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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Aiken County

William Jeffrey Young, Circuit Court Judge

JAMES PRATHER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2013-001053

APPENDIX

SUSAN B. HACKETT
Appellate Defender

ALAN WILSON
Attorney General

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

MEGAN HARRIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

COURT OF GENERAL SESSIONS
06-GS-02-256
06-GS-02-257

THE STATE OF SOUTH CAROLINA
PLAINTIFF
VS.

TRANSCRIPT OF RECORD

JAMES PRATHER
DEFENDANT

MAY 24-26, 2006
AIKEN, SOUTH CAROLINA

B E F O R E:

THE HONORABLE D.A. EARLY, III, JUDGE; AND A JURY.

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

DE GRANT GIBBONS, ASSISTANT SOLICITOR
ATTORNEY FOR THE PLAINTIFF

WALLIS A. ALVES, ESQ.
ATTORNEY FOR THE DEFENDANT

LISA H. HICKLIN
OFFICIAL COURT REPORTER

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1 (WHEREUPON, ON MAY 24, 2006 THE FOLLOWING PROCEEDINGS
2 WERE HELD:)

3 MR. GIBBONS: IF IT PLEASE THE COURT, THE STATE CALLS
4 STATE OF SOUTH CAROLINA VERSUS JAMES DEMONT PRATHER,
5 INDICTMENTS NUMBER 2006-GS-02-256 AND 257 CHARGING HIM
6 WITH TRAFFICKING IN COCAINE ON ONE INDICTMENT AND
7 POSSESSION WITH INTENT TO DISTRIBUTE COCAINE WITHIN
8 PROXIMITY OF A PARK ON THE OTHER INDICT.

9 THE COURT: REPRESENTED BY MISS ALVES?

10 MISS ALVES: YES, SIR.

11 THE COURT: ARE YOU READY TO PROCEED, MA'AM?

12 MISS ALVES: YES, SIR.

13 THE COURT: OKAY. GIVE ME ONE SECOND, IF YOU WOULD.
14 DO I HAVE A WITNESS LIST, VOIR DIRE FOR THIS CASE, MA'AM?

15 MISS ALVES: I DON'T HAVE ANY.

16 THE COURT: LADIES AND GENTLEMEN OF THE JURY PANEL, I
17 REMIND YOU THAT YOU ARE STILL UNDER OATH FROM MONDAY AND
18 WE WILL GO THROUGH THE SAME EXERCISE THAT WE DID -- I'M
19 SORRY, ON TUESDAY. TUESDAY. I KNOW THAT WE HAVE ONE CASE
20 LEFT -- STRIKE THAT. I KNOW THAT WE WE HAVE AT LEAST ONE.
21 WE MAY HAVE TWO. MY JURY PANEL THAT'S DELIBERATING FROM
22 THE ONE THAT WE DREW ON TUESDAY -- WE FINISHED IT UP THIS
23 MORNING. THEY'RE DELIBERATING.

24 WHAT I'D LIKE TO DO IS GO AHEAD AND DRAW THE ONE THAT
25 WE'LL START -- WE'LL DRAW THE JURY THIS MORNING AND START

1 ABOUT 2 OR 2:30 TODAY. THOSE WHO ARE NOT DRAWN WE WILL
2 ASK THAT YOU CALL BACK AGAIN TONIGHT AFTER 6. I AM JUST
3 NOT SURE -- I KNOW THAT WE WILL HAVE -- WE MAY HAVE ONE
4 MORE AFTER THIS ONE. IT IS VERY WELL THAT WE MAY NOT HAVE
5 ANYMORE AFTER THIS ONE. IT IS JUST A MATTER OF HOW IT
6 BREAKS OUT THIS AFTERNOON.

7 SO, WHAT WE'LL DO IS DRAW THIS FIRST JURY THIS
8 MORNING AND THEN GO FROM THERE. I REMIND YOU ONCE AGAIN
9 THAT YOU'RE STILL UNDER OATH FROM TUESDAY, AND I WILL ASK
10 THE SAME QUESTIONS AND THEN WE'LL GO THROUGH SORT OF THE
11 SAME EXERCISE AS WE DID ON TUESDAY. MR. PRATHER?

12 THE DEFENDANT: YES, SIR.

13 THE COURT: GOOD MORNING. HOW ARE YOU?

14 THE DEFENDANT: ALL RIGHT.

15 THE COURT: WOULD YOU PLEASE STAND FOR ME AND FACE
16 THE JURY PANEL? THANK YOU. YOU MAY BE SEATED. HAS ANY
17 MEMBER OF THE JURY PANEL EVER BEEN RELATED BY BLOOD OR
18 MARRIAGE OR HAVE YOU EVER HAD A CLOSE PERSONAL OR SOCIAL
19 RELATIONSHIP WITH MR. JAMES D. PRATHER, P-R-A-T-H-E-R? IF
20 SO, PLEASE STAND.

21 LISTEN TO THE FOLLOWING LIST OF WITNESSES AND I WILL
22 ASK YOU THOSE SAME QUESTIONS. GREG SAVELL, S-A-V-E-L-L,
23 AIKEN COUNTY SHERIFF'S OFFICE; MARK HOWARD, E.C. WHAT
24 IS --

25 MR. GIBBONS: EDGEFIELD COUNTY.

1 THE COURT: EDGEFIELD COUNTY SHERIFF'S OFFICE. GLAD
2 TO HAVE YOU WITH US. MIKE JONES, D.E.A. DEPARTMENT --
3 WHAT IS THAT? WHAT DOES D.E.A. STAND FOR?

4 MR. JONES: THE DRUG ENFORCEMENT ADMINISTRATION.

5 THE COURT: THANK YOU. DRUG ENFORCEMENT
6 ADMINISTRATION. MARTIN SAWYER, AIKEN COUNTY DEPARTMENT OF
7 PUBLIC SERVICE; WAYNE CLARK, AIKEN DEPARTMENT OF PUBLIC
8 SERVICE. I GUESS THAT'S THE CITY; RIGHT?

9 MR. GIBBONS: IT IS.

10 THE COURT: AND TIM ABBOTT. THAT'S THE AIKEN COUNTY
11 SHERIFF'S OFFICE. HE IS NOT PRESENT. HAS ANY MEMBER OF
12 THE JURY PANEL EVER BEEN RELATED BY BLOOD OR MARRIAGE TO
13 ANY OF THESE POTENTIAL WITNESSES OR HAVE YOU EVER HAD A
14 CLOSE PERSONAL OR SOCIAL RELATIONSHIP WITH ANY? IF SO,
15 PLEASE STAND.

16 THE DEFENDANT IS REPRESENTED IN THIS CASE BY
17 MISS WALLIS ALVES. MISS ALVES IS IN CHARGE AND THE HEAD
18 LAWYER FOR THE AIKEN COUNTY PUBLIC DEFENDER'S OFFICE.
19 MR. GRANT GIBBONS WILL BE REPRESENTING THE STATE ON BEHALF
20 OF THE SOLICITOR'S OFFICE. HAS ANY MEMBER OF THE JURY
21 PANEL NOW OR IN THE PAST BEEN REPRESENTED BY EITHER OF
22 THESE LAWYERS OR HAVE YOU EVER BEEN RELATED BY BLOOD OR
23 MARRIAGE OR HAVE YOU EVER HAD A CLOSE PERSONAL OR SOCIAL
24 RELATIONSHIP WITH ANY OF THEM? IF SO, PLEASE STAND? YES,
25 SIR, YOUR NAME?

1 THE JUROR: JOHN MCARTHUR.

2 THE COURT: MR. MCARTHUR, YOUR NUMBER?

3 THE JUROR: EIGHTY-FIVE. I KNOW MR. GIBBONS THROUGH
4 CHURCH AND THROUGH PERSONAL RELATIONSHIP.

5 THE COURT: FRIEND, I ASSUME?

6 THE JUROR: YES.

7 THE COURT: ALL RIGHT. THE FACT THAT YOU ARE A
8 FRIEND AND ATTEND OR THROUGH CHURCH SITUATIONS WOULD THAT
9 IN ANY WAY PRECLUDE OR KEEP YOU FROM BEING A FAIR AND
10 IMPARTIAL JUROR IN THE TRIAL OF THIS CASE?

11 THE JUROR: NO, SIR.

12 THE COURT: THANK YOU. YOU MAY BE SEATED.

13 AS I TOLD YOU THE OTHER DAY AN INDICTMENT IS SIMPLY
14 THE CHARGING DOCUMENT BY WHICH A PERSON IS BROUGHT INTO
15 COURT. IT IS NOT EVIDENCE IN THE CASE. THE DEFENDANT HAS
16 PLEAD GUILTY -- HAS PLEAD NOT GUILTY, NOT GUILTY, TO BOTH
17 OF THESE INDICTMENTS. THAT PUTS THE BURDEN OF PROOF ON
18 THE STATE OF SOUTH CAROLINA TO PROVE EACH AND EVERY
19 ELEMENT OF EACH AND EVERY INDICTMENT BEYOND A REASONABLE
20 DOUBT, BUT I MUST TELL YOU WHAT THE ALLEGATIONS ARE WHICH
21 IS NOT EVIDENCE TO ASK YOU IF YOU KNOW ANYTHING ABOUT IT.

22 IT IS ALLEGED THAT IN AIKEN COUNTY ON FEBRUARY 17,
23 2005 THAT THE DEFENDANT HAD IN HIS POSSESSION A QUANTITY
24 OF COCAINE WITH ALLEGEDLY THE INTENT -- WITH ALLEGEDLY THE
25 INTENT TO TRAFFIC THE COCAINE AND THAT DID OCCUR WITHIN --

1 ALLEGEDLY OCCURRED WITHIN A ONE-HALF MILE RADIUS OF THE
2 PUBLIC SCHOOL; THAT IS -- PLAYGROUND OR PARK. THAT IS
3 WEAVER STREET PARK. THOSE ARE ALLEGATIONS. FEBRUARY 17,
4 2005.

5 ANY MEMBER OF THE JURY PANEL KNOW ANYTHING ABOUT
6 THESE FACTS OR ALLEGATIONS OR HAVE YOU FORMED OR EXPRESSED
7 AN OPINION ABOUT ANY ISSUE OR MATTER INVOLVED IN THE CASE?
8 IF SO, PLEASE STAND.

9 ANY MEMBER OF THE JURY PANEL AWARE OF ANY BIAS OR
10 PREJUDICE TOWARDS EITHER THE STATE OF SOUTH CAROLINA OR
11 THE DEFENDANT IN THIS CASE? IF SO, PLEASE STAND.

12 ANY MEMBER OF THE JURY PANEL A MEMBER OF THE AIKEN
13 COUNTY GRAND JURY WHICH RETURNED A TRUE BILL OF INDICTMENT
14 ON FEBRUARY 9, 2006? IF SO, PLEASE STAND.

15 ANY MEMBER OF THE JURY PANEL KNOW OF ANY REASON
16 WHATSOEVER WHY HE OR SHE SHOULD NOT SERVE AS A JUROR IN
17 THIS CASE WITH PARTICULAR EMPHASIS BEING PLACED ON YOUR
18 ABILITY TO BE FAIR AND IMPARTIAL BOTH TO THE STATE OF
19 SOUTH CAROLINA AND TO THE DEFENDANT MR. JAMES PRATHER? IF
20 SO, PLEASE STAND.

21 ANY ADDITIONAL QUESTIONS ON BEHALF OF THE STATE?

22 MR. GIBBONS: NONE FROM THE STATE.

23 MISS ALVES: NONE FROM THE DEFENSE, JUDGE.

24 THE COURT: ALL RIGHT. FIVE AND FIVE. IS THAT
25 CORRECT?

1 MR. GIBBONS: YES, SIR.

2 THE COURT: AS YOUR NAME IS CALLED WOULD YOU PLEASE
3 COME DOWN LIKE YOU DID YESTERDAY? MA'AM, LADIES.

4 THE CLERK: JUROR NUMBER 10, BRENDA BECKER. WHAT
5 SAYS THE STATE?

6 MR. GIBBONS: PLEASE PRESENT MS. BECKER.

7 THE CLERK: WHAT SAYS THE DEFENSE?

8 MISS ALVES: PLEASE SEAT THE JUROR.

9 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
10 YOUR LEFT. JUROR NUMBER 36, LINDA CORLEY. WHAT SAYS THE
11 STATE?

12 MR. GIBBONS: PLEASE PRESENT MS. CORLEY.

13 THE CLERK: WHAT SAYS THE DEFENSE?

14 MISS ALVES: PLEASE EXCUSE THE JUROR.

15 THE CLERK: YOU MAY RETURN TO YOUR SEAT. JUROR
16 NUMBER 171, THOMAS YOUNGBLOOD. WHAT SAYS THE STATE?

17 MR. GIBBONS: PLEASE PRESENT MR. YOUNGBLOOD.

18 THE CLERK: WHAT SAYS THE DEFENSE?

19 MISS ALVES: PLEASE SEAT THE JUROR.

20 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
21 YOUR LEFT. JUROR NUMBER 1, ARLINA ADRIANO. WHAT SAYS THE
22 STATE?

23 MR. GIBBONS: PLEASE PRESENT MS. ADRIANO.

24 THE CLERK: WHAT SAYS THE DEFENSE?

25 MISS ALVES: PLEASE EXCUSE THE JUROR.

1 THE CLERK: YOU MAY RETURN TO YOUR SEAT. JUROR
2 NUMBER 155, MELZA DAVIS. WHAT SAYS THE STATE?

3 MR. GIBBONS: PLEASE PRESENT MS. DAVIS.

4 THE CLERK: WHAT SAYS THE DEFENSE?

5 MISS ALVES: PLEASE SEAT THE JUROR.

6 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
7 YOUR LEFT. JUROR NUMBER 41, BEVERLY DAVIS.

8 THE COURT: FORTY-ONE?

9 THE CLERK: YES, SIR. WHAT SAYS THE STATE?

10 MR. GIBBONS: PLEASE PRESENT MS. DAVIS.

11 THE CLERK: WHAT SAYS THE DEFENSE?

12 MISS ALVES: PLEASE SEAT MS. DAVIS.

13 THE CLERK: YOU CAN HAVE A SEAT IN THE JURY BOX TO
14 YOUR LEFT. JUROR NUMBER 84, JACOB MATHIS. WHAT SAYS THE
15 STATE?

16 MR. GIBBONS: PLEASE PRESENT MR. MATHIS.

17 THE CLERK: WHAT SAYS THE DEFENSE?

18 MISS ALVES: PLEASE SEAT MR. MATHIS.

19 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
20 YOUR LEFT. JUROR NUMBER 103, WILLIAM PAYNE. WHAT SAYS
21 THE STATE?

22 MR. GIBBONS: PLEASE EXCUSE MR. PAYNE FROM THIS CASE.

23 THE CLERK: YOU MAY RETURN TO YOUR SEAT. JUROR
24 NUMBER 46. ANITA DONATH. WHAT SAYS THE STATE?

25 MR. GIBBONS: PLEASE PRESENT MS. DONATH.

1 THE CLERK: WHAT SAYS THE DEFENSE?

2 MISS ALVES: PLEASE EXCUSE THE JUROR.

3 THE CLERK: YOU MAY RETURN TO YOUR SEAT. JUROR

4 NUMBER 60, KAY GMITTER. WHAT SAYS THE STATE?

5 MR. GIBBONS: PLEASE PRESENT MS. GMITTER.

6 THE CLERK: WHAT SAYS THE DEFENSE?

7 MISS ALVES: PLEASE SEAT THE JUROR.

8 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO

9 YOUR LEFT. JUROR NUMBER 66, ROBERT HOLMES. WHAT SAYS THE
10 STATE?

11 MR. GIBBONS: PLEASE PRESENT MR. HOLMES.

12 THE CLERK: WHAT SAYS THE DEFENSE?

13 MISS ALVES: PLEASE SEAT THE JUROR.

14 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO

15 YOUR LEFT. JUROR NUMBER 145, DERRICK WILLIAMS. WHAT SAYS
16 THE STATE?

17 MR. GIBBONS: PLEASE PRESENT MR. WILLIAMS.

18 THE CLERK: WHAT SAYS THE DEFENSE?

19 MISS ALVES: PLEASE PRESENT MR. WILLIAMS.

20 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO

21 YOUR LEFT. JUROR NUMBER 63, MITCHELL GRUNZEL. WHAT SAYS
22 THE STATE?

23 MR. GIBBONS: PLEASE PRESENT MR. GRUNZEL.

24 THE CLERK: WHAT SAYS THE DEFENSE?

25 MISS ALVES: PLEASE SEAT MR. GRUNZEL.

1 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
2 YOUR LEFT. JUROR NUMBER 170, DAVID WILLIAMS. WHAT SAYS
3 THE STATE?

4 MR. GIBBONS: PLEASE EXCUSE MR. WILLIAMS FROM THIS
5 CASE.

6 THE CLERK: YOU MAY RETURN TO YOUR SEAT. THE STATE
7 HAS EXHAUSTED TWO STRIKES, THE DEFENSE THREE. JUROR
8 NUMBER 24, MARY BUNCH. WHAT SAYS THE STATE?

9 MR. GIBBONS: PLEASE PRESENT MS. BUNCH.

10 THE CLERK: WHAT SAYS THE DEFENSE?

11 MISS ALVES: PLEASE EXCUSE MS. BUNCH.

12 THE CLERK: YOU MAY RETURN TO YOUR SEAT. JUROR
13 NUMBER 39, JERRY CURLES. WHAT SAYS THE STATE?

14 MR. GIBBONS: PLEASE PRESENT MR. CURLES.

15 THE CLERK: WHAT SAYS THE DEFENSE?

16 MISS ALVES: PLEASE SEAT MR. CURLES.

17 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
18 YOUR LEFT. JUROR NUMBER 4, KEITH BARKER. WHAT SAYS THE
19 STATE?

20 MR. GIBBONS: PLEASE PRESENT MR. BARKER.

21 THE CLERK: WHAT SAYS THE DEFENSE?

22 MISS ALVES: PLEASE SEAT MR. BARKER.

23 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
24 YOUR LEFT. JUROR NUMBER 167, JULIA SCOTT. WHAT SAYS THE
25 STATE?

1 MR. GIBBONS: PLEASE PRESENT MS. SCOTT.

2 THE CLERK: WHAT SAYS THE DEFENSE?

3 MISS ALVES: PLEASE SEAT MS. SCOTT.

4 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
5 YOUR LEFT.

6 THE COURT: ALL RIGHT. TWO ALTERNATES, TWO AND ONE.

7 THE CLERK: ALTERNATE NUMBER ONE, JUROR NUMBER 94,
8 MICHELLE MOORE. WHAT SAYS THE STATE?

9 MR. GIBBONS: PLEASE PRESENT MS. MOORE.

10 THE CLERK: WHAT SAYS THE DEFENSE?

11 MISS ALVES: PLEASE SEAT MS. MOORE.

12 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
13 YOUR LEFT. ALTERNATE NUMBER TWO, JUROR NUMBER 163, VICKI
14 MURRAY. WHAT SAYS THE STATE?

15 MR. GIBBONS: PLEASE PRESENT MS. MURRAY.

16 THE CLERK: WHAT SAYS THE DEFENSE?

17 MISS ALVES: PLEASE EXCUSE MS. MURRAY.

18 THE CLERK: YOU MAY RETURN TO YOUR SEAT. JUROR
19 NUMBER 119, PATRICIA SCHANDER. WHAT SAYS THE STATE?

20 MR. GIBBONS: PLEASE PRESENT MS. SCHANDER.

21 THE CLERK: WHAT SAYS THE DEFENSE?

22 MISS ALVES: PLEASE SEAT MS. SCHANDER.

23 THE CLERK: YOU MAY HAVE A SEAT IN THE JURY BOX TO
24 YOUR LEFT.

25 THE COURT: ANY MOTIONS?

1 MR. WEEKS: NONE FROM THE STATE.

2 MISS ALVES: NO, YOUR HONOR.

3 THE COURT: ALL RIGHT. HOW ABOUT SHOW THEM BACK TO
4 THE OTHER JURY ROOM. I'LL BE WITH THEM IN JUST A FEW
5 MINUTES.

6 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 12:04.)

7 (WHEREUPON, A BREAK WAS TAKEN.)

8 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT 12:10.)

9 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE
10 JURY PANEL, WE HAVE SOME PRETRIAL MOTIONS THAT I HAVE TO
11 DO OUTSIDE OF YOUR PRESENCE BEFORE WE START THE TRIAL.
12 WHEN WE GET THROUGH WITH EVERYTHING I'LL EXPLAIN TO YOU
13 WHAT THAT WAS. IN ADDITION TO THAT AT 2 O'CLOCK I HAVE
14 TWO HEARINGS THAT WILL PROBABLY TAKE ABOUT 15 MINUTES
15 EACH. I DON'T WANT Y'ALL HAVE TO SIT AROUND AND WAIT
16 UNTIL -- I'LL ASK YOU TO BE BACK AT 2:30. WE'LL GET
17 STARTED RIGHT AT 2:30 LIKE I DID YESTERDAY WITH THE OTHER
18 JURY. SO YOU CAN MAKE SOME PLANS, I AM NOT SURE HOW LONG
19 THIS CASE WILL LAST, BUT I SUSPECT THAT WE'LL GO UNTIL
20 ABOUT 5 O'CLOCK THIS AFTERNOON INSTEAD OF TRYING TO GO
21 LATE TO FINISH IT AND COME BACK TOMORROW AND DO IT UNLESS
22 WE GET RIGHT CLOSE TO THE END.

23 SO, LET'S BREAK UNTIL 2:30. THE BAILIFF WILL SHOW
24 YOU HOW TO GET BACK AT 2:30. WE'LL START RIGHT AT 2:30.
25 THANK Y'ALL. HAVE A NICE LUNCH.

1 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 12:12.)

2 THE COURT: ALL RIGHT. MR. GIBBONS, I UNDERSTAND
3 THAT WE HAVE A JACKSON V. DENNO HEARING.

4 MR. GIBBONS: YOUR HONOR, THAT MAY NOT BE NECESSARY.
5 IF I CAN EXPLAIN WHAT WAS GOING ON, WE MAY CAN DISPOSE OF
6 SOME OF THE ISSUES. THIS WAS A HOUSE THAT HAD SEVERAL
7 PEOPLE IN IT. SOME DRUGS WERE FOUND ON THE DEFENDANT'S
8 PERSON. SOME WERE FOUND ON A FLOOR. SOME WERE FOUND ON A
9 WINDOW SILL. SOME WERE FOUND IN ANOTHER PERSON'S BAG.

10 WE HAD INTENTIONALLY -- WE HAD ORIGINALLY DECIDED TO
11 GO WITH CONSTRUCTIVE POSSESSION CASE ON SYSTEM OF THE
12 DRUGS ON THIS DEFENDANT, BUT WE HAVE DECIDED ONLY TO TRY
13 HIM ON THE TRAFFICKING COCAINE THAT WAS IN HIS POCKET.
14 THEREFORE, IT'S NOT AN ISSUE WHETHER HE SAID HE LIVED
15 THERE OR NOT. THAT WAS THE JACKSON V. DENNO ISSUE. SOME
16 OTHER ISSUES ALONG THAT LINE ARE NO LONGER --

17 THE COURT: IRRELEVANT.

18 MR. GIBBONS: -- IN QUESTION. I'VE GOT A COPY OF THE
19 SEARCH WARRANT AND A COPY OF THE CHEMICAL ANALYSIS AND
20 SOME PICTURE THAT MISS ALVES WAS GOING TO CHALLENGE. I'LL
21 HAVE THEM MARKED AS COURT'S EXHIBITS.

22 (WHEREUPON, COURT'S EXHIBIT NOS. 1 -4 WERE MARKED FOR
23 IDENTIFICATION ONLY.)

24 MR. GIBBONS: I AM GOING TO PASS UP COURT'S EXHIBIT
25 NO. 1. THIS IS THE DRUG ANALYSIS. RATHER THAN HAVING THE

1 CRACK COCAINE ANALYSIS GO BACK TO THE JURY I BELIEVE SHE'S
2 STIPULATING IT WAS 26.69 GRAMS.

3 THE COURT: WELL, THERE ARE TWO ON HERE. ONE IS 1966
4 AND ONE IS 2669.

5 MR. GIBBONS: THE BOTTOM IS COCAINE. THE TOP IS
6 CRACK.

7 THE COURT: THANK YOU.

8 MR. GIBBONS: THE BOTTOM IS THE ONE WE'RE TRYING,
9 YOUR HONOR.

10 MISS ALVES: JUDGE, WE WOULD STIPULATE THAT THE
11 CHEMIST FOUND 26.69 GRAMS OF COCAINE IN THE SUBSTANCE THAT
12 WAS PROVIDED TO HIM. I AM NOT ADMITTING THAT MY CLIENT
13 HAD POSSESSION OF IT, BUT I DON'T DISPUTE THAT THE 26.69
14 GRAMS IS WHAT THE CHEMIST SAYS SHE FOUND.

15 THE COURT: ANY PROBLEM WITH THAT?

16 MR. GIBBONS: UNLESS I HAVE TO USE THAT PAPERWORK TO
17 SHOW WHAT PACKAGE IT WAS IN.

18 MISS ALVES: I AM NOT DISPUTING THE PACKAGE EITHER,
19 JUDGE. I AM NOT ADMITTING TO POSSESSION. I AM NOT
20 DISPUTING THE PAPERWORK OR THE PACKET THAT WAS SUBMITTED
21 TO THE CHEMIST.

22 MR. GIBBONS: OKAY.

23 THE COURT: IN OTHER WORDS, THE COCAINE THAT WAS --
24 THE SUBSTANCE THAT WAS FOUND WILL BE STIPULATED WAS
25 COCAINE AND IT WAS 26.69 GRAMS. YOU'RE NOT STIPULATING

1 FROM WHENCE IT CAME.

2 MISS ALVES: THAT'S RIGHT, JUDGE.

3 MR. GIBBONS: OKAY.- THAT'S GOOD. HERE ARE TWO
4 PHOTOGRAPHS TAKEN OF THE DEFENDANT, COURT'S EXHIBIT 3 AND
5 4 -- ONE WITH THE COCAINE STILL IN HIS POCKET TAKEN AT THE
6 SCENE, ONE WITH THE COCAINE TAKEN OUT AND PUT IN HIS HANDS
7 SO YOU CAN SEE IT BETTER. SHE HAS ISSUE WITH THOSE.

8 THE COURT: WHAT IS THE PROBLEM, MA'AM?

9 MISS ALVES: I BELIEVE THOSE PICTURES ARE OVERLY
10 PREJUDICIAL AND THEY DO NOT ACCURATELY REFLECT THE SCENE;
11 PARTICULARLY, THE ONE IN HIS HANDS AND THE ONE ON HIS
12 POCKET. ACCORDING TO THE POLICE REPORT THE POLICE HAVE
13 STATED THAT THEY PULLED IT OUT. I BELIEVE THAT ANYTHING
14 SHOWN IN THOSE PICTURES WOULD HAVE BEEN STAGING, AND I
15 THINK THAT IT WOULD BE HIGHLY PREJUDICIAL TO MR. PRATHER
16 TO ALLOW THE JURY TO SEE PICTURES THAT DO NOT ACCURATELY
17 REFLECT THE SCENE, BUT, IN FACT, REFLECT THE SCENE AS IT
18 WAS STAGED BY THE POLICE.

19 THE COURT: I AM NOT GOING TO RULE AT THIS PRESENT
20 TIME. MR. GIBBONS, PLEASE DON'T MENTION THAT IN THE
21 OPENING STATEMENT. WHEN YOU GET TO THE PHOTOGRAPHS DO A
22 PROFFER AND I'LL -- OR YOU CAN DO IT NOW. IT WOULD
23 PROBABLY BE BETTER AS THE EVIDENCE DEVELOPS BEFORE WE GET
24 TO THE PICTURES I'LL SEND THEM OUT.

25 MR. GIBBONS: YES, SIR. WE CAN DO IT THAT WAY.

1 THE COURT: FAIR ENOUGH, MA'AM?

2 MISS ALVES: YES, SIR.

3 MR. GIBBONS: AND HOWEVER YOU WANT TO HANDLE THE
4 SEARCH WARRANT -- I DON'T KNOW EXACTLY WHAT YOUR MOTION IS
5 WITH THAT.

6 THE COURT: DO YOU HAVE ANYTHING FURTHER,
7 MR. GIBBONS?

8 MR. GIBBONS: YOUR HONOR, I HAVE A COPY OF THE SEARCH
9 WARRANT MARKED UP IF YOU'D LIKE TO READ IT. SHE SAID SHE
10 WAS GOING TO CHALLENGE THE SEARCH WARRANT.

11 THE COURT: MA'AM, ANYTHING ON BEHALF OF THE
12 DEFENDANT?

13 MISS ALVES: YES, SIR. JUDGE, I WOULD OBJECT TO THE
14 SEARCH WARRANT. I DON'T BELIEVE THAT THE STATE
15 ESTABLISHED SUFFICIENT PROBABLE CAUSE TO SEARCH THIS HOME.
16 ALSO, I DON'T BELIEVE THAT THERE WAS SUFFICIENT CAUSE
17 STATED TO SEARCH MR. PRATHER ONCE THEY WERE SEARCHING THE
18 HOME MERELY BECAUSE HE WAS FOUND IN THE HOME, AND I WOULD
19 MAKE SUPPRESSION -- I WOULD MAKE MOTION TO SUPPRESS ANY
20 DRUGS FOUND AS A RESULT OF THE SEARCH WARRANT AND THE
21 SEARCH OF MR. PRATHER BECAUSE THOSE ARE PROBABLY TWO
22 SEPARATE ISSUES.

23 MR. PRATHER WAS SEARCHED, JUDGE, IN THIS SITUATION
24 BECAUSE THE POLICE CAME IN WITH THE SEARCH WARRANT AND HE
25 WAS ONE OF FIVE PEOPLE FOUND INSIDE OF THE HOUSE.

1 THE COURT: WELL, YOU WANT TO OFFER EVIDENCE TO
2 SUPPORT YOUR MOTION? YOU WANT TO OFFER AFFIDAVITS? HOW
3 DO YOU WANT TO DO IT?

4 MISS ALVES: JUDGE, THE ONLY THING THAT I HAVE IS THE
5 THE SEARCH WARRANT. I HAVE GOTTEN A COPY OF IT THAT WAS
6 HANDED UP BY THE SOLICITOR. I THINK THAT IT'S THE BURDEN
7 ON THE STATE TO ESTABLISH THAT THEY DID HAVE APPROPRIATE
8 PROBABLE CAUSE TO OBTAIN THE SEARCH WARRANT AND THAT
9 APPROPRIATE PROBABLE CAUSE TO SEARCH MR. PRATHER.

10 MR. GIBBONS: YOUR HONOR, MR. WAYNE CLARK IS IN THE
11 COURTROOM. HE IS THE ONE WHO OBTAINED THE SEARCH WARRANT
12 FROM MAGISTRATE CARROLL. I'D BE HAPPY TO PUT HIM ON THE
13 STAND, AND HE CAN RELAY THE SAME INFORMATION, I BELIEVE.

14 THE COURT: MA'AM, WHAT DO YOU FIND DEFICIENT IN THE
15 ATTACHMENT?

16 MISS ALVES: YOUR HONOR, SPECIFICALLY, ORIGINALLY
17 ACCORDING TO THE ATTACHMENT THERE'S STATEMENTS THAT
18 SOMEONE NAMED TROUBLE COLEMAN ORIGINALLY SOLD DRUGS OUT OF
19 THAT HOME AND THAT LATER THE POLICE RETURNED TO THE
20 LOCATION WITH SOMEONE ELSE NAMED KEITH BUTLER. THERE IS
21 NO STATEMENTS FROM MR. BUTLER OR ANYONE ELSE STATING
22 SPECIFICALLY THE HOUSE THAT THEY WENT TO. THERE IS
23 NOTHING IN HERE INDICATING THE HOUSE THAT MR. TROUBLE
24 COLEMAN SOLD OUT OF. IT JUST SAYS THAT IT WAS IN A
25 LOCATION KNOWN TO KEITH BUTLER AS TROUBLE COLEMAN.

1 JUDGE, IT APPEARS THAT BECAUSE OF THAT ORIGINAL BUY
2 FROM SOMEONE NAMED TROUBLE COLEMAN MR. KEITH BUTLER WENT
3 BACK TO THIS HOUSE, BUT THERE IS NOTHING FROM MR. BUTLER
4 IN HERE. THERE IS NO STATEMENTS SAYING THAT HE ACTUALLY
5 MADE A PURCHASE FROM THAT HOME FROM ANYONE IN THE HOME AND
6 I DON'T BELIEVE THAT THE STATE HAS ESTABLISHED SUFFICIENT
7 PROBABLE CAUSE TO HAVE GOTTEN THE SEARCH WARRANT.

8 THE COURT: WELL, IS THE INFORMANT -- HAS THE
9 INFORMANT MET WITH THE SUBJECT NAMED KEITH BUTLER IN
10 EDGEFIELD, SOUTH CAROLINA. KEITH BUTLER TOLD THE
11 INFORMANT HE COULD PROVIDE THE INFORMANT WITH COCAINE AND
12 CRACK IF HE PROVIDED AN ADDITIONAL \$100. INFORMANT AND
13 KEITH BUTLER LEFT EDGEFIELD. THE INFORMANT WAS TAKEN TO A
14 MOBILE HOME, THE RESIDENCE OF THE SUBJECT KNOWN TO KEITH
15 BUTLER AS TROUBLE COLEMAN. WHAT IS THE PROBLEM WITH ALL
16 OF THAT?

17 MISS ALVES: JUDGE, THERE IS NOTHING IN HERE
18 INDICATING THAT FROM -- THERE IS NOTHING IN HERE FROM
19 MR. BUTLER OR MR. COLEMAN -- WHO I DON'T EVEN KNOW WHO
20 MR. COLEMAN IS -- INDICATING THAT THEY ACTUALLY PURCHASED
21 DRUGS OUT OF THIS HOME ON THIS PARTICULAR DATE WHICH WOULD
22 HAVE GIVEN PROBABLE CAUSE FOR THE SEARCH WARRANT.

23 THE COURT: SUBJECT KEITH BUTLER PURCHASED FROM
24 COLEMAN, QUARTER OUNCE. IS THAT NOT IT?

25 MISS ALVES: NO, SIR. JUDGE, THEY HAVEN'T EVEN SHOWN

1 THAT MR. COLEMAN IS LINKED TO THE HOME OR THAT THIS WAS
2 THE SPECIFIC HOME THAT MR. COLEMAN WAS AT. THERE IS
3 NOTHING IN HERE.

4 THE COURT: WHAT DO YOU THINK IT'S SUPPOSED TO SHOW?

5 MISS ALVES: JUDGE, I THINK THERE SHOULD BE SOMETHING
6 FROM MR. BUTLER. THERE SHOULD BE SOME TYPE OF AFFIDAVIT
7 FROM MR. BUTLER.

8 THE COURT: THAT SAID WHAT?

9 MISS ALVES: SETTING FORTH THAT HE DID, IN FACT,
10 PURCHASE DRUGS FROM THIS HOME AT THIS ADDRESS IN ORDER FOR
11 THEM TO HAVE GOTTEN A SEARCH WARRANT.

12 THE COURT: ANYTHING ELSE?

13 MISS ALVES: JUDGE, I HAVE A SEPARATE MOTION AS TO
14 THE SEARCH OF MR. PRATHER ONCE THE SEARCH WARRANT -- ONCE
15 THE POLICE WERE EXECUTING THE SEARCH WARRANT. I DON'T
16 BELIEVE THAT THERE WAS ANY -- ACCORDING TO THE POLICE
17 REPORT THERE IS AN ALLEGATION THAT THE POLICE SEARCHED
18 MR. BUTLER -- EXCUSE ME, I'M SORRY, MR. PRATHER -- AND
19 THAT'S AT THE TIME WHEN THEY FOUND THE DRUGS THAT THEY'RE
20 STATING THAT THEY FOUND ON HIM. THERE WAS NO REASON FOR
21 MR. PRATHER TO BE SEARCHED UNLESS THE POLICE HAD -- I
22 MEAN, AT THE TIME THAT THEY WERE ENTERING THE HOME. I
23 THINK THE STANDARD IS THE SAME AS IF THEY WERE APPROACHING
24 HIM ON THE STREET. THEY HAVE TO HAVE A SUSPICION THAT
25 THERE IS A DANGER TO THE POLICE OFFICERS, AND THERE WAS

1 NONE STATED IN THE POLICE REPORT THAT THERE WAS A DANGER
2 TO THE POLICE OFFICERS. IN FACT, THE POLICE REPORT
3 SPECIFICALLY STATES THAT THEY OBSERVED HIM IN THE HALLWAY
4 OF THE SINGLE-WIDE TRAILER AND THE INVESTIGATING OFFICER
5 WHO WOULD BE INVESTIGATOR SAVELL AND LIEUTENANT JONES
6 SEARCHED THE SUBJECT PRATHER AND THEY'RE STATING THAT THEY
7 FOUND ONE PLASTIC BAGGY OF MARIJUANA AND THEN THEY TURNED
8 HIM OVER TO INVESTIGATOR ABBOTT FOR A PAT-DOWN AND THEY'RE
9 STATING THAT THEY FOUND A WEAPON AND COCAINE.

10 THE COURT: LET ME MAKE SURE I UNDERSTAND. YOUR
11 CLIENT ALLEGEDLY WAS IN THIS HOUSE; CORRECT?

12 MISS ALVES: YES, SIR, HE WAS.

13 THE COURT: THEY HAD A SEARCH WARRANT TO SEARCH THE
14 HOUSE. DESCRIPTION OF PREMISES TO BE SEARCHED A MOBILE
15 HOME WITH WHITE WITH YELLOW TRIM, ET CETERA, ET CETERA,
16 AND ALL VEHICLES AND ALL OUT BUILDINGS ON THE PREMISES.

17 MISS ALVES: YES, SIR.

18 THE COURT: THEY GO TO THE HOUSE TO EXECUTE THE
19 SEARCH WARRANT. YOUR GUY IS IN THE HOUSE. THEY SEARCH
20 HIS POCKETS WHILE HE IS IN THE HOUSE. IS THAT WHAT YOU'RE
21 TELLING ME?

22 MISS ALVES: YES, SIR. ACCORDING TO THE POLICE
23 REPORT THAT'S WHAT HAPPENED.

24 THE COURT: MR. GIBBONS, WHAT IS YOUR LEGAL BASIS FOR
25 ALLOWING -- IN OTHER WORDS, YOU HAVE A SEARCH WARRANT TO

1 SEARCH MY HOUSE. AT MY HOUSE -- I ASSUME I'M AT THE
2 HOUSE, BUT I HAVE VISITOR IN MY HOUSE. WHEN THEY COME IN
3 AND SEARCH MY HOUSE DO THEY HAVE THE RIGHT TO SEARCH THE
4 POCKETS OF MY VISITORS? IS THAT WHAT WE GOT HERE?

5 MR. GIBBONS: YOUR HONOR, MY ARGUMENT ON THAT IS
6 TWO-FOLD.

7 THE COURT: NUMBER ONE, IS THAT THE CORRECT FACTUAL
8 SCENARIO?

9 MR. GIBBONS: YES, SIR. NUMBER ONE, THEY DID HAVE A
10 SEARCH WARRANT FOR THE HOUSE AND THE CONTENTS NOT LIMITED
11 IN ANY WAY. I THINK THAT GIVES THEM A RIGHT TO BE IN THE
12 HOUSE.

13 THE COURT: DO YOU HAVE ANY LAW ON THAT?

14 MR. GIBBONS: I DO HAVE SOME LAW DOWN -- I DIDN'T
15 KNOW WHAT WE WERE GOING TO BE FACING. THERE IS SOME LAW
16 THAT I CAN PROVIDE THE COURT WITH. I THINK THERE IS
17 ABUNDANT LAW THAT SAYS THAT OFFICERS WHEN THEY'RE
18 EXECUTING A SEARCH WARRANT CAN CHECK EVERY PERSON INSIDE
19 THE RESIDENCE FOR THEIR SAFETY. I THINK THAT'S WHAT THE
20 EVIDENCE WILL SHOW THE TESTIMONY WILL BE. DURING THAT
21 PAT-DOWN IS WHEN THEY FOUND THE DRUGS IN HIS JACKET
22 POCKET.

23 THE COURT: ALL RIGHT. IT IS 12:25. HOW LONG DO
24 Y'ALL NEED TO GET ME SOME LAW ON IT?

25 MR. GIBBONS: IT SHOULDN'T TAKE 15 OR 20 MINUTES.

1 THE COURT: BOTH OF YOU GET ME SOME CASELAW TO
2 SUPPORT YOUR POSITION, PLEASE.

3 MR. GIBBONS: IT DOESN'T SOUND LIKE A TESTIMONY ISSUE
4 AT THIS POINT.

5 THE COURT: NO. IT IS A LEGAL ISSUE, IT SOUNDS LIKE
6 TO ME.

7 MISS ALVES: YES, SIR.

8 THE COURT: AS I UNDERSTAND THE FACTS ARE THEY HAVE A
9 SEARCH WARRANT TO GO TO YOUR HOUSE. IN YOUR HOUSE I'M
10 VISITING.

11 MR. GIBBONS: YES, SIR.

12 THE COURT: AND THEY GO IN, THEY PAT ME DOWN FOR --
13 ALLEGEDLY FOR SAFETY PURPOSES IS WHAT YOU'RE SAYING --

14 MR. GIBBONS: CORRECT.

15 THE COURT: -- AND THAT GIVES THEM THE RIGHT TO IF I
16 HAVE SOMETHING ILLEGAL ON ME TO SEIZE IT AS A RESULT OF
17 THE PAT-DOWN. MISS ALVES SAYS THAT THE FACT THAT I'M IN
18 THE HOUSE AND HAD THE SEARCH WARRANT TO SEARCH YOUR HOUSE
19 DOESN'T GIVE THEM THE RIGHT TO PAT ME DOWN OR SEARCH ME.

20 MR. GIBBONS: YES, SIR.

21 THE COURT: BOTH OF YOU GET ME SOME CASELAW.
22 ANYTHING ELSE, MA'AM?

23 MISS ALVES: JUDGE, I WOULD JUST OBJECT TO ANY
24 REFERENCE TO THE REASON FOR THE -- TO THE REASON FOR THE
25 SEARCH WARRANT BEING BROUGHT UP AND IT'S MY UNDERSTANDING

1 THAT THE POLICE WOULD SAY THAT THE HOUSE WAS UNDER
2 SURVEILLANCE. I WOULD JUST OBJECT TO ANY OF THAT COMING
3 IN. I THINK THAT WOULD BE PREJUDICIAL.

4 MR. GIBBONS: YOUR HONOR, I DON'T SEE ANY POINT IN
5 GOING INTO THAT UNLESS THE DOOR IS OPEN. IF SHE OPENS IT,
6 I WILL JUMP THROUGH.

7 THE COURT: ABSOLUTELY.

8 MISS ALVES: YES, SIR.

9 THE COURT: WHAT ELSE? SOMEBODY COLD BACK THERE?
10 I'M SORRY. YOU WANT ME TO GET YOU A BLANKET? A PILLOW?

11 MALE SPEAKER: I AM OKAY.

12 THE COURT: IF YOU HAD THIS OLD ROBE ON YOU WOULDN'T
13 BE COLD. ANYTHING ELSE THAT I CAN DO TO ACCOMMODATE THIS
14 SITUATION? ALL RIGHT. AT Y'ALLS CONVENIENCE JUST GET ME
15 THOSE CASES. OBVIOUSLY, I AM WAITING.

16 (WHEREUPON, A BREAK WAS TAKEN.)

17 (WHEREUPON, STATE'S EXHIBIT NOS. 1 - 4 WERE MARKED
18 FOR IDENTIFICATION ONLY.)

19 THE COURT: ALL RIGHT. ANYTHING FOR THE RECORD
20 BEFORE WE START AS TO THE MOTION TO SUPPRESS ON THE ISSUE
21 OF THE SEARCH WARRANT, ON THE ISSUE OF THE DEFENDANT, WHAT
22 HAPPENED AT THE HOUSE THAT WE HAD EARLIER TODAY? WE'VE
23 HAD AN IN-CHAMBERS DISCUSSION. I HAVE REVIEWED SOME CASES
24 GIVEN TO ME BY THE SOLICITOR'S OFFICE. I HAVE ALSO HAD AN
25 INFORMAL CONFERENCE WITH BOTH THE DEFENSE COUNSEL AND

1 SOLICITOR. I EXPRESSED SOME CONCERNS ABOUT THE FACTS AND
2 THE SITUATION IN THIS CONCERNING THIS ISSUE, BUT I AM
3 GOING TO GO AHEAD AND RECEIVE TESTIMONY AND SEE HOW IT
4 DEVELOPS DURING THE TRIAL OF THE CASE, AND, MISS ALVES,
5 OBVIOUSLY, YOU CAN MAKE ANY TYPE OF MOTIONS AT THE
6 APPROPRIATE TIME DURING THE CASE TO PROTECT YOUR CLIENT ON
7 THAT.

8 MISS ALVES: YES, SIR.

9 THE COURT: ANY PROBLEMS ON BEHALF OF THE STATE?

10 MR. GIBBONS: YOUR HONOR, JUST SO WE DON'T GO DOWN A
11 WRONG ROAD I AM GOING TO REFER TO THIS DURING THE TRIAL AS
12 A LEGITIMATE SEARCH WARRANT ON ITS FACE BEING SERVED AT
13 THE HOUSE RATHER THAN GOING THROUGH THE DETAILS OF THE
14 SEARCH WARRANT.

15 THE COURT: I DON'T THINK THAT WAS -- I AM GOING TO
16 RULE THAT THE SEARCH WARRANT IS FINE. WHAT BOTHERS ME IS
17 TO HAVE THE SEARCH WARRANT OF A HOUSE AND YOU HAVE
18 OCCUPANTS -- NOT OCCUPANTS, BUT PEOPLE IN THE HOUSE AND
19 THEY GO IN AND SEARCH THOSE PEOPLE.

20 MR. GIBBONS: YES, SIR.

21 THE COURT: THAT'S WHAT GIVES ME SOME CONCERN. I
22 WANT TO SEE HOW THE FACTS DEVELOP ON THAT BEFORE I MAKE A
23 RULING. AS FAR AS THE SEARCH WARRANT GOES, I RULE THAT
24 THE SEARCH WARRANT ON ITS FACE IS LEGITIMATE.

25 MR. GIBBONS: OKAY. SO, I DON'T NEED TO GO INTO

1 THAT. WE AGREED TO STAY AWAY FROM THE UNDERLYING FACTS.
2 I JUST WANTED TO MAKE SURE THAT I UNDERSTOOD. AND THE
3 PHOTOGRAPHS WERE ADMITTED --

4 THE COURT: I TOLD YOU ON THE PHOTOGRAPHS THAT -- SHE
5 MADE A MOTION IN LIMINE. I AM NOT GOING TO EXCLUDE THEM
6 AT THE PRESENT TIME.

7 MR. GIBBONS: OKAY.

8 THE COURT: BUT WHEN WE GET READY TO GO INTO THE
9 PHOTOGRAPHS, LET'S DO A PROFFER OUTSIDE OF THE PRESENCE OF
10 THE JURY SO SHE CAN RAISE AT THAT TIME WHETHER OR NOT IT
11 WAS STAGED, WHETHER OR NOT IT'S MORE PREJUDICIAL THAN
12 PROBATIVE TO HOLD MORE ARGUMENTS DEALING WITH PHOTOGRAPHS.

13 MR. GIBBONS: YES, SIR. THANK YOU.

14 MISS ALVES: YOUR HONOR, I WOULD JUST HAVE SOME
15 CONCERNS ABOUT ALLOWING THE STATE TO GO FORWARD WITHOUT A
16 RULING ON THE MOTIONS. I WOULD JUST PUT MY POSITION ABOUT
17 THAT ON THE RECORD THAT I AM CONCERNED ABOUT THAT, YOUR
18 HONOR, BUT IT'S MY UNDERSTANDING, JUDGE, THAT IF YOU DID
19 FIND LATER ON THAT THE SEARCH WAS IMPROPER THEN AT THAT
20 POINT IF YOU SUPPRESSED IT --

21 THE COURT: AT THAT POINT I AM GOING TO SUPPRESS IT
22 AND THAT'S THE END OF THE CASE.

23 MISS ALVES: YES, SIR. JUDGE, I WOULD ALSO HAVE ONE
24 FINAL MOTION TO KEEP OUT ANY REFERENCE TO A PISTOL THAT
25 WAS FOUND -- ALLEGEDLY FOUND ON MR. PRATHER'S PERSON,

1 RATHER. THERE IS ALLEGATION THAT IN ADDITION TO THE
2 COCAINE THE POLICE FOUND A WEAPON, AND I WOULD OBJECT TO
3 ANY REFERENCE TO THAT COMING IN. I THINK THAT WOULD BE
4 OVERLY PREJUDICIAL TO MR. PRATHER AS TO WHETHER OR NOT HE
5 HAD POSSESSION OF THIS AMOUNT OF THE DRUGS AND POSSESSION
6 WITH INTENT TO DISTRIBUTE WITHIN A HALF MILE.

7 THE COURT: MAYBE HE HAD A CONCEALED WEAPONS PERMIT.
8 I DON'T KNOW. WHAT DO YOU SAY TO THAT?

9 MR. GIBBONS: YOUR HONOR, IF HIS BASIS IS IT'S NOT
10 HIS HOUSE, THEY FOUND A GUN WHEN THEY ROLLED HIM OVER
11 RIGHT NEXT TO THE DRUGS. I MEAN, I DON'T KNOW HOW THAT'S
12 NOT PART OF THE FACTS OF THE CASE.

13 THE COURT: YOU CAN MAKE OBJECTIONS AT THE
14 APPROPRIATE TIME. AT THE PRESENT TIME I AM NOT GOING TO
15 KEEP THAT OUT.

16 MISS ALVES: YES, SIR.

17 MR. GIBBONS: PART OF THE REASON FOR THE SEARCH WAS
18 FOR OFFICER SAFETY. IT MAY BE RELEVANT TO THAT.

19 THE COURT: ABSOLUTELY. CALL THE JURY IN, PLEASE.

20 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT 2:57.)

21 THE COURT: YOU WOULD KNOW AS SOON AS I GOT READY TO
22 BRING Y'ALL OUT AT 2:30 THE OTHER JURY REACHED A VERDICT.
23 SO, I HAD TO DO ALL OF THAT. THE BEST LAID PLANS GO
24 ASTRAY SOMETIMES. MS. MELZA DAVIS? WHERE IS MY LADY THAT
25 WORKS IN THAT LAW OFFICE? WOULD YOU PLEASE SERVE AS MY

1 FOREPERSON? YOU DON'T HAVE TO IF YOU DON'T WANT TO. IT'S
2 NOT A HARD JOB.

3 THE JUROR: YES, SIR.

4 THE COURT: IT'S AN HONORABLE JOB.

5 THE JUROR: I HAVE HEARD THAT BEFORE.

6 THE COURT: THAT MEANS YOU HAVE TO PAY ALL THE
7 JURORS. YOU HAVE TO STRAIGHTEN UP AFTER EVERYTHING IS
8 DONE. JUST KIDDING.

9 THE JUROR: IT IS AN HONOR. THANK YOU.

10 THE COURT: NO, MA'AM. IT'S NOT A DIFFICULT JOB.
11 YOU'RE JUST SORT OF IN CHARGE OF THE DELIBERATIONS AT THE
12 A PROPER TIME, AND IF Y'ALL HAVE ANY CONCERNS JUST WRITE
13 OUT A NOTE. YOU DON'T MIND DOING THAT, DO YOU?

14 THE JUROR: NO, SIR.

15 THE COURT: NOW, IF Y'ALL WOULD ALL PLEASE STAND AND
16 RAISE YOUR RIGHT HAND THE CLERK WILL SWEAR YOU IN FOR THIS
17 PARTICULAR CASE.

18 (WHEREUPON, THE JURY WAS SWORN AT 2:59.)

19 THE COURT: MADAM FORELADY, LADIES AND GENTLEMEN OF
20 THE JURY, LET ME JUST GO OVER A FEW THINGS BEFORE WE GET
21 STARTED. IT IS 3 O'CLOCK. I SUSPECT WE'RE GOING TO GET
22 STARTED INTO THIS THING AND RUN LIKE I TOLD YOU UNTIL
23 ABOUT 5 O'CLOCK THIS AFTERNOON AND SORT OF SEE WHERE WE
24 STAND AT THAT TIME. I DON'T THINK IT'S GOING TO BE A REAL
25 LONG TRIAL. IT IS SORT OF LIKE THE ONE WE JUST HAD,

1 RELATIVELY SHORT COMPARED TO SOME CASES THAT WE TRY IN
2 HERE.

3 LET ME GIVE YOU A LITTLE BIT OF AN OPENING STATEMENT
4 AS TO WHAT'S GOING ON, AND THEN I'LL TELL YOU THE
5 PROCEDURE THAT WE'LL GO THROUGH AFTER I MAKE MY STATEMENT.
6 IN THIS CASE I REMIND YOU THAT THE DEFENDANT IS INDICTED
7 WITH TWO CHARGES. ONE IS CALLED TRAFFICKING IN COCAINE
8 AND THE OTHER IS POSSESSION WITH INTENT TO DISTRIBUTE
9 COCAINE WITHIN PROXIMITY OF A PARK. NOW, A COUPLE OF
10 THINGS -- NUMBER ONE, THESE ARE SIMPLY THE CHARGING
11 DOCUMENTS BY WHICH THIS CASE IS BROUGHT INTO COURT. THE
12 ALLEGATIONS CONTAINED IN THE INDICTMENT IS NOT EVIDENCE IN
13 THE CASE. HE HAS PLEAD NOT GUILTY TO THESE INDICTMENTS,
14 AND THE BURDEN IS ON THE STATE OF SOUTH CAROLINA TO PROVE
15 EACH AND EVERY ELEMENT CONTAINED IN THE INDICTMENT BEYOND
16 A REASONABLE DOUBT, AND IT WILL BE UP TO Y'ALL TO
17 DETERMINE WHETHER OR NOT THE STATE HAS MET THAT BURDEN OF
18 PROOF AT THE CONCLUSION OF ALL OF THE CASE, AND I WILL --
19 AT THE END WHEN EVERYTHING IS SAID AND DONE, I WILL CHARGE
20 OR INSTRUCT Y'ALL ON THE LAW AS TO VARIOUS ELEMENTS
21 CONTAINED IN THESE INDICTMENTS.

22 NOW, YOU AND I HAVE SEPARATE PURPOSES IN THE TRIAL OF
23 THE CASE. AS THE SITTING JUDGE I AM THE JUDGE OF THE LAW,
24 AND IF YOU THINK THE LAW IS SOMETHING OTHER THAN WHAT I
25 GIVE IT TO YOU OR INSTRUCT IT TO YOU OR IF YOU BELIEVE THE

1 LAW OUGHT TO BE SOMETHING OTHER THAN WHAT I INSTRUCT TO
2 YOU, YOU'VE TAKEN AN OATH TO SET ASIDE ANY PRECONCEIVED
3 IDEAS AND ACCEPT THE LAW AS I CHARGE IT TO YOU. IN MY
4 POSITION, I AM THE LAW. I TELL YOU WHAT THE LAW IS. YOU
5 HAVE TO ACCEPT WHAT I TELL YOU WHAT THE LAW IS.

6 MY OTHER DUTY IN THIS CASE IS TO PRESIDE OVER THE
7 CASE, AND ONE OF THOSE THINGS IS TO PRESIDE OVER THE
8 ADMISSION OF EVIDENCE. THE EVIDENCE THAT YOU HEAR WILL
9 COME FROM THIS WITNESS STAND FROM SWORN TESTIMONY FROM
10 WITNESSES AND OR EXHIBITS THAT ARE INTRODUCED PROPERLY.
11 THEY HAVE TO COME WITHIN THE BOUNDS OF OUR RULES OF
12 EVIDENCE. NINETY-FIVE PERCENT OF THE THINGS THAT YOU HEAR
13 IN THE COURTROOM WILL BE ADMITTED. EVERY NOW AND THEN
14 THEY MAY ASK SOMETHING THAT'S OBJECTIONABLE, AND I WILL
15 TELL YOU TO DISREGARD THAT, BUT IF I DON'T TELL YOU TO
16 DISREGARD IT, IT IS ADMITTED INTO EVIDENCE.

17 THEN YOUR JOB THEN COMES INTO PLAY BECAUSE THE 12 OF
18 YOU ACTING COLLECTIVELY AS ONE YOU ARE THE FINDERS OF THE
19 FACT OR THE FACTS, PLURAL, WHICH MEANS THAT ONCE TESTIMONY
20 IS ADMITTED INTO THE TRIAL OF THE CASE, THEN IT BECOMES
21 YOUR DUTY AND YOUR RESPONSIBILITY TO DETERMINE WHETHER OR
22 NOT IT'S TRUE, WHO YOU BELIEVE, WHAT YOU BELIEVE, WHAT
23 INFERENCES YOU DERIVE FROM THAT EVIDENCE FROM
24 CIRCUMSTANTIAL EVIDENCE OR DIRECT EVIDENCE.

25 YOU CAN BELIEVE ONE WITNESS OVER SEVERAL OR SEVERAL

1 WITNESSES OVER ONE, PART OF WHAT A WITNESS SAYS, AND
2 DISREGARD THE OTHER PART. IT IS UP TO YOU TO DETERMINE
3 WHO AND WHAT YOU BELIEVE. YOU DETERMINE THE CREDIBILITY
4 OR THE BELIEVABILITY OF THE WITNESSES. YOU ARE THE FACT
5 FINDERS. YOU TAKE THOSE FACTS AS YOU FIND THEM TO BE AND
6 APPLY IT TO THE LAW AS I GIVE IT TO YOU AND THEN YOU ARE
7 IN A POSITION TO RENDER A TRUE AND JUST VERDICT AT THE
8 CONCLUSION OF THE CASE.

9 I WILL ASK YOU EACH TIME WE TAKE A BREAK OR IF WE
10 BREAK FOR THE EVENING DO NOT START YOUR DELIBERATIONS. I
11 DON'T WANT YOU TALKING ABOUT THE CASE AMONGST YOURSELVES
12 OR ANYONE ELSE UNTIL ALL OF THE EVIDENCE IS IN, THE
13 LAWYERS HAVE MADE THEIR FINAL ARGUMENTS, AND I HAVE
14 CHARGED YOU ON THE LAW, AND THEN YOU MAY COMMENCE YOUR
15 DELIBERATION.

16 MADAM FORELADY, THAT IS ONE OF YOUR DUTIES. IF YOU
17 GET BACK IN THE JURY ROOM ON A BREAK AND SOMEBODY WANTS TO
18 TALK ABOUT THE CASE, YOU MUST REMIND THEM THAT I'VE
19 INSTRUCTED YOU NOT TO TALK ABOUT THE CASE UNTIL EVERYTHING
20 IS IN. IT MAY BE THAT LAST WITNESS THAT TESTIFIES THAT
21 WOULD BE THE WITNESS THAT CHANGES YOUR MIND. SO, IT'S
22 NOT FAIR TO THE STATE OR TO THE DEFENDANT TO DECIDE
23 ANYTHING UNTIL EVERYTHING HAS BEEN TESTIFIED TO AND I'VE
24 CHARGED YOU ON THE LAW. SO, IF ANYBODY TRIES TO TALK
25 ABOUT IT, TELL THEM NOT TO. IT IS ONE OF YOUR DUTIES --

1 AN EASY DUTY.

2 IN JUST A FEW MINUTES THE LAWYERS -- MR. GIBBONS ON
3 BEHALF OF THE STATE WILL MAKE AN OPENING STATEMENT
4 FOLLOWED BY MISS ALVES. WHAT THE LAWYERS TELL YOU IS
5 NOT -- IS NOT EVIDENCE IN THE CASE. IT IS SIMPLY WHAT
6 THEY CONTEND THEIR POSITIONS ARE, WHAT THE ROAD MAP TO THE
7 CASE IS, WHAT THEY INTEND TO PROVE IN THE CASE, BUT THAT
8 IS NOT EVIDENCE. THE ONLY EVIDENCE THAT YOU CAN CONSIDER
9 COMES FROM SWORN TESTIMONY FROM WITNESSES AND OR EXHIBITS
10 IN THE TRIAL OF THE CASE.

11 I DON'T THINK, LIKE I SAID, THIS CASE WILL LAST LONG,
12 BUT THE FACT THAT IT'S NOT LASTING LONG DOESN'T MEAN IT'S
13 NOT A VERY IMPORTANT CASE. WE TRY CASES IN HERE SOME
14 WEEKS THAT LAST A WEEK. WE HAVE TRIED CASES THAT LASTED
15 THREE WEEKS. YOU'RE LUCKY THAT YOU'RE ON ONE THAT'S
16 LASTING MAYBE A DAY AND NOT HAVE TO TAKE TWO OR THREE
17 WEEKS AWAY FROM YOUR JOB, BUT IT IS IMPORTANT AND I ASK
18 THAT YOU KEEP AN OPEN MIND. LISTEN TO THE LAWYERS.
19 LISTEN TO THE TESTIMONY. LISTEN TO MY CHARGE SO AT THE
20 END OF THE CASE YOU'LL BE IN A POSITION TO ANALYZE THE
21 FACTS AND APPLY THOSE FACTS TO THE LAW AS I GIVE IT TO YOU
22 AND BE IN A POSITION TO RENDER A TRUE AND JUST VERDICT IN
23 THIS CASE.

24 ANY OBJECTIONS TO MY OPENING REMARKS BY THE STATE?

25 MR. GIBBONS: NONE, YOUR HONOR.

(OPENING STATEMENT BY MR. GIBBONS)

34

1 THE COURT: MISS ALVES?

2 MISS ALVES: NONE, YOUR HONOR.

3 THE COURT: OKAY. AT THIS TIME PLEASE GIVE CLOSE
4 ATTENTION TO MR. GIBBONS AS HE MAKES HIS OPENING STATEMENT
5 FOLLOWED BY MISS ALVES.

6 OPENING STATEMENT

7 MR. GIBBONS: LADIES AND GENTLEMEN OF THE JURY,
8 YOU'RE HERE BECAUSE THE DEFENDANT IN THIS CASE HAS BEEN
9 CHARGED WITH TWO OFFENSES: TRAFFICKING IN COCAINE AND
10 POSSESSION WITH INTENT TO DISTRIBUTE COCAINE WITHIN ONE
11 HALF A MILE OF A PARK. THOSE ARE TWO CHARGES OR STATUTES
12 THAT HAVE BEEN ENACTED BY OUR LEGISLATURE HERE IN SOUTH
13 CAROLINA SETTING FORTH BEHAVIORS THAT ARE NOT LEGAL. THE
14 JUDGE AT THE END OF THE TRIAL IS GOING TO TELL YOU EXACTLY
15 WHAT THOSE STATUTES SAY, BUT SOMETIMES IT IS HELPFUL AT
16 THE START OF THE CASE TO KIND OF HAVE A ROAD MAP OF WHERE
17 YOU'RE GOING, SOME IDEA OF WHAT YOU'RE LOOKING FOR, AND
18 WE'RE HERE ABOUT.

19 AS TO THE TRAFFICKING CHARGE THE WORD TRAFFICKING
20 SEEMS TO IMPLICATE THAT MAYBE THERE IS SOME SALES GOING
21 ON, MAYBE THERE IS SOME TRADE GOING ON, MAYBE THERE IS
22 SOME DEAL OVER A TABLE WITH MONEY CHANGING HANDS --
23 SOMETHING ALONG THOSE LINES, BUT IN OUR STATE THE
24 LEGISLATURE HAS NAMED A TRAFFICKING OFFENSE PRETTY
25 BROADLY, AND I BELIEVE THE JUDGE WILL TELL YOU AT THE END

(OPENING STATEMENT BY MR. GIBBONS)

35

1 OF THE CASE THAT POSSESSION OF CERTAIN AMOUNTS OF AN
2 ILLEGAL SUBSTANCE EQUALS TRAFFICKING IN SOUTH CAROLINA.
3 AS IT RELATES TO COCAINE WHICH IS A CONTROLLED SUBSTANCE
4 THAT WE'RE DEALING WITH HERE TODAY SOMEONE IN
5 POSSESSION -- KNOWING POSSESSION -- OF MORE THAN 10 GRAMS
6 OF COCAINE IS GUILTY OF TRAFFICKING WHETHER THEY SELL IT,
7 WHETHER THEY BORROW IT, WHETHER THEY'RE HOLDING IT FOR
8 SOMEONE ELSE. IF SOMEONE KNOWS THEY HAVE COCAINE IN THEIR
9 CONTROL OR IN THEIR POSSESSION AND THAT COCAINE WEIGHS
10 OVER 10 GRAMS, THEY HAVE FALLEN UNDER THE TRAFFICKING
11 STATUTE.

12 NOW, THE OTHER STATUTE THAT THIS DEFENDANT IS CHARGED
13 WITH IS POSSESSION WITH INTENT TO DISTRIBUTE COCAINE
14 WITHIN PROXIMITY OF A PARK. THAT IS A WHOLE SEPARATE
15 CHARGE. WHAT THAT CHARGE INDICATES IS IF SOMEONE IS IN
16 POSSESSION OF COCAINE AND YOU AS A JURY DETERMINE THAT
17 THEY HAD THAT COCAINE WITH THE INTENT TO DISTRIBUTE IT
18 WHICH MEANS SHARE IT, GIVE IT AWAY, SELL IT, HAND IT TO
19 SOMEONE ELSE, AND WHILE THEY'RE DOING THAT -- WHILE
20 THEY'RE HAVING THAT COCAINE THEY ARE GEOGRAPHICALLY WITHIN
21 A HALF MILE OF A PUBLIC PARK THEY'RE GUILTY OF THAT OTHER
22 STATUTE.

23 THOSE ARE BASICALLY THE FACTS THAT THE STATE IS
24 CARRYING THE BURDEN OF PROVING FROM THAT CHAIR TODAY AND
25 MAYBE TOMORROW. WE'RE GOING TO PUT WITNESSES ON THE STAND

(OPENING STATEMENT BY MR. GIBBONS)

36

1 WHO ARE GOING TO TELL YOU WHAT THEY DID, WHAT THEY SAW,
2 WHAT THEY FOUND. YOU -- YOU'RE GOING TO TAKE THAT
3 INFORMATION, LISTEN TO WHAT THE JUDGE SAYS ABOUT THE LAW,
4 AND PUT THOSE TWO TOGETHER -- THE LAW AS THE JUDGE GIVES
5 IT TO YOU AND THE FACTS AS YOU FIND THEM DURING THE
6 TESTIMONY OF THIS CASE. YOU'LL GO BACK IN YOUR JURY ROOM
7 AND PUT THOSE TOGETHER AND COME UP WITH A VERDICT.

8 NOW, IN THIS CASE WE'RE GOING TO BE DEALING WITH A
9 TRAILER HERE IN AIKEN COUNTY. OFFICERS HAD A SEARCH
10 WARRANT FOR THAT TRAILER. YOU'RE GOING TO HEAR WHAT
11 HAPPENED WHEN THEY WENT OUT TO EXECUTE THAT SEARCH
12 WARRANT. YOU'RE GOING TO HEAR THERE WERE A NUMBER OF
13 PEOPLE IN THE HOUSE. YOU'RE GOING TO HEAR WHAT THEY FOUND
14 IN THE HOUSE AND WHERE THEY FOUND IT, AND THAT'S,
15 BASICALLY, WHAT THIS IS GOING TO BE ALL ABOUT HERE
16 TODAY -- WHAT THEY FOUND, WHERE THEY FOUND IT, AND WHO HAD
17 WHAT.

18 NOW, WE'RE NOT SAYING THAT THESE DRUGS THAT ARE IN
19 THIS INDICTMENT WERE THE ONLY DRUGS IN THAT HOUSE OR THAT
20 HE IS THE ONLY PERSON ARRESTED, BUT HE IS ON TRIAL HERE
21 TODAY. THOSE OTHER PEOPLE HAVE THEIR OWN DAY IN COURT.
22 WE'RE HERE TO TRY MR. PRATHER FOR THE DRUGS IN THE
23 INDICTMENT. I ASK YOU TO USE YOUR COMMON SENSE.
24 EVERYBODY DEALS WITH THINGS IN THEIR EVERYDAY LIFE THAT
25 ARE IMPORTANT, THAT MEAN A LOT TO THEM, AND THEY MAKE

(OPENING STATEMENT BY MR. GIBBONS)

37

1 DECISIONS REGARDING THOSE THINGS. THAT'S BASICALLY WHAT
2 YOUR JOB IS AS A JUROR IS TO BRING YOUR COMMON SENSE IN
3 THIS ROOM AND COLLECTIVELY YOU LISTEN TO THE EVIDENCE AND
4 DECIDE WHAT THE TRUTH IS BASED ON YOUR EXPERIENCES, BASED
5 ON WHAT YOU HEAR, AND BASED ON WHAT YOU KNOW. THERE IS NO
6 REQUIREMENT THAT YOU LEAVE YOUR GOOD SENSE OUTSIDE IN A
7 BUCKET OUTSIDE OF THE DOOR. YOU BRING IT WITH YOU AND USE
8 IT AS YOU EVALUATE THE TESTIMONY.

9 WE, BOTH THE DEFENSE AND THE STATE, CHOSE YOU TO BE
10 ON THIS JURY BECAUSE WE THOUGHT YOU COULD BE FAIR TO BOTH
11 THE STATE AND THE DEFENSE AND RENDER A VERDICT THAT SPEAKS
12 THE TRUTH. THAT'S WHAT WE'RE ALL HERE ABOUT TODAY IS THE
13 TRUTH -- WHAT HAPPENED. THIS ISN'T GOING TO BE A REAL
14 LONG CASE. IT ISN'T GOING TO TO BE A REAL TECHNICAL CASE.
15 IT IS GOING TO DEPEND ON WHAT YOU HEAR AND THE FEW ITEMS
16 THAT GO INTO EVIDENCE, WHAT YOU GET TO PUT IN YOUR HANDS
17 AND SEE. THERE WAS NO BLOOD. THERE WAS NO SHOOTING.
18 THERE WAS NOBODY LOST THEIR LIFE. BUT I DO WANT TO
19 EMPHASIZE THIS IS AN IMPORTANT MATTER TO THE STATE OF
20 SOUTH CAROLINA.

21 TRAFFICKING COCAINE IS A SERIOUS OFFENSE TO THE STATE
22 OF SOUTH CAROLINA AND THE PEOPLE OF AIKEN COUNTY. SO, I
23 WOULD ASK YOU TO PAY CAREFUL ATTENTION AND GIVE IT THE
24 ATTENTION THAT IT DOES DESERVE. ONCE YOU HEARD THE
25 EVIDENCE AND YOU'VE HEARD THE LAW AS THE JUDGE GIVES IT TO

(OPENING STATEMENT BY MISS ALVES)

38

1 YOU AND YOU'VE GONE BACK IN THAT ROOM AND COME BACK OUT
2 WITH YOUR VERDICT, THAT'S GOING TO BE IT FOR THIS CASE AND
3 WE REALLY APPRECIATE YOUR TIME AND YOUR GIVING UP YOUR DAY
4 TO BE HERE AND DO YOUR CIVIC DUTY. I THINK ONCE YOU'VE
5 HEARD THE EVIDENCE IN THIS CASE AND ONCE YOU'VE HAD A
6 CHANCE TO THINK ABOUT IT AND TALK ABOUT IT IN YOUR JURY
7 ROOM YOU'LL COME BACK OUT WITH A VERDICT OF GUILTY. THANK
8 YOU.

9 MISS ALVES: MAY IT PLEASE THE COURT.

10 THE COURT: YES, MA'AM.

11 OPENING STATEMENT

12 MISS ALVES: MR. GIBBONS. NOW, I'LL BE HONEST. I
13 WATCH A LOT OF T.V. A LOT OF T.V. YOU KNOW, I ALWAYS
14 WATCH THESE SHOWS AND I HEAR THE WORDS TRAFFICKING, AND
15 THE SOLICITOR IS RIGHT. IN SOME CASES IT DOES MEAN MOVING
16 BIG DRUGS AND YOU HEAR ABOUT MEXICO AND ALL OF THOSE KIND
17 OF THINGS ON T.V., BUT HERE IN THIS COURT AND IN THIS
18 STATE TRAFFICKING DOESN'T MEAN YOU ARE SELLING BIG KILOS
19 OF DRUGS AND MIAMI VICE. IT DOESN'T MEAN SOMETHING LIKE
20 THAT. IT JUST MEANS POSSESSION OF MORE THAN 10 GRAMS.
21 THAT'S IT. IT IS JUST POSSESSION. IT IS -- THE
22 TRAFFICKING IS THE WORD THAT WE CALL IT. SO, DON'T LET
23 THE BIG FANCY WORD TRAFFICKING THINK THAT THIS IS GOING TO
24 BE A MIAMI VICE KIND OF SITUATION BECAUSE IT'S NOT, BUT
25 THAT DOESN'T MAKE IT ANY LESS IMPORTANT, AND MR. GIBBONS

(OPENING STATEMENT BY MISS ALVES)

39

1 TOLD YOU THAT IT WAS IMPORTANT TO THE STATE OF SOUTH
2 CAROLINA, BUT IT'S EQUALLY AS IMPORTANT TO JAMES PRATHER
3 WHO IS SITTING OVER THERE BECAUSE HE IS THE PERSON WHO
4 WE'RE DECIDING HIS FATE ON HERE IN THIS COURTROOM.

5 NOW, MR. PRATHER IS HERE AND WE'RE ALL HERE BECAUSE
6 HE HAS SAID THAT HE IS NOT GUILTY OF TRAFFICKING AND THAT
7 HE IS NOT GUILTY OF POSSESSION WITH INTENT TO DISTRIBUTE
8 COCAINE WITHIN A HALF MILE OF A PARK. HE'S TOLD YOU THAT.
9 HE DOESN'T HAVE TO STAND UP HERE AND YELL IT OUT TO YOU.
10 HE DOESN'T HAVE TO TELL YOU THAT HIMSELF OUT OF HIS OWN
11 MOUTH. HE IS TELLING YOU THAT BY THE MERE FACT THAT WE'RE
12 HERE, AND THE JUDGE IS GOING TO TELL YOU AT THE END OF
13 THIS CASE THAT HE IS TO BE PRESUMED INNOCENT UNTIL THE
14 STATE PROVES IT TO YOU BEYOND A REASONABLE DOUBT THAT HE
15 DID, IN FACT, POSSESS MORE THAN 10 GRAMS OF COCAINE FOR
16 TRAFFICKING AND THAT HE DID POSSESS COCAINE WITH THE
17 INTENT TO DISTRIBUTE IT.

18 HE DOESN'T HAVE TO PROVE ANYTHING. THE JUDGE IS
19 GOING TO TELL YOU THAT. A PERSON ON TRIAL DOES NOT HAVE
20 TO GET UP AND BRING EVERY SINGLE WITNESS IN HERE TO PROVE
21 THEY DIDN'T DO SOMETHING BECAUSE YOU KNOW HOW HARD IT IS
22 TO PROVE THAT YOU DIDN'T DO SOMETHING? THE STATE HAS THE
23 BURDEN OF PROOF, AND THAT MEANS THAT THE STATE HAS TO
24 PROVE EACH AND EVERY ELEMENT OF THESE CHARGES TO YOU
25 BEYOND A REASONABLE DOUBT, AND THIS IS NOT SOMETHING THAT

(OPENING STATEMENT BY MISS ALVES)

40

1 THEY JUST HAVE TO DO FOR MR. PRATHER. THIS IS JUST NOT ME
2 SAYING THEY HAVE TO DO IT. THIS IS SOMETHING THEY HAVE TO
3 DO FOR ANYBODY WHO IS CHARGED WITH A CRIME. THIS IS NOT A
4 BURDEN THAT THEY SHOULD TAKE LIGHTLY, AND I'M ASKING YOU
5 NOT TO TAKE IT LIGHTLY. HOLD THEIR FEET TO THE FIRE.

6 IF YOU WANT TO PROVE -- IF YOU WANT TO SAY GUILTY AS
7 MR. GIBBONS IS ASKING YOU TO, YOU HAVE TO BE SURE. YOU
8 HAVE TO KNOW BEYOND A REASONABLE DOUBT THAT THEY HAVE
9 PROVED EACH AND EVERY ELEMENT TO YOU, AND IF THEY CAN'T
10 PROVE -- IF THEY HAVE NOT PROVED IT TO YOU, THEN YOUR
11 VERDICT MUST BE NOT GUILTY. THAT'S NOT JUST MY OPINION.
12 IT'S FACT. THAT'S THE LAW, AND THE JUDGE WILL TELL YOU
13 THAT.

14 NOW, I DON'T HAVE A LOT TO STAND UP HERE AND SAY
15 BECAUSE I AM GOING TO LET YOU GET ON TO THE BUSINESS OF
16 HEARING THE EVIDENCE AND THE FACTS IN THE CASE, AND AT THE
17 END OF THE CASE I'LL COME BACK TO YOU AND WE'LL TALK AGAIN
18 ABOUT WHAT THE EVIDENCE HAS PROVEN, BUT THE ONLY THING I
19 WANT TO ASK YOU TO DO IS KEEP AN OPEN MIND. DON'T JUST
20 SAY, OH, THE SOLICITOR SAID IT, POLICE SAID IT, WE'RE
21 DONE. THAT'S NOT WHAT WE'RE HERE FOR.

22 YOU'RE HERE TO WAIT UNTIL ALL OF THE EVIDENCE HAS
23 BEEN PRESENTED. YOU'RE HERE TO WAIT UNTIL THE JUDGE HAS
24 TOLD YOU THE LAW AT THE END OF THE CASE AND THEN YOU WILL
25 GO BACK INTO THE JURY ROOM AND DELIBERATE AND DECIDE

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1 WHETHER THE STATE HAS PROVED IT TO YOU BEYOND A REASONABLE
2 DOUBT THAT MR. PRATHER IS NOT GUILTY -- IS GUILTY BECAUSE
3 IF THEY HAVEN'T, THEN YOUR VERDICT MUST BE NOT GUILTY.
4 THANK YOU.

5 MR. GIBBONS: THE STATE WOULD CALL MIKE JONES TO THE
6 STAND.

7 MICHAEL E. JONES, AFTER BEING DULY SWORN,
8 TESTIFIED AS FOLLOWS:

9 THE CLERK: HAVE A SEAT IN THE WITNESS BOX. STATE
10 YOUR FULL NAME FOR THE COURT SPELLING YOUR LAST.

11 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN OF THE
12 JURY, I SEE ONE PERSON THAT'S GETTING OUT A FAN BECAUSE
13 THEY'RE UNCOMFORTABLE AND -- NO, MA'AM, THAT'S FINE. ONE
14 PERSON JUST PUT ON A COAT BECAUSE SHE'S COLD. IF Y'ALL
15 GET TOO UNCOMFORTABLE ONE WAY OR THE OTHER, RAISE YOUR
16 HAND AND I WILL TRY TO ACCOMMODATE YOU. PLEASE SIT DOWN.
17 I DON'T HAVE ANY OTHER FANS OTHER THAN THAT, MA'AM.

18 THE JUROR: I AM FINE.

19 THE COURT: GO AHEAD. I WOULD TURN THE AIR
20 CONDITIONER, BUT I GOT ONE DOWN HERE FREEZING. IF Y'ALL
21 GET UNCOMFORTABLE, IF YOU NEED THE BATHROOM, JUST RAISE
22 YOUR HAND. I AM HERE TO MAKE SURE YOU'RE COMFORTABLE.

23 DIRECT EXAMINATION

24 BY MR. GIBBONS:

25 Q THANK YOU, SIR. WHAT IS YOUR NAME?

1 A MICHAEL ERIC JONES, J-O-N-E-S.

2 Q WHERE ARE YOU EMPLOYED?

3 A WITH THE DRUG ENFORCEMENT ADMINISTRATION, UNITED
4 STATES DEPARTMENT OF JUSTICE.

5 Q AND HOW LONG HAVE YOU BEEN WITH THE D.E.A.?

6 A SINCE JULY OF 2005.

7 Q WHAT BRANCH OF THE D.E.A. ARE YOU WORKING WITH?

8 A DRUG ENFORCEMENT ADMINISTRATION.

9 Q AND PRIOR TO GOING TO WORK THERE WHERE WERE YOU
10 EMPLOYED?

11 A THE AIKEN COUNTY SHERIFF'S OFFICE.

12 Q AND WHAT WERE YOUR DUTIES THERE?

13 A I WAS LIEUTENANT OVER THE NARCOTICS DIVISION.

14 Q AND HOW LONG WERE YOU OVER THE NARCOTICS DIVISION IN
15 AIKEN?

16 A FOR TWO YEARS.

17 Q AND PRIOR TO THAT TIME WHERE WERE YOU EMPLOYED?

18 A I WAS INVESTIGATING NARCOTICS FOR SEVEN YEARS.

19 Q AND HOW LONG HAVE YOU BEEN A NARCOTICS OFFICER?

20 A FOR NINE AND A HALF YEARS, SIR.

21 Q AND AS PART OF YOUR TRAINING AS A LAW ENFORCEMENT
22 OFFICER DID YOU RECEIVE ANY ADDITIONAL TRAINING AS RELATES
23 TO NARCOTICS?

24 A YES.

25 Q WHAT TYPE OF TRAINING WAS THAT?

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1 A I RECEIVED TRAINING IN DRUG IDENTIFICATION, VARIOUS
2 INVESTIGATIVE CLASSES, MONEY LAUNDERING INVOLVED IN DRUG
3 CASES, AND, ALSO, I WAS ASSIGNED TO THE DRUG ENFORCEMENT
4 TASK FORCE WHICH IS THE TASK FORCE WITH THE DRUG
5 ENFORCEMENT ADMINISTRATION, AN F.B.I. TASK FORCE.

6 Q AND WHEN YOU WERE WORKING IN AIKEN COUNTY DID YOU DO
7 FIELD WORK AS THE HEAD OF THE NARCOTICS DEPARTMENT OF THE
8 SHERIFF'S OFFICE?

9 A YES, SIR, I DID.

10 Q YOU WEREN'T JUST BEHIND A DESK?

11 A NO, SIR.

12 Q AND DID YOU GO OUT AND ACTUALLY WORK ON CASES?

13 A YES, SIR.

14 Q AND WHAT ABOUT SEARCH WARRANTS? DID YOU PARTICIPATE
15 IN SEARCH WARRANTS?

16 A I PARTICIPATED IN ALL SEARCH WARRANTS THAT WAS
17 EXECUTED BY THE NARCOTICS DIVISION.

18 Q AND ARE YOU FAMILIAR WITH THE SHERIFF'S OFFICE POLICY
19 ON SEARCH WARRANT EXECUTION?

20 A YES, SIR. YES, SIR.

21 Q WERE YOU ON DUTY ON THE NIGHT OF FEBRUARY 17, 2005
22 AROUND MIDNIGHT?

23 A YES.

24 Q WHAT WERE YOU DOING THAT NIGHT?

25 A WE WERE EXECUTING A SEARCH WARRANT ON EDGEFIELD

(MICHAEL E. JONES-DIRECT BY GIBBONS)

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1 HIGHWAY WHICH IS HIGHWAY 19 NORTH IN AIKEN COUNTY.

2 Q AND WAS THAT RESIDENCE IN THE COUNTY?

3 A YES, SIR.

4 Q AND DID Y'ALL HAVE A SIGNED VALID SEARCH WARRANT AT
5 THAT TIME?

6 A YES, SIR, WE DID.

7 Q AND WHAT WAS YOUR JOB ON THIS SEARCH WARRANT?

8 A MY JOB WAS PRETTY MUCH THE SITE SUPERVISOR WHICH IS
9 RESPONSIBLE FOR THE SAFETY OF MY OFFICERS THAT WAS
10 INVOLVED IN THE SEARCH WARRANT AS WELL AS THE S.W.A.T.
11 TEAM THAT WAS ALSO ON THE SCENE AND, ALSO, TO CONDUCT A
12 SEARCH OF THE RESIDENCE.

13 Q YOU MENTIONED THE S.W.A.T. TEAM. WHAT IS THAT?

14 A IT IS THE SPECIAL WEAPONS AND TACTICS AREA OF THE
15 SHERIFF'S OFFICE THAT SPECIALIZES IN HIGH-RISK ENTRIES
16 THAT PRETTY MUCH THEY DO ALL OF OUR HIGH-RISK NARCOTICS
17 SEARCH WARRANTS.

18 Q WHEN THE SHERIFF'S OFFICE EXECUTES A SEARCH WARRANT
19 AND GOES IN A HOUSE, WHAT IS THE POLICY? I MEAN, WHO DOES
20 IT? DO YOU GUYS DO YOUR OWN SEARCH WARRANT SEARCHES?

21 A IF WE DEEM IT -- IF I DEEM IT NOT TO BE WHAT I CALL
22 HIGH RISK, WE CONDUCT OUR OWN SEARCH WARRANTS. BUT IF I
23 DEEM IT TO BE HIGH RISK, THEN WE UTILIZE THE S.W.A.T.
24 TEAM.

25 Q WHAT ARE SOME OF THE REASONS WHY YOU WOULD DEEM A

(MICHAEL E. JONES-DIRECT BY GIBBONS)

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1 SEARCH WARRANT A HIGH-RISK SITUATION?

2 A WELL, WHEN WE THINK THAT THERE IS A POSSIBILITY THAT
3 WEAPONS ARE INVOLVED THEN WE USE THE S.W.A.T. TEAM.

4 Q AND HOW DOES THAT WORK? TAKE US THROUGH WHAT GOES ON
5 WITH WITH THE S.W.A.T. TEAM.

6 A BASICALLY, I OR ONE OF MY INVESTIGATORS WHEN WE GET
7 THE SEARCH WARRANT IN HAND WE'LL GO TO THE S.W.A.T. TEAM
8 COMMANDER AND EXPLAIN THE SITUATION TO HIM, AND, NORMALLY,
9 WE GO OUT AND DO A PRE-RAID LOOK AT THE RESIDENCE. WE
10 GIVE THEM PRE-RAID INTELLIGENCE AS FAR AS WEAPONS THAT
11 WE'RE AWARE OF AT THE TIME AND LOCATION. SOME LOCATIONS
12 REQUIRE FOR US TO USE A S.W.A.T. TEAM JUST BECAUSE OF THE
13 LOCATIONS.

14 ONCE WE DO THE PRE-RAID SURVEILLANCE AND THE PRE-RAID
15 INTELLIGENCE GATHERING WE MAKE A DETERMINATION THEN THAT
16 THE S.W.A.T. TEAM WILL BE UTILIZED AND WHAT TACTICS THEY
17 WILL USE TO EXECUTE THE ENTRY OF THE SEARCH WARRANT
18 WHETHER OR NOT THEY WOULD USE FLASH BANGS OR WHETHER OR
19 NOT THEY WOULD JUST DO A NO-KNOCK SEARCH WARRANT OR
20 WHETHER OR NOT THEY WOULD JUST DO A SLOW AND DELIBERATE
21 ENTRY INTO THE RESIDENCE.

22 Q SO, EXACTLY WHAT TECHNIQUE THEY'LL USE ENTERING?

23 A YES, SIR.

24 Q DO THEY PERFORM A SEARCH WHEN THEY DO AN ENTRY?

25 A THE JOB OF THE S.W.A.T. TEAM IS TO GO IN AND SECURE

1 ALL THE SUBJECTS INSIDE OF THE RESIDENCE. THEY DO NOT DO
2 ACTUAL SEARCHES THEMSELVES.

3 Q ALL RIGHT. WHEN YOU SAY GO IN AND SECURE WHAT
4 HAPPENS WHEN THEY COME UP TO A DOOR?

5 A NORMALLY, THEY ENTER THE RESIDENCE EITHER BY FORCE OR
6 SOMEBODY MAY OPEN THE DOOR AND WHOEVER THEY COME IN
7 CONTACT WITH INSIDE OF THE RESIDENCE THEY SECURE THEM IN
8 THE PLACE THAT THEY ACTUALLY ENCOUNTERED THEM. THEY JUST
9 BRING THEM SECURE. AT THAT TIME THEY'RE NOT HANDCUFFED.
10 THEY ARE JUST SECURE WITH SOMEBODY ASSIGNED TO THAT
11 INDIVIDUAL UNTIL WE COME IN AND DO THE SEARCH OF THE
12 RESIDENCE.

13 Q AND, AGAIN, WHAT IS THE PURPOSE OF HAVING THE
14 S.W.A.T. TEAM COME IN FIRST?

15 A FOR OFFICER SAFETY OF THE SITE.

16 Q WHAT DO THEY DO THAT IS DIFFERENT THAN Y'ALL WOULD
17 DO?

18 A THEY HAVE SPECIAL WEAPONS AND THEY SPECIALIZE IN
19 THOSE KIND OF ENTRIES, WHICH WE DON'T.

20 Q DO YOU THEY HAVE DIFFERENT EQUIPMENT?

21 A YES, SIR, THEY DO.

22 Q AND WHAT IS THAT EQUIPMENT SUPPOSED TO DO FOR THEM?

23 A IT GIVES THEM THE ABILITY TO NEUTRALIZE ANYTHING THAT
24 THEY MAY ENCOUNTER, WHETHER OR NOT THEY ENCOUNTER WEAPONS
25 OR BARRICADED DOORS OR WHATEVER. THEY HAVE THE CAPABILITY

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1 AND EQUIPMENT TO BRING THAT SITUATION UNDER CONTROL.

2 Q NOW, WHEN YOU SAY WHEN THEY GO IN THEY SECURE PEOPLE?

3 A YES.

4 Q WHAT DOES THAT MEAN?

5 A THAT MEANS THEY MAKE ENTRY. IF THEY ENCOUNTER ANY
6 INDIVIDUAL WHETHER THEY'RE, YOU KNOW, SUSPECTS OR NOT THEN
7 THAT PERSON IS SECURED BY A MEMBER OF THE S.W.A.T. TEAM --
8 NOT AS ACTUALLY SECURED. I WOULD SAY THEY'RE BROUGHT
9 UNDER CONTROL, AND THEY'RE HELD THERE UNTIL WE COME IN --
10 UNTIL THE NARCOTICS PEOPLE COME IN TO INVESTIGATE THE
11 SITUATION.

12 Q AND DO THEY DO ANY PAT-DOWNS, FRISKS, OR ANYTHING
13 LIKE THAT?

14 A IF THEY DON'T SEE ANY WEAPONS IN SIGHT, THEY DON'T.
15 IF THEY SEE ANY WEAPONS DURING THEIR SEARCH OR IN CLOSE
16 PROXIMITY TO AN INDIVIDUAL, THEN THEY -- OF COURSE, THEY
17 SEARCH THE IMMEDIATE AREA AND SECURE WHAT WEAPONS THEY DO
18 FIND.

19 Q ONCE THEY'VE GOT EVERYBODY STOPPED AND SECURED IN
20 POSITION, WHAT HAPPENS NEXT AT THE SCENE?

21 A AT THAT TIME MYSELF -- ONCE THE S.W.A.T. TEAM
22 COMMANDER RENDERS THE SCENE SAFE -- NOT SAFE, BUT UNDER
23 CONTROL -- MYSELF AND MY INVESTIGATORS WILL COME IN AND WE
24 CONDUCT PAT-DOWNS OF ALL OF THE INDIVIDUALS INSIDE TO MAKE
25 SURE THAT NOBODY HAS WEAPONS.

1 Q WHY DO YOU DO THAT?

2 A FOR OFFICER SAFETY.

3 Q AND IS THAT PART OF YOUR TRAINING AND PROCEDURE?

4 A YES, SIR, IT IS.

5 Q AND WAS THAT JUST YOUR EXPERIENCE AT THE SHERIFF'S
6 OFFICE IN AIKEN?

7 A NO, SIR.

8 Q WHERE ELSE HAVE YOU HAD THAT POLICY?

9 A IT'S ALWAYS BEEN MY EXPERIENCE WITH THE FEDERAL
10 GOVERNMENT AND ALSO IN EVERY ASPECT OF LAW ENFORCEMENT
11 THAT I'VE BEEN INVOLVED IN.

12 Q SO, WHEN YOU'RE IN CHARGE OR WHEN YOU'RE ON A SEARCH
13 WARRANT IS IT -- Y'ALL STOP AND CHECK EVERYBODY?

14 A YES, SIR, EVERYBODY INSIDE OF THE RESIDENCE.

15 Q AND WHO DOES THAT? THAT'S NOT S.W.A.T. TEAM. THAT'S
16 Y'ALL; CORRECT?

17 A YES.

18 Q LET ME TURN YOUR ATTENTION TO NIGHT THAT WE WERE
19 TALKING ABOUT, FEBRUARY 17, 2005, AROUND MIDNIGHT. YOU
20 SAID YOU WERE OVERSEEING THE SEARCH WARRANT EXECUTION?

21 A YES, SIR.

22 Q SERVING OF THE SEARCH WARRANT?

23 A YES, SIR.

24 Q DID YOU ENTER THE HOUSE?

25 A YES, SIR, I DID.

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1 Q AND DID THE S.W.A.T. TEAM GO IN FIRST?

2 A THE S.W.A.T. TEAM WENT IN FIRST, AND ABOUT FIVE
3 MINUTES AFTER THE S.W.A.T. TEAM WAS IN THEY RENDERED THE
4 SCENE SECURED AND THEY CALLED ME UP, AND I WENT INSIDE TO
5 DO AN INITIAL SCAN OF THE RESIDENCE.

6 Q AND, SO, THE S.W.A.T. TEAM WAS THERE. YOU ASKED FOR
7 THEM?

8 A YES, SIR.

9 Q WHY DID YOU DECIDE TO ASK FOR THEM ON THIS OCCASION?

10 A BECAUSE OF THE AREA AND ALSO BECAUSE WE THOUGHT THAT
11 THERE MAY HAVE BEEN WEAPONS INVOLVED IN THAT PARTICULAR
12 SEARCH WARRANT.

13 Q DO YOU KNOW -- DO YOU HAVE ANY -- STRIKE THAT. SO,
14 YOU ORDERED THE S.W.A.T. TEAM IN AND YOU WENT IN ABOUT
15 FIVE MINUTES AFTER THEY OPENED THE DOOR?

16 A YES, SIR.

17 Q WHAT DID YOU DO WHEN YOU GOT IN THE HOUSE?

18 A I INITIALLY WENT IN THE HOUSE AND I DID A SCAN JUST
19 TO SEE HOW MANY INDIVIDUALS WE HAD IN THE RESIDENCE AND
20 ALSO TO SEE WAS ANYTHING IN PLAIN SITE, ANY DRUGS OR
21 WEAPONS IN PLAIN SIGHT.

22 Q AND WHAT DID YOU SEE?

23 A WHEN I WALKED IN THE RESIDENCE I IMMEDIATELY SMELLED
24 THE ODOR OF MARIJUANA INSIDE THE RESIDENCE AND I COULD
25 ALSO OBSERVE MARIJUANA IN THE KITCHEN, ON THE FLOOR, AND

1 ALSO IN THE HALLWAY IN THE WINDOW SILL IN THE RESIDENCE --

2 MARIJUANA AND CRACK COCAINE.

3 Q WHO WAS IN THE RESIDENCE?

4 A IT WAS SEVERAL INDIVIDUALS IN THE RESIDENCE.

5 THE COURT: I'M SORRY. I CAN'T HEAR YOU. WHAT?

6 SPEAK UP LOUD SO I CAN HEAR YOU.

7 THE WITNESS: THERE WAS SEVERAL INDIVIDUALS INSIDE OF

8 THE RESIDENCE. I THINK IT WAS SIX IN TOTAL.

9 Q WAS MR. PRATHER ONE OF THEM?

10 A YES, SIR.

11 Q WHO WENT AND HAD DEALINGS WITH HIM?

12 A I INITIALLY APPROACHED MR. PRATHER AND ALSO

13 INVESTIGATOR SAVELL CAME UP AFTER I DID.

14 Q WHERE IN THE HOUSE WAS HE?

15 A HE WAS IN THE HALLWAY OF THE SINGLE-WIDE TRAILER.

16 Q AND WHERE WERE THE OTHER PEOPLE?

17 A THEY WERE SCATTERED ABOUT THE RESIDENCE. THERE WAS

18 ONE IN THE KITCHEN AND SEVERAL IN THE BACK BEDROOMS OF THE

19 RESIDENCE, AND, ALSO, I THINK ONE WAS IN THE BATHROOM OF

20 THE RESIDENCE.

21 Q AND YOU SAID YOU SAW DRUGS?

22 A YES, SIR.

23 Q IN PLAIN VIEW?

24 A YES, SIR.

25 Q AND WAS THAT BEFORE OR AFTER YOU CAME IN CONTACT WITH

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1 MR. PRATHER?

2 A BEFORE.

3 Q DID YOU SEE ANY WEAPONS IN THE HOUSE?

4 A YES, SIR.

5 Q WHAT DID YOU SEE?

6 A I SAW A 12 GAUGE SHOTGUN THAT WAS -- WHEN YOU WALKED
7 IN THE DOOR IT WAS IMMEDIATELY TO THE RIGHT SIDE OF THE
8 RESIDENCE AND IT ALSO WAS A HANDGUN ON THE KITCHEN
9 COUNTER, I THINK IT WAS.

10 Q AND YOU SAW BOTH OF THESE BEFORE YOU CAME IN CONTACT
11 WITH MR. PRATHER?

12 A YES, SIR.

13 Q NOW, WHAT WAS HE DOING WHEN YOU GOT TO HIM?

14 A HE WAS LAYING ON THE FLOOR.

15 Q FACE UP, FACE DOWN?

16 A FACE DOWN ON THE FLOOR.

17 Q AND WHAT DID YOU DO? WHAT DID YOU SEE WHEN YOU FIRST
18 WALKED UP?

19 A WHEN I FIRST WALKED UP TO HIM I OBSERVED ONE OF THE
20 S.W.A.T. TEAM MEMBERS OVER HIM. I ADVISED HIM THEN THAT I
21 HAD HIM. I WENT TO CONDUCT A PAT-DOWN SEARCH JUST TO MAKE
22 SURE HE DIDN'T HAVE ANY WEAPONS OR ANYTHING ON HIM AND
23 DURING ANY PAT-DOWN SEARCH I STARTED --

24 MISS ALVES: I OBJECT, JUDGE. I WILL RENEW MY
25 OBJECTION AS PREVIOUSLY STATED.

1 THE COURT: OVERRULED.

2 THE WITNESS: I STARTED MY PAT-DOWN SEARCH AT THE
3 TOP. HE HAD ON LIKE A SWEAT-SHIRT TYPE OF JACKET. I
4 STARTED IN THE PAT-DOWN OF THE HOOD AREA, AND I FELT
5 SOMETHING IN THE HOOD THAT WAS A PLASTIC BAG THAT WAS
6 CONSISTENT WITH CONTRABAND IN THE SWEAT TOP.

7 Q HAD YOU ALREADY SEEN SOME MARIJUANA IN THE HOUSE?

8 A YES, SIR, I HAD.

9 Q WHAT DID YOU DO AFTER YOU FELT THAT?

10 MISS ALVES: I AM GOING TO OBJECT AS TO THE RELEVANCE
11 OF THAT AND --

12 THE COURT: RELEVANCE OF WHAT?

13 MISS ALVES: THE STATEMENT THAT WAS JUST -- THE
14 ANSWER AND THE QUESTION THAT WERE JUST MADE AND I THINK I
15 HAVE A MATTER TO TAKE UP OUTSIDE OF THE PRESENCE OF THE
16 JURY. WE CAN COME OVER TO THE SIDE BAR.

17 THE COURT: FIRST OF ALL, I OVERRULE YOUR OBJECTION.
18 IT IS RELEVANT.

19 MISS ALVES: YES, SIR.

20 THE COURT: BUT YOU CAN COME TO SIDE BAR.

21 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

22 THE COURT: MOVE ALONG.

23 Q OFFICER JONES, WHAT DID YOU DO AS -- AFTER YOU PATTED
24 DOWN HIS HOOD, WHAT DID YOU DO NEXT?

25 A AFTER I FELT THE CONTRABAND IN HIS HOOD I RETRIEVED

(MICHAEL E. JONES-DIRECT BY GIBBONS)

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1 IT AND IT WAS A BAG OF MARIJUANA.

2 Q WHAT DID YOU DO NEXT?

3 A AT THAT TIME I CONTINUED MY PAT-DOWN. AS I WORKED MY
4 WAY DOWN HIS BODY WHICH I'M STANDING OVER HIM AND SO MY
5 RIGHT SIDE WAS TO HIS LEFT SIDE. AT HIS JACKET POCKET I
6 CAN SEE A PLASTIC BAG, THE TOP OF A PLASTIC BAG, HANGING
7 OUT OF HIS JACKET POCKET.

8 Q DID THAT SAY ANYTHING TO YOU AS A NARCOTICS OFFICER?

9 A YES, SIR.

10 Q WHAT DID YOU THINK AT THAT TIME?

11 A AT THAT TIME I THOUGHT IT WAS MORE CONTRABAND THAT
12 WAS ON HIS PERSON.

13 Q DID YOU RETRIEVE THAT ITEM?

14 A YES, SIR, I DID.

15 Q WHAT DID YOU FIND THAT TO BE?

16 A IT WAS A PLASTIC BAG OF WHAT I THOUGHT TO BE COCAINE.

17 Q AND THAT WAS ON HIS PERSON -- THIS JACKET WAS ON HIS
18 PERSON AS WELL?

19 A YES, SIR, THE JACKET WAS. HE WAS WEARING THE JACKET.

20 MISS ALVES: JUDGE, I RENEW MY OBJECTION TO WHAT I
21 BELIEVE TO BE THE EVIDENCE HE IS ABOUT TO ADMIT.

22 THE COURT: OVERRULED.

23 Q LET ME SHOW YOU STATE'S EXHIBIT NO. 3.

24 MISS ALVES: I DON'T HAVE ANY OBJECTION TO STATE'S
25 NO. 3.

1 MR. GIBBONS: I WOULD MOVE STATE'S EXHIBIT NO. 3 INTO
2 EVIDENCE AT THIS TIME, YOUR HONOR.

3 THE COURT: IT IS A PHOTOGRAPH?

4 MR. GIBBONS: PHOTOGRAPH OF THE DEFENDANT.

5 (WHEREUPON, STATE'S EXHIBIT NO. 3 WAS ADMITTED INTO
6 EVIDENCE.)

7 Q OFFICER JONES, CAN YOU IDENTIFY THAT PHOTOGRAPH?

8 A YES, SIR. THAT WAS A PICTURE TAKEN DURING THE SEARCH
9 WARRANT OF THE DEFENDANT JAMES PRATHER.

10 Q DOES THAT ACCURATELY REFLECT THE CLOTHING HE HAD ON
11 THAT NIGHT?

12 A YES, SIR.

13 Q CAN YOU DESCRIBE THAT CLOTHING?

14 A THIS IS THE SWEAT-TOP JACKET THAT HE HAD ON THAT IS
15 WHAT I CALL AN ATHLETIC SWEAT-SHIRT JACKET TYPE.

16 Q DO YOU RECOGNIZE THE PERSON WEARING THAT JACKET?

17 A YES, SIR.

18 Q WHO IS THAT?

19 A JAMES PRATHER.

20 Q IS HE IN THE COURTROOM HERE TODAY?

21 A YES, SIR, HE IS.

22 Q CAN YOU POINT TO HIM AND TELL THE JURY WHAT HE IS
23 WEARING?

24 A HE IS AT THE DEFENSE TABLE WITH THE YELLOW SHIRT AND
25 KHAKI PANTS ON.

(MICHAEL E. JONES-DIRECT BY GIBBONS)

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1 Q THANK YOU. I AM GOING TO SHOW YOU ANOTHER EXHIBIT,
2 STATE'S EXHIBIT NO. 4. WITHOUT TELLING US WHAT IT IS DO
3 YOU RECOGNIZE THAT PHOTOGRAPH?

4 A YES, SIR.

5 Q DOES IT FAIRLY AND ACCURATELY REPRESENT WHAT YOU SAW
6 THAT NIGHT AS YOU WERE GOING THROUGH YOUR EXECUTION OF THE
7 SEARCH WARRANT?

8 A YES, SIR, IT DOES.

9 Q IS THAT A PHOTOGRAPH TAKEN OF HOW IT APPEARED WHEN
10 YOU FIRST SAW IT OR HAS IT BEEN CHANGED BEFORE THE
11 PHOTOGRAPH WAS TAKEN?

12 A THAT'S HOW IT APPEARED WHEN I FIRST SAW IT.

13 MR. GIBBONS: YOUR HONOR, WE'D MOVE STATE'S EXHIBIT 4
14 INTO EVIDENCE.

15 MISS ALVES: I WOULD OBJECT BASED ON MY PREVIOUS
16 OBJECTIONS.

17 THE COURT: WELL, YOUR PREVIOUS OBJECTION WAS DEALING
18 WAS -- DIDN'T ACCURATELY DEPICT HOW THEY FOUND IT AND,
19 SECONDLY, IT WAS MORE PREJUDICIAL THAN PROBATIVE.

20 MISS ALVES: YES, SIR.

21 THE COURT: HE'S TESTIFIED NOW THAT IT ACCURATELY
22 DEPICTS HOW THEY FOUND HIM. SO, I OVERRULE YOU ON THAT.
23 I FURTHER OVERRULE YOU ON THE FACT THAT IT'S NOT MORE
24 PREJUDICIAL THAN PROBATIVE.

25 MISS ALVES: YES, SIR.

1 (WHEREUPON, STATE'S EXHIBIT NO. 5 WAS ADMITTED INTO
2 EVIDENCE.)

3 MR. GIBBONS: YOUR HONOR, WHAT WAS COURT'S EXHIBIT 4
4 IS NOW STATE'S EXHIBIT 5.

5 THE COURT: THAT'S THE ONE WE JUST INTRODUCED?

6 MR. GIBBONS: YES, SIR.

7 DID YOU CONTINUE TO WORK WITH -- WORK AROUND

8 MR. PRATHER AFTER FINDING THIS COCAINE?

9 THE WITNESS: YES, SIR, I DID.

10 MR. GIBBONS: YOUR HONOR, MAYBE WE BETTER TAKE A
11 SIDEBAR HERE. COULD WE, PLEASE?

12 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

13 Q OFFICER JONES, WHAT DID Y'ALL DO WITH THE DEFENDANT
14 NEXT?

15 A AT THAT TIME I CONTINUED TO WORK MY WAY DOWN TO THE
16 LOWER PART OF HIS BODY TO LIKE, AGAIN, HIS LEFT SIDE WHICH
17 IT WOULD BE MY RIGHT SIDE. I WORKED MY WAY DOWN HIS BODY
18 AND DID EVERYTHING ELSE ON THAT SIDE. SO, I WENT TO ROLL
19 HIM OVER SO THAT I COULD PAT-DOWN THE FRONT SIDE OF HIS
20 BODY.

21 Q AND DID YOU FIND ANYTHING ELSE?

22 A YES, SIR, AT THAT TIME --

23 MISS ALVES: I WOULD OBJECT, YOUR HONOR, TO THIS
24 TESTIMONY BASED ON MY PREVIOUS OBJECTION.

25 THE COURT: I'LL ALLOW YOU OUTSIDE OF THE PRESENCE OF

(MICHAEL E. JONES-DIRECT BY GIBBONS)

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1 THE JURY TO PUT YOUR WHOLE OBJECTION ON THE RECORD.

2 MISS ALVES: YES, SIR.

3 THE COURT: YOU'RE RESPECTFULLY OVERRULED.

4 THE WITNESS: AT THAT TIME MYSELF AND INVESTIGATOR

5 ABBOTT OBSERVED A .22 CALIBER SMITH AND WESSON THAT

6 MR. PRATHER WAS LAYING ON -- A HANDGUN THAT HE WAS LAYING

7 ON.

8 Q NOW, DID Y'ALL SECURE THAT WEAPON?

9 (WHEREUPON, STATE'S EXHIBIT NO. 6 WAS MARKED FOR

10 IDENTIFICATION ONLY.)

11 Q I AM GOING TO SHOW YOU A BOX THAT IS ITEM NO. 6,

12 STATE'S EXHIBIT 6. CAN YOU IDENTIFY THAT?

13 A YES, SIR. THIS IS THE WEAPON THAT WE SECURED UNDER

14 THE BODY OF MR. JAMES PRATHER.

15 Q AT THE TIME IT WAS RETRIEVED WAS IT LOADED?

16 A YES, SIR. IT WAS LOADED. IT IS UNLOADED AND SAFE

17 NOW.

18 Q NOW, WHERE HE WAS AT IN THE HOUSE WHERE WAS EVERYBODY

19 ELSE IN RELATION TO HIM?

20 A HE WAS IN THE HALLWAY OF THE RESIDENCE MORE TOWARDS

21 THE LIVING ROOM AREA. THE REST OF THE DEFENDANTS -- IT

22 WAS ONE PERSON IN THE LIVING ROOM OF THE RESIDENCE AND THE

23 REST OF THE INDIVIDUALS WERE TOWARDS THE BACK BEDROOM.

24 IT IS A SINGLE-WIDE TRAILER. SO, IF YOU GO BACK TO

25 THE HALLWAY YOU LEAD INTO A BEDROOM. I THINK THERE WAS

1 ONE FEMALE FOUND IN THAT BEDROOM. THEN YOU HAD YOUR
2 BATHROOM WHERE TWO INDIVIDUALS WERE FOUND AND THEN THE
3 BEDROOM WHERE WE FOUND I THINK IT WAS TWO OTHER
4 INDIVIDUALS IN THAT ROOM. SO, EVERYBODY ELSE WAS FURTHER
5 BACK INTO THE BACK OF THE RESIDENCE.

6 Q WAS ANYBODY WITHIN 10 OR 15 FEET OF MR. PRATHER?

7 A NO, SIR.

8 MR. GIBBONS: YOUR HONOR, THE STATE WOULD MOVE
9 STATE'S EXHIBIT 6 INTO EVIDENCE, A .22 AUTOMATIC.
10 THE COURT: SUBJECT TO HER OBJECTION. AND I OVERRULE
11 HER OBJECTION AND ALLOW IT IN.

12 (WHEREUPON, STATE'S EXHIBIT NO. 6 WAS ADMITTED INTO
13 EVIDENCE.)

14 Q DID THAT END YOUR SEARCH OF MR. PRATHER AT THAT TIME?

15 A AT THAT TIME HE WAS HANDCUFFED BECAUSE IT KIND OF
16 THROUGH US ABACK WHEN WE FOUND THE HANDGUN. IT KIND OF
17 MADE ALL OF US NERVOUS.

18 Q NOW, WHEN YOU FELT THE ITEM IN HIS HOOD --

19 A YES.

20 Q -- WHAT WAS YOUR IMMEDIATE THOUGHT OR REACTION?

21 A MY IMMEDIATE THOUGHT IS THAT IT WAS SOME FORM OF
22 CONTRABAND. IT FELT CONSISTENT TO MARIJUANA TO ME.

23 Q IS THAT BASED ON ANYTHING?

24 A BASED ON MY TRAINING AND EXPERIENCE.

25 Q AND YOUR REASON FOR PATTING HIM DOWN IN THE FIRST

(MICHAEL E. JONES-CROSS BY ALVES)

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1 PLACE WAS WHAT?

2 A FOR THE SAFETY OF MYSELF AND ALSO THE OFFICERS THERE
3 TO MAKE SURE HE DIDN'T HAVE ANY WEAPONS ON HIM.

4 MR. GIBBONS: ONE MOMENT, YOUR HONOR.

5 Q OFFICER JONES, WERE YOU OVERSEEING THE REST OF THE
6 SEARCH AS WELL?

7 A I WAS OVERSEEING -- ANOTHER THAT TIME I TRUSTED MY
8 INVESTIGATORS TO CONDUCT THE SEARCH. AT THAT TIME I
9 BECAME PART OF THE SEARCH WARRANT CONDUCTING THE SEARCH
10 MYSELF. IF ANY DECISIONS NEEDED TO BE MADE ON THE SCENE,
11 I WOULD HAVE MADE THOSE DECISIONS THEN, BUT AS FAR AS
12 OVERSEEING EVERYTHING ELSE I WAS INVOLVED IN THE ACTUAL
13 SEARCH ITSELF.

14 Q DO YOU KNOW IF OTHER PEOPLE WERE SEARCHED?

15 A EVERYBODY THAT WAS INSIDE WAS SEARCHED.

16 Q AND BASED ON YOUR EXPERIENCE AND TRAINING IS IT --
17 WAS IT UNUSUAL FOR YOU TO FIND THE WEAPONS AT A NARCOTICS
18 SEARCH WARRANT?

19 A NO, SIR, IT WAS NOT. IT WOULD HAVE AN UNUSUAL FOR US
20 NOT TO FIND WEAPONS.

21 MR. GIBBONS: THANK YOU. ANSWER ANY QUESTIONS MISS
22 ALVES HAS.

23 THE COURT: CROSS.

24 CROSS-EXAMINATION

25 BY MISS ALVES:

(MICHAEL E. JONES-CROSS BY ALVES)

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1 Q SO, DID YOU DO ANY TYPE OF REPORT IN REGARDS TO YOUR
2 PART IN THIS SEARCH?

3 A NO, MA'AM, I DID NOT.

4 Q DID YOU HAVE ANYTHING TO DO WITH THE REPORT THAT WAS
5 PREPARED?

6 A I WAS -- NO, SIR. THE REPORT WAS WRITTEN BY
7 INVESTIGATOR SAVELL.

8 Q DID YOU APPROVE THE REPORT.

9 A NO, MA'AM. I DID NOT. I WAS OUT ON MATERNITY LEAVE
10 WHEN THE REPORT CAME THROUGH.

11 Q EXCUSE ME?

12 A I WAS OUT ON WITH MY WIFE ON MATERNITY LEAVE WHEN THE
13 REPORT WAS APPROVED.

14 Q OKAY. AND YOU'RE SAYING THAT YOU WERE THE PERSON WHO
15 SEARCHED MR. PRATHER TO FIND -- TO PAT HIM DOWN FOR
16 WEAPONS?

17 A YES, MA'AM.

18 Q AND YOU JUST PATTED HIM DOWN FOR OFFICER SAFETY JUST
19 IN CASE HE HAD SOMETHING?

20 A YES, MA'AM.

21 Q DO YOU HAVE THE PICTURES?

22 A I DON'T HAVE THEM.

23 Q AND THIS IS WHAT -- THIS IS HOW MR. PRATHER LOOKED
24 THAT DAY?

25 A AFTER HE WAS ARRESTED, YES, MA'AM.

(MICHAEL E. JONES-CROSS BY ALVES)

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1 Q AFTER HE WAS ARRESTED. IS THAT WHAT HE WAS WEARING
2 WHEN HE WAS ARRESTED?

3 A YES, MA'AM.

4 Q IS THAT WHAT HE WAS WEARING WHEN YOU PATTED HIM DOWN?

5 A YES, MA'AM.

6 Q THIS JACKET HERE?

7 A YES, MA'AM.

8 Q WHERE'S THE HOOD?

9 A IT'S NOT THE HOOD. IT IS THE BACK OF THE SWEATSHIRT
10 HOOD AREA THERE.

11 Q OKAY. SO, YOU MEANT HOOD AREA, NOT HOOD?

12 A HOOD AREA.

13 Q IT WASN'T --

14 A IT WOULD BE THE HOOD AREA, COLLAR, WHATEVER.

15 Q OKAY. BUT A COLLAR IS A COLLAR AND A HOOD IS A HOOD?

16 A IT'S NOT EXACTLY A COLLAR. IT IS MORE STRETCHED OUT
17 THAN A COLLAR WOULD BE. I WOULD CALL A COLLAR SOMETHING
18 LIKE THIS.

19 Q SO, YOU'RE REFERRING TO HIS COLLAR AS THE HOOD; IS
20 THAT RIGHT?

21 A YES, MA'AM.

22 Q AND YOU'RE SAYING THAT THERE WAS MARIJUANA CONCEALED
23 IN THERE?

24 A YES, MA'AM.

25 Q , IN THIS HOOD?

- 1 A YES, MA'AM.
- 2 Q WAS THERE A HOLE OR SOMETHING IN IT?
- 3 A NO, MA'AM. THERE WAS NOT A HOLE IN IT.
- 4 Q NO? IS IT A ZIPPER OR SECRET COMPARTMENT IN THE
- 5 HOOD?
- 6 A NO, MA'AM. IT WAS RIGHT HERE IN THE SMALL OF HIS
- 7 HOOD WITH THE SWEATSHIRT.
- 8 Q SO, SOMEBODY WAS JUST CARRYING AROUND MARIJUANA IN
- 9 THE SMALL -- IN THE BACK OF THEIR NECK IN THE HOOD -- IN
- 10 THE COLLAR OF THEIR SWEAT JACKET?
- 11 A YOUR CLIENT WAS.
- 12 Q OKAY. DO YOU HAVE ANY PICTURES OF THAT? LET'S SEE
- 13 THE PICTURES OF HIM WITH THE MARIJUANA IN THE HOOD.
- 14 A I DON'T HAVE A PICTURE OF THAT.
- 15 Q AND THESE PICTURES -- IN THIS PICTURE HERE
- 16 PLAINTIFF'S EXHIBIT 5 HE'S ALREADY HANDCUFFED? IS HE
- 17 ALREADY HANDCUFFED?
- 18 A NO, MA'AM. HE HAS HIS HANDS BEHIND HIS BACK.
- 19 Q BUT HE IS NOT HANDCUFFED?
- 20 A I DON'T SEE ANY HANDCUFFS ON HIM. HE WASN'T.
- 21 HANDCUFFED UNTIL I FOUND THE WEAPON.
- 22 Q OKAY. NOW, HE WAS LAYING ON THE GROUND WITH -- HE
- 23 WAS LAYING ON THE GROUND WHEN YOU CAME IN FROM THE
- 24 S.W.A.T. TEAM?
- 25 A YES, MA'AM.

(MICHAEL E. JONES-CROSS BY ALVES)

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1 Q ACTUALLY, Y'ALL CALL IT THE ENTRY TEAM?

2 A ENTRY TEAM. YES, MA'AM.

3 Q OKAY.

4 A WELL, IT IS THE S.W.A.T. TEAM, ENTRY TEAM.

5 Q ARE YOU FAMILIAR WITH THE REPORT?

6 A I AM FAMILIAR WITH THE S.W.A.T. TEAM.

7 Q OKAY. WELL, WE'RE NOT FANCY LIKE THE D.E.A. THEY
8 CALL IT THE ENTRY TEAM HERE IN AIKEN, DON'T THEY?

9 A WELL, IT IS THE S.W.A.T. TEAM SLASH ENTRY TEAM.

10 Q OKAY. AND WHEN THE ENTRY TEAM HAD HIM ON THE GROUND
11 FACE DOWN HIS POCKETS WEREN'T OUT LIKE THAT, WERE THEY?

12 A YES, MA'AM, THEY WERE.

13 Q WELL, YOU JUST TOLD THE SOLICITOR THAT YOU FELT AND
14 YOU SAW A TINY CORNER OF SOMETHING PLASTIC. YOU DIDN'T
15 TELL HIM THAT YOU SAW THAT BIG BAGGY WITH COCAINE, DID
16 YOU?

17 A IF YOU LISTEN TO WHAT I SAID I SAID I WAS WORKING MY
18 WAY DOWN AND I COULD SEE THE TIP OF A PLASTIC BAG WHICH IS
19 IF YOU ARE STANDING OVER HIM YOU'RE GOING TO SEE THE TIP
20 OF THE PLASTIC BAG RIGHT HERE.

21 Q YOU'RE SAYING SO THIS PICTURE DOESN'T ACCURATELY
22 DEPICT WHAT YOU SAW BECAUSE YOU ONLY SAW THE TIP OF THE
23 BAG?

24 A THAT'S THE PICTURE THAT WAS TAKEN OF THE CLIENT AFTER
25 I NOTIFIED THE PERSON THAT WAS TAKING THE PICTURES OF WHAT

1 HE HAD OF HIS POCKET. SO, THAT'S AN ACCURATE DEPICTION OF
2 WHAT I SAW.

3 Q AFTER YOU TOLD THE PERSON WHO WAS TAKING THE PICTURE
4 WHAT WAS IN HIS POCKET?

5 A YES, MA'AM.

6 Q OKAY. AND HIS POCKET WAS LAYING OPEN LIKE THAT,
7 UNZIPPED LIKE THAT?

8 A AGAIN. IT WAS.

9 Q AND HIS JACKET WAS ALL PULLED OUT LIKE THAT FROM
10 UNDERNEATH WHERE HE WAS LAYING?

11 A YES, MA'AM. THAT'S AN ACCURATE DEPICTION OF WHAT I
12 SAW.

13 MISS ALVES: I BEG THE COURT'S INDULGENCE.

14 AND YOU DIDN'T DO ANY STATEMENTS ABOUT ANY OF THIS?
15 YOU DIDN'T DO A STATEMENT, A WRITTEN STATEMENT?

16 THE WITNESS: NO, MA'AM, I DID NOT.

17 Q NOTHING TO -- NOTHING TO ADD TO THE REPORT ABOUT --
18 TO THE OFFICIAL REPORT ABOUT YOUR PART?

19 A NO, MA'AM.

20 MISS ALVES: NO FURTHER QUESTIONS. THANK YOU.

21 THE COURT: REDIRECT?

22 MR. GIBBONS: THANK YOU, YOUR HONOR.

23 REDIRECT EXAMINATION

24 BY MR. GIBBONS:

25 Q OFFICER JONES, HOW MANY TIMES HAVE YOU FOUND

1 MARIJUANA ON A PERSON?

2 A MORE THAN 100 TIMES. I REALLY COULDN'T GIVE YOU AN
3 ACCURATE NUMBER. IT'S BEEN A LOT.

4 Q ARE THERE UNUSUAL PLACES THAT PEOPLE PUT MARIJUANA?

5 A YES, SIR, IT IS.

6 Q WHAT ARE SOME OF THE PLACES THAT YOU FOUND MARIJUANA?
7 KEEP IT CLEAN?

8 THE COURT: I THINK THAT WE KNOW WHERE YOU'RE GOING.

9 Q HATS?

10 A HATS, VARIOUS BODY CAVITIES TO PUT IT NICELY.

11 Q UNDERWEAR?

12 A UNDERWEAR.

13 Q SOCKS?

14 A SOCKS, HAIR.

15 Q WHAT DO YOU MEAN HAIR?

16 A IN AFROS. IN AFROS TUCKED INSIDE OF THE HAIR.

17 Q HAVE YOU FOUND IT IN PEOPLE'S -- UNDER PEOPLE'S
18 COLLAR FLAPS BEFORE?

19 A YES, SIR, I HAVE.

20 MR. GIBBONS: NOTHING FURTHER.

21 THE COURT: YOU MAY STEP DOWN. NEXT WITNESS.

22 MR. GIBBONS: THE STATE CALLS MARK HOWARD.

23 MARK HOWARD, AFTER BEING DULY SWORN, TESTIFIED

24 AS FOLLOWS:

25 THE CLERK: HAVE A SEAT IN THE WITNESS BOX. STATE

(MARK HOWARD-DIRECT BY GIBBONS)

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1 YOUR FULL NAME FOR THE COURT SPELLING YOUR LAST.

2 THE WITNESS: MARK HOWARD, H-O-W-A-R-D.

3 DIRECT EXAMINATION

4 BY MR. GIBBONS:

5 Q MR. HOWARD, WHERE ARE YOU EMPLOYED?

6 A EDGEFIELD COUNTY SHERIFF'S OFFICE.

7 Q HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

8 A SINCE 1995.

9 Q HOW MUCH OF THAT HAVE YOU SPENT WORKING IN THE
10 NARCOTICS DIVISION?

11 A FOUR YEARS.

12 Q AND WHERE DID YOU WORK IN NARCOTICS?

13 A AT THE AIKEN COUNTY SHERIFF'S OFFICE; ALSO, EDGEFIELD
14 COUNTY SHERIFF'S OFFICE.

15 Q AND DID YOU HAVE OCCASION TO BE ON THE SCENE OF THIS
16 SEARCH WARRANT?

17 A YES, SIR.

18 Q WHAT WAS YOUR JOB THERE THAT DAY?

19 A INITIALLY, MY JOB WAS AS A S.W.A.T. TEAM MEMBER
20 MAKING ENTRY. I BELIEVE I WAS THE POINT MAN. I MADE
21 ENTRY FIRST, CLEARED THE RESIDENCE AT WHICH TIME MY JOB
22 SHIFTED OVER TO NARCOTICS INVESTIGATOR WHERE I ASSISTED
23 THE NARCOTICS DIVISION WITH THE INVESTIGATION.

24 Q DID YOU COME IN CONTACT WITH MR. PRATHER THAT
25 EVENING?

(MARK HOWARD-DIRECT BY GIBBONS)

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1 A I OBSERVED MR. PRATHER, BUT I DON'T RECALL HAVING ANY
2 PERSONAL CONTACT WITH HIM.

3 Q YOU DIDN'T SPEAK WITH HIM?

4 A NO, SIR, I DON'T.

5 Q WHO COLLECTED THE DRUGS THAT NIGHT?

6 A I WAS THE CUSTODIAN OF THE SEARCH WARRANT THAT NIGHT.

7 Q DID YOU COLLECT THE DRUGS?

8 A I COLLECTED THE EVIDENCE -- THE DRUGS AND THE
9 EVIDENCE.

10 Q AND WHEN I SHOW YOU STATE'S EXHIBIT 5 --

11 A YES, SIR.

12 Q -- DID YOU COLLECT THAT PLASTIC BAG THAT NIGHT?

13 A YES, SIR. I WOULD HAVE COLLECTED THAT BAG.

14 Q FROM MR. PRATHER?

15 A I WOULD HAVE COLLECTED IT FROM THE AGENT WHO
16 DISCOVERED IT WHETHER IT BE IN HIS POCKET -- I DON'T
17 RECALL. I WOULD HAVE TO LOOK AT MY REPORT. I WOULD HAVE
18 COLLECTED IT FROM EITHER THE AGENT WHO DISCOVERED IT OR
19 FROM THE POCKET OF THE DEFENDANT.

20 Q WOULD IT HELP TO REFRESH YOUR MEMORY IF I SHOWED YOU
21 THE PAPERWORK?

22 A YES. YES, SIR, THIS PAPERWORK WOULD REFLECT THAT I
23 SEIZED THE EVIDENCE FROM MR. PRATHER AND SECURED IT.

24 Q AND YOU WERE THE CUSTODIAN OF IT, I THINK YOU SAID.
25 WHAT DOES THAT MEAN?

(MARK HOWARD-DIRECT BY GIBBONS)

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1 A IT MEANS I AM RESPONSIBLE FOR LISTING THE ITEMS ON
2 THE SEARCH WARRANT RETURN. THAT'S THE RECEIPT THAT IS
3 LEFT WITH THE RESIDENCE OF THE DEFENDANT AFTER THE SEARCH
4 WARRANT IS EXECUTED, AND, ALSO, I WOULD HAVE BEEN THE ONE
5 TO COMPLETE THE CHAIN OF CUSTODY -- EVIDENCE CHAIN OF
6 CUSTODY AND THE DRUG EVIDENCE KITS.

7 Q WHAT DO YOU DO WITH THE DRUGS AFTER YOU SEIZE THEM
8 FROM THE SEARCH WARRANT?

9 A THE DRUGS ARE SEIZED FROM THE PERSON OR SCENE. THEY
10 ARE THEN PLACED INTO WHAT WE CALL A BEST KIT. IT IS A
11 DRUG EVIDENCE KIT THAT IS SEALED. THE CHAIN OF CUSTODY IS
12 COMPLETED AND TURNED OVER TO OUR LAB TECHNICIAN FOR
13 PROCESSING.

14 Q WHEN YOU SAY PROCESSING WHAT DOES THAT MEAN?

15 A TESTING, TESTING.

16 Q AND, SO, YOU TAKE THEM AND PUT THEM IN A BEST KIT?

17 A CORRECT.

18 Q WHY IS THAT?

19 A FOR SAFEKEEPING FOR -- TO MAKE SURE THAT THEY CAN'T
20 BE TAMPERED WITH DURING THE TIME THAT THEY ARE SEIZED --
21 DURING THE TIME FROM SEIZURE UNTIL FINAL TEST UNTIL COURT.

22 Q NOW, BEING AS YOU'RE THE ONE THAT SUBMITTED IT WHO
23 WOULD RECEIVE THE RESULTS BACK FROM THE CHEMIST?

24 A EITHER MYSELF, THE ONE THAT SUBMITTED IT, OR THE
25 INVESTIGATING OFFICER THAT WROTE THE CASE. GENERALLY, THE

(MARK HOWARD-DIRECT BY GIBBONS)

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1 NAME THAT IS SIGNED ON THE RECEIPT WOULD RECEIVE THE
2 RESULTS OF THAT OR THE INVESTIGATING OFFICER WOULD RECEIVE
3 THE RESULTS.

4 Q ALL RIGHT. I AM GOING TO SHOW YOU WHAT'S BEEN MARKED
5 AS STATE'S EXHIBIT 4. DID YOU SUBMIT ITEMS TO BE TESTED
6 FROM MR. PRATHER'S ARREST?

7 A YES, SIR, I WOULD HAVE.

8 Q I WILL SHOW YOU ITEM NUMBER 2 ON COURT'S EXHIBIT
9 NO. 1. WHAT IS THAT EXHIBIT?

10 A THAT IS THE PLASTIC BAG THAT CONTAINED THE ROCK
11 SUBSTANCE WE BELIEVE TO BE THE COCAINE.

12 Q WHAT NAME ON -- WHAT CASE IS THAT ASSOCIATED WITH?

13 A IT IS ASSOCIATED WITH MR. JAMES PRATHER'S CASE.

14 Q IS THAT THE ITEM THAT YOU SUBMITTED FOR TESTING?

15 A YES, SIR. YES, SIR.

16 Q NOW, WAS IT TESTED?

17 A YES, IT WAS TESTED.

18 MR. GIBBONS: YOUR HONOR, I BELIEVE THERE IS A
19 STIPULATION AT THIS POINT.

20 THE COURT: ALL RIGHT. MADAM FORELADY AND LADIES AND
21 GENTLEMEN OF THE JURY, STIPULATION SIMPLY MEANS THAT THE
22 DEFENDANT AND THE STATE HAVE AGREED ON A CERTAIN FACT
23 WHICH THEY DON'T HAVE TO PROVE. SO, YOU ACCEPT THAT AS
24 EVIDENCE IN THE CASE AND IT'S UNDISPUTED. HE WILL READ
25 THE STIPULATION IN JUST A SECOND.

1 THE COURT: WHAT IS THE --

2 Q AS TO ITEM NUMBER TWO, MR. HOWARD, IT IS STIPULATED
3 THAT THE RESULT IN THAT TEST WAS -- COULD YOU READ NUMBER
4 NUMBER 2?

5 A YES, SIR. PLASTIC BAG CONTAINING ROCK SUBSTANCE.

6 Q TEST RESULTS?

7 A TEST RESULTS, COCAINE FOUND.

8 Q AND IS THERE A WEIGHT?

9 A YES, SIR, 26.69 GRAMS.

10 THE COURT: READ IT AGAIN.

11 THE WITNESS: 26.69 GRAMS.

12 Q AND THAT WAS COCAINE; CORRECT?

13 A YES, SIR.

14 Q I AM GOING TO SHOW YOU WHAT'S BEEN MARKED AS STATE'S
15 EXHIBIT 4 AND ASK YOU IF YOU CAN IDENTIFY THAT, PLEASE.

16 A YES, SIR.

17 Q WHAT IS THAT?

18 A IT'S A QUANTITY OF COCAINE, POWDER COCAINE.

19 Q DOES IT HAVE SOME NUMBERS ON IT?

20 A YES, SIR.

21 Q I AM GOING TO SHOW YOU BACK COURT'S EXHIBIT NO. 1.

22 A OKAY.

23 Q CAN YOU IDENTIFY WHAT THOSE NUMBERS ARE RELATED TO?

24 A YES, SIR. THE LAB NUMBER L05-0157, THE NUMBER 2

25 WHICH WOULD MEAN CIRCLED NUMBER 2 ON THE BAGGY WHICH IS

(MARK HOWARD-DIRECT BY GIBBONS)

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1 ITEM 2 AND THAT WOULD MATCH WITH THE SHERIFF'S OFFICE
2 FORENSIC LAB RESULT SHEET AS TO ITEM 2, THE COCAINE THAT
3 WAS FOUND.

4 Q SO, THAT'S THE COCAINE THAT WAS TESTED?

5 A YES, SIR.

6 MR. GIBBONS: I WOULD MOVE STATE'S EXHIBIT 4 INTO THE
7 RECORD, YOUR HONOR.

8 MISS ALVES: JUDGE, I ALREADY HAVE A PREVIOUS
9 OBJECTION AS TO THE SEARCH IN GENERAL.

10 THE COURT: OVERRULED.

11 (WHEREUPON, STATE'S EXHIBIT NO. 4 WAS ADMITTED INTO
12 EVIDENCE.)

13 Q OFFICER HOWARD, ARE YOU FAMILIAR WITH THE LOCATION
14 WHERE THIS HAPPENED?

15 A YES, SIR.

16 Q WHAT COUNTY IS THAT?

17 A THAT WOULD BE AIKEN COUNTY, SIR.

18 Q AND IF I WAS LEAVING THE COURTHOUSE HOW WOULD I GET
19 TO THAT LOCATION?

20 A YOU WOULD LEAVE THE COURTHOUSE. YOU WOULD TRAVEL TO
21 HIGHWAY 19, EDGEFIELD HIGHWAY, AND IT WOULD BE ON THAT
22 ROAD.

23 Q AND APPROXIMATELY HOW FAR OUT OF AIKEN PROPER?

24 A SEVERAL MILES, IF THAT. NOT EVEN THAT. A MILE OR
25 SO.

1 Q I'D LIKE TO HAND YOU STATE'S EXHIBIT 1. DO YOU
2 RECOGNIZE THAT?

3 A YES, SIR, I DO.

4 Q WHAT IS THAT?

5 A SIR, THAT APPEARS TO BE THE TRAILER THAT WE -- THAT'S
6 THE TRAILER, THE RESIDENCE THAT WE SEARCHED.

7 Q AND IS IT JUST THE RESIDENCE OR IS IT THE SURROUNDING
8 AREA AS WELL?

9 A NO. THAT IS THE SURROUNDING AREA.

10 Q AND ARE YOU FAMILIAR WITH ANY PARKS THAT ARE IN THAT
11 AREA?

12 A YES, SIR, THE PARK ON WEAVER STREET.

13 Q AND IS IT YOUR TESTIMONY THAT THAT PARK WOULD BE
14 CLOSER THAN A HALF MILE FROM WHERE THIS TRAILER WAS?

15 A YES, SIR, WITHIN A HALF A MILE.

16 MR. GIBBONS: I WOULD MOVE STATE'S EXHIBIT 1 INTO
17 EVIDENCE, YOUR HONOR. THIS IS A MAP.

18 THE COURT: ANY OBJECTION?

19 MISS ALVES: NO, YOUR HONOR.

20 THE COURT: WITHOUT OBJECTION.

21 (WHEREUPON, STATE'S EXHIBIT NO. 1 WAS ADMITTED INTO
22 EVIDENCE.)

23 MR. GIBBONS: THANK YOU. ANSWER ANY QUESTIONS MISS
24 ALVES HAS.

25 THE COURT: CROSS.

(MARK HOWARD-CROSS BY ALVES)

73

1 CROSS-EXAMINATION

2 BY MISS ALVES:

3 Q DID YOU DO A REPORT? OTHER THAN THE PAPERWORK THAT
4 YOU JUST TESTIFIED FROM, DID YOU DO ANY KIND OF REPORT OR
5 STATEMENT ABOUT YOUR PART IN THIS CASE?

6 A NO, MA'AM, OTHER THAN THE CHANGING THE RETURN, NO,
7 MA'AM.

8 Q AND YOU SAID YOU DIDN'T REMEMBER -- YOU DON'T REALLY
9 REMEMBER THE DETAILS OF WHAT HAPPENED?

10 A THE DETAILS OF -- WHICH DETAILS?

11 Q YOU SAID -- BEFORE YOU REFRESHED YOUR MEMORY YOU
12 COULDN'T REMEMBER WHO YOU -- WHERE YOU GOT THE SUBSTANCE
13 FROM, THE DRUGS FROM, WHETHER YOU SAY YOU GOT IT FROM
14 MR. PRATHER OR FROM AN OFFICER?

15 A GENERALLY, WE WOULD EITHER SEIZE THE DRUGS FROM THE
16 SUSPECT OR FROM AN OFFICER WHO FOUND THE DRUGS. I DID NOT
17 RECALL EXACTLY AT THAT POINT IN TIME UNTIL I REFRESHED MY
18 MEMORY IF I SEIZED IT FROM THE OFFICER OR FROM THE
19 SUSPECT.

20 Q OKAY. SO, YOU HAD TO REFRESH YOUR RECOLLECTION AND
21 YOU LOOKED AT THE PAPERWORK IN ORDER --

22 A YES, MA'AM.

23 Q -- TO REMEMBER WHO YOU GOT IT FROM?

24 A THAT'S CORRECT.

25 Q WHERE EXACTLY WAS MR. PRATHER WHEN YOU GOT THESE

1 DRUGS?

2 A HE WAS LAYING ON THE FLOOR OF THE RESIDENCE.

3 Q DO YOU REMEMBER WHERE EXACTLY?

4 A HE WAS IN THE HALLWAY LIVING ROOM AREA AND CLOSE TO
5 -- IN CLOSE PROXIMITY TO EITHER AREA.

6 Q CLOSE PROXIMITY?

7 A HE WAS NEITHER IN THE HALL NOR THE LIVING ROOM. HE
8 WAS BETWEEN THE TWO, MA'AM, ON THE FLOOR.

9 Q AT WHAT POINT WAS HE MOVED OUT OF THE HALLWAY? DO
10 YOU KNOW?

11 A I DO NOT RECALL THAT, MA'AM. I WOULD NOT HAVE MOVED
12 HIM.

13 Q YOU WOULDN'T HAVE BEEN THE PERSON TO MOVE HIM?

14 A I WOULD NOT HAVE MOVED HIM, NO.

15 Q WERE YOU THERE WHEN THE DRUGS WERE FOUND?

16 A I WAS PART OF THE S.W.A.T. TEAM. MY JOB WAS TO HELP
17 SECURE THE RESIDENCE. IT WAS AFTER THIS THAT I BEGAN TO
18 ASSIST WITH INVESTIGATION, YES.

19 Q SO, YOU WEREN'T WORKING NARCOTICS AT THAT TIME?

20 A YES, MA'AM, I WAS.

21 Q YOU WERE? YOU WERE PART OF THE ENTRY TEAM. YOU
22 WEREN'T PART OF THE NARCOTICS TEAM?

23 A MA'AM, MY JOB WAS S.W.A.T. AND THEN ONCE WE SECURED
24 THE RESIDENCE I BECAME A NARCOTICS INVESTIGATOR TO ASSIST
25 MY TEAM WITH A SEARCH OF THE RESIDENCE.

(MARK HOWARD-CROSS BY ALVES)

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1 Q OKAY. YOU WERE BOTH AT THE SAME TIME?

2 A I WAS ASSIGNED TO NARCOTICS AS AN INVESTIGATOR, BUT I
3 WAS ALSO A S.W.A.T. TEAM MEMBER, YES.

4 Q NOW, WHERE EXACTLY WERE YOU WHEN THE DRUGS WERE
5 FOUND?

6 A MA'AM, I CANNOT TELL YOU THAT. I HAD CLEARED THE
7 HOUSE WITH THE S.W.A.T. TEAM, AND I CAN'T TESTIFY AS TO MY
8 EXACT LOCATION WHEN LIEUTENANT JONES FOUND THE DRUGS.

9 Q HOW DID YOU KNOW THAT DRUGS WERE FOUND? HOW DID YOU
10 KNOW TO COME AND GET THE DRUGS?

11 A BECAUSE AFTER I COMPLETED MY INITIAL JOB AS A
12 S.W.A.T. TEAM ENTRY MEMBER I BECAME THE SEARCH WARRANT
13 CUSTODIAN AS I STATED BEFORE AND I WOULD HAVE BEEN TOLD
14 THAT THERE WERE DRUGS.

15 Q SO, THE INVESTIGATORS WHO WERE SEARCHING THE HOUSE
16 WOULD HAVE THEN TOLD YOU WHAT THEY FOUND AND THEN YOU
17 WOULD HAVE THEN COME PICK IT UP?

18 A AND I WOULD SEIZE IT.

19 Q OKAY. AND THAT WOULD HAVE BEEN PART OF YOUR DUTY?

20 A YES, MA'AM.

21 MISS ALVES: THANK YOU. NO FURTHER QUESTIONS.

22 THE COURT: YOU MAY STEP DOWN. NEXT WITNESS.

23 MR. GIBBONS: THE STATE CALLS GREG SAVELL.

24 GREGORY SAVELL, AFTER BEING DULY SWORN,

25 TESTIFIED AS FOLLOWS:

1 THE CLERK: HAVE A SEAT IN THE WITNESS BOX. STATE
2 YOUR FULL NAME FOR THE COURT SPELLING YOUR LAST.

3 THE WITNESS: I AM GREG SAVELL; S-A-V-E-L-L.

4 DIRECT EXAMINATION

5 BY MR. GIBBONS:

6 Q OFFICER SAVELL, WHERE ARE YOU EMPLOYED?

7 A AIKEN COUNTY SHERIFF'S OFFICE.

8 Q AND HOW LONG HAVE YOU BEEN WITH AIKEN COUNTY?

9 A A LITTLE OVER FOUR YEARS.

10 Q WHAT ARE YOUR CURRENT DUTIES?

11 A CURRENTLY I AM AN INVESTIGATOR IN C.I.D., THE ADULT
12 SIDE CRIMINAL INVESTIGATION DIVISION.

13 Q AND IN FEBRUARY OF '05 WHAT WERE YOUR DUTIES?

14 A I WAS A NARCOTICS INVESTIGATOR.

15 Q AND WERE YOU ON THIS SEARCH WARRANT DETAIL THAT WE'RE
16 SPEAKING ABOUT TODAY?

17 A YES, SIR.

18 Q WHAT WAS YOUR ASSIGNMENT THAT NIGHT?

19 A I WAS CASE AGENT.

20 Q WHAT DOES THAT MEAN?

21 A I'M SORRY, SIR?

22 Q WHAT DOES THAT MEAN?

23 A I WAS THE INVESTIGATOR IN CHARGE OF THIS PARTICULAR
24 SEARCH WARRANT. I WAS GOING TO WRITE THE REPORT.

25 Q YOU GOT STUCK WITH THE PAPERWORK THAT NIGHT?

(GREGORY SAVELL-DIRECT BY GIBBONS)

77

1 A THAT'S RIGHT.

2 Q AND DID YOU ALSO PARTICIPATE IN THE SEARCH?

3 A YES, SIR, I DID.

4 Q WHAT DID YOU SEE AND WHAT DID YOU DO?

5 A IT WAS -- AS THE PREVIOUS INVESTIGATOR ADVISED AFTER
6 THE S.W.A.T. TEAM INITIATED THE SEARCH WARRANT AND THE
7 SCENE WAS SECURED THEN WE WERE CALLED IN. BEING THE CASE
8 AGENT I DIDN'T PARTICULARLY GO OVER TO ONE INDIVIDUAL. IT
9 WAS MY JOB TO MAKE MENTAL NOTES FOR THE REPORT PURPOSES.
10 AT THAT TIME I WENT IN AND I OBSERVED THE SHOTGUN LEANING
11 IN THE CORNER. I MADE MENTAL NOTES OF THE MARIJUANA THAT
12 WAS ON THE FLOOR AND THAT'S PRETTY MUCH WHAT I WAS DOING
13 AT THAT POINT.

14 Q NOW, WE'VE TALKED ABOUT ONE PERSON. MORE WAS GOING
15 ON THAN MR. PRATHER?

16 A THAT'S RIGHT.

17 Q WAS THERE A LOT MORE GOING ON ON THE SCENE THAN JUST
18 HIM THAT NIGHT?

19 A YES, THERE WAS.

20 Q WERE YOU WRITING THE REPORT JUST AS TO HIM?

21 A NO, SIR.

22 Q WERE YOU WRITING THE REPORT JUST AS TO EVERYTHING
23 THAT WAS GOING ON?

24 A THAT'S CORRECT.

25 Q DID YOU COME IN CONTACT WITH MR. PRATHER OR SEE MR.

1 PRATHER THAT NIGHT?

2 A YES, I DID.

3 Q TELL US WHAT HAPPENED WHEN YOU SAW HIM.

4 A I WAS IN THE KITCHEN AREA AS I SAID. I NOTICED AND
5 OBSERVED THE SHOTGUN AND THE MARIJUANA ON THE FLOOR. AT
6 THE TIME LIEUTENANT JONES NOTIFIED ME AS TO HIS FINDINGS
7 WHEN HE WAS CONDUCTING THE PAT-DOWN OF MR. PRATHER IN THE
8 HALLWAY. I WENT OVER. HE SHOWED ME WHERE THE MARIJUANA
9 WAS IN THE HOODIE OF HIS SWEAT JACKET. AT THAT POINT HE
10 SHOWED ME THE PLASTIC BAGGY THAT WAS VISIBLE IN HIS
11 POCKET. I WAS OFF TO THE SIDE HANDLING -- HAD CLEAR
12 VISIBLE VIEW OF THE PLASTIC BAGGY OF THE SUSPECTED COCAINE
13 IN HIS POCKET AND THAT'S WHEN I CAME INTO CONTACT WITH
14 MR. PRATHER.

15 Q DID YOU -- WERE YOU THERE WHEN OFFICER HOWARD CAME
16 UP?

17 A YES, I WAS.

18 Q DID YOU SEE HIM RETRIEVE THE ITEM?

19 A YES, I DID.

20 Q THE PHOTOGRAPHS -- LET'S SEE, STATE'S 5. THAT'S A
21 PICTURE OF WHAT?

22 A THE PLASTIC BAGGY WITH THE SUSPECTED -- AT THE TIME
23 THE SUSPECTED COCAINE.

24 Q DID YOU SEE THAT BAGGY AS IT LOOKS IN THAT PICTURE?

25 A YES, I DID.

(GREGORY SAVELL-DIRECT BY GIBBONS)

79

1 Q WHAT ABOUT STATE'S EXHIBIT 3?

2 A YES, SIR.

3 Q WHAT IS THAT A PICTURE OF?

4 A MR. PRATHER.

5 Q AND IS THAT AS HE APPEARED THAT NIGHT?

6 A YES, IT WAS.

7 Q THANK YOU. AND DID YOU CONDUCT A SEARCH OR FIND SOME
8 ITEMS THAT NIGHT?

9 A YES, I DID.

10 Q AND DID THEY INCLUDE NARCOTICS IN OPEN VIEW?

11 A YES, THEY WERE.

12 Q WHEN DID YOU FIRST SEE THOSE NARCOTICS?

13 A AS I WENT INTO THE TRAILER THEY WERE IN PLAIN VIEW ON
14 THE KITCHEN FLOOR.

15 Q AND WHAT ABOUT WEAPONS? YOU MENTIONED A SHOTGUN.
16 DID YOU SEE ANY OTHER WEAPONS?

17 A YES, SIR. THERE WAS AS I SAID THE SHOTGUN THAT WAS
18 IN THE CORNER. THERE WAS ALSO A HANDGUN ON THE COUNTERTOP
19 IN THE KITCHEN.

20 Q AND DID YOU SEE THOSE PRIOR TO COMING INTO CONTACT
21 WITH MR. PRATHER?

22 A YES, I DID.

23 Q DID YOU ENTER THE SAME WAY OFFICER JONES AND THE
24 ENTRY TEAM CAME IN?

25 A YES, I DID.

1 Q HOW LONG AFTER OFFICER JONES WENT IN DID YOU GO IN?

2 A I BELIEVE IT WAS RIGHT BEHIND. I FOLLOWED RIGHT
3 BEHIND HIM.

4 Q STEPS BEHIND?

5 A THAT'S CORRECT.

6 Q NOW, YOU WROTE THE REPORT IN THIS CASE; CORRECT?

7 A YES, SIR.

8 Q DID YOU DO THAT BASED ON EVERYTHING THAT YOU SAW AND
9 NOTHING ELSE OR SOMETHING ELSE?

10 A BASED ON MY FINDINGS AND WHAT THE FINDINGS THAT ARE
11 BROUGHT TO MY ATTENTION, YOU KNOW, BY SOMEONE ELSE, BY
12 ANOTHER INVESTIGATOR.

13 Q SO, YOU MAY NOT HAVE SEEN EVERYTHING THAT YOU WROTE
14 DOWN IN THIS REPORT?

15 A THAT'S CORRECT.

16 Q IT MAY HAVE BEEN TOLD TO YOU?

17 A THAT'S CORRECT.

18 Q AND THE PERSON THAT YOU SAW WEARING THAT SWEATSHIRT
19 THAT NIGHT, IS HE IN THE COURTROOM TODAY?

20 A YES, HE IS.

21 Q COULD YOU PLEASE POINT HIM OUT?

22 A SITTING OVER THERE IN THE YELLOW SHIRT.

23 Q DID YOU SEE A WEAPON NEAR MR. PRATHER?

24 A YES, SIR.

25 Q WHAT WAS THAT AND WHERE DID YOU FIRST SEE IT?

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81

1 A IT WAS A BLACK HANDGUN THAT WAS SHOWN. IT WAS AROUND
2 HIS WAISTBAND AND HE WAS ROLLED ON HIS SIDE IT WAS ON THE
3 GROUND.

4 Q AND YOU WERE THERE WHEN THAT WAS FOUND?

5 A YES, I WAS.

6 Q WERE YOU THERE WHEN HE WAS HANDCUFFED?

7 A YES, SIR.

8 MR. GIBBONS: PLEASE ANSWER ANY QUESTIONS THAT MISS
9 ALVES HAS.

10 THE COURT: CROSS.

11 CROSS-EXAMINATION

12 BY MISS ALVES:

13 Q NOW, WERE YOU WITH -- YOU WERE WITH INVESTIGATOR
14 JONES WHEN HE WAS PATTING DOWN MR. PRATHER?

15 A HE HAD STARTED THE INITIAL PAT-DOWN BEFORE LIEUTENANT
16 JONES CALLED ME OVER.

17 Q AND YOU ACTUALLY WERE WITH LIEUTENANT JONES WHEN HE
18 FOUND THE PLASTIC BAGGY OF MARIJUANA IN THE HOODIE?

19 A NO, I APPROACHED -- THAT'S WHEN AT THAT POINT
20 LIEUTENANT JONES HAD CALLED ME OVER AND SHOWED ME WHAT HE
21 HAD FOUND.

22 Q SO, YOU WERE NOT WITH HIM WHEN HE -- WHEN HE FOUND
23 THIS BAGGY OF MARIJUANA?

24 A THAT'S CORRECT.

25 Q SO, YOU ONLY CAME OVER AFTER. ARE YOU AWARE THAT

1 YOUR REPORT SAYS THAT YOU AND LIEUTENANT JONES SEARCHED
2 MR. PRATHER AND FOUND A PLASTIC BAGGY OF MARIJUANA IN THE
3 HOOD?

4 A THAT'S CORRECT.

5 Q BUT THAT'S NOT WHAT HAPPENED?

6 A WELL, I WAS PRESENT WHEN HE CALLED ME OVER THERE.
7 SO, ME BEING PRESENT AT THE TIME.

8 Q OKAY. IT SAYS THAT YOU AND HE SEARCHED HIM. IT SAYS
9 THAT YOU AND INVESTIGATOR JONES SEARCHED HIM. THAT'S NOT
10 WHAT HAPPENED?

11 A WELL, AS I SAID HE BEGAN THE SEARCH AND THEN HE
12 CALLED ME OVER AND THEN I WAS THERE FOR THE SEARCH.

13 Q AND THEN IT SAYS THAT WHEN THE INVESTIGATORS -- I
14 WANT TO GO BACK TO THAT. THE SENTENCE EXACTLY IS, THIS
15 INVESTIGATING OFFICER AND LIEUTENANT JONES SEARCHED THE
16 SUBJECT JAMES PRATHER AND FOUND ONE PLASTIC BAGGY OF
17 MARIJUANA IN THE HOOD OF HIS JACKET. THAT'S WHAT THE
18 SENTENCE -- IS THAT WHAT YOUR SENTENCE -- I'M SORRY. DO
19 YOU NOT HAVE ONE?

20 A I HAVE A COPY.

21 Q OKAY. DO YOU AGREE THAT'S WHAT IT SAYS?

22 A THAT'S WHAT THE SENTENCE SAYS.

23 Q OKAY. I'M SORRY. PRIOR TO THAT IT SAYS, THIS
24 INVESTIGATING OFFICER OBSERVED SUBJECT JAMES PRATHER IN
25 THE HALLWAY OF THE SINGLE-WIDE TRAILER.

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83

1 A THAT'S CORRECT.

2 Q OKAY. AND THEN IT SAYS THAT YOU AND LIEUTENANT JONES
3 SEARCHED THE SUBJECT JAMES PRATHER AND FOUND THE PLASTIC
4 BAGGY OF MARIJUANA IN THE HOOD?

5 A THAT'S CORRECT.

6 Q AND WHEN YOU SAW MR. PRATHER IN THE HALLWAY OF THE
7 TRAILER HE WAS LAYING ON THE FLOOR?

8 A YES, HE WAS.

9 Q AND WHERE WAS HIS HANDS?

10 A THEY WERE -- I BELIEVE AT THAT POINT WHEN I CAME OVER
11 THERE THEY WERE BEHIND HIS BACK.

12 Q THEY WERE BEHIND HIS BACK? AND AFTER THE MARIJUANA
13 WAS FOUND YOUR REPORT SAYS WHEN INVESTIGATORS TURNED OVER
14 PRATHER TO CONDUCT A PAT-DOWN OF THE SUBJECT INVESTIGATOR
15 ABBOTT FOUND A LOADED .22 SMITH AND WESSON PISTOL?

16 A THAT'S CORRECT.

17 Q AND THEN YOU HAVE UNDER HIS PERSON; IS THAT RIGHT?

18 A THAT'S CORRECT..

19 Q AND THEN YOU HAVE LIEUTENANT JONES FOUND A PLASTIC
20 BAGGY CONTAINING COCAINE MORE THAN 10 GRAMS IN PRATHER'S
21 RIGHT JACKET POCKET?

22 A THAT'S CORRECT.

23 Q WHAT WAS UNDER HIS PERSON? THE COCAINE OR THE GUN?

24 A THE PISTOL.

25 Q THE GUN? SO, THE GUN WASN'T FOUND IN HIS POCKET?

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84

1 A NO.

2 Q OR IN HIS WAISTBAND?

3 A AS I SAID, THE GUN HAD FALLEN OUT. IT WAS LAYING ON
4 THE GROUND UNDER HIS PERSON.

5 Q SO, IT WASN'T --

6 A THAT'S WHAT I SAID BEFORE.

7 Q OKAY. IT WASN'T IN HIS WAISTBAND?

8 A I HAVE SAID BEFORE THAT THE GUN MUST HAVE BEEN IN HIS
9 WAISTBANDS AND IT FELL OUT. IT WAS UNDER HIS PERSON IS
10 WHEN HE WAS ROLLED OVER AND IT WAS LOCATED.

11 Q OKAY. NOW, DID YOU SEE THE MARIJUANA IN THE HOOD?

12 A YES, I DID.

13 Q YOU DID? SO, INVESTIGATOR JONES WHEN HE CALLED YOU
14 OVER TO SHOW YOU WHAT HE HAD FOUND YOU WERE ABLE TO SEE IT
15 THERE?

16 A YES. AS I EXPLAINED I WAS -- BEING THE CASE AGENT I
17 WAS TAKING IN THE ENTIRE SCOPE OF THE SCENE THERE AND
18 LIEUTENANT JONES AT THE TIME WHEN HE WAS CONDUCTING
19 INITIAL PAT-DOWN HE ALERTED ME TO COME OVER TO HIS
20 ASSISTANCE AT THAT POINT. HE WANTED ME TO BE PRESENT TO
21 CONTINUE ON WITH THE SEARCH OF THE SUBJECT. THAT'S WHEN I
22 IMMEDIATELY WENT OVER THERE FROM THAT POINT. HE SHOWED ME
23 WHERE THE MARIJUANA WAS ON THE SUBJECT. THAT'S WHEN I WAS
24 THERE FOR THE REST OF THE PAT-DOWN OF THE SUBJECT.

25 Q DID Y'ALL TAKE ANY PICTURES OF THE MARIJUANA IN THE

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85

1 HOOD?

2 A I BELIEVE THERE WAS. WITHOUT LOOKING AT -- WITHOUT
3 LOOKING AT THE DISK, I CAN'T SAY FOR SURE -- FOR CERTAIN.

4 Q OKAY. NOW, -- HOW LONG AFTER THE ENTRY TEAM ENTERED DID
5 YOU ENTER THE HOUSE?

6 A I WOULD SAY AT BEST A ROUGH GENERAL FIVE AT THE MAX,
7 TEN MINUTES.

8 Q FIVE OR TEN MINUTES. SO, WOULD YOU HAVE BEEN ONE OF
9 THE FIRST FEW PEOPLE IN THE HOUSE AFTER ENTRY TEAM?

10 A AFTER THE ENTRY TEAM?

11 Q YEA.

12 A THAT'S CORRECT.

13 Q YOU WOULD HAVE BEEN ONE OF THE FIRST PEOPLE IN AND
14 THE ENTRY TEAM WOULD HAVE HAD EVERYBODY IN THE HOUSE
15 SECURED?

16 A THAT'S RIGHT.

17 Q AND THEY WOULD HAVE ALL BEEN ON THE FLOOR OR WHEREVER
18 THEY WERE SECURED?

19 A THAT'S CORRECT.

20 Q WHEN YOU CAME IN?

21 A (WITNESS NODS HEAD.)

22 Q AND NOW DID YOU COME IN WITH LIEUTENANT JONES? DID
23 HE COME --

24 A YES, I CAME IN AROUND THE TIME. I CAN'T SAY IF HE
25 WALKED IN BEFORE ME, AFTER ME. IT WAS AROUND THE SAME

1 TIME WE WOULD HAVE WENT IN.

2 Q AND WHAT'S THE FIRST THING YOU DID WHEN YOU WENT IN
3 THE HOUSE?

4 A THE FIRST THING I DID? I APPROACHED THE HOUSE. I AM
5 TRYING TO GET AN OBSERVATION OF WHAT'S GOING ON IN THE
6 HOUSE, WHO WE HAVE, HOW MANY SUBJECTS ARE IN THE HOUSE.
7 THE FIRST KEY FACTOR YOU SEE IS A WEAPON LEANING IN THE
8 CORNER, THE MARIJUANA LAYING ON THE GROUND IN THE
9 KITCHEN.

10 Q OKAY.

11 A JUST BEING OBSERVANT, I GUESS YOU WOULD SAY --

12 Q OKAY.

13 A -- GOING INSIDE OF THE HOUSE.

14 Q OKAY. NOW, THAT GUN WAS IN THE LIVINGROOM?

15 A IT WAS IN THE CORNER ON THE RIGHTHAND SIDE OF THE
16 TRAILER.

17 Q OKAY. AND MR. PRATHER WAS THE HALLWAY?

18 A YES, HE WAS.

19 Q HE WAS ON THE FLOOR WITH HIS HANDS BEHIND HIS BACK?

20 A WHEN I GOT THERE, YES.

21 Q WHEN YOU WALKED INTO THE RESIDENCE?

22 A YEA. WHEN I OBSERVED HIM AND NOTICED HIM THAT'S
23 WHERE HE WAS.

24 Q AND YOU SAW HIM WHEN YOU CAME INTO THE RESIDENCE?

25 A YEA, AT SOME POINT. YES.

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1 Q I MEAN, WAS HE VISIBLE TO YOU WHEN YOU WALKED IN?

2 A YEA, HE WAS ONE OF THE VISIBLE PEOPLE.

3 MISS ALVES: OKAY. THANK YOU. NO FURTHER QUESTIONS.

4 THE COURT: REDIRECT?

5 THE COURT: WHOA, WHOA, WHOA.

6 MR. GIBBONS: I HAVE NOTHING FOR THIS WITNESS.

7 THE COURT: NOW YOU MAY GO. IT IS CALLED DIRECT,

8 CROSS, REDIRECT.

9 EVERYBODY OKAY? NOBODY NEEDS A CUP OF COFFEE?

10 EXCEPT THE JUDGE. SAY IT OUT LOUD.

11 MR. GIBBONS: YOUR HONOR, THE STATE RESTS AT THIS

12 POINT.

13 THE COURT: THAT MEANS THAT'S ALL THE EVIDENCE FROM

14 THE STATE. I NEED TO LISTEN TO THE LAWYERS JUST A FEW

15 MINUTES. SO, LET'S STRETCH OUR LEGS. Y'ALL GO BACK AND

16 TAKE A BREAK. PLEASE DO NOT DISCUSS THE CASE NOR COMMENCE

17 ANY DELIBERATIONS. I'LL BE WITH YOU IN JUST A FEW

18 MINUTES.

19 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 4:13.)

20 THE COURT: LET ME SEE THE LAWYERS OVER HERE.

21 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

22 THE COURT: ALL RIGHT. MISS ALVES, HOW ABOUT PUT ON

23 THE RECORD YOUR COMMENTS THAT YOU MADE AT SIDE BAR DEALING

24 WITH THE MARIJUANA AND ANY OTHER THING YOU THINK THAT YOU

25 NEED TO PUT ON THE RECORD TO PROTECT YOURSELF.

1 MISS ALVES: YES, SIR. JUDGE, I MADE OBJECTION TO
2 THE STATE BEING ABLE TO BRING UP THE MARIJUANA FOUND ON
3 MR. PRATHER AS WELL AS THE MARIJUANA FOUND IN THE HOUSE.
4 WE AT THE PRETRIAL DURING OUR PRETRIAL CONFERENCES AND OUR
5 PRETRIAL DISCUSSIONS IT WAS MY UNDERSTANDING THAT THE
6 STATE WAS NOT GOING TO PRESENT ANY EVIDENCE REGARDING ANY
7 OTHER DRUGS ALLEGED TO HAVE BEEN FOUND IN THE HOUSE OR ON
8 MR. PRATHER.

9 JUDGE, MR. PRATHER IS ACTUALLY CURRENTLY CHARGED WITH
10 POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA, POSSESSION
11 WITH INTENT TO DISTRIBUTE MARIJUANA WITHIN A HALF MILE OF
12 OR SCHOOL OR PLAYGROUND, TRAFFICKING CRACK COCAINE,
13 POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE WITHIN
14 A HALF A MILE OF A SCHOOL OR PLAYGROUND AS WELL AS THE TWO
15 CHARGES THAT WE HAVE HERE TODAY. THE STATE PRIOR TO
16 CALLING THE CASE INFORMED ME THAT THEY WERE NOT GOING TO
17 CALL THOSE OTHER FOUR CHARGES EVEN THOUGH THEY CAME OUT OF
18 THE SAME INCIDENT, AND IT WAS MY UNDERSTANDING PRIOR TO
19 TRIAL THAT THE STATE WAS NOT GOING TO BE BRINGING UP ANY
20 OTHER DRUGS OTHER THAN THE COCAINE. YET, ON THE FIRST
21 WITNESS THE SOLICITOR WENT INTO GREAT DETAIL ABOUT THE
22 CONTRABAND FOUND IN THE HOOD AND THE MARIJUANA FOUND ALL
23 OVER THE -- ALL OVER THE -- ALL OVER THE FLOOR IN THE
24 KITCHEN AND IN THE RESIDENCE AND ALL THE CONTRABAND THAT
25 WAS FOUND IN THE HOUSE.

1 JUDGE, I MADE MY OBJECTION WHEN THEY FIRST STARTED
2 TALKING ABOUT CONTRABAND FOUND IN THE HOOD AND IT WAS AT
3 THAT POINT THAT YOU OVERRULED IT. HOWEVER, THE STATE -- I
4 THINK THEY WENT TO GREAT DETAIL ABOUT ALL OF THE DRUGS
5 FOUND IN THE HOUSE, AND I THINK THAT WAS OVERLY
6 PREJUDICIAL TO MR. PRATHER. HE IS ONLY HERE TODAY CHARGED
7 WITH TRAFFICKING COCAINE AND POSSESSION WITH INTENT TO
8 DISTRIBUTE COCAINE WITHIN HALF A MILE OF A SCHOOL OR
9 PLAYGROUND. I THINK I WAS OVERLY PREJUDICIAL FOR THE
10 STATE TO BE ALLOWED TO BRING UP ALL OF THAT MARIJUANA
11 INCLUDING MARIJUANA THAT THEY HAVE NOT ACTUALLY CHARGED
12 HIM WITH.

13 THE COURT: MR. GIBBONS?

14 MR. GIBBONS: YOUR HONOR, IT IS TRUE THAT WE DID HAVE
15 A PRETRIAL DISCUSSION ABOUT LEAVING ALL OF THE OTHER
16 CHARGES ASIDE AND PURSUING ONLY THIS ONE TO KEEP THE CASE
17 CLEAN. SUBSEQUENT TO THAT WE HAD A MOTION HEARING
18 CHALLENGING WHAT WAS GOING ON AND WHAT JUSTIFIED THE
19 SEARCH OF THE DEFENDANT. I DIDN'T SEE HOW WE COULD REALLY
20 ADDRESS THE WHOLE SITUATION THAT WAS GOING ON WHEN A
21 SEARCH TOOK PLACE UNLESS WE KNEW THE WHOLE PICTURE. PART
22 OF THAT WAS THAT THEY DID SEE CONTRABAND IN PLAIN VIEW
23 WHEN THEY WENT IN THE HOUSE. THEY SAW WEAPONS IN PLAIN
24 VIEW, AND ONCE THEY FOUND MARIJUANA ON HIS PERSON, IT
25 REALLY ALMOST CHANGED THIS TO A SEARCH INCIDENT TO ARREST

1 AT THAT POINT.

2 THE COURT: WELL, I AM AWARE OF THE MOTION THAT WAS
3 MADE REGARDING THE SUPPRESSION TO SUPPRESS THE EVIDENCE
4 BASED ON THE SEARCH WARRANT AND ONE OF THE CASES THAT WAS
5 GIVEN TO ME WAS MICHIGAN VERSUS SUMMERS WHICH IS A UNITED
6 STATES SUPREME COURT CASE AND I ASSUME YOU HAD READ THAT
7 CASE AND YOU WERE TRYING TO SHOW THAT THE LEGITIMATE LAW
8 ENFORCEMENT INTEREST IN PREVENTING FLIGHT AND LOSING
9 INCRIMINATING EVIDENCE AND ALSO MINIMIZING RISK OF HARM TO
10 THE OFFICERS. SO, YOU HAD TO SHOW A TOTALITY OF THE
11 CIRCUMSTANCES WHICH WOULD JUSTIFY THE PAT-DOWN AND OR THE
12 SEIZURE OF THE 26.69 GRAMS OF COCAINE.

13 SO, ONCE THAT BECAME AN ISSUE AS FAR AS THE TOTALITY
14 OF THE CIRCUMSTANCES I FIND IT NOT TO BE PREJUDICIAL. I
15 FIND IT TO BE PROPER. I FIND IT TO BE RELEVANT, AND I
16 RESPECTFULLY CONTINUE TO OVERRULE YOUR OBJECTION, MA'AM.

17 MISS ALVES: YES, SIR. JUDGE, AS TO THE SEARCH OF
18 MR. PRATHER, WHILE I AGREE THAT THAT MIGHT HAVE BEEN
19 RELEVANT AS TO THE TOTALITY AS TO THE SEARCH, I THINK IT
20 WAS NOT RELEVANT AS TO THE FACT -- THE UNDERLYING FACTS
21 ABOUT WHETHER OR NOT HE TRAFFICKED COCAINE. I MEAN, I HAD
22 CONCERNS AT THE BEGINNING OF THIS TRIAL ABOUT NOT GOING
23 FORWARD WITH THE PRETRIAL MOTION AT WHICH TIME HE COULD
24 HAVE BROUGHT THIS UP, BUT I THINK FOR THE STATE TO HAVE
25 BEEN ALLOWED TO BRING IT UP IN FRONT OF THE JURY WAS

1 PREJUDICIAL. YOUR HONOR, I STILL -- BUT I UNDERSTAND YOUR
2 RULING.

3 THE COURT: I HAVE RULED.

4 MISS ALVES: YES, SIR.

5 THE COURT: YOU KNOW WHAT THE RULES ARE. ONCE I'VE
6 RULED --

7 MISS ALVES: YES, SIR.

8 THE COURT: -- THERE IS NO FURTHER ARGUMENT.

9 MISS ALVES: YES, SIR. YOUR HONOR, AS TO THE -- I
10 STILL WOULD HAVE A MOTION AS TO THE SEARCH. THE STATE HAS
11 -- THE STATE PUT UP EVIDENCE THAT IT'S THEIR PRACTICE TO
12 GO IN AND PAT DOWN. I THINK THERE WAS GREAT DETAIL ABOUT
13 THE PRACTICE AND THE POLICIES WITH SEARCH WARRANTS AND HOW
14 THE ENTRY TEAM OR THE S.W.A.T. TEAM WOULD GO IN FIRST.
15 THEY WOULD CHECK ON WEAPONS. THEY DO THE INTELLIGENCE.
16 THEY FIGURE OUT WHAT TECHNIQUE TO USE AND THEN THEY GO IN
17 TO SECURE ANYONE IN THE RESIDENCE, AND THERE WAS
18 DISCUSSION ABOUT THE PURPOSE OF THE S.W.A.T. TEAM WHICH
19 WAS TO ENSURE THE OFFICER SAFETY.

20 HOWEVER, JUDGE, THERE WAS ALSO OTHER EVIDENCE ABOUT
21 THE SEARCH AND ABOUT THE SEARCH OF THE PEOPLE -- HOW THEY
22 SEARCHED BECAUSE THEY BELIEVED THAT WEAPONS WOULD BE
23 PRESENT. I DON'T BELIEVE THAT THAT IS SUFFICIENT REASON
24 FOR THEM TO HAVE BEEN ALLOWED TO SEARCH MR. PRATHER.
25 MR. PRATHER -- WHEN THE OFFICERS CAME INTO THE HALLWAY

1 ACCORDING TO THE TESTIMONY FROM INVESTIGATOR JONES AND
2 INVESTIGATOR HOWARD AND INVESTIGATOR SAVELL HE WAS LAYING
3 ON THE FLOOR WITH HIS HANDS BEHIND HIS BACK SECURED BY THE
4 S.W.A.T. TEAM. THERE WAS NO -- HE WAS NOT NEAR THE
5 WEAPON THAT WAS FOUND IN THE LIVINGROOM. THERE WAS NO
6 INDICATION FROM ANYONE THAT MR. PRATHER WAS STRUGGLING,
7 WAS CAUSING A PROBLEM, WAS SAYING ANYTHING, WAS TRYING TO
8 REACH FOR A WEAPON. THERE WAS NO INDICATION OF ANY OF
9 THAT AT ALL.

10 YET, THE OFFICERS WERE -- THEY IMMEDIATELY --
11 ACCORDING TO INVESTIGATOR SAVELL THEY IMMEDIATELY SEARCHED
12 MR. PRATHER, FOUND THE MARIJUANA, AND THEN TURNED HIM OVER
13 AND FOUND THE GUN AND THE COCAINE. I DON'T BELIEVE THAT
14 THE SEARCH OF MR. PRATHER WOULD HAVE BEEN APPROPRIATE FOR
15 THEM TO CONTINUE TO SEARCH HIM TO GET TO THE POINT WHERE
16 THE COCAINE WAS BECAUSE THERE IS NO REASON FOR THEM TO
17 HAVE SEARCHED HIM. THEY HAVE TO PUT AN ARTICULABLE
18 SUSPICION THAT THERE IS A FEAR -- THAT THERE IS A DANGER
19 TO THE OFFICER. THERE CAN'T JUST BE THE FACT THAT IN THIS
20 SITUATION THEY SEARCHED PEOPLE.

21 I MEAN, YOUR HONOR, I AM RELYING MORE ON WHAT THE LAW
22 IS AND CASELAW REGARDING AUTOMOBILE SEARCHES BECAUSE THERE
23 IS REALLY NOT A LOT OF SEARCH WARRANT CASES FOR ME TO HAVE
24 AND I DIDN'T FIND SEARCH WARRANT CASES, BUT, JUDGE, WHEN
25 POLICE STOP AN AUTOMOBILE EVEN THOUGH THAT IS CONSIDERED A

1 HIGH-RISK STOP. THERE ARE SEVERAL CASES THAT SAY THAT THERE
2 HAS TO BE AN ARTICULABLE SUSPICION FROM THE OFFICER THAT
3 THERE MIGHT BE A WEAPON OR THAT THERE IS PROBABLE CAUSE OR
4 SOME TYPE OF FEAR FOR THE OFFICER'S SAFETY IN ORDER FOR
5 THE OFFICER TO PAT THE DEFENDANT DOWN. I DON'T THINK A
6 TERRY STOP OR A TERRY FRISK IS JUST ALLOWED JUST BECAUSE
7 THE OFFICERS TYPICALLY DO ONE AND I THINK THAT'S MORE WHAT
8 WE HAVE HERE.

9 MR. GIBBONS: YOUR HONOR, THE LANGUAGE IN MICHIGAN
10 VERSUS SUMMERS WHICH IS UNITED STATES SUPREME COURT FROM
11 1981, ABOUT THE FOURTH PAGE FROM THE BACK THERE IS
12 LANGUAGE RECOGNIZING A LEGITIMATE INTEREST THAT THE POLICE
13 HAVE WHEN EXECUTING A SEARCH WARRANT IN BOTH PREVENTING
14 FLIGHT AND DESTRUCTION OF EVIDENCE AS WELL AS THE SAFETY
15 OF THE OFFICERS.

16 THE COURT: JUST WHAT I READ A WHILE AGO INTO THE
17 RECORD.

18 MISS ALVES: YES, SIR.

19 MR. GIBBONS: YES, SIR. AND WE DID HAVE -- IN THIS
20 CASE IT SAYS -- IN THE MICHIGAN VERSUS SUMMERS IT SAYS WE
21 DIDN'T HAVE SPECIFIC INFORMATION ABOUT WEAPONS BEING
22 INVOLVED IN THIS CASE, BUT EVEN THOUGH WE DON'T WE'RE
23 RECOGNIZING THOSE ARE LEGITIMATE INTERESTS. IN OUR CASE
24 HERE TODAY THESE OFFICERS HAD ALREADY SEEN GUNS BEFORE
25 THEY GOT TO HIM. SO, WE WOULD SUBMIT IT IS AN EVEN

1 STRONGER CASE FOR THE EXIGENT CIRCUMSTANCES OF THE
2 PAT-DOWN. FOLLOWING THE PAT-DOWN WE GET INTO THE
3 MINNESOTA VERSUS DICKERSON PLAIN FIELD DOCTRINE CASE AND
4 THAT WOULD SUPPORT THE FINDING AND IMMEDIATELY IDENTIFYING
5 OF THE MARIJUANA.

6 THE COURT: I THINK FURTHER ALSO IN THAT MICHIGAN
7 VERSUS SUMMERS THEY SAY THE RISK OF HARM TO BOTH THE
8 POLICE AND THE OCCUPANTS IS MINIMIZED IF THE OFFICERS
9 ROUTINELY EXERCISE A QUESTION AND COMMAND OF A SITUATION
10 RECOGNIZING DESTRUCTION OF THE EVIDENCE, FLIGHT, AND
11 SAFETY TO THE OFFICERS. SO, ALMOST THE SAME REASONING AS
12 I HAD BEFORE, BUT BASED ON ALL OF THE TOTALITY OF THE
13 CIRCUMSTANCES I FIND THAT THE SEARCH WAS PROPER, AND I
14 RESPECTFULLY OVERRULE YOUR OBJECTION.

15 MISS ALVES: YES, SIR.

16 THE COURT: ALL RIGHT, MA'AM. WHAT KIND OF WITNESSES
17 YOU GOT? I ASSUME YOU WANT A MAKE A MOTION FOR DIRECTED
18 VERDICT?

19 MISS ALVES: YES, SIR. JUDGE, AT THIS TIME I WOULD
20 LIKE TO MAKE A MOTION FOR DIRECTED VERDICT. TAKING THE
21 EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE I WOULD
22 MOVE FOR A VERDICTED VERDICT ON BEHALF OF MR. PRATHER.

23 THE COURT: RESPECTFULLY DENIED.

24 MISS ALVES: THANK YOU.

25 THE COURT: ANYTHING FURTHER?

1 MISS ALVES: JUDGE, IF I PUT UP A CASE THE ONLY
2 PERSON THAT I WOULD HAVE WOULD BE MR. PRATHER, IF I COULD
3 TALK TO HIM FOR A FEW MINUTES ABOUT THAT.

4 THE COURT: WELL, LET ME ASK YOU THIS. NUMBER ONE,
5 ARE THERE ANY PRIOR CONVICTIONS THAT WOULD SUBJECT HIMSELF
6 TO BEING IMPEACHED ON THAT, MR. GIBBONS?

7 MR. GIBBONS: YOUR HONOR, WE WOULD REQUEST TO BE ABLE
8 TO ASK HIM IF HE WAS CONVICTED OF A FELONY ON -- LET ME
9 SEE THE DATE -- MAY 25, 2005. IT WAS A POSSESSION OF
10 COCAINE. WE WOULD LEAVE THAT PART OUT.

11 MISS ALVES: IT'S NOT A FELONY, JUDGE. HE WAS
12 CONVICTED OF POSSESSION OF COCAINE FIRST OFFENSE WHICH
13 WOULD BE A MISDEMEANOR.

14 THE COURT: HOLD ON.

15 MR. GIBBONS: IT DOES CARRY OVER A YEAR. SO, I COULD
16 SAY HE WAS CONVICTED OF A CRIME. THAT WOULD STILL FALL IN
17 THE SAME --

18 MISS ALVES: JUDGE, I WOULD OBJECT.

19 THE COURT: FOR WHAT?

20 MISS ALVES: I THINK THAT -- I THINK IT WOULD BE MORE
21 PREJUDICIAL THAN PROBATIVE FOR THE STATE TO ASK
22 MR. PRATHER ABOUT ANOTHER -- ANOTHER DRUG OFFENSE, A DRUG
23 CONVICTION WHICH OCCURRED --

24 THE COURT: HE IS NOT GOING TO ASK A DRUG OFFENSE.
25 HE IS SIMPLY GOING TO ASK WERE YOU CONVICTED OF AN OFFENSE

(JAMES PRATHER-QUESTIONS BY THE COURT)

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1 THAT CARRIES IMPRISONMENT FOR MORE THAN ONE YEAR. SO, IT
2 TAKES AWAY THAT PREJUDICIAL EFFECT, DOESN'T IT?

3 MISS ALVES: YES, SIR, IT DOES.

4 THE COURT: ALL RIGHT. MR. PRATHER, LET ME TALK TO
5 YOU A FEW MINUTES. HOW ABOUT STAND UP FOR ME.

6 JAMES PRATHER, AFTER BEING DULY SWORN, TESTIFIED
7 AS FOLLOWS:

8 THE COURT: STAND UP FOR ME, PLEASE. MR. PRATHER,
9 HOW ARE YOU? ARE YOU OKAY?

10 THE DEFENDANT: ALL RIGHT.

11 THE COURT: ALL RIGHT. WE'VE REACHED THE POINT OF
12 THE TRIAL WHERE YOU PRESENT YOUR OWN DEFENSE. THAT
13 INCLUDES YOU HAVE THE RIGHT TO TESTIFY. OKAY?

14 THE DEFENDANT: YES, SIR.

15 THE COURT: YOU ALSO HAVE THE RIGHT TO CLAIM THE
16 PROTECTIONS GIVEN TO YOU BY THE FIFTH AMENDMENT OF THE
17 CONSTITUTION WHICH BASICALLY SAYS NOBODY CAN BE COMPELLED
18 TO OFFER TESTIMONY IN A CASE WHERE THEY'RE BEING ACCUSED
19 OF A CRIME. WHAT THAT MEANS IS IF YOU WANT TO TESTIFY YOU
20 CERTAINLY HAVE THE RIGHT TO DO SO. IF YOU TESTIFY YOU
21 WILL BE SUBJECT TO THE SAME RULES THAT GOVERN EVERYONE
22 ELSE; THAT IS, YOU'LL BE ABLE TO BE CROSS EXAMINED ON ANY
23 AND ALL RELEVANT INFORMATION AS LONG AS I DETERMINE THAT
24 THE PROBATIVE VALUE OUTWEIGHS THE PREJUDICIAL EFFECT TO
25 YOU.

(JAMES PRATHER-QUESTIONS BY THE COURT)

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1 IN ADDITION TO THAT, YOU HAVE A PRIOR CONVICTION
2 WHICH CARRIES MORE THAN ONE YEAR AND THE STATE WILL BE
3 ABLE TO USE THAT PRIOR CONVICTION FOR IMPEACHMENT PURPOSES
4 ONLY. IN OTHER WORDS, THEY COULD ASK YOU IF YOU HAVE BEEN
5 CONVICTED OF A CRIME THAT CARRIES IMPRISONMENT FOR MORE
6 THAN ONE YEAR FOR IMPEACHMENT -- IN OTHER WORDS, TO ATTACK
7 YOUR BELIEVABILITY OR CREDIBILITY. IF YOU CHOOSE NOT TO
8 TESTIFY, THEN I WOULD TELL THE JURY WHEN I INSTRUCT THEM
9 OR CHARGE THEM THAT THEY COULD NOT HOLD YOUR FAILURE TO
10 TESTIFY AGAINST YOU IN ANY MANNER WHATSOEVER, AND I WOULD
11 FURTHER INSTRUCT THEM THAT THEY COULDN'T EVEN CONSIDER --
12 THEY COULDN'T EVEN TALK ABOUT THE FACT THAT YOU DIDN'T
13 TESTIFY WHEN THEY DELIBERATED YOUR GUILT OR INNOCENCE;
14 THAT YOU WERE TO BE -- THERE WOULD BE NO PREJUDICE
15 WHATSOEVER SHOWN TO YOU BECAUSE YOU DIDN'T TESTIFY. THEY
16 COULDN'T EVEN MENTION THAT WHEN THEY DELIBERATED. NOW, I
17 WOULD GIVE THEM THAT INSTRUCTION IF YOU DON'T TESTIFY.

18 SO YOU HAVE THOSE TWO THINGS TO BALANCE. THAT IS
19 YOUR DECISION -- YOUR DECISION ONLY. YOU CAN TALK WITH
20 YOUR LAWYER OR ANYBODY HERE THAT YOU'VE GOT WITH YOU. I
21 NEED TO KNOW IN JUST A FEW MINUTES AS TO WHETHER OR NOT
22 YOU WISH TO TESTIFY. SO, YOU NEED A LITTLE BIT OF TIME
23 WITH YOUR LAWYER TO DISCUSS THAT?

24 - THE DEFENDANT: ..YES., -SIR.....

25 THE COURT: I'LL GIVE YOU THAT. Y'ALL GO AHEAD AND

(JAMES PRATHER-QUESTIONS BY THE COURT)

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1 DISCUSS IT AND LET ME KNOW.

2 (WHEREUPON, MISS ALVES CONFERRED WITH THE DEFENDANT.)

3 THE COURT: MISS ALVES, IT'S 4:30. SO, Y'ALL NEED TO
4 HUSTLE UP.

5 MISS ALVES: YES, SIR.

6 THE COURT: BUT YOU TAKE ALL THE TIME YOU NEED.

7 (WHEREUPON, MISS ALVES CONFERRED WITH THE DEFENDANT.)

8 THE COURT: MISS WALLIS ALVES, WHAT IS YOUR PLEASURE?

9 MISS ALVES: MR. PRATHER IS GOING TO TESTIFY.

10 THE COURT: ALL RIGHT. BRING THE JURY IN, PLEASE.

11 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT 4:35.)

12 THE COURT: MADAM FORELADY, LADIES AND GENTLEMEN,
13 WE'VE GOT ONE WITNESS LEFT ON BEHALF OF THE STATE: SO,
14 LET'S DO THIS. LET'S TAKE THIS LAST TESTIMONY. WE'LL BE
15 THROUGH BY 5 PROBABLY -- ON BEHALF OF THE DEFENDANT. AND
16 THEN WHAT WE'LL DO IS WE'LL BREAK AND DECIDE WHAT TIME TO
17 START IN THE MORNING. HOW ABOUT THAT? FAIR ENOUGH?

18 MISS ALVES, YOU MAY CALL YOUR FIRST WITNESS.

19 MISS ALVES: I CALL JAMES PRATHER.

20 THE COURT: COME AROUND, SIR, PLEASE.

21 JAMES PRATHER, AFTER BEING DULY SWORN, TESTIFIED
22 AS FOLLOWS:

23 THE CLERK: HAVE A SEAT IN THE WITNESS BOX. STATE
24 YOUR FULL NAME FOR THE COURT SPELLING YOUR LAST.

25 THE WITNESS: MY NAME IS JAMES PRATHER;

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1 P-R-A-T-H-E-R.

2 THE COURT: SPEAK UP LOUD, MR. PRATHER, PLEASE.

3 DIRECT EXAMINATION

4 BY MISS ALVES:

5 Q MR. PRATHER, DO YOU REMEMBER WHAT HAPPENED ON
6 FEBRUARY 17, 2005?

7 A YES, MA'AM.

8 Q THAT'S THE INCIDENT THAT WE'RE TALKING ABOUT HERE
9 TODAY?

10 A YES, MA'AM.

11 Q WHERE WERE YOU AT THAT TIME?

12 A WHAT YOU MEAN?

13 Q YOU WERE AT THE TRAILER ON EDGEFIELD ROAD?

14 A YES, MA'AM.

15 THE COURT: SPEAK UP, PLEASE.

16 Q SPEAK LOUD, OKAY?

17 A YES, MA'AM.

18 Q DO YOU REMEMBER WHEN THE POLICE CAME TO THE HOUSE?

19 A YES, MA'AM.

20 Q WHAT WERE YOU DOING? WHAT WERE YOU DOING WHEN THE
21 POLICE CAME?

22 A I WAS JUST -- BEFORE THEY CAME IN?

23 Q YEA.

24 A I WAS JUST IN THERE TALKING TO A COUPLE OF PEOPLE.

25 Q JUST HANGING OUT?

(JAMES PRATHER-DIRECT BY ALVES)

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1 A YES, MA'AM.

2 Q YOU NEED TO TALK VERY LOUD?

3 A YES, MA'AM.

4 Q AND DO YOU REMEMBER WHAT HAPPENED WHEN THE POLICE
5 CAME?

6 A YES, MA'AM.

7 Q TELL US WHAT HAPPENED.

8 A WHEN THE POLICE CAME INTO THE DOOR EVERYBODY RAN TO
9 THE BACK, BACK OF THE TRAILER.

10 Q WHAT DID YOU DO?

11 A I FOLLOWED THE CROWD.

12 Q WHY?

13 A JUST INSTINCT. EVERYBODY ELSE RAN. I AM GOING TO
14 RUN.

15 Q WHAT WAS GOING ON WHILE EVERYBODY WAS RUNNING TO THE
16 BACK OF THE TRAILER?

17 A I SEEN EVERYBODY WAS THROWING GUNS EVERYWHERE.

18 Q WHAT WERE YOU DOING?

19 A I HAD RAN. AFTER THEY THROUGH ALL OF THE GUNS AND
20 EVERYTHING, WE RAN TO THE BACK. THAT'S WHEN EVERYBODY
21 FELL AND I JUST LAID ON THE FLOOR. I KNEW WHAT WAS GOING
22 ON THEN. SO, I JUST LAID ON THE FLOOR AND LET THE
23 OFFICERS DO THEIR JOB.

24 Q AND WHAT DID THE OFFICERS DO TO YOU?

25 A THEY HAD PICKED ME UP. WHEN THEY PICK ME UP, THEY

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1 HAD SEEN A GUN NOT ON ME BUT THE GUN WAS -- IT WAS ABOUT
2 FIVE OF US IN A BUNCH. THEY FOUND THE GUN RIGHT THERE
3 BETWEEN ALL FIVE OF US -- NOT JUST ME.

4 Q NOW, WHICH OFFICER -- ARE YOU TALKING ABOUT THE
5 INITIAL OFFICER WHO WENT IN?

6 A THE S.W.A.T. TEAM.

7 Q THE S.W.A.T. TEAM?

8 A THE FIRST PEOPLE THAT CAME IN.

9 Q SO, WHAT DID THEY -- SO, WHAT HAPPENED TO YOU AFTER
10 THE S.W.A.T. TEAM CAME IN?

11 A THE ONLY THING THAT HAPPENED TO ME WAS THEY JUST
12 SECURED US IN THE BACK. THAT'S WHEN THE S.W.A.T. TEAM
13 CAME IN. THEY SECURED US IN THE BACK.

14 Q YOU WERE SECURED WHERE EXACTLY?

15 A RIGHT AT THE BACK DOOR IN THE HALLWAY ALL OF THE WAY
16 TO THE BACK BY THE BATHROOM AND STUFF.

17 Q YOU WERE IN THE HALLWAY?

18 A YES, MA'AM.

19 Q WHAT DRUGS DID YOU HAVE IN YOUR POSSESSION?

20 A I AIN'T HAD NONE IN MY POSSESSION.

21 Q WHERE WERE THE DRUGS FOUND?

22 A IT WAS WHEN THEY HAD PULLED ME TO THE FRONT. THEY
23 HAD LAID ME RIGHT BESIDE THE DRUGS AND SAID IT WAS MINE.
24 THEN THEY TOOK -- THE DRUGS -- THEY TOOK A PICTURE AND
25 THEY PUT MY HANDS BEHIND MY BACK LIKE THIS AND PUT THE

1 DRUGS IN MY HAND. THAT'S WHEN THEY TOOK THE PICTURE.

2 Q SO, WHO TOOK A PICTURE OF YOU LIKE THAT?

3 A I DON'T KNOW WHO TOOK THE PICTURE.

4 Q SO, THE OFFICERS POSED YOU WITH DRUGS?

5 A YES, MA'AM.

6 Q AND WHAT DRUGS DID THEY POSE YOU WITH?

7 A COCAINE AND MARIJUANA.

8 Q SO, THEY ACTUALLY HAD PICTURES WHERE THEY PUT YOUR
9 HANDS BEHIND YOUR BACK AND THEY PUT THE MARIJUANA AND
10 COCAINE AND MARIJUANA IN YOUR HANDS?

11 A THEY PUT HAD THE CUFFS ON ME AND HAD THE MARIJUANA
12 AND COKE IN MY HAND LIKE THIS HERE WITH MY HANDS AROUND MY
13 BACK. THEY TOOK THE PICTURE.

14 Q NOW, THAT'S NOT HOW THEY FOUND YOU, IS IT?

15 A THEY FOUND ME IN THE BACK. THEY MOVED ME FROM THE
16 BACK TO THE FRONT.

17 Q AND TELL US HOW THE PICTURE OF THE COCAINE GOT -- HOW
18 DID THEY GET A PICTURE OF THE COCAINE IN YOUR POCKET?

19 A I DON'T KNOW HOW THEY DID THAT.

20 Q WHAT DRUGS DID YOU HAVE -- WHAT INTENT DID YOU HAVE
21 TO DISTRIBUTE ANY DRUGS?

22 A I HAD NO INTENT TO DISTRIBUTE NO DRUGS.

23 Q ON THAT DAY YOU DIDN'T HAVE ANY INTENT TO DISTRIBUTE
24 ANY DRUGS?

25 A NO, MA'AM.

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1 Q AND, SO, YOU'RE TELLING US THAT YOU HAD NO POSSESSION
2 OF THE COCAINE?

3 A NO, MA'AM.

4 MISS ALVES: I BEG THE COURT'S INDULGENCE ONE MOMENT.

5 I AM SHOWING YOU WHAT'S BEEN MARKED AS COURT'S

6 EXHIBIT NO. 3. DO YOU RECOGNIZE THAT?

7 THE WITNESS: THAT'S PICTURE THAT I WAS TALKING ABOUT
8 WHERE THEY PUT IT IN MY HAND.

9 Q SO, WHEN YOU WERE FOUND WHEN WHEN THE S.W.A.T. TEAM
10 SECURED YOU -- I'M SORRY. YOUR HONOR, I WOULD MOVE TO
11 MOVE COURT'S EXHIBIT NUMBER 3 INTO EVIDENCE.

12 MR. GIBBONS: YOUR HONOR, I OBJECT. SHE OBJECTED TO
13 THAT PHOTO AT THE BEGINNING OF THE TRIAL.

14 THE COURT: SHE CAN OBJECT AND NOW UNOBJECT AND PUT
15 IT IN, BUT LET'S MARK IT AS DEFENDANT'S EXHIBIT 1.

16 MR. GIBBONS: THANK YOU.

17 (WHEREUPON, DEFENDANT'S EXHIBIT NO. 1 WAS MARKED FOR
18 IDENTIFICATION AND RECEIVED INTO EVIDENCE.)

19 Q I AM SHOWING YOU WHAT'S MARKED AS DEFENSE EXHIBIT
20 NO. 1. DO YOU RECOGNIZE THAT?

21 A YES.

22 Q AND THAT IS THE PICTURE THAT THE POLICE POSED YOU
23 WITH?

24 A YES, MA'AM.

25 Q WERE YOU POSED LIKE THAT ON YOUR OWN?

1 A NO, MA'AM.

2 Q WHO POSED YOU LIKE THAT?

3 A ONE OF THE POLICE OFFICERS.

4 Q DID YOU HAVE CRACK IN YOUR HAND -- I'M SORRY, COKE IN
5 YOUR HAND WHEN THE POLICE CAME IN?

6 A NO, MA'AM.

7 MISS ALVES: OKAY. THANK YOU. I DON'T HAVE ANY
8 FURTHER QUESTIONS, JAMES. PLEASE ANSWER ANY THAT THE
9 SOLICITOR MIGHT HAVE. OKAY?

10 CROSS-EXAMINATION

11 BY MR. GIBBONS:

12 Q MR. PRATHER, ARE YOU THE SAME JAMES PRATHER THAT WAS
13 CONVICTED OF A CRIME THAT CARRIES MORE THAN ONE YEAR ON
14 MAY 25 OF 2005?

15 A YES, SIR.

16 Q AND THE PICTURE SHOWN, STATE'S EXHIBIT 3, IS YOU;
17 CORRECT?

18 A YES, SIR.

19 Q AND THE PICTURE SHOWN, STATE'S EXHIBIT 5, IS YOU;
20 CORRECT?

21 A YES, SIR.

22 Q YOUR JACKET; CORRECT?

23 A YES, SIR.

24 Q WHERE IS THE OTHER ONE?

25 THE COURT: IT IS BEING PUBLISHED TO THE JURY.

(JAMES PRATHER-CROSS BY GIBBONS)

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- 1 Q AND THE PICTURE THAT'S GOING AROUND, THAT'S YOU;
2 CORRECT?
3 A YES, SIR.
4 Q NOBODY ELSE'S HANDS?
5 A NO, SIR.
6 Q AND WHO LIVED AT THE TRAILER THAT YOU WERE AT THAT
7 NIGHT?
8 A FRIENDS OF MINE.
9 Q WHAT IS HIS NAME?
10 A CALVIN CAVE.
11 Q CALVIN CAVE? WHERE WAS HE THAT NIGHT?
12 A THEY LET HIM GO.
13 Q SIR?
14 A HE WAS IN THERE. THEY LET HIM GO.
15 Q YOU'RE SAYING CALVIN CAVE WAS IN THERE WHEN THE
16 SEARCH WARRANT TEAM ENTERED THE HOUSE?
17 A YES, SIR.
18 Q AND THEY JUST LET HIM GO?
19 A YES, SIR.
20 Q WHERE WAS HE IN THE HOUSE?
21 A HE WAS IN THE BACK ROOM -- LAYING IN THE BACK ROOM.
22 Q AND THEY CAUGHT HIM?
23 A YES, SIR.
24 Q AND THEY JUST LET HIM GO? SIR?
25 A YES, SIR.

1 Q AND WERE YOU SITTING AROUND WITH THIS GROUP IN THE
2 HOUSE THAT NIGHT?

3 A YES, SIR.

4 Q AND I THINK YOU SAID YOU WERE JUST HANGING OUT?

5 A YES, SIR.

6 Q DID YOU SPEND THE NIGHT THERE SOMETIMES?

7 A I HAVE.

8 Q AND MR. CAVE WAS -- IS HE A FRIEND OF YOURS?

9 A YES, SIR.

10 Q WHAT ABOUT THE OTHER PEOPLE THAT WERE THERE THAT
11 NIGHT? ARE THEY YOUR FRIENDS, TOO?

12 A ALL OF US MESS AROUND WITH EACH OTHER. THAT'S WHY I
13 WAS THERE.

14 Q WELL, ARE THEY YOUR FRIENDS?

15 A YES, SIR.

16 Q DO YOU HANG OUT WITH THEM OFTEN?

17 A YES, SIR.

18 Q AND YOUR TESTIMONY IS THAT WHEN THE S.W.A.T. TEAM
19 CAME IN THE GUY THAT OWNED THE PLACE --

20 A YES, SIR.

21 Q -- WAS IN THE BACK BEDROOM?

22 A YES, SIR.

23 Q BUT I THINK YOU SAID YOU ALL WERE IN THE FRONT PART
24 OF THIS TRAILER?

25 A YES, SIR.

(JAMES PRATHER-CROSS BY GIBBONS)

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1 Q AND Y'ALL WERE JUST HANGING OUT? IS THAT WHAT YOU
2 SAID, SIR?

3 A YES, SIR.

4 Q DID YOU KNOW THERE WAS A SHOTGUN IN THE HOUSE?

5 A I MEAN, I KNOW HE HAD ONE, BUT I WASN'T PAYING
6 ATTENTION TO WHERE IT WAS. I KNEW HE HAD ONE.

7 Q DID YOU KNOW THERE WAS ANOTHER PISTOL IN THE HOUSE?

8 A I KNEW HE HAD A COUPLE OF PISTOLS IN THE HOUSE.

9 Q DID YOU KNOW THERE WAS A PISTOL SITTING ON ONE OF THE
10 TABLES IN THE FRONT OF THE HOUSE?

11 A IT WASN'T SITTING ON THE TABLE. IT WAS SITTING
12 LIKE -- IT IS A LEVEL LIKE THIS LEVEL RIGHT HERE. IT WAS
13 SITTING AT THE BOTTOM. YOU COULDN'T EVEN SEE IT UNLESS
14 YOU WALKED IN THE KITCHEN.

15 Q BUT YOU KNEW IT WAS THERE. YOU JUST TOLD THE JURY
16 WHERE IT WAS. YOU KNEW IT WAS THERE, DIDN'T YOU?

17 A YEA, I KNEW IT WAS THERE.

18 Q AND YOU KNEW THERE WAS MARIJUANA BEING USED THAT
19 NIGHT?

20 A YEA.

21 Q YOU WERE IN THE SAME ROOM; CORRECT?

22 A YES, SIR.

23 Q WHAT ABOUT COCAINE?

24 A ALL KINDS OF DRUGS WAS BEING USED. I AIN'T SAY I WAS
25 IN THE RIGHT PLACE. I WAS IN THE WRONG PLACE, BUT AT THE

(JAMES PRATHER-CROSS BY GIBBONS)

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1 SAME TIME.

2 Q BUT YOU DIDN'T HAVE ANY?

3 A NO, I DIDN'T.

4 Q YOU WERE JUST USING EVERYBODY ELSE'S?

5 A (NO RESPONSE.)

6 Q SIR?

7 A IF YOU WANT TO -- YEA.

8 Q IT'S NOT WHAT I WANT.

9 A FREELOAD.

10 Q WERE YOU JUST USING EVERYBODY ELSE'S?

11 A FREELOADING.

12 Q EVERYBODY ELSE HAD SOME, BUT YOU?

13 A YES, SIR. I AIN'T GOING TO SAY EVERYBODY HAD SOME.

14 IT WAS JUST CERTAIN PEOPLE HAD SOME.

15 Q AND DID YOU HEAR THE POLICE KNOCK ON THE DOOR?

16 A THEY DIDN'T KNOCK. THEY JUST KICKED IT IN.

17 Q AND YOU WERE SITTING IN THERE WITH ALL OF THOSE

18 PEOPLE WHEN THEY KICKED IT IN, AND YOUR TESTIMONY IS THAT

19 EVERYBODY RAN TO THE BACK TOGETHER IN A BIG BUNCH?

20 A YEA.

21 Q EVERYBODY RAN AT THE SAME TIME?

22 A (WITNESS NODS HEAD.)

23 Q THEY ALL RAN DOWN THAT LITTLE HALL TOGETHER?

24 A NO, IT WAS ONE BY ONE BECAUSE EVERYBODY FELL LIKE

25 DOMINOES.

(JAMES PRATHER-CROSS BY GIBBONS)

109

1 Q I BELIEVE YOU SAID THEY ALL RAN IN A BUNCH TO THE
2 BACK OF THE HOUSE. WHICH IS IT?

3 A THAT'S WHERE EVERYBODY FELL. EVERYBODY JUST RAN TO
4 THE BACK OF THE HOUSE. I AIN'T SAY HOW THEY RAN. I JUST
5 SAID EVERYBODY RAN TO THE BACK OF THE HOUSE.

6 Q SO, EVERYBODY GOT CLEAR TO THE BACK OF THE TRAILER?

7 A WE DIDN'T MAKE IT BACK. THAT'S WHEN EVERYBODY -- WE
8 MADE IT TO THE BACK DOOR, BUT THAT'S WHEN EVERYBODY
9 COLLAPSED. IT IS LIKE FIVE OF US FELL RIGHT THERE.

10 Q I ASKED YOU A QUESTION. DID EVERYBODY MAKE IT TO THE
11 BACK AND FALL IN FRONT OF THE DOOR IN THE BACK?

12 A DID THEY GO THROUGH THE DOOR?

13 Q DID THEY FALL RIGHT BEFORE THEY GOT TO THE DOOR?

14 A IT WAS A BUNCH OF US. I'M SAYING EVERYBODY MADE IT
15 TO THE BACK -- THAT BACK DOOR.

16 Q EVERYBODY?

17 A EVERYBODY EXCEPT -- NO. EVERYBODY MADE IT TO THE
18 BACK DOOR.

19 Q EVEN YOU?

20 A YEA, BUT IT WAS WE WAS LYING LIKE DOMINOES NOW. IF
21 THE DOMINOES FALL LIKE THIS HERE, YOU'RE GOING TO HAVE
22 SOMEBODY IN THE FRONT AND YOU'RE GOING TO HAVE SOMEBODY IN
23 THE BACK. SO, WHAT I AM SAYING IS WHEN WE RAN TO THE BACK
24 EVERYBODY JUST COLLAPSED LIKE DOMINOES.

25 Q AND ON THE WAY BACK THERE YOU SAID EVERYBODY WAS

1 THROWING DRUGS AND GUNS OUT?

2 A AS THEY WAS RUNNING, YEA.

3 Q HOW LONG IS THAT TRAILER?

4 A I MEAN, I AIN'T NO MATHEMATIC. I DON'T KNOW.

5 Q WELL, FROM ME TO YOU? FURTHER THAN THAT? FROM THE
6 FRONT DOOR TO THE BACK DOOR HOW FAR IS IT?

7 A I AIN'T PLAYING WITH THIS. I DO NOT KNOW.

8 Q YOU CAN'T EVEN GIVE ME A GUESS?

9 A I AM NOT GOING TO GUESS.

10 Q IS IT LONGER THAN ME TO YOU NOW, 10 FEET? LONGER
11 THAN THAT?

12 A GOT TO BE LONGER THAN THAT. IT WOULDN'T BE NO
13 TRAILER.

14 Q HOW ABOUT TWICE THAT FAR?

15 A I DON'T KNOW. I CAN'T TELL YOU.

16 Q YOU DON'T REMEMBER HOW FAR YOU RAN THAT NIGHT TO GET
17 TO THE BACK DOOR?

18 A HOW ARE YOU GOING TO REMEMBER HOW FAR YOU RAN AND
19 GUNS AND STUFF COMING IN YOUR FACE AND YOU'RE GETTING --
20 AND THE THINGS KICKED THROUGH THE DOOR? YOU'RE NOT PAYING
21 ATTENTION.

22 Q GUNS IN YOUR FACE? ARE YOU RUNNING BACKWARDS? SIR?

23 A AM I RUNNING BACKWARDS?

24 Q HOW CAN GUNS BE IN YOUR FACE IF YOU'RE RUNNING AWAY
25 FROM THEM?

(JAMES PRATHER-CROSS BY GIBBONS)

111

1 A YEA, I AM RUNNING AWAY FROM THEM.

2 Q WELL, YOU JUST SAID HOW ARE YOU GOING TO REMEMBER
3 SOMETHING WITH GUNS IN YOUR FACE.

4 A THEY AIN'T NEVER PUT NO GUNS IN MY FACE WHEN THEY HAD
5 US ON THE GROUND?

6 Q SIR?

7 A THEY AIN'T NEVER PUT NO GUNS IN MY FACE WHEN THEY HAD
8 US ON THE GROUND?

9 Q I ASKED YOU IF YOU REMEMBER HOW FAR YOU RAN; CORRECT?

10 A I TOLD YOU I CAN'T REMEMBER THAT.

11 Q YOU SAID I CAN'T REMEMBER BECAUSE I HAD GUNS IN MY
12 FACE. I AM JUST TRYING TO CLEAR THAT UP.

13 A I CAN'T REMEMBER BECAUSE ALL OF THE LOUD EXPLOSION
14 THEY BRING IN THERE AND I JUST RAN WITH THE CROWD AND THE
15 BACK DOOR -- EVERYBODY MADE IT TO THE BACK DOOR AND
16 EVERYBODY JUST -- WHEN THEY GOT TO THE BACK DOOR THEY
17 COLLAPSED AT ONE TIME LIKE DOMINOES.

18 Q AND THEN I BELIEVE YOU SAID THEY DECIDED YOU WERE THE
19 ONE THEY WERE GOING TO PICK UP AND MOVE DOWN THE HALL?

20 A THEY MOVED A BUNCH OF US DOWN THE HALL. THAT AIN'T
21 ALL THE STUFF THEY FOUND IN THAT HOUSE.

22 Q I UNDERSTAND THAT, SIR, BUT I THINK YOU SAID THEY
23 TOOK YOU TO THE END OF THE HALL AND LAID YOU DOWN -- TOOK
24 YOU AWAY FROM THE OTHER PEOPLE AND LAID YOU DOWN IN THE
25 HALL?

1 A I WAS THE LAST ONE.

2 Q I AM ASKING YOU. DID THEY TAKE YOU AWAY FROM THE
3 OTHER PEOPLE AND LAY YOU DOWN IN A HALLWAY?

4 A YEA. THEY TRIED TO CLEAR US APART AND I WAS THE LAST
5 ONE IN LINE. SO, I AM THE FIRST ONE THEY'RE GOING TO GRAB
6 TO BRING TO THE FRONT.

7 Q SO, THEY BROUGHT YOU TO THE FRONT OF THE HALL AND
8 LAID YOU DOWN ON THE FLOOR?

9 A YES.

10 Q AND AT THAT POINT THEY GOT SOME DRUGS FROM SOMEWHERE
11 AND TOOK YOUR PICTURE WITH THEM?

12 A DRUGS WAS ALL ON THE FLOOR. THEY JUST LAID ME ON THE
13 FLOOR. THIS IS YOURS.

14 Q ALL OVER THE FLOOR?

15 A YEA.

16 Q WELL, SIR, YOUR TESTIMONY IS YOU DON'T REMEMBER HOW
17 THEY GOT STATE'S EXHIBIT NO. 5. YOU DON'T REMEMBER HOW
18 THEY GOT THAT PICTURE?

19 A NO, I DON'T.

20 Q YOU GOT NO IDEA? YOU DON'T REMEMBER THEM SNAPPING A
21 PICTURE AND YOU DON'T REMEMBER ANYBODY PUTTING THINGS IN
22 YOUR POCKET, DO YOU? SIR?

23 A NO, I DON'T.

24 Q THAT IS YOUR COAT?

25 A THAT'S MY COAT.

(JAMES PRATHER-CROSS BY GIBBONS)

113

1 Q BUT YOU'RE SAYING YOU REMEMBER THEM PUTTING SOMETHING
2 IN YOUR HANDS, BUT JUST NOT IN YOUR POCKET?

3 A I REMEMBER GRABBING IT AND THEM PUTTING IT IN MY
4 HANDS AND SAYING IT'S YOURS.

5 Q WELL, SIR, ISN'T IT TRUE THAT THE DRUGS STARTED OUT
6 IN YOUR POCKET --

7 A NO, IT'S NOT TRUE.

8 Q SIR, LET ME FINISH MY QUESTION, PLEASE. ISN'T IT
9 TRUE THAT THE DRUGS STARTED OUT IN YOUR POCKET AND THEY
10 TOOK THEM OUT AND PUT THEM IN YOUR HANDS SO THEY COULD GET
11 A BETTER PICTURE OF IT?

12 A I DON'T KNOW WHY DID THEY DID IT. THE DRUGS WAS NOT
13 IN MY POCKET.

14 Q SO, THIS PICTURE YOU HAVE NO IDEA WHERE THAT CAME
15 FROM?

16 A I TOLD YOU I DO NOT KNOW HOW THE DRUGS GOT IN MY
17 POCKET.

18 Q DO YOU KNOW THESE OFFICERS?

19 A I KNOW TWO OF THEM.

20 Q DO YOU HAVE PROBLEMS WITH THEM? ONGOING ARGUMENT
21 WITH THEM? FIGHT WITH THEM BACK WHEN THIS HAPPENED?

22 A NO, I AIN'T HAD NO -- EXCEPT FOR ONE TIME WHEN I WAS
23 AT ANOTHER SPOT WHEN I GOT THAT FIRST CHARGE FROM.

24 Q SIR, I AM NOT GOING INTO THAT. I'M SAYING DO YOU
25 HAVE -- YOU HAVE AN ONGOING FIGHT WITH ANY OF THESE

1 OFFICERS WHEN THIS HAPPENED?

2 A I MEAN, IF I AM IN THE WRONG PLACE WHEN THEY ARE
3 DOING THEIR JOB I GUARANTEE THEY DON'T LIKE ME WHEN THEY
4 DO THEIR JOB.

5 THE COURT: THE QUESTION IS DO YOU HAVE AN ONGOING
6 FIGHT WITH THEM? ANSWER THE QUESTION AND THEN YOU CAN
7 EXPLAIN.

8 Q IS THERE A REASON WHY YOU WOULD GET PICKED ON BY
9 THEM?

10 A YEA, BECAUSE THEY SEEN ME IN ANOTHER SPOT BEFORE.

11 Q DID YOU SEE THEM MOVING OTHER PEOPLE AROUND TAKING
12 THEIR PICTURES?

13 A YEA.

14 Q YOU SAW THEM PLANTING DRUGS ON OTHER PEOPLE?

15 A I DON'T KNOW WHAT WAS GOING ON WITH OTHER PEOPLE. I
16 MEAN, I AM GOING OVER MYSELF WITH WHAT HAPPENED WITH ME.

17 Q YOU JUST SAID YOU SAW THEM DOING IT?

18 A I SAID I SEEN THEM MOVE PEOPLE AROUND. I AIN'T SAY
19 NOTHING ABOUT PLANTING DRUGS ON OTHER PEOPLE.

20 Q SO, YOU DIDN'T SEE THEM DO THAT TO ANYBODY ELSE?

21 A I DON'T KNOW.

22 Q I AM ASKING IF YOU SAW IT. DO YOU KNOW IF YOU SAW IT
23 OR NOT?

24 A NO.

25 Q YOU DID NOT SEE IT?

(JAMES PRATHER-CROSS BY GIBBONS)

115

1 A NO. BECAUSE ALL THE DRUGS -- CAN I SAY ONE MORE
2 THING?

3 THE COURT: YOU CAN EXPLAIN IT. GO AHEAD.

4 THE WITNESS: BECAUSE ALL OF THE DRUGS THE ONES THAT
5 WEREN'T FOUND IN THE LIVINGROOM -- THERE WAS SOME MORE IN
6 THE KITCHEN. THAT WAS ALL IN ONE THING. SO, THE ONES
7 THEY FOUND IN THE LIVINGROOM AND IN THE KITCHEN, THAT'S
8 ALL THE DRUGS THEY HAD FOUND.

9 Q SO, YOU'RE SAYING ALL THE DRUGS WERE IN ONE PLACE
10 BEFORE THE POLICE GOT THERE?

11 A THE ONE -- THAT WAS IN THE KITCHEN. WHOEVER RAN FROM
12 THAT KITCHEN AND LEFT THE DRUGS RIGHT THERE IN A LITTLE
13 BLACK BAG AND THEN THEY CAME TO THE LIVINGROOM. WHATEVER
14 THEY HAD IN THEIR POCKETS, EVERYBODY ELSE WAS JUST
15 THROWING EVERYWHERE.

16 Q EVERYBODY?

17 A EVERYBODY THAT WAS IN THERE.

18 Q EXCEPT YOU?

19 A I DIDN'T HAVE NO DRUGS ON ME.

20 Q I AM JUST ASKING. YOU SAID EVERYBODY. I JUST WANT
21 TO MAKE SURE WE'RE CLEAR.

22 A I AM JUST SAYING THAT IS JUST AN EXPRESSION --
23 EVERYBODY. I DON'T KNOW WHO THREW THE DRUGS BECAUSE
24 EVERYBODY WAS THROWING DRUGS EVERYWHERE.

25 Q YOU KNEW THERE WERE A LOT OF DRUGS IN THAT TRAILER

1 THAT NIGHT; CORRECT?

2 A I AM NOT DENYING THAT, YEA, I KNEW THAT.

3 Q SIR, ISN'T IT TRUE THAT YOU HAD COCAINE -- 26
4 SOME-ODD-GRAMS -- IN THE POCKET OF YOUR SWEATSHIRT THAT
5 NIGHT WHEN THE POLICE CAME IN?

6 A NO, IT'S NOT.

7 Q DO YOU ADMIT OR DENY THAT?

8 A I DENY THAT.

9 Q DO YOU ADMIT OR DENY THAT THEY TOOK IT OUT OF YOUR
10 POCKET AND PUT IT IN YOUR HANDS TO GET A BETTER PICTURE OF
11 IT?

12 A I AIN'T SAY THEY TOOK IT OUT OF MY POCKET. I SAID
13 THEY TOOK IT.

14 Q I UNDERSTAND. YOU DENY THAT'S TRUE?

15 A I DENY THAT. I AIN'T SAYING THEY TOOK IT OUT OF MY
16 POCKET.

17 MR. GIBBONS: ALL RIGHT. I HAVE NOTHING FURTHER,
18 YOUR HONOR.

19 THE COURT: REDIRECT?

20 MISS ALVES: NOTHING FURTHER, JUDGE.

21 THE COURT: YOU MAY STEP DOWN. NEXT WITNESS?

22 MISS ALVES: DEFENSE RESTS.

23 THE COURT: ANYTHING IN REPLY?

24 MR. GIBBONS: I DO HAVE A REPLY WITNESS, YOUR HONOR.

25 THE COURT: ALL RIGHT. LET'S DO IT QUICK.

(MICHAEL JONES-DIRECT BY GIBBONS)

117

1 MR. GIBBONS: THE STATE CALLS OFFICER MIKE JONES.

2 THE COURT: WE DO ALLOW REPLY. IT'S THE CASE IN
3 CHIEF, DEFENSE, AND REPLY. THIS WILL BE THE END OF IT.
4 YOU'RE STILL UNDER OATH.

5 MICHAEL JONES, AFTER BEING PREVIOUSLY DULY
6 SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. GIBBONS:

9 Q OFFICER JONES, I AM GOING TO SHOW YOU STATE'S
10 EXHIBIT 4 AND STATE'S EXHIBIT 3 -- I MEAN, DEFENSE EXHIBIT
11 1, EXCUSE ME. STATE'S 4 AND DEFENSE 1. CAN YOU EXPLAIN
12 THOSE PICTURES, PLEASE?

13 A EXHIBIT NO. 5 IS THE COCAINE THAT WAS FOUND IN THE
14 JACKET POCKET OF DEFENDANT JAMES PRATHER BEFORE IT WAS
15 REMOVED BY INVESTIGATOR HOLLY. DEFENSE EXHIBIT NO. 1 IS
16 AFTER THE COCAINE WAS REMOVED FROM MR. PRATHER'S JACKET
17 POCKET AND PLACED IN HIS HAND TO GET A BETTER PHOTOGRAPH
18 OF IT.

19 Q WHY DID YOU DO THAT?

20 A IT WAS DONE SO WE COULD SHOW THAT IT WAS INDEED
21 COCAINE AND JUST TO GET A PICTURE OF THE WAY IT WAS FOUND
22 AFTER WE PULLED IT OUT OF THE JACKET.

23 Q OKAY. AND WHICH PHOTOGRAPH DID YOU USE IN COURT TO
24 SHOW WHERE IT WAS ORIGINALLY FOUND?

25 A EXHIBIT NO. 5. STATE'S EXHIBIT NO. 5.

1 Q INVESTIGATOR JONES, WERE ANY OF THE PEOPLE MOVED TO A
2 DIFFERENT LOCATION BETWEEN THE ENTRY OF THE S.W.A.T. TEAM
3 AND SECURING THE RESIDENCE AND YOU GETTING INSIDE?

4 A NO, SIR, THEY WERE NOT REMOVED.

5 Q DID ANYBODY MOVE MR. PRATHER FROM ONE AREA TO ANOTHER
6 AND LAY HIM ON THE FLOOR TO TAKE HIS PICTURE?

7 A NO, SIR. WHERE HE WAS IS WHERE HE WAS FOUND.

8 Q DID ANYBODY PUT A BAG OF COCAINE IN HIS HAND?

9 A NO, SIR. NOBODY DID THAT.

10 MR. GIBBONS: THANK YOU, SIR. NOTHING FURTHER.

11 THE COURT: CROSS?

12 CROSS-EXAMINATION

13 BY MISS ALVES:

14 Q YOU DID, IN FACT, PUT A BAG OF COCAINE IN HIS HAND,
15 DIDN'T YOU?

16 A EXCUSE ME?

17 Q SOMEBODY PUT A BAG OF COCAINE IN HIS HAND?

18 A AFTER IT WAS MOVED FROM HIS JACKET IT WAS PLACED
19 THERE TO TAKE A PICTURE OF IT.

20 Q Y'ALL STAGED THIS PICTURE WITH THIS COCAINE IN HIS
21 HAND?

22 A WE DIDN'T STAGE THE PICTURE. WE PLACED IT THERE. IT
23 WASN'T DONE TO BE STAGED. IT WAS DONE AS EVIDENCE TO SHOW
24 THAT THE COCAINE -- THAT IT WAS INDEED COCAINE. IT WASN'T
25 STAGED.

(MICHAEL JONES-CROSS BY ALVES)

119

1 Q OKAY. BUT THAT'S NOT HOW YOU FOUND HIM?

2 A NO. THAT'S HOW YOU FOUND HIM THERE.

3 Q THIS IS HOW YOU POSED HIM?

4 A THAT'S HOW WE TOOK THE PICTURE.

5 Q OKAY. AND YOU TOOK PICTURES OF HIM WITH MARIJUANA IN
6 HIS HAND, TOO, DIDN'T YOU?

7 A I WOULD NOT -- I DON'T SEE THAT PICTURE. IF IT IS
8 ONE, I DIDN'T TAKE THE PICTURES.

9 Q OKAY. WHO PUT THE COCAINE IN HIS HAND?

10 A IT WOULD HAVE BEEN INVESTIGATOR HOWARD --

11 Q HOWARD?

12 A -- WHO IS THE CUSTODIAN.

13 Q OKAY. NOW, YOU DIDN'T ENTER THE RESIDENCE WITH THE
14 ENTRY TEAM, DID YOU?

15 A AS I PREVIOUSLY STATED, NO, MA'AM, I DID NOT.

16 Q SO, YOU DON'T KNOW WHETHER THE ENTRY TEAM MIGHT HAVE
17 MOVED HIM FROM ONE AREA?

18 A I AM TELLING YOU HE WAS NOT MOVED. THAT'S NOT THE
19 WAY WE DO THINGS. WHERE HE WAS FOUND IS WHERE HE WAS.

20 Q THE ENTRY -- YOU DON'T KNOW WHETHER THE ENTRY TEAM
21 PERSONNEL MOVED HIM?

22 A I AM TELLING YOU THAT HE WAS NOT MOVED. I CAN SPEAK
23 FOR THE ENTRY TEAM. HE WAS NOT MOVED.

24 Q WERE YOU ON THE ENTRY TEAM?

25 A NO, MA'AM, I WAS NOT.

(MARK HOWARD-DIRECT BY GIBBONS)

120

1 Q WERE YOU THERE WHEN THE ENTRY TEAM WENT IN?

2 A I WAS AT THE RESIDENCE.

3 Q WERE YOU INSIDE WHEN THE ENTRY WENT IN?

4 A NO, MA'AM, I WAS NOT.

5 Q SO, YOU CAN'T TELL US WHAT THEY DID IN THE HOUSE
6 BEFORE YOU --

7 A I CAN TELL YOU FROM POLICY AND WHAT'S PRACTICE THAT
8 HE WAS NOT MOVED.

9 Q I AM NOT GOING FROM POLICY AND PRACTICE. I AM GOING
10 WITH WHAT ACTUALLY HAPPENED. YOU WEREN'T THERE, WERE YOU?

11 A I WAS THERE.

12 Q YOU WEREN'T IN THE HOUSE WHEN THE ENTRY TEAM WAS
13 THERE, WERE YOU?

14 A NO, MA'AM, I WAS NOT.

15 MISS ALVES: OKAY. NO FURTHER QUESTIONS.

16 THE COURT: YOU MAY STEP DOWN. I ASSUME YOU GOT ONE
17 MORE TO CALL?

18 MR. GIBBONS: THE STATE CALLS OFFICER HOWARD, YOUR
19 HONOR.

20 THE COURT: COME AROUND, SIR. YOU'RE STILL UNDER
21 OATH.

22 MARK HOWARD, AFTER BEING DULY SWORN, TESTIFIED
23 AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MR. GIBBONS:

(MARK HOWARD-DIRECT BY GIBBONS)

121

1 Q INVESTIGATOR HOWARD, WHAT DID THE ENTRY TEAM DO WITH
2 MR. PRATHER FROM THE MOMENT THEY ENTERED THE HOUSE UNTIL
3 INVESTIGATOR JONES CAME IN AND TOOK OVER?

4 A AS I STATED EARLIER I WAS POINT WHICH MEANS I WAS THE
5 FIRST ONE IN THE DOOR. AS WE MADE ENTRY THE DEFENDANTS
6 FLED TO THE BACK OF THE TRAILER AT WHICH TIME THE
7 DEFENDANT IS CORRECT EVERYBODY WENT DOWN TOWARDS THE BACK
8 OF THE TRAILER. THE DEFENDANT WAS CORRECT HE WAS ONE OF
9 THE LAST WHICH WOULD PUT HIM -- IF YOU THINK OF A TRAILER
10 HALL AND YOU THINK OF FIVE OR SIX BODIES IF THEY'RE
11 FALLING IN THE HALLWAY HE WOULD HAVE FELL CLOSER TOWARD
12 THE END OF THE HALL, THE OPEN END OF THE HALL. ONCE WE
13 SECURE THE RESIDENCE ALL BODIES STAY WHERE THEY ARE UNTIL
14 IT IS -- IT IS DETERMINED CLEAR BY THE S.W.A.T. TEAM
15 COMMANDER WHO WAS PRESENT AT THE TIME OF THE ENTRY AND
16 THEN NARCOTICS IS IMMEDIATELY CALLED IN TO MAKE ENTRY TO
17 CONDUCT THE INVESTIGATION.

18 Q WAS MR. PRATHER MOVED AFTER HE WAS SECURED?

19 A NO, SIR.

20 Q THE PLACE WHERE HE IS IN THE PHOTOGRAPH, IS THAT THE
21 PLACE WHERE HE WAS CAUGHT AND SECURED?

22 A THAT IS THE PLACE WHERE HE WOULD HAVE HIT THE FLOOR,
23 YES, SIR.

24 Q AND YOU TOOK CUSTODY OF THE DRUGS; CORRECT?

25 A YES, SIR.

(MARK HOWARD-CROSS BY ALVES)

122

1 Q DID YOU RETRIEVE THE DRUGS FROM THE POCKET?

2 A CORRECT, SIR.

3 Q AND WAS THERE A PHOTOGRAPH TAKEN BEFORE THE DRUGS
4 WERE PUT IN THE BEST PACK?

5 A YES, SIR.

6 Q AND IS THAT DEFENSE EXHIBIT NO. 1?

7 A THAT IS, SIR.

8 Q WHY WAS THAT PHOTO TAKEN?

9 A FOR CLARIFICATION AS TO THE ITEM THAT WAS FOUND IN
10 HIS POCKET.

11 MR. GIBBONS: THANK YOU. NOTHING FURTHER.

12 THE COURT: CROSS?

13 CROSS-EXAMINATION

14 BY MISS ALVES:

15 Q DID YOU TAKE THAT PICTURE?

16 A NO, MA'AM, I DID NOT.

17 Q SO, YOU JUST PUT IT IN HIS HAND FOR CLARIFICATION?

18 A FOR THE PHOTOGRAPH AND THEN FOR IT TO BE SECURED IN
19 THE BEST KIT.

20 Q ON YOUR PAPERWORK THAT YOU DID EXPLAINING WHAT YOU
21 DID WITH THE DRUGS AFTER YOU COLLECTED THEM, DID YOU
22 MENTION ANYTHING ABOUT TAKING PICTURES OF THEM?

23 A I BELIEVE IT WOULD HAVE SAID IT WAS SEIZED AND FROM
24 HIM TO ME FROM ME TO THE BEST KIT.

25 Q AND YOUR PAPERWORK, DO YOU SAY ANYTHING ABOUT TAKING

(MARK HOWARD-CROSS BY ALVES)

123

1 PICTURES OF THE DRUGS IN MR. PRATHER'S HANDS?

2 A NO, MA'AM, I DID NOT.

3 MISS ALVES: THANK YOU. NO FURTHER QUESTIONS.

4 THE COURT: YOU MAY STEP DOWN.

5 MR. GIBBONS: NOTHING FURTHER, YOUR HONOR.

6 THE COURT: THAT CONCLUDES THE TESTIMONY. AS I SAID
7 WE WOULD FINISH RIGHT AT 5 O'CLOCK. THAT'S THE FIRST TIME
8 THAT'S HAPPENED TO ME IN TWO YEARS. I CAN'T EVER PREDICT.
9 LET'S DO THIS. LET'S BREAK FOR THE EVENING. TEN O'CLOCK
10 SUIT Y'ALL? OR 9:30? TEN O'CLOCK? WHY DON'T YOU BE HERE
11 A LITTLE EARLIER THAN 10. WE'LL START RIGHT AT 10. I'LL
12 HAVE YOU SOME DOUGHNUTS AND COFFEE, SAUSAGE BISCUITS.
13 WHAT ELSE? THAT'S WHAT WE HAD THIS MORNING, WASN'T IT?

14 THE BAILIFF: YES, SIR.

15 THE COURT: LET'S DO IT AGAIN. I THINK THESE PEOPLE
16 LIKE BOTH. OR DOMINOES PIZZA? YOU WANT TO STOP BY AND
17 BRING SOME?

18 THE JUROR: WE'RE NOT OPEN THEN.

19 THE COURT: SERIOUSLY, I'LL HAVE SOME DOUGHNUTS AND
20 SOME SAUSAGE BISCUITS AND COFFEE AROUND 9:30, 9:15. WE'LL
21 START RIGHT AT 10 O'CLOCK, AND WHAT WE'LL DO TOMORROW IS
22 HAVE THE FINAL ARGUMENTS, AND I'LL CHARGE YOU ON THE LAW,
23 AND YOU SHOULD HAVE THE CASE IN YOUR HANDS BY AROUND
24 11 O'CLOCK. Y'ALL HAVE A VERY PLEASANT EVENING.

25 A COUPLE THINGS. DON'T DISCUSS THE CASE WITH ANYONE.

1 DON'T LET ANYBODY DISCUSS IT WITH YOU. IF THEY TRY TO,
2 GET THEIR NAMES AND I'LL HANDLE THAT. I DON'T THINK THERE
3 WILL BE ANYTHING IN THE NEWS ABOUT IT. IF THERE IS, I ASK
4 THAT YOU NOT WATCH IT OR READ ANYTHING. WE WANT TO TRY
5 THIS CASE BASE SOLELY ON WHAT HAPPENS IN THE COURTROOM AND
6 NOT ON ANYTHING FROM THE OUTSIDE.

7 Y'ALL ALL HAVE A VERY PLEASANT EVENING. DOES ANYBODY
8 NET NEED ASSISTANCE GETTING HOME? RIDES? EVERYBODY OKAY?
9 TRYING TO GET YOU TO WORK. ALL RIGHT. Y'ALL HAVE A VERY
10 PLEASANT EVENING. EVERYBODY ELSE REMAIN SEATED. THANK
11 YOU.

12 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 5:04.)

13 THE COURT: ANYTHING FOR THE RECORD ON BEHALF OF THE
14 STATE?

15 MR. GIBBONS: NO, SIR.

16 THE COURT: MA'AM?

17 MISS ALVES: JUDGE, TAKING THE EVIDENCE IN THE LIGHT
18 MOST FAVORABLE TO THE STATE I WOULD MOVE FOR DIRECTED
19 VERDICT ON BEHALF OF MR. PRATHER.

20 THE COURT: I RESPECTFULLY DENY IT.

21 MISS ALVES: I HAVE NOTHING FURTHER.

22 THE COURT: THERE IS AMPLE EVIDENCE IN THE RECORD FOR
23 THE JURY TO MAKE A DECISION IN THIS CASE.

24 MISS ALVES: YES, SIR.

25 THE COURT: CAN I DO ANYTHING FOR ANYBODY BEFORE WE

1 LEAVE?

2 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED FOR THE
3 DAY AND WERE RECONVENED ON MAY 25, 2006 AS FOLLOWS:)

4 THE COURT: ALL RIGHT. IS THE STATE READY?

5 MR. GIBBONS: THE STATE IS, YOUR HONOR.

6 THE COURT: MISS ALVES?

7 MISS ALVES: YES, SIR. CAN I HAVE JUST ONE SECOND?

8 THE COURT: Y'ALL GOT ANY JURY CHARGE OR ANYTHING
9 THAT YOU WANT?

10 MR. GIBBONS: YOUR HONOR, I SHOWED MISS ALVES AND I
11 PASSED UP TO THE CLERK A SET OF TABLES.

12 THE COURT: ABOUT GRAINS AND GRAMS?

13 MR. GIBBONS: YES, SIR. WE HAVE BOTH OF THEM IN THIS
14 CASE, AND IT MAY HELP FOR THE JURY TO TAKE JUDICIAL NOTICE
15 OF THAT.

16 THE COURT: ANY OBJECTION, MA'AM?

17 MISS ALVES: NO, SIR.

18 THE COURT: ANYTHING FROM THE DEFENDANT BY WAY OF
19 CHARGE?

20 MISS ALVES: NO, SIR.

21 THE COURT: THE STATE IS GOING TO WAIVE OPENING
22 ARGUMENT OR OPENING?

23 MR. GIBBONS: YES, SIR.

24 THE COURT: THERE ARE NO STATEMENTS INVOLVED IN THIS
25 CASE, IF I REMEMBER CORRECTLY.

(CLOSING STATEMENT BY MISS ALVES)

126

1 MR. GIBBONS: NO, SIR.

2 THE COURT: ALL RIGHT. BRING THE JURY IN, PLEASE.

3 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT 10:04.)

4 THE COURT: GOOD MORNING. HOW WAS YOUR SAUSAGE
5 BISCUITS?

6 THE JUROR: GOOD.

7 THE COURT: HEAVY? OKAY. WE'RE GOING TO NOW MOVE
8 INTO OUR CLOSING ARGUMENTS. MISS ALVES?

9 CLOSING STATEMENT

10 MISS ALVES: AS WE KNOW THERE ARE ALWAYS TWO SIDES TO
11 EVERY STORY AND THAT'S WHY WE HAVE TO HAVE TRIALS BECAUSE
12 IN THIS SITUATION, OF COURSE, THE STATE IS SAYING THAT
13 MR. PRATHER HAD POSSESSION OF THE COCAINE THAT WE HEARD
14 ABOUT IN THE COURTROOM YESTERDAY, BUT MR. PRATHER IS
15 SAYING THAT HE DIDN'T HAVE POSSESSION OF THAT COCAINE.
16 SO, IT'S UP TO YOU TO DECIDE EXACTLY WHAT WAS GOING ON ON
17 FEBRUARY 17, 2005 AND WHO HAD WHAT.

18 NOW, IN LISTENING TO MR. PRATHER'S STORY, IT'S NOT A
19 PRETTY STORY. I MEAN, LET'S BE HONEST. HE WAS AT A HOUSE
20 WHERE THERE CLEARLY WERE DRUGS. THERE IS NO POINT IN
21 SAYING THERE WEREN'T. THERE WERE CLEARLY DRUGS. THE
22 POLICE MADE A POINT OF TELLING YOU ABOUT THE DRUGS THAT
23 WERE FOUND, WHAT THEY FOUND IN THE HOUSE, THE WEAPONS, THE
24 PEOPLE THAT WERE IN THE HOUSE -- THAT THEY HAD BEEN GOING
25 OVER THERE SERVING A SEARCH WARRANT AND HE TOLD YOU, YEA,

(CLOSING STATEMENT BY MISS ALVES)

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1 HE ADMITS IT WASN'T A GOOD STORY. HE WAS IN THE WRONG
2 PLACE, AND LET'S BE REAL. HE PROBABLY WAS USING DRUGS AND
3 HE SAID -- HE TOLD YOU HE WAS, AND HE SAID THAT HE HAD
4 BEEN MOOCHING OFF OF SOME OF THE OTHER PEOPLE WHO HAD
5 DRUGS, BUT HE SAYS HE DIDN'T HAVE ANY HIMSELF.

6 THEN THE ENTRY TEAM CAME IN, AND THEN THE NEXT THING
7 YOU KNOW EVERYBODY IS RUNNING, AND EVERYBODY IS THROWING
8 WHATEVER THEY HAVE, AND THE CROWD IS RUNNING. SO, HE
9 RUNS, TOO. THEY RUN THROUGH THE HALLWAY AND GET TO THE
10 BACK DOOR. SOMEBODY -- OBVIOUSLY, THE POLICE COME IN THE
11 BACK DOOR. EVERYBODY FALLS DOWN LIKE DOMINOES, LANDS IN
12 THE HALLWAY. THE ENTRY TEAM COMES IN AND DETAINED
13 EVERYBODY WHERE THEY ARE. THAT'S WHAT HAPPENED. WHAT
14 ELSE WAS IN THE HALLWAY? ALL OF THE DRUGS AND EVERYTHING
15 ELSE THAT EVERYONE WAS THROWING AND HE TOLD YOU.

16 NOW, THE JUDGE IS GOING TO TELL YOU WHAT POSSESSION
17 IS, AND POSSESSION A KNOWLEDGE PLUS CONTROL OF A
18 SUBSTANCE. YOU JUST DON'T POSSESS IT JUST BECAUSE YOU'RE
19 IN THE HOUSE WITH IT. YOU HAVE TO HAVE KNOWLEDGE OF THE
20 SUBSTANCE AND YOU HAVE TO HAVE CONTROL OVER THE SUBSTANCE
21 IN ORDER TO HAVE POSSESSION OF SOMETHING. HAVE THEY
22 ESTABLISHED THAT, OR HAVE THEY ESTABLISHED THAT HE WAS
23 JUST IN A HOUSE?

24 NOW, WE HEARD A LOT ABOUT MARIJUANA AND OTHER DRUGS
25 AND A SHOTGUN IN THE LIVINGROOM AND A GUN IN THE KITCHEN

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1 AND EVERYTHING ELSE THAT WAS GOING ON, BUT YOU KNOW WHAT?
2 HE IS NOT HERE SITTING CHARGED WITH A GUN IN THE KITCHEN,
3 A SHOTGUN, A GUN FOUND ON THE FLOOR, A GUN FOUND
4 UNDERNEATH HIM, MARIJUANA. WE'RE NOT SITTING HERE TALKING
5 ABOUT -- THESE HAVE NOTHING TO DO WITH THE CHARGES THAT
6 WE'RE HERE FOR TODAY. NOTHING.

7 THE STATE WANTS YOU TO LISTEN TO ALL OF THAT TO SAY,
8 OH, AND THEN HE HAD POSSESSION OF THIS STUFF FOUND IN THIS
9 POCKET BECAUSE OF THESE PICTURES THAT THE POLICE STAGED
10 SHOW THAT HE HAD THIS IN HIS POCKET -- ALL THIS MARIJUANA.
11 NOW, HAD I BEEN BRINGING UP MARIJUANA AND CARRYING ON
12 ABOUT MARIJUANA THEY WOULD HAVE SAID, OH, I AM TRYING TO
13 GET YOUR ATTENTION OFF OF THE REAL DEAL -- THE COCAINE.
14 WELL, I WANT YOU TO FOCUS ON THE REAL DEAL -- THE
15 COCAINE -- AND WHAT THE POLICE WERE DOING THERE THAT DAY.

16 AS I WAS SAYING THERE WAS A LOT GOING ON IN THE
17 HOUSE, BUT HE TOLD YOU THAT WAS THE HOUSE OF SOMEBODY
18 NAMED KELVIN CAVE. KELVIN WAS AT THE HOUSE. THERE WERE
19 SEVERAL OTHER PEOPLE THERE. THEY WERE HANGING OUT DOING
20 THINGS THEY WEREN'T SUPPOSED TO, YES. BUT CAN YOU SAY
21 THAT HE HAD POSSESSION OF SOMETHING THAT WAS IN SOMEONE
22 ELSE'S HOUSE? THEY'RE TRYING TO SAY, OH YEA, LOOK, HE
23 KNEW ABOUT THE GUNS, AND HE KNEW ABOUT THIS. OKAY. I
24 KNOW ABOUT A LOT OF THINGS THAT ARE IN MY FRIEND'S HOUSE.
25 THAT DOESN'T MEAN I HAVE CONTROL OVER ANYTHING THAT'S IN

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1 SOMEONE ELSE'S HOUSE.

2 KNOWLEDGE WITHOUT CONTROL IS NOT POSSESSION. IT HAS
3 TO BE BOTH. YOU HAVE TO HAVE KNOWLEDGE PLUS CONTROL.
4 HERE THEY HAVEN'T ESTABLISHED THAT HE HAD CONTROL OVER
5 ANYTHING ELSE IN THE HOUSE. THEY WANT TO TALK ABOUT ALL
6 OF THIS OTHER MARIJUANA, ALL OF THE DRUGS IN THE KITCHEN
7 EVERYTHING ELSE GOING ON. PROVE THAT HE HAD CONTROL.
8 NUMBER ONE, PROVE THAT HE HAD KNOWLEDGE OF ANYTHING IN THE
9 KITCHEN, AND, NUMBER TWO, PROVE THAT HE HAD CONTROL OVER
10 ANYTHING ELSE FOUND IN THAT HOUSE. YEA, HE TOLD YOU ABOUT
11 HIS FRIEND'S GUN ON THE CONSOLE -- ON THE -- I THINK HE
12 SAID ON A SHELF SOMEWHERE YOU COULD SEE IT IN THE LIVING
13 ROOM. IT'S NOT HIS. IT IS THE PERSON WHO HAS THE HOUSE,
14 BUT YET WE HEARD ABOUT ALL THAT STUFF YESTERDAY. THEY ARE
15 TRYING TO PIN ALL OF THAT ON MR. PRATHER WHEN WE'RE NOT
16 EVEN HERE FOR ANY OF THAT.

17 AND WE HEARD ABOUT THE ENTRY TEAM AND WHAT THEY DID,
18 AND INVESTIGATOR HOWARD -- HE WAS ON THE ENTRY TEAM. HE
19 TOLD YOU WHAT HE DID. THEY CAME IN. HE TOLD YOU -- HE
20 CONFIRMED THE STORY. YEA, THEY ALL RAN DOWN THE HALL AND
21 THEY FELL LIKE DOMINOES. HE EVEN BACKED UP. MR. PRATHER
22 WAS CORRECT. THEY PINNED THEM DOWN WHERE THEY WERE. HE
23 DIDN'T ALLOW ANYBODY TO MOVE. MR. PRATHER IS SAYING THEY
24 MOVED HIM UP SOME. WELL, THEY DIDN'T -- HE DIDN'T SAY
25 THEY MOVED HIM INTO THE LIVING ROOM. IF HE IS TRYING TO

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1 LIE ABOUT, OH, THEY MOVED HIM SOMEWHERE, WELL, THEY SHOULD
2 HAVE MOVED HIM CLEAN INTO THE LIVING ROOM OR CLEAN INTO
3 THE KITCHEN WHERE THEY FOUND THE MOTHER LOBE OF DRUGS.

4 BUT, NO, HE DIDN'T TELL YOU THAT THEY DID THAT. HE
5 IS NOT SAYING THEY MOVED HIM EXCESSIVELY. THEY MOVED HIM
6 OUT OF THE BUNCH OF PEOPLE AND SORTED THE PEOPLE OUT
7 BECAUSE THEY ALL FELL RIGHT THERE TOGETHER, AND THEY
8 PINNED HIM DOWN WHERE HE WAS, AND THEN THEY PUT HIS HANDS
9 BEHIND HIS BACK, AND THAT'S -- THEN FIVE MINUTES LATER
10 ACCORDING TO INVESTIGATOR SAVELL WHO WAS THE RECORDKEEPER
11 OF OF THIS THE NARCOTICS TEAM CAME IN.

12 WHAT DID THE NARCOTICS TEAM DO? WELL, THEY THEN
13 SEARCHED MR. PRATHER AND FIND MARIJUANA IN HIS HOOD AND
14 THEY PUT THE PICTURES IN SHOWING WHAT HE LOOKED LIKE AND
15 SHOWING HIS -- SHOWING WHAT HE WAS WEARING, BUT THE FUNNY
16 THING THERE IS NO HOOD ON THIS JACKET. OH, WELL, WAIT,
17 WAIT, WAIT. NOT THE HOOD. I MEANT THE COLLAR. THE
18 COLLAR IS REALLY THE HOOD. COME ON, NOW. WE'VE ALL BEEN
19 DRESSING OURSELVES SINCE, WHAT, THE AGE OF 2? WE ALL KNOW
20 WHAT THINGS ARE CALLED ON A SHIRT. THIS IS A COLLAR, NOT
21 A HOOD. OH, WELL, YOU CAN HIDE DRUGS UNDER THERE. HE HAD
22 IT TUCKED UP UNDER HIS NECK. WELL, WHERE UNDER THAT
23 SKINNY NECK AND BETWEEN THAT LITTLE SKIMPY COLLAR DID THIS
24 MAN HAVE A BIG OLD POUND OF MARIJUANA TRUMPED UP?

25 I THINK IT'S MORE CREDIBLE TO BELIEVE THAT, YEA, I

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1 DON'T DOUBT WHOEVER HAD DRUGS AND WHATEVER THEY HAD WAS
2 THROWING AND RUNNING. BUT ISN'T IT MORE CREDIBLE TO
3 BELIEVE THAT THE MARIJUANA WAS FOUND NEAR HIM AND PERHAPS
4 NOT ON HIM AND THAT THE POLICE ATTRIBUTED IT TO HIM
5 BECAUSE HE WAS THE CLOSEST? ISN'T THAT POSSIBLE? AND
6 THEN NOW AS WE'RE TALKING ABOUT THE MARIJUANA, ISN'T IT
7 POSSIBLE THAT THE COCAINE WAS IN THE SAME SITUATION?
8 EVERYBODY'S RUNNING AND DUMPING. YET, THE POLICE WOULD
9 HAVE US BELIEVE THAT MR. PRATHER IS GOING TO KEEP THE
10 BAGGY IN HIS POCKET -- A POCKET WHERE HE DIDN'T HAVE THE
11 MARIJUANA BECAUSE THE MARIJUANA WAS SUPPOSED TO BE IN A
12 GOOD HIDING SPOT TUCKED BETWEEN HIS NECK AND HIS HOOD,
13 BUT, YET, HE HAS GOT A PERFECTLY GOOD POCKET AND THEY HAVE
14 YOU BELIEVE THAT HE IS LAYING DOWN WITH HIS POCKET WIDE
15 OPEN LIKE THAT TO SHOW THAT THEY HAVE -- THAT THEY FOUND
16 COCAINE IN THE POCKET?

17 ISN'T IT MORE LIKELY THAT THE COCAINE WAS FOUND
18 CLOSEST TO HIM AND LIKE MR. PRATHER SAID THEY SAID THIS IS
19 YOURS, OR MORE TO THE POINT IT'S YOURS? BECAUSE I CAN
20 TELL YOU RIGHT NOW EVERYBODY AGREES THIS IS NOT HOW THEY
21 FOUND MR. PRATHER. THEY DID NOT FIND HIM WITH COCAINE IN
22 HIS HAND. THESE PICTURES WERE STAGED.

23 NOW, WE'VE HEARD A LOT ABOUT THE POLICE AND PEOPLE
24 WHO ARE SUPPOSED TO BE GUARDING PRISONERS STAGING PICTURES
25 LATELY. I AM BY NO MEANS SAYING THAT THESE ARE AS BAD AS

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1 PUTTING BAGS ON A PRISONERS' HEADS SHOWING PRISONERS
2 GETTING TORTURED, BUT SHOWING PRISONERS IN WEIRD
3 POSITIONS, BUT THIS IS A BIT RIDICULOUS TO HAVE SOMEONE'S
4 HANDCUFFED HANDS BEHIND THEIR BACK AND SLAP DRUGS IN THEIR
5 HAND AND, OH, SAY, OH, WELL, LOOK, THOSE WERE HIS DRUGS.
6 NOW, WE HEARD A LOT ABOUT POLICE PROCEDURE IN HERE
7 YESTERDAY. WE HEARD HOW THE POLICE GET THE SEARCH
8 WARRANT, WHAT THEY DO AFTER THEY GET THE SEARCH WARRANT.
9 THEY JUST DON'T GO AND SERVE A SEARCH WARRANT. WHAT THEY
10 DO IS THEY GO AND COLLECT INTELLIGENCE ON THE HOUSE. THEY
11 MONITOR THE HOUSE, CHECK TO SEE WHO IS COMING AND GOING,
12 THE TIMES WHEN PEOPLE ARE COMING AND GOING. THEY FIGURE
13 OUT THE BEST TIME FOR THE ENTRY TEAM TO GO INTO THE HOUSE.
14 THEY FIGURE OUT WHAT THE ENTRY TEAM NEEDS TO DO. THEY
15 PLAN. THEY COORDINATE WITH THE ENTRY TEAM. THEY
16 COORDINATE WITH THE NARCOTICS PEOPLE.
17 THEY ARRANGE FOR ONE PERSON TO BE THE RECORDKEEPER
18 AND THAT WOULD HAVE BEEN INVESTIGATOR SAVELL. THEY
19 ARRANGE FOR ONE PERSON TO BE THE SEARCHER OR ONE OR MORE
20 PEOPLE TO BE THE SEARCHERS. THEY ARRANGE FOR ONE PERSON
21 TO BE THE EVIDENCE CUSTODIAN, AND, REMEMBER, THAT WAS
22 INVESTIGATOR HOWARD. SO, EVERYBODY HAD A JOB TO DO. THEY
23 ARE STANDARD OPERATING PROCEDURES, AND INVESTIGATOR JONES
24 WAS VERY CLEAR TO TELL US ABOUT ALL OF THE PROCEDURES
25 EVERY STEP THEY GO, BUT ONE THING THAT HE DID NOT DISCUSS

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1 AS BEING ANY PART OF ANY PROCEDURE WAS TAKING PICTURES OF
2 SOMEBODY WITH DRUGS IN THEIR HAND, AND I CAN TELL YOU THAT
3 THIS DOESN'T EVEN MAKE SENSE BECAUSE WHY WOULD YOU IF
4 YOU'RE GOING TO ARREST SOMEBODY FOR HAVING DRUGS YOU THEN
5 PUT THEM BACK IN THEIR HAND? THAT DOESN'T EVEN MAKE ANY
6 SENSE UNLESS YOU'RE JUST TRYING TO EITHER, A, HUMILIATE
7 THEM, OR, B, STAGE A SCENE, AND I TELL YOU THAT'S WHAT WAS
8 DONE HERE.

9 THERE IS NO REASON FOR THAT. IF THEY'RE GOING TO
10 SAY, OH, THEY WANTED TO TAKE IT SO THEY COULD KEEP IT
11 STRAIGHT FOR THE DRUGS -- INVESTIGATOR JONES SAID HE PUT
12 IT IN HIS HAND TO GET A BETTER PICTURE. IS THAT A GOOD
13 PICTURE? WOULD IT HAVE BEEN A BETTER PICTURE TO SHOW YOU
14 MAYBE PUT THE DRUGS ON A TABLE AND TAKE A PICTURE LIKE
15 THAT? OH, WE TOOK IT OUT SO WE COULD GET A GOOD PICTURE.
16 IF YOU LOOK AT STATE'S EXHIBIT 5 -- OH, WE TOOK IT SO YOU
17 COULD SEE WHERE IT WAS. THAT'S NOT WHAT HE TESTIFIED TO
18 AS TO HOW IT LOOKED WHEN HE SAW IT. HE SAID THAT HE
19 LOOKED DOWN ON MR. PRATHER AND ALL HE SAW WAS A -- HE SAW
20 A TINY PIECE OF BAGGY. THAT DOESN'T EVEN -- IS NOT EVEN
21 CONSISTENT WITH WHAT'S IN THIS PICTURE.

22 THAT'S BECAUSE THAT'S NOT WHAT HE SAW. THAT'S NOT
23 WHAT HAPPENED. IT IS VERY LIKELY HE SAW A BAG ON THE
24 FLOOR, PUT IT THERE TO SHOW THAT MAYBE -- BECAUSE MAYBE HE
25 BELIEVED THEY WERE MR. PRATHER'S BECAUSE THEY WERE CLOSEST

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1 TO HIM, BUT HIS BELIEF IS NOT ENOUGH FOR REASONABLE DOUBT,
2 AND THIS DOESN'T EVEN MAKE ANY SENSE. IF THEY WERE TRYING
3 TO TAKE PICTURES SOLELY TO SHOW WHOSE DRUGS THEY SAY THEY
4 WERE, WHY DIDN'T THEY TAKE PICTURES OF THE MAN'S FACE NEXT
5 TO THE DRUGS. WHY DIDN'T YOU PUT MAYBE HIS NAME? WHY
6 DON'T YOU MARK THE BAG IN SOME FORM OR FASHION TO INDICATE
7 WHAT BAG, WHERE IT WAS TAKEN TAKEN FROM, AND WHO YOU ARE
8 SAYING IT WAS TAKEN FROM?

9 THIS DOESN'T MAKE ANY SENSE. ALL THESE PICTURES SHOW
10 IS THEY STAGED A SCENE. THEY PICKED UP DRUGS FROM IN THAT
11 HOUSE SOMEWHERE. NO DOUBT THEY WERE THERE ON THE FLOOR
12 SOMEWHERE IN THAT HALLWAY NEAR THEM AND PUT IT ON THE
13 PERSON WHO WAS CLOSEST TO HIM -- THE PERSON WHO WAS TRYING
14 TO BE LAST OUT THE DOOR AND FELL BACK IN THE HALLWAY AND
15 WOUND UP BEING FIRST IN THE HOUSE.

16 AND MORE ABOUT THESE PICTURES -- HOW COME NOBODY
17 KNOWS WHO TOOK THEM? ALL OF THE STANDARD OPERATING
18 PROCEDURE THAT WE HEARD ABOUT IN HERE YESTERDAY, ALL OF
19 THE LITTLE DETAILS THAT WERE KEPT TO INCLUDING THE
20 RECORDKEEPING, THE PAPERWORK DONE BY MARK HOWARD TO DETAIL
21 WHAT HAPPENED. REMEMBER? HE DIDN'T EVEN REMEMBER WHERE
22 HE GOT THE DRUGS FROM. OH, I DON'T KNOW. I GOT THEM FROM
23 SOMEBODY UNTIL HE SAID THAT HE LOOKED AT HIS PAPERWORK,
24 OH, YEA, YEA, I GOT THEM FROM MR. PRATHER. AND THEN
25 MAGICALLY, HE REMEMBERS, OH, YEA, AND THEY WERE IN HIS

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1 POCKET. SO, THE PAPERWORK ACCORDING TO INVESTIGATOR
2 HOWARD AT LEAST IS IMPORTANT.

3 SO, HOW COME NOBODY KNOWS WHO TOOK THE PICTURES?
4 INVESTIGATOR JONES WAS SUPPOSED TO BE SUPERVISING AND HE
5 CAN'T EVEN TELL YOU WHO TOOK THE PICTURES. THAT'S BECAUSE
6 IT DIDN'T HAPPEN EXACTLY THE WAY THE PICTURES SHOW BECAUSE
7 THE PICTURES ARE STAGED. DON'T BELIEVE EVERYTHING THAT
8 YOU SEE IN PICTURES BECAUSE PICTURES CAN BE POSED AND
9 THOSE CLEARLY WERE.

10 NOW, MR. PRATHER IN ADDITION TO BEING CHARGED WITH
11 TRAFFICKING WHAT THE JUDGE WILL TELL YOU IS POSSESSION OF
12 MORE THAN 10 GRAMS OF COCAINE IS ALSO CHARGED WITH
13 POSSESSION WITH INTENT TO DISTRIBUTE COCAINE WITHIN A HALF
14 MILE OF A PARK. NOW, MR. PRATHER HAS TOLD YOU HE DIDN'T
15 HAVE POSSESSION OF ANY COCAINE. HOWEVER, THAT'S NOT ALL
16 THE STATE HAS TO PROVE IN ORDER TO PROVE IT TO YOU BEYOND
17 A REASONABLE DOUBT TO PROVE THIS CHARGE. NOT ONLY DO THEY
18 HAVE TO PROVE TO YOU BEYOND A REASONABLE DOUBT THAT
19 MR. PRATHER HAD POSSESSION OF COCAINE, THEY HAVE TO PROVE
20 IT TO YOU THAT HE HAD INTENT TO DISTRIBUTE THAT COCAINE,
21 AND, LADIES AND GENTLEMEN, BY NO MEANS AM I STANDING HERE
22 SAYING THAT MR. PRATHER HAD POSSESSION OF ANY COCAINE
23 BECAUSE HE TOLD YOU POINT BLANK FROM THAT WITNESS STAND
24 THAT HE DID NOT. HOWEVER, EVEN IF THE STATE COULD PROVE
25 THAT HE DID HAVE POSSESSION OF COCAINE NOW THEY'RE TRYING

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1 TO SAY HE SOME KIND OF DISTRIBUTOR OF COCAINE.

2 WHERE IS THE EVIDENCE OF THAT? WHERE IS ANY EVIDENCE
3 THAT ANYBODY THAT WAS SELLING COCAINE ON THAT DAY OUT OF
4 THAT HOUSE -- PARTICULARLY MR. PRATHER, ESPECIALLY
5 MR. PRATHER BECAUSE WE'RE NOT CONCERNED WITH WHAT
6 EVERYBODY ELSE DID HERE. WE'RE NOT HERE FOR MR. KELVIN
7 CAVE OR ANYBODY ELSE WHO WAS IN THAT HOUSE. WE'RE HERE
8 FOR ONE PERSON, AND WHERE IS THE EVIDENCE THAT HE DID
9 ANYTHING TO DISTRIBUTE COCAINE OR INTENDING TO DISTRIBUTE
10 IT?

11 SO, WHAT CAN WE FIGURE THAT SOMEBODY WHO IS SELLING
12 COCAINE MIGHT HAVE? SCALES TO WEIGH IT BECAUSE YOU HAVE
13 TO GIVE IT ACCURATELY. NO SCALES. MONEY? LOTS AND LOTS
14 OF MONEY. ISN'T THAT WHAT DRUGS DEALERS HAVE? NO MONEY.
15 BAGGIES TO DIVIDE IT UP INTO? NO BAGGIES. NOTES ON WHO
16 THEY SOLD TO? NO NOTES. A CELLPHONE? NO CELLPHONE. HOW
17 ABOUT THE FACT THAT THE HOUSE WAS UNDER SURVEILLANCE BY
18 THE POLICE FROM THE TIME THEY GOT THE SEARCH WARRANT UNTIL
19 THE TIME THE ENTRY TEAM WENT IN? NAME ME ONE TIME
20 SOMEBODY TOLD YOU SOMEBODY WENT IN THAT HOUSE ON THAT DAY
21 TO BUY DRUGS AND ONE TIME THAT SOMEBODY WENT IN THERE TO
22 BUY DRUGS FROM MR. PRATHER. YOU CAN'T BECAUSE THERE
23 WASN'T ANY. NO ONE SAID ANYTHING INDICATING THAT
24 MR. PRATHER HAD ANY INTENT TO SELL DRUGS OUT OF THAT
25 HOUSE. NO INTENT TO DISTRIBUTE DRUGS.

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1 AND, LADIES AND GENTLEMEN, EVEN IF YOU FIND HIM
2 GUILTY OF THE POSSESSION OF COCAINE YOU CANNOT FIND HIM
3 GUILTY OF POSSESSION WITH INTENT TO DISTRIBUTE UNLESS YOU
4 FIND THAT HE HAD THOSE DRUGS WITH THAT INTENT. NOW, THE
5 STATE IS GOING TO STAND UP THERE AND TELL YOU IT'S BASED
6 ON THE AMOUNT. OH, HE HAD A LOT. SO, IT'S BASED ON THE
7 AMOUNT. BASED ON THE AMOUNT OF COCAINE IT WAS BECAUSE IT
8 WAS THE AMOUNT IT WAS THAT IT'S INTENT TO DISTRIBUTE.

9 WELL, THAT'S JUST AN INFERENCE. WHAT THAT MEANS IS
10 THAT THE STATE STILL HAS TO PROVE IT. YOU JUST DON'T GET
11 TO INFER THAT SOMEBODY MIGHT HAVE DONE SOMETHING, AND,
12 BAM, THEY GET A GUILTY CONVICTION BECAUSE OF IT. THEY
13 STILL HAVE TO PROVE IT BEYOND A REASONABLE DOUBT, AND THE
14 JUDGE IS GOING TO TELL YOU THAT THE LAW IS THAT IF YOU
15 HAVE MORE THAN 10 GRAINS OF COCAINE THEN THERE IS AN
16 INFERENCE THAT IT'S POSSESSION WITH INTENT TO
17 DISTRIBUTE -- THAT SMALL AMOUNT -- AND THAT THERE ARE 15
18 GRAINS IN A GRAM AND WE HEARD THERE WERE A LITTLE OVER 26
19 GRAMS HERE, AND I AM NOT GOING TO SAY THAT IT'S NOT A LOT
20 OF GRAINS. I AM NOT GOING TO SAY THEY HAVEN'T ESTABLISHED
21 IT UNDER THE INFERENCE, BUT THAT'S NOT ENOUGH. THEY STILL
22 HAVE TO PROVE TO YOU BEYOND A REASONABLE DOUBT THAT HE HAD
23 POSSESSION OF DRUGS AND THAT HE HAD POSSESSION WITH THE
24 INTENT TO DISTRIBUTE THEM, AND WHEN YOU'RE LOOKING AT,
25 WELL, GEE, EVEN IF YOU GET PAST THE POSSESSION PART YOU

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1 SAY, GEE, THAT WAS A LOT, AND THE JUDGE DID TELL US THAT
2 WAS A LOT AND THAT DOES COME OUT TO A LOT -- I HAVEN'T
3 DONE THE MATH, BUT IT DOES COME OUT TO A LOT OF GRAINS.

4 HOWEVER, JUST THINK ABOUT SOMETHING ELSE THAT YOU
5 MIGHT HAVE A LOT OF IN YOUR POSSESSION THAT YOU DON'T
6 INTEND TO GIVE TO ANYBODY ELSE. CIGARETTES. PEOPLE WHO
7 SMOKE TEND TO HAVE A PACK OF CIGARETTES. WHAT IS IN A
8 PACK? I DON'T SMOKE. TWENTY IN A PACK? SO, DOES THAT
9 MEAN THAT YOU'RE PLANNING TO GIVE CIGARETTES TO 19 OTHER
10 PEOPLE OR ARE YOU CARRYING YOUR PACK BECAUSE AFTER YOU
11 TAKE YOUR ONE YOU MIGHT HAVE ANOTHER ONE LATER FOR
12 YOURSELF AND YOU MIGHT WANT TO SAVE ONE SO YOU CAN HAVE
13 THE REST OF THEM LATER. THAT DOESN'T MEAN THAT YOU PLAN
14 TO GIVE A CIGARETTE TO EVERYBODY SITTING AROUND. THAT
15 JUST MEANS YOU HAVE YOUR CIGARETTES IN YOUR PACK -- IN
16 YOUR PERSON. WHAT ABOUT PEOPLE WHO WHEN THEY ARE SMOKERS
17 WHO GO TO THE STORE AND BUY A CARTON AND ACTUALLY MIGHT
18 HAVE IN THEIR POSSESSION IN THEIR CAR OR IN THEIR HOUSE OR
19 WHATEVER A CARTON OF CIGARETTES? DOES THAT MEAN THEY
20 INTEND TO GIVE A PACK OF CIGARETTES TO EVERYBODY THEY SEE
21 OR A CIGARETTE TO EVERYBODY THEY SEE OR DO THEY JUST HAVE
22 ALL OF THEIR CIGARETTES IN ONE PLACE? THAT TENDS TO BE
23 HOW YOU BUY THEM. YOU BUY THEM IN A CARTON IN BULK
24 CHEAPER.

25 ANOTHER EXAMPLE IS BEER. YEA, YOU CAN GO TO THE

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1 STORE AND BUY ONE BEER. MOST PEOPLE I KNOW GO TO THE
2 STORE AND BUY A SIX-PACK OR A 12-PACK OR A 24-PACK. IT
3 DOESN'T MEAN THEY INTEND TO HAND A BEER TO EVERYBODY THEY
4 SEE. THAT'S JUST HOW THEY COME. NO INTENT TO DISTRIBUTE
5 ON BEER OR CIGARETTES. HOW CAN THEY INFER AN INTENT TO
6 DISTRIBUTE JUST BECAUSE OF AN AMOUNT OF COCAINE?

7 THEY HAVE TO PROVE THIS CASE TO YOU BEYOND A
8 REASONABLE DOUBT. I AM NOT JUST SITTING UP HERE OR
9 STANDING UP HERE, RATHER, ASKING YOU TO BELIEVE THIS CASE
10 BEYOND A REASONABLE DOUBT. THAT'S THE LAW. THE JUDGE IS
11 GOING TO TELL IT TO YOU. HE TOLD IT TO YOU AT THE
12 BEGINNING OF THIS CASE. YOU'LL PROBABLY HEAR THOSE WORDS
13 SEVERAL TIMES MORE WHILE THE JUDGE IS GIVING YOU HIS
14 INSTRUCTIONS. BEYOND A REASONABLE DOUBT.

15 THE STATE HAS TO PROVE TO YOU THAT EACH AND EVERY
16 ELEMENT OF THIS CASE IS TRUE; THAT MR. PRATHER DID POSSESS
17 COCAINE AND THAT HE DID POSSESS IT WITH INTENT TO
18 DISTRIBUTE, AND IF YOU ARE NOT SATISFIED THAT HE POSSESSED
19 COCAINE -- IF YOU ARE NOT SATISFIED THAT HE POSSESSED IT
20 WITH INTENT TO DISTRIBUTE, YOUR DUTY AS JURORS IS TO FIND
21 MR. PRATHER NOT GUILTY.

22 THAT'S NOT JUST WHAT I AM ASKING YOU FOR. THAT'S
23 PLAIN AND SIMPLE THE LAW. ALL I AM ASKING YOU TO DO IS
24 FOLLOW THE LAW. FOLLOW YOUR OATH AS JURORS. MAKE SURE
25 YOU CONSIDER EVERYTHING THAT YOU HAVE HEARD IN THE

1 COURTROOM AND ISSUE A VERDICT THAT SPEAKS THE TRUTH.

2 THANK YOU.

3 CLOSING STATEMENT

4 MR. GIBBONS: IF IT PLEASE THE COURT.

5 THE COURT: YES, SIR.

6 MR. GIBBONS: MISS ALVES. LADIES AND GENTLEMEN, IT'S
7 ALMOST THE END OF THE CASE. IT'S ALMOST TIME FOR YOU TO
8 GO BACK TO THAT LITTLE ROOM AND PUT YOUR HEADS TOGETHER.
9 I AM GOING TO SPEAK TO YOU FOR A FEW MINUTES, AND THEN THE
10 JUDGE IS GOING TO TELL YOU ABOUT THE LAW.

11 AS I TOLD YOU AT THE FRONT OF THIS CASE THIS CASE IS
12 ABOUT TWO DIFFERENT STATUTES, AND THERE IS A LITTLE BIT OF
13 MATH INVOLVED. THEY SHOULD HAVE KNOWN BETTER THAN TO PUT
14 MATH IN THE LAW BECAUSE LAWYERS ARE NOTORIOUSLY BAD AT
15 MATH, BUT MISS ALVES WAS RIGHT. POSSESSION WITH INTENT TO
16 DISTRIBUTE WITHIN A HALF MILE OF A SCHOOL CHARGE, THE LAW
17 ALLOWS YOU TO INFER HE INTENDED TO DISTRIBUTE THE DRUGS IF
18 HE WAS IN POSSESSION OF MORE THAN 10 GRAINS OF COCAINE. I
19 BELIEVE THE JUDGE IS GOING TO CHARGE YOU DURING HIS
20 CLOSING REMARKS THAT ONE GRAM EQUALS ABOUT 15-SOME-ODD
21 GRAINS. SO, IF SOMEONE HAS 1 GRAM OF COCAINE, THEY HAVE
22 MORE THAN 10 GRAINS OF COCAINE.

23 NOW, THE TRAFFICKING STATUTE IS IN GRAMS. THAT'S
24 WHAT IS SO CONFUSING ABOUT THIS. TRAFFICKING IN COCAINE
25 IS IF I HAVE MORE THAN 10 GRAMS OF COCAINE. IN THIS CASE

1 THE TESTIMONY WAS AND THE STIPULATION WAS THERE WAS OVER
2 26 GRAMS. NOW, WHEN YOU PUT THAT 26 UP TO GRAMS, THAT'S
3 EASY. IT'S MORE THAN 10. IT IS 26. NOW, WHEN YOU HOOK
4 THAT UP TO THE INFERENCE ON GRAINS, YOU HAVE TO MULTIPLY
5 THAT 26 TIMES 15 AND IT COMES OUT AROUND 400, AND ON THE
6 POSSESSION WITH INTENT TO DISTRIBUTE IT HAS TO BE OVER 10
7 GRAINS AND WE HAVE ALMOST 400 GRAINS..

8 SO, WE'RE WAY, WAY BEYOND BOTH THE INFERENCE AMOUNTS
9 THAT THE LAW RECOGNIZES YOU CAN USE TO INFER THAT WHAT HE
10 HAD WAS IN AN AMOUNT ENOUGH THAT YOU CAN INFER HE MEANT TO
11 SHARE IT, HAND IT OFF, SELL IT. THAT'S WHAT WE MEAN BY
12 DISTRIBUTE WHETHER IT'S SOLD, WHETHER IT'S SHARED WITH
13 YOUR BUDDY, WHETHER IT'S HANDED TO YOUR FRIEND TO TAKE
14 CARE OF FOR A WHILE, THAT'S DISTRIBUTING COCAINE.

15 NOW, I AM NOT GOOD AT MATH EITHER, BUT WE DEFINITELY
16 HAVE MORE THAN 10 GRAMS HERE -- 10 GRAINS HERE. WE HAVE
17 ALMOST 400 GRAINS HERE FOR THE POSSESSION WITH INTENT TO
18 DISTRIBUTE. WE DEFINITELY HAVE MORE THAN 10 GRAMS. WE
19 HAVE 26 FOR THE TRAFFICKING STATUTE. SO, BOTH OF THOSE
20 INFERENCES ARE PERMISSIBLE FOR YOU TO USE IN THIS CASE.

21 NOW, YOU HEAR ALL KINDS OF THINGS IN A COURTROOM, ALL
22 KINDS OF DIFFERENT EXPLANATIONS. IT'S YOUR JOB TO SORT
23 THEM OUT. SOMETIMES IT'S EASY, AND SOMETIMES IT'S NOT.
24 TODAY WHAT YOU'RE HEARING IS, ONE, I DIDN'T HAVE ANY
25 COCAINE, BUT EVEN IF I DID HAVE IT I JUST MEANT TO USE IT

1 FOR MYSELF. IT IS UP TO YOU TO FIGURE OUT WHAT YOU
2 BELIEVE OUT OF THAT.

3 NOW, INTENT IS A FUNNY THING, AND WE'LL GET TO THAT
4 AFTER A WHILE, BUT LET'S TALK ABOUT WHAT WE HAVE IN THIS
5 CASE. WE HAVE OFFICERS WHO ARE GOING INTO A DANGEROUS
6 SITUATION. WE KNOW THAT -- WE KNOW FROM THE TESTIMONY
7 THERE WERE GUNS IN THERE. THERE WERE DRUGS IN THERE.
8 THERE WERE PEOPLE RUNNING AROUND IN THERE WHEN THE ENTRY
9 TEAM CAME IN. THEY USED THE S.W.A.T. TEAM BECAUSE THEY
10 THOUGHT IT WAS GOING TO BE A DANGEROUS SITUATION, AND EVEN
11 THE DEFENDANT AGREED THAT AFTER THEY CAME THROUGH THAT
12 DOOR PEOPLE WERE THROWING GUNS AND DRUGS EVERYWHERE.

13 NOW, THESE OFFICERS WANT TO GO HOME AT THE END OF THE
14 DAY. THEY'RE GOING TO WORRY ABOUT GUNS AND THEY'RE GOING
15 TO WORRY ABOUT KEEPING PEOPLE UNDER CONTROL, BUT THEY'VE
16 GOT ANOTHER JOB TO DO. WHEN THEY MAKE A CASE IT HAS TO
17 END UP IN COURT, AND THEY TRY TO ANTICIPATE WHAT IS GOING
18 TO BE TOLD IN FRONT OF A JURY. DO THEY ALWAYS GUESS
19 RIGHT? NO, BUT I SUBMIT TO YOU THAT EXPLAINS MORE ABOUT
20 THESE PICTURES THAN ANY CONSPIRACY THEORY. IT'S NOT ON A
21 GRASSY KNOLL OR SOMETHING LIKE THAT THAT WE GOT GOING ON
22 HERE. THERE ARE GUNS AND DRUGS ALL OVER THIS HOUSE. THE
23 POLICE HAVE TO COLLECT THEM. WHAT ELSE DO THEY HAVE TO
24 DO? THEY HAVE TO BE ABLE TO SHOW WHAT DRUGS CAME FROM
25 WHAT PERSON.

(CLOSING STATEMENT BY MR. GIBBONS)

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1 NOW, THIS HAS BEEN ALMOST A YEAR AGO. IF THERE WERE
2 DRUGS THROWN ALL OVER THAT HOUSE AND THEY JUST THREW THEM
3 ALL ON A TABLE AND TOOK A PICTURE OF THEM, THEN WHEN THEY
4 CAME TO COURT THERE ARE GOING TO BE FINGERS POINTED AT THE
5 POLICE SAYING, WELL, WHY DIDN'T YOU TAKE A PICTURE OF THE
6 DRUGS WITH THE PERSON? SO, THEY'RE KIND OF DAMNED IF THEY
7 DO AND DAMNED IF THEY DON'T.

8 SO, WHAT DID THE STATE SHOW YOU? WE SHOWED YOU WHAT
9 THE OFFICER SAID THEY SAW FIRST RIGHT HERE. STAGED PHOTO?
10 WELL, YOU KNOW, HE PROBABLY WASN'T LAYING THERE WITH HIS
11 HANDS BEHIND HIS BACK BEFORE THE POLICE GOT THERE, BUT
12 WHAT HAS HE GOT IN HIS POCKET? HE'S GOT A BAGGY. WELL,
13 IF THERE ARE 15 BAGGIES ON THE TABLE OR 5 BAGGIES ON THE
14 TABLE AND SOMEONE TAKES A PICTURE OF THAT, DOES THAT TELL
15 YOU ANYTHING? WOULD IT BE REASONABLE -- THAT'S WHAT WE'RE
16 HERE ABOUT -- BEFORE THEY TAKE THAT LITTLE BAGGY OF DRUGS
17 AND PUT IT WITH ALL OF THE OTHER LITTLE BAGGIES TO PULL IT
18 OUT WHILE THE CAMERA IS RIGHT THERE, TAKE THIS PICTURE,
19 PUT IT IN HIS HAND, SNAP, TAKE ANOTHER PICTURE SO THEY
20 DON'T GET ACCUSED OF HIM HAVING, OH, THIS WAS MARIJUANA OR
21 THIS WAS FROM MY SANDWICH OR THIS IS JUST AN EMPTY BAGGY I
22 HAD IN MY POCKET. IS IT REASONABLE FOR THEM TO TAKE THIS
23 PICTURE? OKAY. NOW, TAKE IT OUT AND PUT IT ON HIM SO WE
24 CAN SEE HIS CLOTHES AND HIS PANTS AND WE'LL TAKE ANOTHER
25 PICTURE TO SHOW WHAT IT WAS SO WHEN WE GET TO COURT

1 SOMEONE DOESN'T SAY, WELL, WHY DIDN'T YOU TAKE THE PICTURE
2 OF IT OUTSIDE OF HIS POCKET. THEY WERE JUST TRYING TO
3 COVER THEIR BASES, JUST TRYING TO KEEP EVERYTHING STRAIGHT
4 BECAUSE THERE WAS A LOT GOING ON IN THAT HOUSE THAT NIGHT.
5 THEY STOOD HIM UP AND TOOK ANOTHER PICTURE TO MATCH UP THE
6 CLOTHES. IS THAT REASONABLE?

7 THE JUDGE IS GOING TO TELL YOU YOUR STANDARD HERE
8 TODAY IN A COURT OF LAW THAT YOU SWORE TO UPHOLD IS THAT
9 THE STATE PROVES THE GUILT BEYOND A REASONABLE DOUBT.
10 REASONABLE DOUBT. NOW, WHEN THEY ARE MAKING UP THE RULES
11 FOR THIS COURTROOM THEY DIDN'T SAY BEYOND A SHADOW OF A
12 DOUBT, BEYOND ANY DOUBT THAT I CAN MAKE UP, WELL, BEYOND A
13 LITTLE BIT OF DOUBT. IT'S A REASONABLE DOUBT.

14 THAT REASONABLE IS AN IMPORTANT WORD. IT HAS A LOT
15 TO DO WITH COMMON SENSE. IT HAS A LOT TO DO WITH JUST
16 EVERYDAY WHAT MAKES SENSE. WHAT MAKES SENSE IN THIS CASE?
17 THE JUDGE IS GOING TO TELL YOU THAT YOU CAN EVALUATE THE
18 PEOPLE THAT SAT IN THAT CHAIR AND COME UP WITH WHAT YOU
19 BELIEVE IS THE TRUTH IN A LOT OF DIFFERENT WAYS. HE IS
20 GOING TO TELL YOU THAT ONE OF THE FACTORS THAT YOU CAN
21 FACTOR IN TO EVALUATE WHO SAID WHAT WHEN YOU'RE TRYING TO
22 DECIDE IS WHO HAS A MOTIVE TO TELL YOU A STORY.

23 NOW, THESE MEN OVER HERE, WIN, LOSE, OR DRAW, ARE
24 GOING TO WALK OUT THOSE DOORS WHEN THIS TRIAL IS OVER.
25 THEY DON'T GET PAID ANY MORE OR ANY LESS BASED ON WHAT

1 THEY SAY IN THE COURTROOM TODAY, BUT THIS MAN OVER AT THIS
2 TABLE RIGHT HERE, DOES HE HAVE A MOTIVE TO TELL YOU A
3 STORY? DOES HE HAVE SOMETHING ON THE TABLE TODAY THAT HE
4 MIGHT HAVE A REASON TO MAKE UP A STORY ABOUT? YOU ARE
5 ALLOWED TO EXAMINE THAT WHEN YOU GO BACK AND ENTER YOUR
6 DELIBERATIONS.

7 NOW, HIS STORY WAS THAT HE WAS JUST TALKING AT THIS
8 RESIDENCE, KNEW THERE WERE GUNS IN PLAIN VIEW, EVERYBODY
9 WAS DOING DRUGS, AND SOMETHING CAME TO THE DOOR AND THEY
10 ALL TOOK OFF TO THE BACK OF THE TRAILER. EVERYBODY RAN,
11 AND THEY ALL GOT TO THE BACK AND FELL DOWN LIKE DOMINOES,
12 BUT IF YOU REMEMBER WHAT HE SAID WHEN HE WAS TESTIFYING
13 HIS STORY IS THAT THE ENTRY TEAM GOT EVERYBODY AND BECAUSE
14 HE WAS IN THE BACK OF THE GROUP THEY MOVED HIM, LAID HIM
15 DOWN, AND SOMEBODY CAME AND PUT DRUGS ON HIS HANDS AND
16 TOOK THE PICTURE. IT IS UP TO YOU, BUT DO YOU THINK THESE
17 GUYS THAT ARE IN THIS HEATED SITUATION GOING INTO THIS
18 HOUSE WITH WEAPONS AND DRUGS ARE GOING TO PICK SOMEBODY UP
19 AND LAY THEM DOWN ON A .22 LOADED PISTOL? IS THAT
20 REASONABLE? THEY'RE GOING TO LAY HIM ON A PISTOL?

21 NOW, HE HAS NO EXPLANATION -- HE TOLD YOU, I DON'T
22 KNOW HOW THEY GOT THAT PICTURE -- BECAUSE OUT OF ALL OF
23 THE STUFF UP ON THIS BAR HERE AND ALL OF THE STUFF THAT
24 CAME OUT OF THAT CHAIR WHAT'S THE ONE THING THAT WOULD
25 DAMAGE HIS CASE THE MOST? AND, SO, WHAT'S THE ONE THING

(CLOSING STATEMENT BY MR. GIBBONS)

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1 HE CAN'T EXPLAIN? HOW THOSE DRUGS GOT IN HIS POCKET.
2 NOW, YOU DON'T HAVE TO LIKE THE LAW. YOU DON'T HAVE TO
3 AGREE WITH THE LAW, BUT WHEN YOU RAISED YOUR HAND
4 YESTERDAY YOU SAID YOU WOULD FOLLOW THE LAW AS THE JUDGE
5 GAVE IT TO YOU AND THAT INCLUDES ALL OF THE OTHER THINGS
6 THAT GO ALONG WITH IT.

7 NOW, LET'S TALK ABOUT CONTROL. THE LAW SAYS IN ORDER
8 TO BE CHARGED WITH TRAFFICKING OR POSSESSION OR POSSESSION
9 WITH INTENT THAT SOMEONE HAS TO HAVE IT IN THEIR CUSTODY
10 OR THEIR CONTROL AND KNOW WHAT IT IS. NOW, THIS IS MY
11 PEN. WHEN I HAVE IT IN MY POCKET, I GOT CONTROL OF IT.
12 IF I SIT IT DOWN OVER HERE WITHIN MY REACH I HAVE CONTROL
13 OF IT AND I KNOW IT'S A PEN. THOSE DRUGS WERE IN HIS
14 POCKET IN A BAGGY RIGHT HERE. THAT'S CONTROL. THAT'S
15 POSSESSION. AND HE KNOWS WHAT DRUGS ARE. HE SAID THAT HE
16 SAW DRUGS ALL OVER THE HOUSE THAT NIGHT. SO, HE
17 DEFINITELY KNOWS WHAT THAT IS. HE KNOWS WHAT THAT'S ALL
18 ABOUT.

19 NOW, AS TO THE POSSESSION WITH INTENT TO DISTRIBUTE
20 CHARGE YOU'RE GOING TO HAVE THESE ITEMS BACK THERE WITH
21 YOU AS YOU DELIBERATE, AND I BELIEVE YOU'LL SEE RIGHT HERE
22 IN THIS PICTURE THE BALLPARK OR MAYBE SOME TENNIS COURTS,
23 AND THERE IS A MEASURING LINE AND YOU'LL BE ABLE TO SEE
24 HOW FAR IT IS. IF IT'S WITHIN ONE HALF MILE OF WHERE
25 MR. PRATHER HAD HIS DRUGS IN HIS POCKET THEN HE IS IN

(CLOSING STATEMENT BY MR. GIBBONS)

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1 VIOLATION OF THAT SECOND STATUTE.

2 I WANT TO THANK YOU FOR YOUR TIME. SERVING ON A JURY
3 IS NOT A WHOLE LOT OF FUN FOR MOST PEOPLE, BUT IT IS AN
4 IMPORTANT DUTY. AS YOU SIT HERE TODAY YOU ARE MEMBERS OF
5 AIKEN COUNTY AND THIS CRIME HAPPENED IN AIKEN COUNTY.
6 THIS DIDN'T HAPPEN ON T.V. THIS DIDN'T HAPPEN IN THE BIG
7 CITY. THIS HAPPENED RIGHT HERE IN OUR COMMUNITY, AND I
8 WOULD ASK YOU TO DELIBERATE CAREFULLY BECAUSE DRUGS ARE A
9 SERIOUS PROBLEM IN OUR COMMUNITY. IN THIS CASE --

10 MISS ALVES: OBJECTION, YOUR HONOR, IMPROPER
11 ARGUMENT. PERSONALIZING.

12 THE COURT: OVERRULED. GO AHEAD.

13 MR. GIBBONS: THIS CASE DESERVES YOUR FULL ATTENTION,
14 AND I WOULD ASK YOU TO DELIBERATE CAREFULLY. EVALUATE
15 WHAT WAS SAID BY WHO, WHO MAY HAVE A MOTIVE FOR WHAT THEY
16 SAID AND WHO MAY NOT HAVE A MOTIVE FOR WHAT THEY SAID, AND
17 REMEMBER THE SITUATION THAT WAS GOING ON THAT NIGHT AND
18 ALL OF THE OTHER SURROUNDING CIRCUMSTANCES. THERE WAS A
19 LOT GOING ON. THE GUYS DID THE BEST THEY COULD TRY TO DO
20 THAT NIGHT. COULD THEY HAVE DONE BETTER? SURE. ANYBODY
21 CAN ALWAYS DO BETTER, BUT WHEN YOU GET RIGHT DOWN TO THE
22 BOTTOM LINE WHAT MAKES SENSE ABOUT WHAT HAPPENED THAT
23 NIGHT? I THINK WHEN YOU ASK YOURSELVES THAT QUESTION IT
24 MAKES SENSE THAT THAT NIGHT HE WAS TRYING TO GET OUT OF
25 THERE BECAUSE OF THAT GUN AND HE HAD 26 GRAMS OF POWDER

(JURY CHARGE)

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1 COCAINE IN HIS POCKET. AS I SAID, THAT'S 400 -- 40 TIMES
2 THE POSSESSION WITH INTENT INFERENCE AMOUNT.

3 WHY DIDN'T HE HAVE ANY MONEY? IT DOESN'T MATTER.
4 THE LAW DOESN'T SAY ANYTHING ABOUT HE HAS TO HAVE MONEY.
5 IF I JUST BUY IT -- MOST OF THE TIME WHEN I COME OUT OF
6 WAL-MART I DON'T HAVE ANY MONEY LEFT, BUT I HAVE SOMETHING
7 IN MY POCKET, SOMETHING IN MY BAG.

8 THANK YOU FOR YOUR TIME. THANK YOU FOR YOUR
9 ATTENTION ON THIS CASE. I THINK THAT ONCE YOU EVALUATE
10 WHAT IS REASONABLE IN THIS CASE YOU WILL COME UP WITH A
11 VERDICT THAT SPEAKS THE TRUTH OF WHAT HAPPENED THAT NIGHT,
12 AND I THINK THAT VERDICT WILL BE GUILTY ON BOTH COUNTS.
13 THANK YOU.

14 JURY CHARGE

15 THE COURT: MADAM FORELADY, LADIES AND GENTLEMEN OF
16 THE JURY, IT IS NOW TIME FOR ME TO CHARGE OR INSTRUCT YOU
17 ON THE LAW IN THE CASE, AND WHAT I WILL DO FIRST IS GIVE
18 YOU SOME GENERAL LAW THAT PRETTY MUCH APPLIES TO ALL OF
19 THE CRIMINAL CASES THAT WE TRY ALL OVER THE STATE. ONCE I
20 DO THAT I WILL GO TO THE SPECIFICS OF THIS CASE AND CHARGE
21 YOU THE SPECIFIC ELEMENTS OF THESE TWO INDICTMENTS, I.E.,
22 TRAFFICKING IN COCAINE AND POSSESSION WITH INTENT TO
23 DISTRIBUTE COCAINE WITHIN THE PROXIMITY OF A PARK.

24 I REMIND YOU ONCE AGAIN THE FACT THAT THE DEFENDANT
25 WAS ARRESTED, CHARGED, AND INDICTED IN THE CASE IS NOT

(JURY CHARGE)

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1 EVIDENCE IN THE CASE AND CANNOT BE CONSIDERED BY YOU AS
2 EVIDENCE OF GUILT IN THE CASE, NOR DOES IT CREATE ANY
3 PRESUMPTION OR INFERENCE OF GUILT. THESE TWO INDICTMENTS
4 ARE SIMPLY THE FORMAL WRITTEN INSTRUMENTS WHICH CONTAIN
5 THE CHARGES MADE AGAINST THE DEFENDANT. IT IS THE FORMAL
6 DOCUMENT BY WHICH THESE CHARGES ARE BROUGHT INTO COURT,
7 AND IT IS IN NO SENSE EVIDENCE IN THE CASE.

8 THERE ARE TWO INDICTMENTS IN THE CASE AND THEY CHARGE
9 TWO SEPARATE DISTINCT OFFENSES. WHEN YOU START
10 DELIBERATING THE CASE YOU MUST DECIDE EACH ONE SEPARATELY
11 UNINFLUENCED BY YOUR DECISION ON THE OTHER. THE DEFENDANT
12 MAY BE CONVICTED OR FOUND NOT GUILTY ON ONE OR BOTH OR A
13 COMBINATION THEREOF. SO, YOU DECIDE EACH ONE OF THEM
14 INDEPENDENTLY OF THE OTHER. YOU WILL BE ASKED TO WRITE A
15 SEPARATE VERDICT OF GUILTY OR NOT GUILTY FOR EACH OF THESE
16 TWO INDICTMENTS.

17 NOW, IN THIS CASE THE DEFENDANT HAS PLEAD NOT GUILTY
18 TO BOTH OF THESE INDICTMENTS. THAT PLEA OF NOT GUILTY
19 PUTS THE BURDEN ON THE STATE OF SOUTH CAROLINA TO PROVE
20 THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. ANY
21 PERSON CHARGED IN OUR STATE WITH COMMITTING A CRIMINAL
22 OFFENSE IS NEVER, EVER -- NEVER, EVER REQUIRED TO PROVE
23 HIMSELF INNOCENT. I CHARGE AND INSTRUCT YOU THAT IT IS AN
24 IMPORTANT RULE OF LAW THAT A DEFENDANT IN A CRIMINAL TRIAL
25 WILL ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME FOR

1 WHICH HE WAS INDICTED UNLESS GUILT HAS BEEN PROVEN BY THE
2 STATE BY EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A
3 REASONABLE DOUBT.

4 THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU
5 BEGIN YOUR DELIBERATIONS IN THE CASE BUT IT STAYS WITH THE
6 DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT
7 OF GUILT BASED ON EVIDENCE SATISFYING YOU OF THAT GUILT
8 BEYOND A REASONABLE DOUBT. THIS PRESUMPTION OF INNOCENCE
9 IS NOT A MERE LEGAL THEORY. IT IS NOT JUST A LEGAL
10 PHRASE. IT IS A SUBSTANTIAL CONSTITUTIONAL RIGHT TO WHICH
11 EVERY DEFENDANT IS ENTITLED UNLESS YOU, THE JURY, ARE
12 SATISFIED FROM THE EVIDENCE OF THE DEFENDANT'S GUILT
13 BEYOND A REASONABLE DOUBT.

14 NOW, WHAT IS A REASONABLE DOUBT IN THE LAW? IT'S
15 VERY SIMPLE. A REASONABLE DOUBT IS THE KIND OF DOUBT THAT
16 WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT. A
17 REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A
18 REASONABLE PERSON TO HESITATE TO ACT. I REMIND YOU ONCE
19 AGAIN THAT DURING THIS TRIAL YOU AND I HAVE HAD CERTAIN
20 DUTIES TO PERFORM. AS THE TRIAL JUDGE IT'S BEEN MY
21 RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THE CASE AND
22 TO RULE ON THE ADMISSIBILITY OF EVIDENCE. AS I TOLD YOU
23 AT THE FIRST OF THE CASE MOST OF THE EVIDENCE WOULD BE
24 ADMITTED AND I THINK THAT WAS THE CASE HERE. YOU CAN ONLY
25 CONSIDER THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS

1 WITNESS STAND AND THE ONE STIPULATION OF COUNSEL ABOUT THE
2 AMOUNT OF THE COCAINE.

3 I ALSO HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW
4 IN THE CASE, AND AS I TOLD YOU EARLIER I AM THE SOLE JUDGE
5 OF THE LAW IN THIS CASE, MY POSITION IS, AND IT IS YOUR
6 DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS I NOW CHARGE
7 IT TO YOU. ONCE AGAIN, IF YOU HAVE SOME IDEA AS TO WHAT
8 THE LAW OUGHT TO BE AND WHAT THE LAW SHOULD BE AND IT DOES
9 NOT AGREE WITH WHAT I TELL YOU, UNDER YOUR OATH YOU MUST
10 SET THAT PERSONAL OPINION ASIDE AND ACCEPT THE LAW AS I
11 NOW STATE IT TO YOU.

12 AS EQUALLY AS STRONG AS I AM THE JUDGE OF THE LAW IN
13 THE CASE YOU ARE THE JUDGES OF THE FACTS IN THIS CASE.
14 SO, IF AT ANY TIME DURING THE TRIAL OF THE CASE I MADE ANY
15 COMMENT THAT YOU THOUGHT I MAY HAVE AN OPINION ABOUT THE
16 FACTS OR IF I MADE A FACIAL EXPRESSION OR ANYTHING ELSE,
17 PLEASE DISREGARD THAT. THE LAW DOES NOT ALLOW ME TO HAVE
18 ANY OPINION WHATSOEVER ABOUT THE FACTS. THAT IS YOUR
19 PROVINCE. IF I HAVE DONE ANYTHING THAT YOU THINK THAT I
20 MAY HAVE HAD SOME OPINION ABOUT THE FACTS, PLEASE
21 DISREGARD THAT. I CAN'T TELL YOU WHAT THE FACTS ARE. YOU
22 CAN'T TELL ME WHAT THE LAW IS. SO, WE HAVE TO RESPECT
23 EACH OTHER'S POSITION IN THIS CASE.

24 NOW, IN MOST CASES THERE ARE TWO TYPES OF EVIDENCE
25 WHICH ARE GENERALLY PRESENTED DURING A TRIAL. ONE IS

1 CALLED DIRECT EVIDENCE AND THE OTHER IS CALLED
2 CIRCUMSTANTIAL EVIDENCE. DIRECT EVIDENCE IS THE TESTIMONY
3 OF THE PERSON WHO ASSERTS OR CLAIMS TO HAVE ACTUAL
4 KNOWLEDGE OF A FACT, SUCH AS AN EYE WITNESS. WE OFTEN
5 GIVE THE EXAMPLE THAT IF YOU GO OUTSIDE AND SEE IT RAINING
6 AND YOU GET WET, YOU COME IN AND TESTIFY, THAT'S DIRECT
7 EVIDENCE THAT YOU SAW IT RAINING.

8 THE OTHER EVIDENCE IS WHAT WE CALL CIRCUMSTANTIAL
9 EVIDENCE. THAT IS A PROOF OF A CHAIN OF FACTS AND
10 CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. WE GIVE
11 THIS EXAMPLE THAT IF YOU GO OUTSIDE AND IT'S CLOUDY AND
12 YOU COME BACK IN AND STICK AROUND A LITTLE WHILE AND THEN
13 GO BACK OUTSIDE AND YOU SEE MUD PUDDLES EVERYWHERE YOU CAN
14 ASSUME THAT IT'S RAINED. YOU GATHER THE FACT THAT IT
15 RAINED FROM THE CIRCUMSTANCES OF THE CLOUDS AND MUD
16 PUDDLES, BUT YOU DIDN'T ACTUALLY SEE IT RAIN.

17 WHEN I SAY THAT THERE ARE TWO TYPES OF EVIDENCE THE
18 LAW MAKES NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE
19 GIVEN EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE, NOR IS ANY
20 GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL
21 EVIDENCE THAN THAT OF DIRECT EVIDENCE. YOU SHOULD WEIGH
22 ALL OF THE EVIDENCE IN THE CASE AND AFTER WEIGHING ALL OF
23 THE EVIDENCE IF YOU ARE NOT CONVINCED OF THE GUILT OF THE
24 DEFENDANT BEYOND A REASONABLE DOUBT THEN YOU MUST FIND HIM
25 NOT GUILTY.

1 NOW, AS PART OF YOUR JOB BEING THE FACT-FINDERS IN
2 THE CASE THAT MEANS THAT YOU MUST NECESSARILY JUDGE AND
3 DETERMINE THE CREDIBILITY OF THE WITNESSES WHO HAVE
4 TESTIFIED IN THIS CASE. CREDIBILITY SIMPLY MEANS
5 BELIEVABILITY. IT BECOMES YOUR DUTY AS JURORS TO ANALYZE
6 AND EVALUATE THE EVIDENCE TO DETERMINE WHICH EVIDENCE
7 CONVINCES YOU OF ITS TRUTH. IN DETERMINING THE
8 BELIEVABILITY OR CREDIBILITY OF WITNESSES WHO HAVE
9 TESTIFIED IN THIS CASE YOU HAVE THE RIGHT TO BELIEVE ONE
10 WITNESS OR SEVERAL WITNESSES OR SEVERAL WITNESSES OVER ONE
11 WITNESS. YOU CAN BELIEVE PART OF THE TESTIMONY OF A
12 WITNESS AND REJECT THE REMAINING PART OF THE TESTIMONY OF
13 THAT SAME WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A
14 WITNESS IN ITS ENTIRETY OR YOU MAY REJECT THE TESTIMONY OF
15 A WITNESS IN ITS ENTIRETY. YOU MAY CONSIDER WHETHER ANY
16 WITNESS HAS EXHIBITED TO YOU ANY INTEREST, BIAS,
17 PREJUDICE, OR OTHER MOTIVE IN THE CASE. YOU MAY ALSO
18 CONSIDER HOW THE WITNESS APPEARED AND THE MANNER IN WHICH
19 HE TESTIFIED WHILE ON THE WITNESS STAND.

20 IN THIS CASE YOU HEARD EVIDENCE THAT THE DEFENDANT
21 WAS CONVICTED OF A CRIME OTHER THAN THE ONE FOR WHICH THE
22 DEFENDANT IS NOW ON TRIAL FOR. THIS EVIDENCE MAY BE
23 CONSIDERED BY YOU IF YOU CONCLUDE IT IS TRUE ONLY IN
24 DECIDING WHETHER THE DEFENDANT'S TESTIMONY IS BELIEVABLE
25 AND FOR NO OTHER PURPOSE. YOU MUST NOT CONSIDER THE

(JURY CHARGE)

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1 DEFENDANT'S PRIOR RECORD AS ANY EVIDENCE OF THE
2 DEFENDANT'S GUILT ON THE TWO INDICTMENTS WE'RE TRYING HERE
3 TODAY.

4 NOW, MADAM FORELADY, LADIES AND GENTLEMEN, WHAT I
5 HAVE JUST TOLD YOU IS PRETTY MUCH GENERAL LAW THAT I
6 CHARGE ALL OVER THE STATE WHEN WE TRY CRIMINAL CASES. IT
7 APPLIES TO 99.9 OF ALL OF THE CRIMINAL CASES THAT WE TRY.
8 IT IS GENERAL CONSTITUTIONAL LAW THAT EVERY CASE IS
9 DEPENDENT UPON. NOW LET'S TURN AWAY FROM THAT GENERAL LAW
10 AND LET'S TALK ABOUT THE TWO INDICTMENTS IN THIS CASE.
11 DON'T PLACE ANY EMPHASIS ON THE ORDER IN WHICH I DO THEM.
12 I'LL JUST TALK, FIRST OF ALL, ABOUT TRAFFICKING IN
13 COCAINE.

14 NOW, THIS IS NOT A VERY DIFFICULT CONCEPT. LET ME
15 EXPLAIN IT TO YOU. THE DEFENDANT IS CHARGED WITH
16 TRAFFICKING IN COCAINE. IN ORDER TO PROVE THAT THE STATE
17 MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT
18 WAS KNOWINGLY IN ACTUAL OR CONSTRUCTIVE POSSESSION OR
19 KNOWINGLY ATTEMPTED TO BECOME IN ACTUAL OR CONSTRUCTIVE
20 POSSESSION OF COCAINE -- THAT HE WAS IN ACTUAL OR KNOWING
21 POSSESSION OF COCAINE, ACTUAL AND CONSTRUCTIVE POSSESSION
22 OF COCAINE. IN ADDITION TO THAT THE STATE MUST PROVE
23 BEYOND A REASONABLE DOUBT THAT THE AMOUNT OF THE COCAINE
24 WAS 10 GRAMS OR MORE -- 10 GRAMS OR MORE. IT MUST BE
25 PROVEN BEYOND A REASONABLE DOUBT.

(JURY CHARGE)

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1 NOW, TO PROVE POSSESSION THE STATE MUST PROVE BEYOND
2 A REASONABLE DOUBT THAT THE DEFENDANT HAD BOTH THE POWER
3 AND THE INTENT TO CONTROL THE DISPOSITION OR USE OF THE
4 COCAINE. THAT POSSESSION MAY BE ONE OF TWO WAYS. THE LAW
5 SAYS IT MAY BE EITHER ACTUAL OR CONSTRUCTIVE POSSESSION.
6 ACTUAL POSSESSION MEANS THAT THE COCAINE WAS IN THE ACTUAL
7 PHYSICAL CUSTODY OF THE DEFENDANT. THAT'S ACTUAL
8 POSSESSION. THE OTHER TYPE OF POSSESSION IS WHAT WE CALL
9 IN THE LAW CONSTRUCTIVE POSSESSION. THAT MEANS THAT THE
10 DEFENDANT HAD DOMINION AND CONTROL OR THE RIGHT TO
11 EXERCISE DOMINION OR CONTROL OVER EITHER THE COCAINE
12 ITSELF OR THE PROPERTY ON WHICH THE COCAINE WAS FOUND.

13 NOW, MERE PRESENCE AT THE SCENE WHERE THE DRUGS WERE
14 FOUND IS NOT ENOUGH TO PROVE POSSESSION. ACTUAL KNOWLEDGE
15 OF THE PRESENCE OF THE COCAINE IS STRONG EVIDENCE OF THE
16 DEFENDANT'S INTENT TO CONTROL ITS DISPOSITION OR USE. THE
17 DEFENDANT'S KNOWLEDGE AND POSSESSION MAY BE INFERRED WHEN
18 A SUBSTANCE IS FOUND ON THE PROPERTY UNDER THE DEFENDANT'S
19 CONTROL. HOWEVER, THIS INFERENCE IS SIMPLY AN EVIDENTIARY
20 FACT TO BE TAKEN INTO CONSIDERATION BY YOU ALONG WITH THE
21 OTHER EVIDENCE IN THE CASE AND TO BE GIVEN THE WEIGHT THAT
22 YOU DECIDE IT SHOULD HAVE.

23 SO, BASICALLY, UNDER TRAFFICKING THE STATE MUST PROVE
24 BEYOND A REASONABLE DOUBT THAT THE DEFENDANT HAD ACTUAL OR
25 CONSTRUCTIVE POSSESSION OF COCAINE AND MUST FURTHER PROVE

1 BEYOND A REASONABLE DOUBT THAT THE AMOUNT OF THE COCAINE
2 WAS 10 GRAMS OR MORE AND THAT I'VE TOLD YOU WHAT
3 POSSESSION IS BOTH ACTUAL AND CONSTRUCTIVE. ALL OF THAT
4 MUST BE PROVEN TO YOU BEYOND A REASONABLE DOUBT BY THE
5 STATE.

6 THE SECOND INDICTMENT IS POSSESSION WITH INTENT TO
7 DISTRIBUTE COCAINE WITHIN THE PROXIMITY OF A PARK. THE
8 DEFENDANT IS CHARGED WITH POSSESSION WITH INTENT TO
9 DISTRIBUTE COCAINE WITHIN PROXIMITY OF A PARK. IN ORDER
10 TO PROVE THIS THE STATE MUST PROVE BEYOND A REASONABLE
11 DOUBT THAT THE DEFENDANT, ONCE AGAIN, POSSESSED COCAINE
12 WITH THE INTENT TO DISTRIBUTE IT. TO PROVE POSSESSION THE
13 STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE
14 DEFENDANT HAD BOTH THE POWER AND THE INTENT TO CONTROL THE
15 DISPOSITION OR USE OF THE COCAINE.

16 ONCE AGAIN, POSSESSION MAY BE EITHER ACTUAL OR
17 CONSTRUCTIVE. ACTUAL IS DEFINED THE SAME WAY IN THIS
18 STATUTE WHICH SIMPLY MEANS THAT THE DEFENDANT WAS IN
19 ACTUAL PHYSICAL CUSTODY OF THE COCAINE AND CONSTRUCTIVE
20 POSSESSION IS ALSO THE SAME THING WHICH AGAIN MEANS THAT
21 THE DEFENDANT HAD DOMINION AND CONTROL OR THE RIGHT TO
22 EXERCISE DOMINION OR CONTROL OVER EITHER THE COCAINE
23 ITSELF OR THE PROPERTY ON WHICH THE COCAINE WAS FOUND.

24 ONCE AGAIN, MERE PRESENCE AT THE SCENE WHERE THE
25 DRUGS WERE FOUND IS NOT ENOUGH TO PROVE POSSESSION.

(JURY CHARGE)

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1 ACTUAL KNOWLEDGE OF THE PRESENCE OF THE COCAINE IS STRONG
2 EVIDENCE OF THE DEFENDANT'S INTENT TO CONTROL ITS
3 DISPOSITION OR USE. THE DEFENDANT'S KNOWLEDGE AND
4 POSSESSION MAY BE INFERRED WHEN A SUBSTANCE IS FOUND ON
5 THE PROPERTY UNDER THE DEFENDANT'S CONTROL. ONCE AGAIN,
6 THIS INFERENCE IS SIMPLY AN EVIDENTIARY FACT TO BE TAKEN
7 INTO CONSIDERATION BY YOU ALONG WITH THE OTHER EVIDENCE IN
8 THE CASE AND TO BE GIVEN THE WEIGHT YOU DECIDE IT SHOULD
9 HAVE. TWO OR MORE PERSONS MAY HAVE JOINT POSSESSION OF A
10 DRUG.

11 IN ADDITION TO THE POSSESSION WHICH WE TALKED ABOUT
12 WITH INTENT TO DISTRIBUTE, UNDER THIS STATUTE THE STATE
13 MUST ALSO PROVE BEYOND A REASONABLE DOUBT THAT THE
14 DEFENDANT INTENDED TO DISTRIBUTE THE COCAINE. DISTRIBUTE
15 MEANS TO DELIVER OTHER THAN BY ADMINISTERING OR DISPENSING
16 A DRUG. IT SIMPLY MEANS TO DELIVER A DRUG. INTENT MAY BE
17 SHOWN BY ACTS AND CONDUCTS OF THE DEFENDANT AND OTHER
18 CIRCUMSTANCES FOR WHICH YOU MAY NATURALLY AND REASONABLY
19 INFER INTENT.

20 IN DETERMINING WHETHER THE DEFENDANT HAD THE INTENT
21 TO DISTRIBUTE THE COCAINE YOU MAY CONSIDER THE
22 CIRCUMSTANCES SURROUNDING THE DEFENDANT'S ALLEGED
23 POSSESSION. YOU MAY CONSIDER THE AMOUNT OF THE ALLEGED
24 SUBSTANCE TO HAVE BEEN POSSESSED, THE AMOUNT IN WHICH IT
25 WAS ALLEGEDLY POSSESSED, THE PLACE WHERE IT WAS ALLEGELY

(JURY CHARGE)

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1 POSSESSED, AND OTHER FACTORS WHICH YOU CONSIDER TO BE
2 IMPORTANT. YOU MUST FIND THE DEFENDANT DID NOT INTEND TO
3 HAVE THE COCAINE SOLELY FOR HIS OWN USE.

4 POSSESSION OF 10 GRAINS -- THIS IS THE GRAINS STATUTE
5 AS OPPOSED TO GRAMS -- POSSESSION OF 10 GRAINS OF COCAINE
6 CREATES AN INFERENCE THAT THE DEFENDANT POSSESSED THE
7 COCAINE WITH INTENT TO DISTRIBUTE IT. THIS POSSESSION OR
8 THIS INFERENCE OF 10 GRAINS OR MORE DOES NOT RELIEVE THE
9 STATE FROM PROVING BEYOND A REASONABLE DOUBT THAT THIS
10 DEFENDANT HAD THE INTENT TO DISTRIBUTE. ONE AGAIN, IT IS
11 SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION
12 BY YOU ALONG WITH THE OTHER EVIDENCE AND TO BE GIVEN THE
13 WEIGHT YOU DECIDE IT SHOULD HAVE.

14 I FURTHER CHARGE YOU THAT THERE ARE 15.43 -- A STRING
15 OF NUMBERS. I CHARGE YOU ARE THERE ARE 15.43 GRAINS PER
16 ONE GRAM. SO, IN THE TRAFFICKING STATUTE YOU TALK ABOUT
17 GRAMS -- 10 GRAMS OR MORE -- AND IN THE INTENT TO
18 DISTRIBUTE -- POSSESSION WITH INTENT TO DISTRIBUTE, IT
19 TALKS ABOUT GRAINS. IT TALKS ABOUT 10 GRAINS AND ONE GRAM
20 EQUALS 15 GRAINS.

21 NOW, ALSO, UNDER THIS STATUTE WITH POSSESSION WITH
22 INTENT TO DISTRIBUTE COCAINE WITHIN PROXIMITY OF A PARK,
23 FINALLY, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT
24 THAT THE DEFENDANT UNLAWFULLY POSSESSED WITH INTENT TO
25 DISTRIBUTE COCAINE WHILE IN, ON, OR WITHIN ONE-HALF MILE

(JURY CHARGE)

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1 OF THE GROUNDS OF A PUBLIC PLAYGROUND OR PARK. THAT'S THE
2 LAST ELEMENT OF THAT.

3 NOW, MADAM FORELADY, LADIES AND GENTLEMEN, AS I TOLD
4 YOU YOU DECIDE EACH INDICTMENT SEPARATELY FROM THE OTHER.
5 SO, YOU NEED TO GO BACK WHEN YOU START YOUR DELIBERATIONS
6 AND TALK ABOUT EITHER THE TRAFFICKING OR THE POSSESSION
7 WITH INTENT TO DISTRIBUTE WITHIN PROXIMITY OF A PARK. YOU
8 DO THOSE SEPARATELY. YOU GOT TO DO ONE AND THEN THE
9 OTHER. ON EACH ONE OF THEM YOUR VERDICT HAS TO BE
10 UNANIMOUS. OKAY? ALL 12 OF YOU MUST AGREE.

11 I HAVE PREPARED A VERDICT FORM. IT IS FAIRLY SIMPLE.
12 NUMBER ONE, DEALING WITH TRAFFICKING IN COCAINE, IT IS
13 SIMPLY WE FIND HIM NOT GUILTY OR GUILTY. THAT HAS TO BE A
14 UNANIMOUS DECISION. ONCE Y'ALL REACH THAT DECISION YOU
15 CHECK WHICH ONE IS APPLICABLE AND SIGN YOUR NAME AND DATE
16 IT TODAY WHICH IS THE 20-WHATEVER -- 25TH. SEVEN MONTHS
17 FROM CHRISTMAS. ON THE OTHER ONE, POSSESSION WITH INTENT
18 TO DISTRIBUTE COCAINE WITHIN A PROXIMITY OF A PARK, IT IS
19 THE SAME EXERCISE -- EITHER NOT GUILTY OR GUILTY,
20 WHICHEVER ONE Y'ALL ALL 12 UNANIMOUSLY AGREE UPON. YOU DO
21 THOSE INDEPENDENT OF EACH OTHER. YOU DO ONE AND THEN THE
22 OTHER. WHEN YOU DO THE OTHER YOU DON'T CONSIDER -- YOU
23 CONSIDER THEM SEPARATELY. OKAY?

24 NOW, I AM GOING TO ASK YOU IN JUST A SECOND TO RETURN
25 TO YOUR JURY ROOM. I AM GOING TO ASK YOU NOT YET TO START

1 THE DELIBERATION BECAUSE I HAVE TO ASK THE LAWYERS IF I
2 HAVE LEFT ANYTHING OUT OR I NEED TO CHANGE ANYTHING, AND
3 THEN AFTER THAT WE HAVE TO GET ALL OF THE EVIDENCE
4 TOGETHER. THAT TAKES ABOUT FIVE MINUTES OR LESS. ONCE I
5 DO THAT THEN I WILL SEND THE BAILIFF INTO THE JURY ROOM
6 WITH THE TWO VERDICT FORMS AND THE EXHIBITS AND THEN YOU
7 CAN START YOUR DELIBERATIONS.

8 DURING YOUR DELIBERATIONS IF YOU HAVE ANY QUESTIONS
9 WHATSOEVER, WRITE IT OUT ON A PIECE OF PAPER AND KNOCK ON
10 THE DOOR AND GIVE IT TO THE BAILIFF. SHE'LL SEND IT OUT
11 TO ME. IF I CAN ANSWER IT, I WILL. IF I CAN'T, I'LL TELL
12 TELL YOU WHY I CAN'T. IT JUST DEPENDS ON WHAT THE
13 QUESTION IS.

14 AFTER YOU HAVE DELIBERATED BOTH INDICTMENTS -- BOTH
15 QUESTIONS -- AND YOU HAVE REACHED A DECISION ON BOTH, JUST
16 KNOCK ON THE DOOR AND TELL THE BAILIFF AND THEY WILL SEND
17 IT OUT TO ME AND I WILL RECEIVE Y'ALL BACK AND WE'LL TAKE
18 THE VERDICT. DO I HAVE ANY SMOKERS? IF YOU GET IN THERE
19 AND YOU HAVE TO HAVE A CIGARETTE DURING THE
20 DELIBERATION -- JUST, SERIOUSLY, JUST KNOCK ON THE DOOR
21 AND THEY'LL LET ME KNOW IF YOU HAVE TO GO DOWN AND TAKE A
22 SMOKE. I WOULD ASK THAT Y'ALL STOP YOUR DELIBERATIONS
23 WHILE HE'S GONE OUT OF THE ROOM FOR THE FEW MINUTES.
24 LET'S JUST SEE HOW WE GO. LIKE I SAID, IF YOU HAVE ANY
25 QUESTIONS KNOCK ON THE DOOR.

1 SO, AT THIS TIME I AM GOING TO ASK MY 12 JURORS TO GO
2 WITH MS. NELL.

3 MS. NELL, YOU PUT THE OTHER TWO ALTERNATES IN THE
4 OTHER JURY ROOM. I'LL BE WITH Y'ALL IN JUST A SECOND.

5 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 11:03.)

6 THE COURT: ALL RIGHT. ANY OBJECTIONS, REQUESTED
7 ADDITIONS, OR DELETIONS TO MY CHARGE ON BEHALF OF THE
8 STATE?

9 MR. GIBBONS: NO, SIR.

10 THE COURT: MISS ALVES?

11 MISS ALVES: YES, SIR. JUDGE, I DISAGREE WITH THE
12 FACT THAT THEY CAN CONSIDER EACH ONE SEPARATELY. I THINK
13 THAT IF THE JURY WERE TO FIND MR. PRATHER NOT GUILTY OF
14 TRAFFICKING, I DON'T AGREE THAT THEY COULD THEN FIND HIM
15 GUILTY OF POSSESSION WITH INTENT TO DISTRIBUTE WITHIN
16 PROXIMITY OF A PARK BECAUSE, JUDGE, THE TRAFFICKING IS
17 JUST THE POSSESSION OF MORE THAN 10 GRAMS. EVEN THOUGH
18 IT'S IN GRAMS AND GRAINS, THERE IS STILL THE SAME AMOUNT
19 OF COCAINE PRESENT AND I THINK IF THEY WERE TO FIND HIM
20 NOT GUILTY OF TRAFFICKING THEN I DON'T AGREE THAT THEY
21 WOULD BE ABLE TO STILL CONSIDER THE HALF-MILE CHARGE
22 BECAUSE THEY WOULD HAVE FOUND HIM NOT GUILTY OF THE ACTUAL
23 POSSESSION OF THE DRUGS.

24 THE COURT: INTERESTING ARGUMENT.

25 MR. GIBBONS: THE AMOUNT IS FOR THE JURY TO DECIDE,

1 JUDGE. THEY CAN FIND UNDER 10 GRAMS IF THEY WANTED TO.
2 IT IS POSSIBLE.

3 MISS ALVES: BUT, JUDGE --

4 THE COURT: ALL RIGHT. YOUR EXCEPTION IS NOTED.
5 COME LOOK AT THE VERDICT FORMS, PLEASE, WITH YOUR
6 EXCEPTION BEING NOTED AND IF THEY COME BACK WITH A NOT
7 GUILTY ON TRAFFICKING AND A GUILTY ON POSSESSION WITH
8 INTENT TO DISTRIBUTE WITHIN PROXIMITY THEN I WILL DEAL
9 WITH IT AT THAT TIME.

10 (WHEREUPON, THE ATTORNEYS GATHERED THE EXHIBITS.)

11 THE COURT: ALL RIGHT. MR. WHITTLE, TELL THEM THEY
12 CAN COMMENCE THEIR DELIBERATION.

13 (WHEREUPON, THE JURY BEGINS TO DELIBERATE AT 11:18.)

14 THE COURT: LET THE RECORD REFLECT THAT WE HAD A
15 SERIES OF FIVE QUESTIONS THAT WERE ASKED. I DISCUSSED
16 THOSE IN CHAMBERS WITH DEFENSE COUNSEL AND THE SOLICITOR'S
17 OFFICE. THEY WANTED A COPY OF THE INDICTMENTS WHICH I
18 SENT BACK TO THE JURY ROOM. THEY ALSO WANTED TO SEE THE
19 TESTIMONY OF TWO WITNESSES. I TOLD THEM THAT THEY
20 COULDN'T SEE IT, BUT IF I THAT THEY WANTED TO HEAR IT I
21 WOULD BE GLAD TO DO SO. THEY'VE ADVISED ME THEY WISH TO
22 HAVE THOSE TWO WITNESSES' TESTIMONY REPLAYED. THEY ALSO
23 ASKED ABOUT THE STATUTES BEING RECHARGED. THEY HAVE TOLD
24 ME THEY DO NOT WANT THE STATUTES RECHARGED. THEY ASKED A
25 QUESTION ABOUT WHY WAS AN ADMISSION OF THE GUN AND

1 MARIJUANA WHEN THEY WERE NOT CHARGED WITH THAT. I JUST
2 SIMPLY TOLD THEM THAT THE COURT COULDN'T COMMENT ON THAT
3 QUESTION, AND THEN THEY ASKED ME ABOUT LUNCH AND I TOLD
4 THEM THAT IT TOOK APPROXIMATELY AN HOUR AND A HALF TO
5 ORDER THE LUNCH AND IF YOU THINK YOU NEEDED THIS MUCH MORE
6 TIME ADVISE AND I GET A NOTE BACK THAT SAYS HALF WANTS
7 LUNCH IN AND THE OTHER HALF WANTS TO GO TO LUNCH.

8 HERE IS WHAT I INTEND TO DO. I AM GOING TO CALL THE
9 JURY BACK IN NOW, REPLAY THE TESTIMONY OF THOSE TWO SHORT
10 WITNESSES. I AM GOING TO INFORM THE JURY OF MY PERSONAL
11 PROBLEM TODAY WHICH I HAVE INFORMED BOTH THE SOLICITOR AND
12 THE DEFENDANT'S OFFICE, I.E., MY WIFE'S AUNT PASSED
13 AWAY -- TODAY IS THURSDAY. SHE PASSED AWAY ON TUESDAY.
14 THE FUNERAL IS 4 O'CLOCK TODAY IN BARNWELL WHICH I HAVE
15 ABSOLUTELY GOT TO GO TO AND I WANT TO GO TO.

16 SO, I AM GOING TO TELL THE JURY MY PERSONAL PROBLEM.
17 I AM GOING TO STAY HERE UNTIL ABOUT 2 OR 2:15. IF THEY
18 HAVE NOT YET REACHED A VERDICT AT THAT TIME THEN I WILL
19 DISMISS THEM UNTIL IN THE MORNING. I WILL FURTHER TELL
20 THEM THAT INSTEAD OF ORDERING LUNCH -- WE GOT CRACKERS AND
21 COOKIES AND ALL THAT?

22 THE BAILIFF: NOT ENOUGH FOR THEM, BUT WE CAN GET
23 SOME.

24 THE COURT: HOW LONG DOES IT TAKE US TO GET LUNCH?
25 IF WE ORDERED IT NOW HOW LONG WOULD IT TAKE?

1 THE BAILIFF: IT IS DURING THEIR LUNCH PERIOD,
2 ALTHOUGH I COULD PROBABLY GUESTIMATE. IT WAS JUST ABOUT
3 ONE HOUR YESTERDAY; FIFTY MINUTES YESTERDAY.

4 THE COURT: CAN WE GET IT ANYWHERE QUICKER LIKE
5 HARDEES? IS THAT ANY QUICKER?

6 THE BAILIFF: YES, SIR. IF YOU WANTED TO ORDER
7 HAMBURGERS OR SOMETHING LIKE THAT.

8 THE COURT: I HAVE PERMISSION FROM THE TWO OF Y'ALL
9 TO LET THE BAILIFFS GO BACK AND TELL THEM THAT -- DO THEY
10 WANT TO ORDER HAMBURGERS FROM HARDEES OR SANDWICHES FROM
11 THE BOWERY. WHICHEVER ONE THEY WANT TO DO, LET'S GO AHEAD
12 AND GET THAT ORDER IN, OKAY? IS THAT AGREEABLE WITH
13 EVERYBODY?

14 MR. GIBBONS: YES, SIR.

15 MISS ALVES: YES, SIR.

16 THE COURT: WHY DON'T WE START ON THIS PLEA, AND ONCE
17 THEY GET THEIR LUNCH ORDER IN AND IF WE'RE RIGHT IN THE
18 MIDDLE OF IT OR TOWARDS THE END IT, WE'LL BREAK.

19 (WHEREUPON, COURT'S EXHIBIT NO. 5 WAS MARKED FOR
20 IDENTIFICATION ONLY.)

21 (WHEREUPON, A BREAK WAS TAKEN.)

22 (WHEREUPON, THE JURY ENTERED THE COURTROOM.)

23 THE COURT: MADAM FORELADY, LADIES AND GENTLEMEN,
24 I'VE GOT MY COURT REPORTER WHO IS GOING TO REPLAY THE
25 TESTIMONY OF THOSE TWO WITNESSES. I DON'T KNOW IF THERE

1 IS ANYTHING IN PARTICULAR THAT YOU'RE LOOKING FOR. SO,
2 WHAT I PROPOSE TO DO IS PLAY IT THROUGH ITS ENTIRETY BUT
3 IF YOU GET TO THE POINT WHERE YOU LEARN WHAT YOU WANTED TO
4 HEAR, JUST RAISE YOUR HAND AND WE'LL GO ON TO THE NEXT
5 ONE. I'M NOT SURE WHAT ALL YOU WANT TO HEAR. DO YOU WANT
6 TO HEAR IT IN ITS ENTIRETY?

7 THE FOREPERSON: NO, I DON'T THINK THEY WANT TO HEAR
8 IT -- WE WANT TO HEAR IT IN THE ENTIRETY. JUST THE
9 STATEMENTS BY INVESTIGATOR AGENT JONES.

10 THE COURT: I DON'T MEAN ALL THE TESTIMONY. JUST
11 AGENT JONES.

12 THE FOREPERSON: JONES, I GUESS, WHEN HE CAME INTO
13 THE TRAILER AND ALSO IS IT SAVELL -- SAVELL, WHEN HE CAME
14 IN --

15 THE COURT: OKAY.

16 THE FOREPERSON: -- OR WHEN HE STARTED TAKING NOTES.

17 THE COURT: WHEN YOU FEEL LIKE YOU'VE GOTTEN ENOUGH
18 OF EACH ONE OF THEM, RAISE YOUR HAND.

19 THE FOREPERSON: YES, SIR.

20 THE COURT: THAT'S NUMBER ONE. NUMBER TWO, WE'VE
21 ORDERED THE HAMBURGERS. I APOLOGIZE BECAUSE NORMALLY I
22 WOULD HAVE GIVEN YOU A BIG LUNCH. MY WIFE'S AUNT DIED AND
23 HER FUNERAL IS AT 4 O'CLOCK TODAY IN BARNWELL AND I'VE GOT
24 TO GO TO THAT. WE'RE GOING TO GO UNTIL ABOUT -- I DON'T
25 WANT TO RUSH YOU. WE'RE GOING TO GO UNTIL ABOUT 2:15. IF

1 YOU'VE MADE A DECISION BY THEN, FINE. IF YOU HAVE NOT, I
2 AM GOING TO LET YOU GO AND COME BACK TOMORROW. NORMALLY
3 WE WOULD GO ON, BUT I'VE JUST GOT A PERSONAL SITUATION
4 THAT I HAVE TO DEAL WITH. I HOPE Y'ALL UNDERSTAND THAT.
5 OKAY, MADAM COURT REPORTER.

6 (WHEREUPON, THE TESTIMONY WAS REPLAYED.)

7 THE COURT: MADAM COURT REPORTER, HOW ABOUT GO
8 THROUGH HIS QUALIFICATIONS AND JUST GO TO WHERE HE CAME
9 IN. THAT'S WHAT Y'ALL WANT?

10 THE JUROR: YES, SIR.

11 (WHEREUPON, THE TESTIMONY WAS RESTARTED.)

12 THE COURT: GO RIGHT TO WHERE HE CAME INTO THE PLACE.
13 THAT'S WHAT Y'ALL WANT? WHERE HE CAME IN?

14 THE COURT REPORTER: I THOUGHT THAT'S WHERE WE WERE.
15 SORRY. LET'S TRY IT AGAIN.

16 (WHEREUPON, THE TESTIMONY WAS RESTARTED.)

17 THE COURT: LISA, JUST MOVE ON SO WE CAN GET THROUGH
18 THIS SIDE BAR.

19 (WHEREUPON, THE TESTIMONY WAS RESTARTED.)

20 THE COURT: IS THAT ENOUGH? ALL RIGHT. LET'S GO TO
21 THE NEXT GUY.

22 (WHEREUPON, THE TAPE WAS STOPPED.)

23 THE COURT REPORTER: SAVELL.

24 THE COURT: YES, MA'AM. YOU JUST WANT WHERE HE CAME
25 IN AS WELL?

1 THE FOREPERSON: YES, SIR.

2 THE COURT: BAD NEWS FOR YOU. HARDEES WON'T GIVE THE
3 COUNTY CREDIT TO BUY HAMBURGERS. SO, I'VE ORDERED YOU
4 HAMBURGERS FROM THE BOWERY. THEY'RE PROBABLY BETTER
5 ANYWAY. MAYBE WE NEED TO PAY MORE TAXES. ALL RIGHT.
6 Y'ALL READY?

7 THE JUROR: YES, SIR.

8 (WHEREUPON, THE TESTIMONY WAS REPLAYED.)

9 THE COURT: TURN IT OFF A SECOND, LISA.

10 THE JUROR: SKIP OVER TO THE QUESTIONING.

11 THE COURT: YOU WANT HER QUESTIONS?

12 THE JUROR: YES, WHEN SHE QUESTIONS.

13 THE COURT: OKAY. GO FORWARD TO THE CROSS OF MISS
14 ALVES. MAYBE WE SHOULD'VE ORDERED DOMINOES PIZZA. COULD
15 YOU HAVE GOTTEN US CREDIT AT DOMINOES?

16 (WHEREUPON, THE TESTIMONY WAS RESTARTED.)

17 THE COURT: IS THAT IT? OKAY.

18 (WHEREUPON, THE TAPE WAS STOPPED.)

19 THE COURT: THANK YOU. OKAY. Y'ALL GO BACK. IF YOU
20 NEED ANYTHING ELSE. LET ME KNOW.

21 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 12:48.

22 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

23 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT 2:09.)

24 THE COURT: SO, WHAT WE NEED TO DO IS COME BACK
25 TOMORROW?

1 THE FOREPERSON: YES, SIR.

2 THE COURT: I APOLOGIZE. IT IS SOMETHING THAT'S
3 BEYOND MY CONTROL. IT IS MY WIFE'S DAD'S OLDEST SISTER.
4 HER FATHER IS DECEASED, TOO, AND, SO, IT'S A VERY CLOSE
5 FAMILY. THE FUNERAL IS 4 O'CLOCK IN BARNWELL. I HOPE
6 THAT I DON'T GET PULLED GOING TO BARNWELL LIKE MY LAWCLERK
7 GOT PULLED COMING OVER HERE THE OTHER MORNING WITH ME
8 RIDING IN THE CAR WITH HER. THAT'S TERRIBLE, ISN'T IT?
9 SHE TOLD ME NOT TO TELL ANYBODY AND I REALLY HAVEN'T TOLD
10 ANYBODY UNTIL I TOLD Y'ALL.

11 WHAT TIME WOULD SUIT Y'ALL IN THE MORNING? WE CAN DO
12 9:30, 10?

13 THE JUROR: 9:30 WOULD BE FINE.

14 THE COURT: 9:35?

15 THE JUROR: 9:30 WOULD BE FINE. DO WE HAVE A
16 CONSENSUS? 9:30? ALL RIGHT. WE'LL START -- Y'ALL REPORT
17 BACK AT 9:30 IN THE MORNING. I'LL HAVE YOU SOME DOUGHNUTS
18 AND BISCUITS. DID Y'ALL GET YOUR HAMBURGERS?

19 THE FOREPERSON: YES, SIR.

20 THE COURT: BETTER THAN HARDEES; RIGHT?

21 THE JUROR: OH, YEA.

22 THE COURT: BETTER THAN DOMINOES? I WANT TO THANK
23 YOU FOR YOUR EFFORT AND I WILL SEE Y'ALL IN THE MORNING AT
24 9:30 AND I WOULD ASK THAT TONIGHT THAT YOU NOT DISCUSS THE
25 CASE WITH ANYONE. DON'T LET ANYBODY DISCUSS IT WITH

1 Y'ALL. JUST LEAVE IT UP HERE, AND WE'LL START BACK IN THE
2 MORNING. WHEN Y'ALL GET A FULL 12 OF YOU IN THE MORNING
3 THEN YOU CAN START BACK WHILE YOU'RE SHARING YOUR COFFEE
4 AND DOUGHNUTS OR WHATEVER, BUT UNTIL YOU GET A FULL HOUSE,
5 MA'AM, DON'T START.

6 THE FOREPERSON: YES, SIR.

7 THE COURT: TALK ABOUT THE NEWS UNTIL EVERYBODY GETS
8 HERE AND TRY TO BE HERE AT 9:30 SO WE CAN MOVE ALONG.
9 I'LL BE HERE AT THE SAME TIME. WE'VE GOT A GOOD BIT OF
10 WORK STILL TO DO TOMORROW. IT IS A DIFFERENT KIND OF
11 WORK -- PROBATION VIOLATIONS TOMORROW AND SOME BOND
12 HEARINGS AND THINGS OF THAT NATURE. SO, I'LL BE RIGHT
13 HERE WITH Y'ALL, AND I APOLOGIZE ONCE AGAIN. IT IS JUST A
14 MATTER THAT I CANNOT HELP. SO, Y'ALL HAVE A WONDERFUL
15 AFTERNOON, AND I'LL SEE YOU IN THE MORNING.

16 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 2:12.)

17 THE COURT: HE IS IN CUSTODY.

18 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED FOR THE
19 DAY AND WERE RECONVENED ON MAY 26, 2006 AS FOLLOWS:)

20 (WHEREUPON, THE JURY BEGINS DELIBERATING AT 10:11.)

21 THE COURT: ALL RIGHT. HOW ABOUT GET MR. PRATHER OUT
22 HERE. THE STATE IS READY TO RECEIVE THE VERDICT?

23 MR. GIBBONS: THE STATE IS READY, YOUR HONOR.

24 THE COURT: MISS ALVES?

25 MISS ALVES: YES, SIR.

1 THE COURT: ALL RIGHT. BRING THE JURY IN, PLEASE.

2 (WHEREUPON, THE JURY ENTERED THE COURTROOM AT 10:38.)

3 THE COURT: MA'AM, HAVE Y'ALL REACHED A VERDICT?

4 THE FOREPERSON: YES, SIR.

5 THE COURT: IF YOU WOULD HAND IT TO ME, PLEASE. ALL

6 RIGHT. PLEASE HAVE THE DEFENDANT STAND WHEN WE PUBLISH

7 THE VERDICT.

8 THE CLERK: YOUR HONOR, WE HAVE STATE OF SOUTH

9 CAROLINA, COUNTY OF AIKEN, VERSUS JAMES DEMONT PRATHER,

10 CASE NUMBER 2006-GS-02-256. WE, THE JURY, FIND THE

11 DEFENDANT IN THIS CASE JAMES DEMONT PRATHER TO BE GUILTY

12 OF POSSESSION WITH INTENT TO DISTRIBUTE COCAINE WITHIN A

13 PROXIMITY OF A PARK, SIGNED BY FOREPERSON MELZA DAVIS, MAY

14 26, 2006.

15 YOUR HONOR, WE HAVE STATE OF SOUTH CAROLINA, COUNTY

16 OF AIKEN, VERSUS JAMES DEMONT PRATHER, CASE NUMBER

17 2006-GS-02-257, WE, THE JURY, FIND THE DEFENDANT IN THIS

18 CASE JAMES DEMONT PRATHER TO BE GUILTY OF TRAFFICKING IN

19 COCAINE, SIGNED BY FOREPERSON MELZA DAVIS, MAY 26, 2006.

20 FORELADY, LADIES AND GENTLEMEN OF THE JURY, IS THIS

21 YOUR VERDICT? PLEASE INDICATE BY RAISING YOUR HAND. ALL

22 HANDS ARE RAISED.

23 THE COURT: THANK YOU. ANYTHING FURTHER FROM THE

24 FROM THE JURY ON BEHALF OF THE STATE?

25 MR. GIBBONS: NO, YOUR HONOR.

1 THE COURT: MISS ALVES?

2 MISS ALVES: I'D REQUEST POLLING.

3 THE COURT: WHAT THAT MEANS IS, LADIES AND GENTLEMEN,
4 I JUST NEED TO ASK YOU A QUESTION. AS YOUR NAME IS CALLED
5 I WILL ASK YOU IS THIS YOUR VERDICT AND IS IT STILL YOUR
6 VERDICT, AND IF IT IS PLEASE SAY I DO. SO, I AM GOING TO
7 CALL YOUR NAME. JUROR NUMBER 10, MS. BECKER, BRENDA
8 BECKER, IS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

9 THE JUROR: YES, SIR.

10 THE COURT: THANK YOU, MS. BECKER. JUROR NUMBER 171,
11 THOMAS YOUNGBLOOD. MR. YOUNGBLOOD, IS THIS YOUR VERDICT
12 AND IS IT STILL YOUR VERDICT?

13 THE JUROR: YES, SIR.

14 THE COURT: THANK YOU, MR. YOUNGBLOOD. MY
15 FOREPERSON, MS. MELZA DAVIS, 155?

16 THE FOREPERSON: YES, SIR.

17 THE COURT: IS THIS YOUR VERDICT AND IS IT STILL YOUR
18 VERDICT?

19 THE FOREPERSON: YES, SIR.

20 THE COURT: THANK YOU, MA'AM. JUROR NUMBER 41,
21 BEVERLY DAVIS, MS. DAVIS, IS THIS YOUR VERDICT AND IS IT
22 STILL YOUR VERDICT?

23 THE JUROR: YES, IT WAS.

24 THE COURT: THANK YOU, MA'AM. JUROR NUMBER 84, JACOB
25 MATHIS, MR. MATHIS, IS THIS YOUR VERDICT AND IS IT STILL

1 YOUR VERDICT?

2 THE JUROR: YES, SIR.

3 THE COURT: THANK YOU, MR. MATHIS. JUROR NUMBER 60,
4 KAYE GMITTER.

5 THE JUROR: GMITTER.

6 THE COURT: GMITTER. HARD WORD. IS THIS YOUR
7 VERDICT, MA'AM, AND IS IT STILL YOUR VERDICT?

8 THE JUROR: YES, SIR.

9 THE COURT: THANK YOU, MS. GMITTER. JUROR NUMBER 66,
10 MR. ROBERT HOLMES. MR. HOLMES, IS THIS YOUR VERDICT AND
11 IS IT STILL YOUR VERDICT?

12 THE JUROR: YES, IT IS.

13 THE COURT: THANK YOU, SIR. JUROR NUMBER 145,
14 DERRICK WILLIAMS. MR. WILLIAMS, IS THIS YOUR VERDICT AND
15 IS IT STILL YOUR VERDICT?

16 THE JUROR: YES, SIR.

17 THE COURT: THANK YOU, MR. WILLIAMS. JUROR NUMBER
18 63, MITCHELL GRUNZEL; IS THAT RIGHT?

19 THE JUROR: GRUNZEL. YES, SIR.

20 THE COURT: IS THIS YOUR VERDICT AND IS IT STILL YOUR
21 VERDICT?

22 THE JUROR: YES, SIR.

23 THE COURT: JUROR NUMBER 39, MR. JERRY CURLES. MR.
24 CURLES, IS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT?

25 THE JUROR: YES, SIR.

1 THE COURT: THANK YOU, SIR. JUROR NUMBER 4,
2 MR. KEITH BARKER. MR. BARKER, IS THIS YOUR VERDICT AND IS
3 IT STILL YOUR VERDICT?

4 THE JUROR: YEA.

5 THE COURT: THANK YOU. JUROR NUMBER 167, MS. JUDY
6 SCOTT. MS. SCOTT, IS THIS YOUR VERDICT AND IS IT STILL
7 YOUR VERDICT?

8 THE JUROR: YES, SIR.

9 THE COURT: THANK YOU. JUROR NUMBER 94, MR.
10 MICHELLE -- I'M SORRY; MS. MICHELLE MOORE, WHO IS AN
11 ALTERNATE. SO, THEY ARE GONE. OKAY. HAVING POLLED THE
12 JURY THEY ALL HAVE ANSWERED IN THE AFFIRMATIVE THAT IT WAS
13 THEIR VERDICT AND IT IS STILL THEIR VERDICT.

14 MADAM FORELADY, LADIES AND GENTLEMEN, THAT CONCLUDES
15 YOUR SERVICE THIS WEEK. IF YOU HAD STAYED JUST A LITTLE
16 LONGER I WAS GOING TO SEND FOR BARBEQUE FOR YOU. JUST
17 KIDDING. PIZZA FROM DOMINOES.

18 IN ALL SERIOUSNESS, THANK Y'ALL SO MUCH, AND I
19 APOLOGIZE FOR MAKING Y'ALL HAVE TO COME BACK THIS MORNING.
20 I THANK YOU FOR ACCOMMODATING ME FOR MY PERSONAL SITUATION
21 THAT I HAD YESTERDAY WITH MY WIFE'S FAMILY, AND THAT
22 CONCLUDES YOUR SERVICE THIS WEEK, AND YOU'RE NOW EXEMPT
23 FOR THE NEXT THREE WEEKS. CHECKS? IF YOU WOULD GO BACK
24 TO JURY ROOM WE HAVE YOUR CHECKS, WORK EXCUSES.

25 ANYONE HAVE ANY QUESTIONS? I WANT TO THANK YOU.

1 Y'ALL HAVE SERVED WONDERFULLY. YOU HAVE PAID CLOSE
2 ATTENTION. YOU DELIBERATED HARD. I THANK YOU.

3 (WHEREUPON, THE JURY EXITED THE COURTROOM AT 10:44.)

4 (WHEREUPON, A BREAK WAS TAKEN.)

5 THE COURT: WE CAN DO IT NOW, WHATEVER IS YOUR
6 PLEASURE. I WILL GIVE YOU 10 DAYS TO MAKE ANY POST-TRIAL
7 MOTIONS.

8 MISS ALVES: THANK YOU, JUDGE. ARE YOU READY TO DO
9 THE SENTENCING?

10 THE COURT: YES, MA'AM. Y'ALL GOT THE SENTENCE
11 SHEET?

12 THE CLERK: YES, SIR.

13 THE COURT: ALL RIGHT. MISS ALVES, I HAVE HEARD ALL
14 OF THE EVIDENCE. I COMMEND YOU FOR A VERY ADVERSARIAL
15 MANNER IN WHICH YOU DEFENDED YOUR CLIENT. YOU DID UNDER
16 THE CIRCUMSTANCES I THOUGHT ALL THAT WAS HUMANLY POSSIBLE,
17 AND THE JURY, OBVIOUSLY, DEEPLY CONSIDERED YOUR ARGUMENTS
18 AND YOUR POSITION BY THE FACT THAT THEY STAYED OUT AS LONG
19 AS THEY DID. I COMMEND YOU FOR HOW YOU DEFENDED YOUR
20 CLIENT. AS ALWAYS YOU DO AN EXCELLENT JOB, AND I
21 APPRECIATE IT. I'LL BE GLAD TO HEAR FROM YOU.

22 MISS ALVES: THANK YOU, YOUR HONOR. MAY IT PLEASE
23 THE COURT, MR. PRATHER IS 26 YEARS OLD. HE DOES HAVE ONE
24 CHILD, AND HE HAS ONE CHILD ON THE WAY. HE HAS BEEN
25 WORKING LAYING BRICKS FOR THE PAST YEAR. JUDGE, HIS PRIOR

1 RECORD OTHER THAN TRAFFIC OFFENSES IS THE POSSESSION OF
2 POWDER COCAINE THAT HE WAS CONVICTED OF LAST YEAR, AND
3 THAT'S THE EXTENT OF HIS RECORD AS FAR AS I KNOW.

4 THE COURT: HOW OLD IS HIS CHILDREN?

5 THE DEFENDANT: SEVEN MONTHS.

6 THE COURT: WHEN DO YOU WANT THEM TO START USING
7 COCAINE AND CRACK?

8 THE DEFENDANT: NEVER.

9 THE COURT: ALL RIGHT.

10 MISS ALVES: JUDGE, YOU HEARD HIS VERSION OF WHAT
11 HAPPENED ON THE STAND. THERE IS NO REASON FOR ME TO GO
12 FURTHER INTO THAT, BUT ALL I CAN SAY IS THAT HE MAINTAINED
13 HIS INNOCENCE AND HE HAD A TRIAL, AND HE UNDERSTOOD THE
14 RISKS WHEN HE DID THAT AND HERE WE ARE. JUDGE, HE IS
15 FACING -- HE KNOWS THAT HE IS FACING SUBSTANTIAL TIME AND
16 WHAT THAT MEANS. I WOULD ASK YOU TO CONSIDER GIVING HIM 5
17 YEARS WHICH IS THE MINIMUM ON THE TRAFFICKING CHARGE. HE
18 HAS -- HE UNDERSTANDS THAT HE WOULD HAVE TO DO 85 PERCENT.
19 REGARDLESS OF WHAT YOU GIVE HIM, HE'LL HAVE TO DO
20 85 PERCENT FOR THE TRAFFICKING CHARGE. IT IS NO PAROLE,
21 AND HE WILL BE ON SUPERVISED RELEASE WHEN HE GETS OUT.

22 I JUST WOULD ASK YOU TO TAKE THAT INTO CONSIDERATION
23 IN YOUR SENTENCING. YOUR HONOR, IF YOU SENTENCED HIM EVEN
24 TO THE 5 YEARS WHICH IS THE MINIMUM ON THE TRAFFICKING
25 CHARGE HE KNOWS THAT HE WOULD HAVE TO DO -- WELL, MORE

1 THAN A LITTLE OVER 3. HE'D HAVE TO DO ALMOST 4 YEARS ON
2 THAT CHARGE BEFORE HE WOULD EVEN BE ELIGIBLE TO GET OUT,
3 AND THEN HE KNOWS THAT HE WOULD HAVE TO BE ON SUPERVISED
4 RELEASE FOR 2 YEARS.

5 I THINK THAT IS SUBSTANTIAL PUNISHMENT, AND I WOULD
6 ASK YOU TO CONSIDER SENTENCING HIM IN THAT MANNER. IF
7 YOUR HONOR DOES NOT FEEL THAT'S APPROPRIATE, I WOULD ASK
8 YOU TO CONSIDER -- JUST CONSIDER THE FACT THAT HE DOES NOT
9 HAVE MUCH OF A PRIOR RECORD EXCEPT FOR THE POSSESSION. HE
10 DOES -- HE DID WORK TO SUPPORT HIS KIDS AND HE DID -- HE
11 TOOK A TRIAL. HE TESTIFIED. HE SAID WHAT HAPPENED.

12 THE COURT: I UNDERSTAND.

13 MISS ALVES: THAT WAS ALL WE COULD DO.

14 THE COURT: WELL, I ALSO HAVE BEEN MADE AWARE THIS
15 MORNING THAT THERE IS A SWORN STATEMENT THAT HE'S GIVEN
16 THAT PROBABLY MAY SUBJECT HIM TO PERJURY.

17 MISS ALVES: YOUR HONOR, THAT STATEMENT -- ACTUALLY,
18 I THINK THERE WOULD BE A PROBLEM WITH ANY USE OF THAT
19 STATEMENT BECAUSE OF A MATTER THAT I HAVE DISCUSSED WITH
20 BOTH THE SOLICITOR AND THE ATTORNEY WHO TOOK THAT
21 STATEMENT. ALSO, THAT STATEMENT WAS NOT THE SUBJECT OF
22 ANY TESTIMONY THAT HE GAVE YESTERDAY.

23 THE COURT: I UNDERSTAND.

24 MISS ALVES: THAT STATEMENT CONCERNS THE DRUGS IN THE
25 KITCHEN, AND THERE WAS NEVER ANY TESTIMONY CONCERNING THE

1 DRUGS IN THE KITCHEN. SO, THAT WOULD NOT BE A PERJURY
2 ISSUE. WE WOULD HAVE OTHER ISSUES THAT --

3 THE COURT: WELL, I DON'T THINK THAT THE STATE IS
4 GOING TO MOVE FORWARD WITH THE PERJURY ISSUES.

5 MISS ALVES: NO, SIR, BUT THERE WOULD BE SIGNIFICANT
6 OTHER ISSUES REGARDING THE USE OF THAT STATEMENT WHICH I'D
7 RATHER NOT GO INTO.

8 THE COURT: I UNDERSTAND. WELL, IT IS SAD, MISS
9 ALVES. YOU GOT A YOUNG MAN HERE WHO IS YOUNG, GOT ONE
10 CHILD AND ONE ON THE WAY, AND HE'S CHOSEN TO GET INVOLVED
11 IN TRAFFICKING COCAINE. I DON'T KNOW HOW -- I MEAN, YOU
12 ARE IN HERE AS MUCH AS I AM. YOU SEE WHAT IT DOES TO
13 FAMILIES. YOU SEE WHAT IT DOES TO ALL WALKS OF LIFE. YOU
14 SEE HOW DESTROYING IT IS, AND YOU KNOW HOW I DEAL WITH
15 PEOPLE WHO HAVE SIMPLE POSSESSION. I KNOW THEY HAVE THEIR
16 PROBLEMS, AND I KNOW THAT THEY'RE ADDICTED, AND I KNOW
17 THAT I TREAT THEM -- YOU KNOW HOW I TREAT THEM. I TRY TO
18 GIVE SENTENCES TO HELP THEM -- EVEN THOSE WHO HAVE -- YOU
19 KNOW, WHEN WE HAVE POSSESSION WITH INTENT TO DISTRIBUTE
20 CASES, FOR THE MOST PART ON THOSE IF IT'S A SMALL AMOUNT I
21 GIVE THEM THE BENEFIT OF THE DOUBT. HERE YOU GOT A GUY
22 THAT'S INVOLVED IN THE BUSINESS, AND I GUESS THIS IS THE
23 PRICE YOU DO TO DO BUSINESS.

24 ANYTHING YOU WANT TO TELL ME, MR. PRATHER? IF YOU
25 LIVE BY THE SWORD, YOU DIE BY THE SWORD. IF YOU WANT TO

1 BE TRAFFICKING COCAINE IN MY JURISDICTION, YOU'RE NOT
2 GOING TO GET A 5-YEAR SENTENCE.

3 ALL RIGHT. ON THE TRAFFICKING COCAINE THE SENTENCE
4 OF THE COURT IS THAT YOU BE COMMITTED TO THE STATE
5 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 20 YEARS. ON
6 THE POSSESSION WITH INTENT TO DISTRIBUTE WITHIN PROXIMITY
7 THE SENTENCE OF THE COURT IS THAT YOU BE COMMITTED TO THE
8 STATE DEPARTMENT OF CORRECTIONS FOR 15 YEARS. THAT RUNS
9 CONCURRENT. GOOD LUCK TO YOU.

10 THE PROBATION OFFICER: JUDGE EARLY, DO YOU JUST WANT
11 ME TO RUN THE PROBATION REVOCATION --

12 THE COURT: HE'S GOT A PROBATION REVOCATION?

13 MISS ALVES: HE GOT PROBATION FOR THE POSSESSION OF
14 COCAINE CHARGE FROM LAST -- WAS IT MAY?

15 THE COURT: WELL, I'LL JUST REVOKE HIS PROBATION,
16 TERMINATE IT, AND -- TERMINATE IT IN FULL AND LET IT RUN
17 CONCURRENT.

18 MISS ALVES: THANK YOU, JUDGE. JUDGE, FOR THE RECORD
19 WE WOULD HAVE A MOTION FOR A NEW TRIAL, BUT I WILL TAKE
20 YOU UP ON YOUR 10 DAYS. THANK YOU.

21 THE COURT: JUST FILE THE MOTION, MISS ALVES, AND I
22 AM GOING TO BE BACK HERE WHENEVER. YOU CAN FILE IT AND
23 THEN WE CAN ARGUE IT WHEN I GET BACK.

24 MISS ALVES: THANK YOU, JUDGE.

25 THE COURT: IS THAT FAIR ENOUGH?

1 MISS ALVES: YES, SIR.

2 (END OF TRANSCRIPT OF RECORD.)

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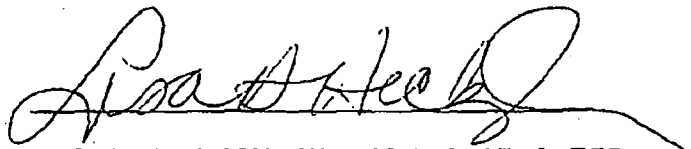
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, LISA H. HICKLIN, OFFICIAL COURT REPORTER FOR THE
SECOND JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR
AIKEN COUNTY, SOUTH CAROLINA, ON THE 24TH-26TH DAYS OF
MAY, 2006.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

JANUARY 18, 2007


LISA H. HICKLIN, COURT REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

COURT OF GENERAL SESSIONS

06-GS-02-256, 257

04-GS-02-39

THE STATE OF SOUTH CAROLINA

PLAINTIFF

VS.

JAMES PRATHER

DEFENDANT

TRANSCRIPT OF RECORD

JUNE 26, 2006

AIKEN, SOUTH CAROLINA

B E F O R E:

THE HONORABLE D.A. EARLY, III, JUDGE.

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

DE GRANT GIBBONS, ASSISTANT SOLICITOR
ATTORNEY FOR THE PLAINTIFF

WALLIS A. ALVES, ESQ.
ATTORNEY FOR THE DEFENDANT

LISA H. HICKLIN
OFFICIAL COURT REPORTER

I N D E X O F W I T N E S S E S

STATEMENT BY MISS ALVES..... 3
STATEMENT BY MR. GIBBONS..... 10

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>

(NONE OFFERED)

1 (WHEREUPON, ON JUNE 26, 2006 THE FOLLOWING
2 PROCEEDINGS WERE HELD:)

3 MR. GIBBONS: JUDGE, THIS IS ONE WE TRIED LAST TERM.
4 SHE IS MAKING HER POST-TRIAL MOTIONS.

5 MISS ALVES: JUDGE, BEFORE WE START --

6 THE COURT: HOLD ON A SECOND. EVERYBODY GOT THE CASE
7 CAPTION?

8 MISS ALVES, BRING ME UP TO DATE A LITTLE BIT.

9 MISS ALVES: JUDGE, WE HAD A TRIAL ON THIS CASE LAST
10 TERM OF COURT. I BELIEVE IT LASTED THREE DAYS. ON MAY 25
11 THE JURY FOUND MR. PRATHER GUILTY OF TRAFFICKING IN
12 COCAINE AND POSSESSION WITH INTENT TO DISTRIBUTE COCAINE
13 WITHIN PROXIMITY OF A PARK.

14 THE COURT: GIVE ME A LITTLE BIT OF THE FACTS.

15 MISS ALVES: HE WAS IN A TRAILER. THE POLICE WERE
16 SERVING A SEARCH WARRANT AND --

17 THE COURT: EVERYBODY RAN OUT THE BACK DOOR?

18 MR. GIBBONS: THAT'S THE ONE.

19 THE COURT: I REMEMBER IT NOW.

20 MISS ALVES: YOUR HONOR, PRIOR TO BEGINNING WE STILL
21 HAVE MY MOTION FOR A NEW TRIAL OUTSTANDING WHICH I MADE ON
22 THE RECORD. I DID SERVE THE SOLICITOR WITH A WRITTEN
23 MOTION AND YOUR HONOR AGREED TO CONTINUE THE MOTION FOR A
24 NEW TRIAL UNTIL A LATER DATE.

25 MR. PRATHER HAS INFORMED ME THIS MORNING THAT HE DOES

1 NOT WANT ME TO CONTINUE REPRESENTING HIM FOR THAT MOTION
2 OR FOR ANY OF HIS OTHER CHARGES. HE WANTS TO HIRE AN
3 ATTORNEY TO REPRESENT HIM -- TO CONCLUDE THE MOTION FOR
4 THE NEW TRIAL AS WELL AS HANDLE ALL OF HIS OTHER CHARGES
5 AND SO THAT'S HIS MOTION TO MAKE.

6 THE COURT: WAIT A MINUTE. YOU TRIED IT. YOU MADE
7 THE MOTION; RIGHT?

8 MISS ALVES: YES, SIR.

9 THE COURT: AND I GAVE YOU AN OPPORTUNITY TO PREPARE
10 FOR THE MOTION AND NOT HEAR IT THAT PARTICULAR DAY. IS
11 THAT WHAT I DID?

12 MISS ALVES: YES, SIR. AND HE'S STATED THAT HE WOULD
13 PREFER TO HAVE ANOTHER ATTORNEY TO HANDLE THIS MATTER AS
14 WELL AS HIS OTHER CHARGES.

15 THE COURT: WHAT OTHER CHARGES DOES HE HAVE?

16 MR. GIBBONS: HE STILL HAS GOT A NEW TRAFFICKING
17 CHARGE.

18 MISS ALVES: HE'S GOT ABOUT 17 PENDING CHARGES.

19 MR. GIBBONS: AND A COUPLE OF OTHER ONES.

20 THE COURT: WELL, I WILL CERTAINLY ALLOW HIM TO
21 RETAIN THE SERVICES OF ANOTHER LAWYER TO HANDLE THE
22 ADDITIONAL CHARGES, BUT YOU'RE THE TRIAL JUDGE -- I MEAN
23 THE TRIAL LAWYER. I AM GOING TO LET YOU ARGUE THE MOTION
24 FOR ANY POST-TRIAL MOTIONS AND THEN IF HE WANTS TO HIRE
25 SOMEBODY ON APPEAL HE CAN DO THAT.

1 MR. GIBBONS: YOUR HONOR, AS TO THE OTHER CHARGES HE
2 IS IN CORRECTIONS NOW, AND, YOU KNOW, I DON'T CARE WHO HIS
3 LAWYER IS, BUT WHEN I GET READY TO TRY IT I HOPE HE HAS
4 ONE. I MEAN, I AM NOT GOING TO DRAG IT ALONG FOR YEARS.

5 THE COURT: HE CAN REPRESENT HIMSELF. WHO ARE YOU
6 GOING TO HIRE?

7 THE DEFENDANT: MY FAMILY IS LOOKING FOR A LAWYER
8 TODAY.

9 THE COURT: WHEN ARE YOU GOING TO TRY IT?

10 MR. GIBBONS: IT WILL PROBABLY BE A COUPLE OF MONTHS
11 BEFORE I HAVE THE DRUG RESULTS BACK AND I WILL GIVE HIM
12 NOTICE AT LEAST THREE WEEKS AHEAD OF TIME.

13 THE COURT: AS SOON AS YOU GET A NEW LAWYER YOU LET
14 THE SOLICITOR'S OFFICE KNOW, BUT I AM NOT GOING TO RELEASE
15 MISS ALVES ON POST TRIAL MOTIONS. SHE IS GOING TO DO
16 THOSE. I'LL BE GLAD TO HEAR FROM YOU, MISS WALLIS ALVES.

17 (WHEREUPON, MISS ALVES CONFERRED WITH THE CLIENT.)

18 THE COURT: ALL RIGHT. SIR, YOU UNDERSTAND WHAT I'VE
19 DONE? I WILL ALLOW YOU TO RETAIN LAWYERS ON THE OTHER
20 CHARGES PENDING AGAINST YOU. FAIR ENOUGH?

21 THE DEFENDANT: (NODS HEAD.)

22 MR. GIBBONS: YES, SIR.

23 THE COURT: I CAN'T HEAR YOU.

24 THE DEFENDANT: OH, YES, SIR.

25 THE COURT: AND MISS ALVES -- I AM NOT GOING TO

1 RELEASE HER FROM BEING YOUR LAWYER. I WILL DENY THAT
2 REQUEST. SHE WILL MAKE THE POST-TRIAL MOTIONS. HOWEVER I
3 RULE YOU HAVE UNDER THE RULES 10 DAYS TO FILE AN APPEAL.

4 THE DEFENDANT: SO, AFTER SHE -- WHATEVER YOUR RULING
5 IS I CAN'T GET NO LAWYER AFTER YOU RULE?

6 THE COURT: SURE. YOU CAN DO WHATEVER YOU WANT TO
7 DO.

8 MISS ALVES?

9 MISS ALVES: JUDGE, MAY IT PLEASE THE COURT, I AM
10 MAKING A MOTION FOR A NEW TRIAL ON BEHALF OF MR. PRATHER.
11 THE FIRST GROUND THAT I HAVE TO MAKE A MOTION FOR A NEW
12 TRIAL IS I THINK OVERLY PREJUDICIAL INFORMATION WAS
13 PRESENTED TO THE JURY. IN THIS CASE I MADE MOTION TO
14 SUPPRESS ANY DRUGS OBTAINED FROM THE SEARCH OF MR. PRATHER
15 AND I MADE MOTION TO SUPPRESS ANYTHING FOUND ON
16 MR. PRATHER DUE TO IMPROPER SEARCH OF MR. PRATHER.

17 JUDGE, YOU INITIALLY AGREED TO DO A MOTION TO
18 SUPPRESS. HOWEVER, THEN AFTER DISCUSSION IT WAS DECIDED
19 THAT YOU WOULD DO THE MOTION THROUGHOUT THE TRIAL AND YOU
20 WOULD ALLOW THE SOLICITOR TO PRESENT HIS EVIDENCE DURING
21 THE TRIAL. PRIOR TO TRIAL WE HAD PRETRIAL MOTIONS AND THE
22 SOLICITOR AND I HAD SOME PRETRIAL AGREEMENTS. ONE OF
23 THOSE AGREEMENTS IS THAT THERE WOULD BE NO MENTION OF ANY
24 DRUGS OR OTHER THAN WHAT WAS -- OTHER THAN THE COCAINE
25 THAT WAS FOUND IN MR. PRATHER'S POCKET. IN PARTICULAR

1 MR. PRATHER WAS ORIGINALLY CHARGED WITH TRAFFICKING IN
2 COCAINE, POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA,
3 AND TRAFFICKING IN CRACK AS WELL AS HALF-MILE CHARGES FOR
4 EACH ONE OF THOSE CHARGES.

5 IMMEDIATELY PRIOR TO THE TRIAL THE SOLICITOR CAME TO
6 ME AND SAID HE WAS NOT GOING TO TRY MR. PRATHER FOR THE
7 OTHER FOUR CHARGES; THAT HE WAS ONLY GOING TO TRY HIM FOR
8 THE TRAFFICKING IN COCAINE AND THE POSSESSION WITH INTENT
9 TO DISTRIBUTE COCAINE WITHIN PROXIMITY. HE AGREED NOT TO
10 MENTION ANYTHING ELSE ABOUT THE OTHER DRUGS AND ANYTHING
11 -- HE AGREED NOT TO MENTION ANYTHING ELSE ABOUT ANY OTHER
12 DRUGS OTHER THAN THE COCAINE THAT WAS FOUND IN HIS POCKET.

13 HOWEVER, WHEN WE DID THE SUPPRESSION HEARING THE
14 SOLICITOR WAS ALLOWED TO BRING UP ALL THE DRUGS THAT WERE
15 IN THE HOUSE. THEY BROUGHT UP GUNS THAT WERE IN THE
16 HOUSE. THEY BROUGHT UP DRUGS THAT MR. PRATHER WASN'T EVEN
17 CHARGED WITH. THEY TALKED ABOUT DRUGS THAT OTHER PEOPLE
18 WERE CHARGED WITH. I THINK THAT THAT WAS EXCESSIVELY
19 PREJUDICIAL. I THINK IT WAS OVERLY PREJUDICIAL THAT THE
20 SUPPRESSION MOTION WAS NOT DONE OUTSIDE OF THE PRESENCE OF
21 THE JURY, AND I DO HAVE TWO CASES TO CITE THAT I THINK
22 WOULD SUPPORT ME IN THIS.

23 THE FIRST ONE IS STATE VERSUS BURTON IN WHICH BURTON
24 MADE MOTIONS FOR DIRECTED VERDICT AT THE CLOSE OF THE
25 STATE'S CASE AND THEY WERE DENIED BECAUSE --

1 THE COURT: HOLD ON A SECOND. HOW ABOUT GET THAT GUY
2 IN THE BACK ROW IN THE RED SHIRT AND ASK HIM TO LEAVE. HE
3 CAN'T KEEP HIS MOUTH SHUT. RIGHT THERE. GO OUTSIDE AND
4 TALK. YOU DON'T TALK IN HERE. GO AHEAD.

5 MISS ALVES: JUDGE, IN STATE VERSUS BURTON, BURTON
6 MADE A MOTION FOR DIRECTED VERDICT.

7 THE COURT: YOU GOT A COPY OF THE CASE?

8 MISS ALVES: YES, SIR. BURTON MADE MOTIONS FOR
9 DIRECTED VERDICT AND THE COURT FOUND THAT THE APPROPRIATE
10 VEHICLE FOR CHALLENGING THE ADMISSIBILITY OF EVIDENCE
11 BASED ON A SEARCH AND SEIZURE VIOLATION IS A MOTION TO
12 SUPPRESS. SO, THE MOTION FOR DIRECTED VERDICT WOULD HAVE
13 CHALLENGED THE SUFFICIENCY OF THE PROPERLY ADMITTED
14 EVIDENCE AND THEY SAID THAT BURTON DID NOT TIMELY MOVE TO
15 SUPPRESS THE EVIDENCE SINCE HE WAS MAKING HIS MOTION IN A
16 DIRECTED VERDICT MOTION RATHER THAN IN A MOTION TO
17 SUPPRESS.

18 YOUR HONOR, I DID MAKE A TIMELY MOTION TO SUPPRESS IN
19 THIS CASE. HOWEVER, IT WAS NOT ARGUED PRETRIAL. I DID
20 MAKE -- I DID -- I PUT ON THE RECORD MY OBJECTION TO NOT
21 ARGUING THE MOTION PRETRIAL AND INSTEAD OF REQUIRING THE
22 SOLICITOR TO PRESENT THE EVIDENCE IN HIS CASE IN CHIEF
23 BECAUSE THAT ALLOWED OVERLY PREJUDICIAL INFORMATION TO THE
24 DEFENDANT TO COME BEFORE THE JURY. JUDGE, I THINK I CAN
25 SUPPORT THAT THE EVIDENCE WAS OVERLY -- NUMBER ONE, IT WAS

1 EVIDENCE OF DRUGS COMPLETELY OVER THE HOUSE. IT WAS
2 EVIDENCE OF GUNS FOUND IN THE HOUSE. THERE WAS NO LINKING
3 OF SOME OF THE DRUGS THAT WERE FOUND AND SOME -- AND THE
4 GUNS -- NONE OF THE GUNS TO MR. PRATHER; YET, THEY WERE
5 ALLOWED TO BE PRESENTED TO THE JURY, AND THE JURY EVEN
6 CAME BACK WITH A QUESTION CONCERNING WHY THEY -- WHY WAS
7 ALL OF THAT INFORMATION PRESENTED IF IT HAD NOTHING TO DO
8 WITH MR. PRATHER? SO, I THINK THAT THE FACT THAT THEY
9 EVEN CONSIDERED IT AND WEIGHED THAT INFORMATION SHOWS THAT
10 IT WAS OVERLY PREJUDICIAL TO MR. PRATHER.

11 THERE IS A SECOND CASE THAT I'D LIKE TO PRESENT. IT
12 IS STATE VERSUS PATTON WHICH IS A MURDER CASE.

13 THE COURT: PLEASE HAND IT UP.

14 MISS ALVES: JUDGE, IN STATE VERSUS PATTON THERE WAS
15 -- THE APPELLANT ARGUED THAT THE TRIAL COURT ERRED BY NOT
16 HOLDING A SUPPRESSION HEARING ON THE SEARCH AND SEIZURE
17 ISSUE. IN THAT PARTICULAR CASE I BELIEVE IT WAS FOUND
18 PROPER. IT WAS BECAUSE THE ERROR WAS HARMLESS. HOWEVER,
19 IN STATE VERSUS PATTON THEY RELY ON SEVERAL OTHER CASES
20 WHICH TALK ABOUT WHEN A DEFENDANT WOULD BE ENTITLED TO
21 HAVING THE JUDGE CONDUCT AN EVIDENTIARY HEARING OUTSIDE OF
22 THE PRESENCE OF THE JURY, AND I THINK UNDER THE CASES THAT
23 ARE CITED IN PATTON MR. PRATHER SHOULD HAVE BEEN ENTITLED
24 -- HE WOULD HAVE BEEN ENTITLED TO A PRETRIAL SUPPRESSION
25 HEARING FOR THESE CHARGES.

1 SPECIFICALLY, IN PATTON THEY REFER TO BLASSENGAME
2 WHICH SAYS THAT A DEFENDANT NEED NOT ARTICULATE
3 SPECIFIC -- THE BLASSENGAME CASE SAYS THAT A DEFENDANT
4 NEED NOT ARTICULATE SPECIFIC GROUNDS AS TO WHY A
5 SUPPRESSION HEARINGS WAS NECESSARY. HE NEED ONLY MAKE A
6 BROAD GENERAL MOTION SUCH AS WAS MADE BY THE APPELLANT IN
7 THAT CASE -- IN THE BLASSENGAME CASE AND THERE JUST HAS TO
8 BE SOME QUESTION AS THE FACTS OF WHAT HAPPENED.

9 JUDGE, IN THIS SITUATION I THINK THAT WE DID MAKE A
10 BROAD GENERAL MOTION AS TO WHY THE DRUGS SHOULD BE
11 SUPPRESSED. I THINK THERE WERE SPECIFIC FACTUAL AND LEGAL
12 GROUNDS THAT SUPPORTED OUR CONTENTION, AND, YOUR HONOR, I
13 UNDERSTAND WHY YOU RULED AGAINST US BECAUSE, ULTIMATELY,
14 THE STATE'S EVIDENCE -- YOU FOUND THAT THE STATE'S
15 EVIDENCE WAS SUFFICIENT. HOWEVER, IN GETTING TO THE
16 FINDING THAT THE STATE'S EVIDENCE WAS SUFFICIENT YOU
17 ALLOWED THE STATE TO PUT IN EVIDENCE THAT I FIND
18 PREJUDICIAL TO MR. PRATHER -- THAT WAS PREJUDICIAL TO
19 MR. PRATHER.

20 SO, I THINK THAT THESE TWO CASES SUPPORT MY ARGUMENT
21 THAT THE PRETRIAL MOTION --- THAT THE SUPPRESSION HEARING
22 SHOULD HAVE BEEN ALLOWED PRETRIAL RATHER THAN ALLOWING THE
23 STATE TO ARGUE THE PRETRIAL MOTION IN THEIR CASE IN CHIEF.

24 THE COURT: MR. GIBBONS?

25 MR. GIBBONS: YOUR HONOR, OUR POSITION ON THIS CASE

1 WE DID HAVE NUMEROUS DISCUSSIONS OUTSIDE THE PRESENCE OF
2 THE JURY REGARDING THE SUPPRESSION ISSUE. THE STATE DID
3 AGREE TO LEAVE INFORMATION OF OTHER ITEMS OUT UNTIL THE
4 POINT WHERE IT BECAME APPARENT THAT THEY WERE GOING TO BE
5 USED MORE AS A SWORD THAN A SHIELD AND IT WAS NECESSARY TO
6 JUSTIFY WHY THE STATE WAS DOING WHAT THEY WERE DOING. WE
7 COULD HAVE TRIED IT WITHOUT THEM HAD THE SPECIFIC ISSUE
8 NOT BEEN RAISED FOR SUPPRESSION REASONS THAT THE OFFICERS
9 HAD NO REASON TO SEARCH HIM, BUT ONCE THAT BECAME AN
10 ISSUE, WE HAD TO PROVE WHAT CIRCUMSTANCES EXISTED FOR THE
11 OFFICERS TO DO WHAT THEY DID, AND SOME OF THOSE ITEMS WERE
12 THE GUNS THAT WERE IN PLAIN VIEW BEFORE THEY EVEN GOT TO
13 MR. PRATHER AND DRUGS IN PLAIN VIEW BEFORE THEY GOT TO
14 MR. PRATHER TO JUSTIFY THEIR REASONS FOR SEARCHING HIM AT
15 ALL.

16 THE COURT: THANK YOU.

17 MISS ALVES: JUDGE, I THINK MR. PRATHER WAS ENTITLED
18 TO ARGUE -- HE WAS ENTITLED TO MAKE THE MOTION THAT THE
19 DRUGS SHOULD BE SUPPRESSED. MY ONLY ARGUMENT HERE IS THAT
20 THE ARGUMENT -- THAT ANY EVIDENCE PRESENTED ON THAT MOTION
21 SHOULD HAVE BEEN PRETRIAL RATHER THAN DURING THE STATE'S
22 CASE IN CHIEF WHERE IF THERE HAD BEEN A PRETRIAL RULING
23 CONSISTENT WITH THE RULING YOU MADE AFTER THEY PRESENTED
24 THE EVIDENCE THEN THERE WOULD HAVE BEEN NO SUPPRESSION
25 ISSUE BECAUSE YOU WOULD HAVE RULED AGAINST US ON THAT

1 ISSUE AND THE JURY WOULD NOT HAVE HEARD ALL OF THE
2 INFLAMMATORY EVIDENCE. THEY WOULDN'T HAVE HEARD ABOUT ALL
3 OF THE GUNS THAT WERE FOUND IN THE HOUSE. THEY WOULDN'T
4 HAVE HEARD ABOUT ALL OF THESE OTHER DRUGS THAT WERE FOUND
5 IN THE HOUSE. WE WOULD HAVE STUCK TO THE FACTS OF THE
6 COCAINE AND WHERE THE COCAINE WAS FOUND AND WHETHER IT WAS
7 IN THE POSSESSION OF MR. PRATHER. THAT WAS THE ONLY
8 RELEVANT ISSUE THAT NEEDED TO BE BEFORE THE JURY. YET,
9 THE JURY HEARD EVERYTHING.

10 THEY HEARD ABOUT EVERYTHING -- EVERYTHING THAT WAS
11 GOING ON EVEN SOMETHING THAT HAD NO RELEVANCE TO THE
12 CASE -- TO THIS PARTICULAR CASE. THEY HEARD ABOUT THINGS
13 THAT WOULD HAVE BEEN RELEVANT TO THE SUPPRESSION BUT NOT
14 TO WHETHER OR NOT MR. PRATHER --

15 THE COURT: WELL, I DISAGREE WITH YOU. I THINK
16 EVERYTHING THAT WAS BROUGHT INTO THE TRIAL OF THE CASE WAS
17 RELEVANT AS TO THE ISSUE OF GUILT, RELEVANT AS TO WHY THEY
18 WERE THERE, RELEVANT AS TO WHY THEY SEARCHED HIM. IT WAS
19 THE TOTALITY OF THE CIRCUMSTANCES THAT LED TO THE ULTIMATE
20 INDICTMENT AND THE ULTIMATE TRIAL OF THE CASE. SO, I
21 RESPECTFULLY DISAGREE WITH YOU ABOUT RELEVANCY AND ABOUT
22 PREJUDICIAL EFFECT. IT WAS WHAT IT WAS. I MEAN, HE WAS
23 IN A HOUSE, BUT IT WAS GUNS, DRUGS. HE WAS SEARCHED
24 BECAUSE OF THAT AND FOUND DRUGS ON HIM AND THAT'S JUST THE
25 FACTS OF THE CASE.

1 MISS ALVES: YES, SIR.

2 THE COURT: I RESPECTFULLY DENY YOUR MOTION.

3 MISS ALVES: YOUR HONOR, I HAVE A SECOND GROUND FOR
4 MY MOTION FOR A NEW TRIAL. THE SOLICITOR -- I WOULD ARGUE
5 FOR A NEW TRIAL ALSO ON THE BASIS OF IMPROPER CLOSING
6 ARGUMENT BY THE SOLICITOR. YOUR HONOR, IN THE SOLICITOR'S
7 CLOSING HE MADE REFERENCE TO -- SPECIFICALLY WHAT HE SAID
8 WAS THAT THERE WAS -- HE SAID THAT -- IF I CAN QUOTE HIM,
9 "THAT I WANT TO THANK YOU FOR YOUR TIME. SERVING ON A
10 JURY IS NOT A WHOLE LOT OF FUN FOR MOST PEOPLE, BUT IT IS
11 AN IMPORTANT DUTY. AS YOU SIT HERE TODAY YOU ARE MEMBERS
12 OF AIKEN COUNTY, AND THIS CRIME HAPPENED IN AIKEN COUNTY.
13 THIS DIDN'T HAPPEN ON T.V. THIS DIDN'T HAPPEN IN THE BIG
14 CITY. THIS HAPPENED RIGHT HERE IN OUR COMMUNITY, AND I
15 WOULD ASK YOU TO DELIBERATE CAREFULLY BECAUSE DRUGS ARE A
16 SERIOUS PROBLEM IN OUR COMMUNITY IN THIS CASE."

17 AT THAT POINT I OBJECTED FOR IMPROPER ARGUMENT,
18 PERSONALIZING, AND THAT ARGUMENT -- THAT OBJECTION WAS
19 OVERRULED.

20 YOUR HONOR, I THINK THAT THIS WAS AN IMPROPER CLOSING
21 ARGUMENT ON BEHALF OF SOLICITOR. THERE IS A SPECIFIC
22 CASE, STATE VERSUS REESE, WHICH WAS DECIDED IN 2004 WHICH
23 SAYS THAT A SOLICITOR --

24 THE COURT: YOU GOT A COPY OF IT?

25 MISS ALVES: YES, SIR. A SOLICITOR'S CLOSING MUST

1 NOT APPEAL TO PERSONAL BIAS OF JURORS, NOR BE CALCULATED
2 TO AROUSE JURORS' PASSIONS OR PREJUDICES AND CONTENTS
3 SHOULD STAY WITHIN THE RECORD OR REASONABLE REFERENCE
4 THERETO. YOUR HONOR, IN THIS PARTICULAR SITUATION I THINK
5 THAT THE REFERENCE THAT THE SOLICITOR MADE TALKING ABOUT
6 THE JURORS BEING MEMBERS OF AIKEN COUNTY, THIS HAPPENING
7 IN AIKEN COUNTY, AND TALKING ABOUT DRUGS BEING A PROBLEM
8 IN OUR COMMUNITY PERSONALIZED THE ARGUMENT TO THE JURORS.
9 IT WAS CALCULATED TO AROUSE THE JURORS' PASSIONS AND
10 PREJUDICES AND IT DID NOT STAY REASONABLY WITHIN -- IT WAS
11 NOT A REASONABLE REFERENCE TO THE RECORD.

12 I THINK THAT THE ARGUMENT WAS IMPROPER. I MEAN, I
13 KNOW THE REESE ARGUMENTS ARE SOMEWHAT DIFFERENT, BUT, I
14 MEAN, BECAUSE THAT WAS AN ARGUMENT ABOUT WHO SPEAKS FOR --
15 IN REESE THE QUESTION THAT THE SOLICITOR SAID WAS WHO
16 SPEAKS FOR THE VICTIM AND THE SUPREME COURT -- EXCUSE ME,
17 THE COURT OF APPEALS FOUND THAT THAT WAS AN IMPROPER
18 STATEMENT CALCULATED TO AROUSE THE JURORS' PASSIONS AND
19 PREJUDICES. IN THIS PARTICULAR SITUATION THE SOLICITOR
20 PERSONALIZED THE ARGUMENT TO THE JURY BY THE FACT THAT
21 THEY WERE ALL CITIZENS OF AIKEN COUNTY AND THAT AIKEN
22 COUNTY HAS -- WELL, THAT DRUGS ARE A PROBLEM IN OUR
23 COMMUNITY. I THINK THAT ARGUMENT WAS IMPROPER, AND I THINK
24 THAT IT WAS PREJUDICIAL TO MR. PRATHER, AND I WOULD MAKE
25 MOTION FOR A NEW TRIAL ON THAT BASIS.

1 YOUR HONOR, I HAVE A THIRD.

2 THE COURT: GO AHEAD. WHAT IS YOUR THIRD?

3 MISS ALVES: MY THIRD REASON FOR THE MOTION FOR THE
4 NEW TRIAL IS THAT THE STATE DID PRESENT INFORMATION TO THE
5 COURT WHICH WAS EX-PARTE, AND I THINK IT WAS IMPROPER.

6 THE COURT: WHAT, WHOA, WHOA. WHAT? THE STATE
7 PRESENTED EVIDENCE --

8 MISS ALVES: YES, SIR.

9 THE COURT: -- TO THE COURT THAT WAS EX-PARTE?

10 MISS ALVES: YES, SIR.

11 THE COURT: WHAT?

12 MISS ALVES: THE SOLICITOR PRESENTED YOU WITH A
13 STATEMENT GIVEN BY -- GIVEN BY MY CLIENT THAT HE WAS
14 PRESENTED FROM ANOTHER ATTORNEY. I HAD ADVISED -- WHEN
15 MR. GIBBONS GAVE ME THAT STATEMENT -- WHEN HE CAME AND
16 SHOWED ME THAT STATEMENT THAT MORNING, I ADVISED HIM THAT
17 I BELIEVED THAT THAT STATEMENT WAS AN ATTORNEY-CLIENT
18 PRIVILEGED STATEMENT WHICH HE SHOULD NOT HAVE RECEIVED.
19 HE TOLD ME -- HE SAID HE ALREADY HAD IT, AND, SO, HE GAVE
20 ME A COPY OF IT. AT THAT TIME IT IS MY UNDERSTANDING HE
21 CAME BACK AND GAVE YOUR HONOR A COPY OF IT. I WAS NOT
22 AWARE THAT THAT HAD BEEN DONE UNTIL IT WAS STATED IN OPEN
23 COURT. SO, I WAS NOT AWARE THAT THAT STATEMENT HAD BEEN
24 PROVIDED. IT IS MY UNDERSTANDING --

25 THE COURT: BE MORE SPECIFIC NOW.

1 MISS ALVES: YES, SIR. IT WAS A STATEMENT THAT
2 MR. PRATHER HAD SUPPOSEDLY GIVEN TO ANOTHER ATTORNEY WHO
3 WAS CURRENTLY REPRESENTING A CO-DEFENDANT STATING THAT THE
4 DRUGS THAT WERE IN THE KITCHEN WERE HIS -- WAS IN -- THE
5 BAG BELONGED TO HIM.

6 THE COURT: ARE YOU TELLING ME THAT THE SOLICITOR
7 GAVE ME THAT IN CHAMBERS?

8 MISS ALVES: I DON'T KNOW WHERE HE GAVE IT TO YOUR
9 HONOR.

10 THE COURT: I DON'T EITHER.

11 MISS ALVES: I JUST KNOW THAT --

12 THE COURT: WHAT PROOF DO YOU HAVE THAT HE GAVE ME
13 ANYTHING?

14 MISS ALVES: YOUR HONOR, IN THE RECORD -- I MEAN, I
15 DON'T HAVE ANY PROOF THAT HE YOU WERE GIVEN ANYTHING.

16 THE COURT: THEN WHY ARE YOU ALLEGING THAT?

17 MISS ALVES: YOUR HONOR, IN THE RECORD DURING THE
18 SENTENCING YOU STATED THAT THE SOLICITOR HAD COME TO YOU
19 AND GIVEN YOU A STATEMENT STAYING AND THAT MY CLIENT --

20 THE COURT: LET ME SEE IT.

21 MISS ALVES: YES, SIR.

22 THE COURT: MR. GIBBONS, FILL ME IN ON THIS.

23 MISS ALVES: PAGE FIVE.

24 MR. GIBBONS: YOUR HONOR, I THINK SHE'S TALKING ABOUT
25 A DOCUMENT THAT BOB HARTE GAVE ME REGARDING A CO-DEFENDANT

1 OF MR. PRATHER'S. I WAS GETTING READY TO TRY THE
2 CO-DEFENDANT THAT SAME WEEK, AND MR. HARTE CAME AND
3 DELIVERED ME AN AFFIDAVIT -- SWORN AFFIDAVIT THAT
4 MR. PRATHER ALLEGELY HAD GIVEN HIS -- HIM AT HIS OFFICE
5 CLAIMING THE DRUGS -- NOT THE DRUGS THAT WE TRIED HIM ON,
6 BUT SOME OTHER DRUGS THAT WERE FOUND IN THE HOUSE. AS
7 SOON AS I GOT THAT I THOUGHT WE DISCUSSED IT IN CHAMBERS
8 AND I GAVE MISS ALVES NOTICE OF IT AT THE SAME TIME IS
9 WHAT I RECALL.

10 MISS ALVES: NO, SIR. MR. GIBBONS CAME INTO THE BACK
11 AND HE GAVE ME A COPY OF THE STATEMENT. I TOLD HIM THAT I
12 BELIEVED THAT THAT STATEMENT MIGHT BE ATTORNEY-CLIENT
13 PRIVILEGE AND THAT I DID NOT THINK HE SHOULD BE ABLE TO
14 USE THE STATEMENT OR THAT IT SHOULD HAVE BEEN GIVEN TO
15 HIM. AT THAT POINT MR. GIBBONS MADE A COPY OF THE
16 STATEMENT IN THE BACK. HE GAVE IT TO ME BECAUSE I HAD
17 NEVER RECEIVED A COPY. I HAD NEVER SEEN IT AND HE THEN
18 CAME OUT THE COURTROOM. I DON'T KNOW ANYTHING FURTHER
19 ABOUT WHAT HAPPENED UNTIL DURING THE SENTENCING YOUR HONOR
20 MADE REFERENCE TO IT.

21 THE COURT: I WAS MAKING REFERENCE THAT THERE WAS A
22 SWORN STATEMENT THAT MAY SUBJECT HIM TO PERJURY BECAUSE HE
23 HAD DENIED THE DRUGS WERE HIS AND IN THE SWORN STATEMENT
24 HE HAD CLAIMED THEY WERE HIS. THAT'S WHAT I WAS REFERRING
25 TO.

1 MISS ALVES: YES, SIR. THE SWORN STATEMENT DID NOT
2 HAVE ANYTHING TO DO WITH THE DRUGS THAT WERE FOUND IN --

3 THE COURT: WELL, THAT'S WHAT YOU PUT ON THE
4 RECORD --

5 MISS ALVES: YES, SIR.

6 THE COURT: -- AND I BELIEVED YOU AND I DIDN'T DO
7 ANYTHING ELSE ABOUT IT.

8 MR. GIBBONS: AND THAT NEVER CAME UP IN TRIAL THAT I
9 RECALL.

10 MISS ALVES: NO, SIR. I THINK IT IS RELEVANT THAT IT
11 WAS BEFORE THE TRIAL AND IT WAS MADE REFERENCE, AND ON
12 THAT ONE I WOULD ASK FOR A NEW TRIAL FOR ALL OF THE
13 REASONS STATED. I WOULD ALSO ASK YOU TO CONSIDER
14 RE-SENTENCING MR. PRATHER.

15 THE COURT: WHAT DID I SENTENCE HIM TO?

16 MISS ALVES: TWENTY YEARS, JUDGE, BECAUSE I THINK --
17 I DON'T THINK THAT THAT INFORMATION SHOULD HAVE BEEN
18 PROVIDED. I THINK THERE IS -- I DON'T THINK THAT THE
19 STATE SHOULD HAVE PROVIDED THAT INFORMATION. I THINK THEY
20 WERE IN ERROR. IT HAD NOTHING TO DO WITH THE CHARGES THAT
21 WE WERE HERE FOR.

22 THE COURT: AND YOU INFORMED ME OF THAT AND I TOOK
23 THAT AT FACE VALUE?

24 MISS ALVES: YES, SIR.

25 THE COURT: THE ONLY THING I WAS CONCERNED ABOUT IS

1 THAT HE HAD PERJURED HIMSELF BY MAKING A SWORN STATEMENT
2 ACKNOWLEDGING THE DRUGS WERE HIS AND ONCE YOU TOLD ME THE
3 EXPLANATION FOR IT THAT WAS THE END OF IT.

4 MISS ALVES: YES, SIR.

5 THE COURT: THE ONLY THING I WAS CONCERNED ABOUT WAS
6 PERJURY. I DIDN'T USE THAT AS ANYTHING ELSE.

7 MISS ALVES: YES, SIR.

8 THE COURT: AND I DON'T ME WHAT THE STATE DID WITH
9 THE PERJURY IF THEY DID ANYTHING WITH IT OR NOT. I ASSUME
10 THEY FELT LIKE THAT IT WAS DIFFERENT DRUGS AND THEY HADN'T
11 DONE ANYTHING WITH IT.

12 MISS ALVES: AS FAR AS I KNOW THEY HAVE NOT.

13 THE COURT: ALL RIGHT. RESPOND TO THE GOLDEN OR THE
14 PERSONALIZATION OF THE FINAL ARGUMENT -- ANYTHING YOU WANT
15 TO PUT ON THE RECORD, MR. GIBBONS.

16 MR. GIBBONS: YOUR HONOR, I AM AWARE OF A CASE I
17 BELIEVE OUT OF HAMPTON COUNTY -- I DON'T HAVE IT HERE WITH
18 ME -- WHERE SOLICITOR MURDOCK SAID, "YOU SPEAK FOR THE
19 VOICE OF THE COMMUNITY BY YOUR VERDICT," AND THAT CASE --

20 THE COURT: I HAVE HEARD THAT ARGUMENT A THOUSAND
21 TIMES IN THIRTY YEARS OF PRACTICE.

22 MR. GIBBONS: IT IS STILL ON THE BOOKS.

23 THE COURT: THAT'S RIGHT.

24 MR. GIBBONS: AND WHAT I SAID WAS A LOT LESS
25 INFLAMMATORY IF YOU CAN CALL THAT INFLAMMATORY.

1 THE COURT: IT'S NOT INFLAMMATORY. IT'S JUST --

2 MR. GIBBONS: IT'S A FACT.

3 THE COURT: THE JURY DOES SPEAK FOR THE CONSCIENCE OF
4 THE COMMUNITY. THEY ARE THE CONSCIENCE OF THE COMMUNITY.
5 DO YOU GOT ANY CASES THAT SAY THAT'S WRONG, MA'AM?

6 MISS ALVES: JUDGE, I --

7 THE COURT: I DON'T THINK YOU DO.

8 MISS ALVES: NO, I DON'T HAVE ANY SPECIFIC THAT SAYS
9 THE COMMUNITY, BUT I'VE HANDED UP THAT CASE AND THE ONLY
10 OTHER OTHER CASE THAT I FOUND RECENTLY WAS A VONDOLEN
11 VERSUS STATE WHICH IS SIMILAR BUT IT'S NOT GOING TO SPEAK
12 FOR THE COMMUNITY. THAT WAS MORE OF A PERSONALIZING THE
13 VICTIM.

14 THE COURT: ALL RIGHT. WELL, MISS ALVES, I
15 APPRECIATE YOUR ARGUMENTS AND I UNDERSTAND YOUR POSITION,
16 BUT I RESPECTFULLY DENY YOUR MOTION FOR A NEW TRIAL. I
17 DENY RE-SENTENCING. I THINK THAT THE SENTENCE WAS PROPER.
18 YOU ARE IN THIS COURTROOM AS MUCH AS I AM. WE HAVE A
19 TREMENDOUS DRUG PROBLEM IN THIS COMMUNITY AS WELL AS
20 ACROSS THE STATE. YOU SEE WHAT IT DOES TO LIVES,
21 PARTICULARLY CRACK COCAINE, PARTICULARLY THE YOUNG PEOPLE.

22 I DON'T KNOW HOW WE'RE GOING TO PUT A STOP TO IT
23 UNLESS WE GIVE THOSE PEOPLE WHO ARE DEALING IN IT SEVERE
24 SENTENCES, AND THAT'S WHAT I GAVE HIM. IT WAS WELL WITHIN
25 THE RANGE, AND YOU SEE ME ENOUGH TIMES WHEN YOU HAVE

1 PEOPLE UP HERE WHO HAVE CRACK COCAINE PROBLEMS AND THEY
2 HAVE JUST A ROCK OR TWO, A SMALL AMOUNT, MY SENTENCES ARE
3 TAILORED TO TRY TO HELP THOSE PEOPLE MOST OF THE TIME.
4 IT'S CERTAINLY NOT ANY JAIL TIME, BUT WHEN I HAVE A DEALER
5 WHO IS TRAFFICKING I SEND A MESSAGE. I STAND BY MY
6 MESSAGE. I STAND BY THE PUNISHMENT THAT I HAVE GIVEN THIS
7 YOUNG MAN. HE DESERVES EVERY MINUTE OF IT. THANK YOU.

8 (END OF TRANSCRIPT OF RECORD.)

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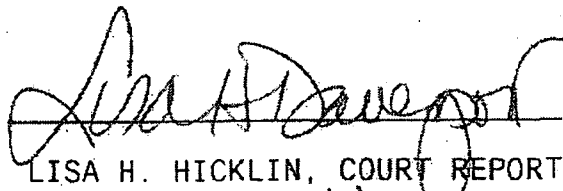
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, LISA H. HICKLIN, OFFICIAL COURT REPORTER FOR THE
SECOND JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND
EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE,
RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR
AIKEN COUNTY, SOUTH CAROLINA, ON THE 26TH DAY OF JUNE,
2006.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

SEPTEMBER 12, 2006


LISA H. HICKLIN, COURT REPORTER
Copy 1/4/11

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES PRATHER,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

LANELLE C. DURANT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err by failing to grant Appellant's motion to suppress the evidence found on Appellant as the result of an unlawful search of Appellant?

STATEMENT OF THE CASE

On February 13, 2006 the Aiken County Grand Jury indicted James Prather on trafficking in cocaine between ten and twenty-eight grams (26.69 grams) and possession with intent to distribute cocaine within a one-half mile of a school and/or park indictment #'s 2006-GS-02-256 and 257. On May 24-26, 2006, Prather stood trial before the Honorable D.A. Early, III, and a jury. The jury found Prather guilty as charged and Judge Early sentenced him to twenty years on the trafficking cocaine second offense and fifteen years on the possession with intent to distribute cocaine within one-half mile of a school and/or park to run concurrently. Prather's probation for a prior conviction for possession of cocaine in 2003 was revoked in full (two years) as a result of his guilty sentence. That revocation was ordered to run concurrently to his other sentences. Prather filed a motion for a new trial which was heard by Judge Early on June 26, 2006 and denied. Prather filed a timely notice of intent to appeal on July 3, 2006. This appeal follows.

ARGUMENT

The trial court erred by failing to grant Appellant's motion to suppress the evidence found on Appellant as the result of an unlawful search of Appellant.

FACTS

Law enforcement officers with the Narcotics Division of the Aiken County Sheriff's Department obtained a search warrant based on information from an informant to search a trailer home on Edgefield Highway in Aiken County. (ROA p. 20, lines 8-16, p. 36, lines 8-13, p. 42, lines 1-14, p. 43, lines 18-25, p. 44, lines 1-6). Prather was a guest in the trailer home visiting a friend. (ROA p. 22, lines 10-25, p. 23, lines 1-12, p. 99, lines 5-25). When officers entered the home, they searched Prather along with the person living in the home and some other people. (ROA p. 100, lines 1-25, p. 51, lines 21-23, p. 52, lines 2-6, 56, lines 15-20, p. 59, lines 14-15). A gun was found lying underneath Prather and marijuana and cocaine were found on his person. (ROA p. 83, lines 1-25).

Prather's trial counsel made a motion pretrial to suppress the drugs and gun on the legal basis that the officers had no reason to search Prather. (ROA p. 21, lines 13-25). She argued that the officers needed a reasonable suspicion that he was a danger to the officers before they could search him. (ROA p. 21, lines 24-25, p. 22, lines 1-24). The court ruled that the search warrant was allowed but he would wait to rule on the search of Prather to see how the facts developed during the trial testimony. (ROA p. 26, lines 15-24). During the trial testimony the court ruled that the search of Prather was proper and overruled trial counsel's objection to the evidence. (ROA p. 90, lines 2-16).

DISCUSSION

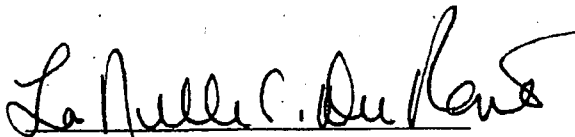
The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. Katz v. United States, 389 U.S. 347, 88 S.Ct. 507 (1967). The Fourth Amendment protects people, not simply areas against unreasonable searches and seizures. Id. What a person seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected under the Fourth Amendment. Id. The requirement that person or thing to be seized be particularly described applies to both arrest and search warrants. Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed. 2d 441 (1963).

The officers had no reason to search Prather. There is no record that he was named in the search warrant, and officers did not see drugs or a gun on his person in plain view. The Fourth Amendment states that the person to be seized must be described in the search warrant. Although Prather was visiting in another person's home, he still had an expectation of privacy related to his own person. For these reasons, Prather's conviction should be vacated.

CONCLUSION

Based on the above, Prather's sentence and conviction should be vacated.

Respectfully submitted,



LaNelle C. DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of June, 2007.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES PRATHER,

APPELLANT

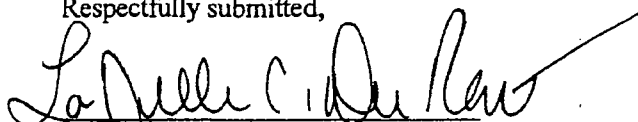
PETITION TO BE RELIEVED AS COUNSEL

Counsel for James Prather states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Doyet A. Early, III, which was held on May 25, 2006, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for James Prather.

Respectfully submitted,


 LaNelle C. DuRant
 Appellate Defender

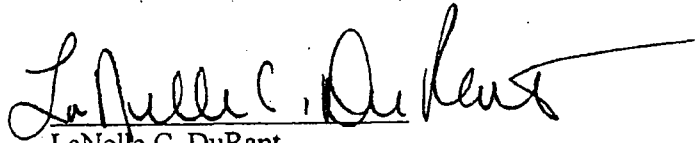
ATTORNEY FOR APPELLANT

This 26th day of June, 2007.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

June 26, 2007

A handwritten signature in black ink, appearing to read "LaNelle C. DuRant", with a long horizontal flourish extending to the right.

LaNelle C. DuRant
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, SC 29211-1589
803) 734-1343
Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Doyet A. Early, III, Circuit Court Judge

THE STATE,

RESPONDENT,

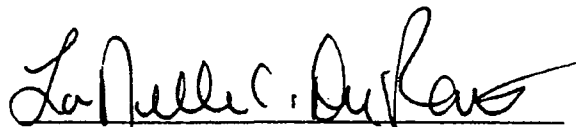
V.

JAMES PRATHER,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliot, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 26th day of June, 2007. A copy of the brief and record on appeal have also been served on James Prather, #315663 at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 26th day of June, 2007.



LaNelle C. Durant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 26th day of June, 2007.

Karen D. Elliott (L.S.)
Notary Public for South Carolina

My Commission Expires: March 19, 2017

ANDERS RESPONSE BRIEF

STATE of South Carolina
IN THE Court of Appeal

Appeal from Aiken County
Doyet A Early, III, Circuit Court Judge

The State

Respondent

V

James Prather

Appellant

pro se brief

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SC Court of Appeals

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Michigan v. Summers, 101 S.Ct. 2587, 452 U.S. 692 (1981)

Minnesota v. Dickerson, 508 U.S. 366, 113 S.Ct. 2130, 724 L.Ed.2d 334 (1993)

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United States Constitution, Fourth Amendment

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Prather's trial counsel made a motion in pretrial to suppress the drugs on the legal basis that the officer had no reason to search Prather, (Tr p 21 -

lines 13-25) She argued that the officer needed a reasonable that Prather was danger to the officers before they could search him (Tr p 21 lines 24-25 p 22 lines 1-24) The court ruled that the search of Prather to see how the facts developed during the trial testimony (Tr P 26 lines 15-24). During the trial testimony the court ruled that search of Prather was proper using the case Michigan v Summers that say the risk of harm to both the police and the occupants is minimized if the officers routinely exercise a question and command of a situation recognizing destruction of the evidence, flight, and safety to the officers. The court also used Minnesota v Dickerson plain feel doctrine case and that would support the finding and immediately identifying of the Marijuana (Tr p 93 lines 19-25, p 94 lines 1-14)

Discussion

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures *Katz v. United States*, 389 U.S. 347, 88 S.Ct. 507 (1967)

The Fourth Amendment protects people, not simply areas against unreasonable searches and seizures

What a person seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected under the Fourth Amendment. The

requirement that person or thing to be seized be particularly described applies to both arrest and search

warrants *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed. 2d 441 (1963). The risks of harm

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of the evidence, flight, and safety to the officers

Michigan v. Summers 101 S.Ct. 2587, 452 U.S. 642 (1981)

The police may seize nonthreatening contraband detected through the sense of touch during a protective pat down

search of the sort permitted by *Terry*. So long as the search stays within the bounds marked by *Terry*,

Minnesota v. Dickerson 113 S.Ct. 2130, 508 U.S. 366, 124

L.Ed. 334 (1993). *Terry* permits a brief stop of

person whose suspicious conduct leads an officer to

Conclude in light of his experience that criminal activity may be afoot, and pat down search of person for weapons when the officer is justified in believing that the person may be armed and presently dangerous. This protective search - permitted without a warrant and on the basis of reasonable suspicion less than probable cause is not ment to discover evidence of crime, but must be strictly limited to that which is necessary for the discovery of weapons which might be used to harm the officers or others. If the protective search goes beyond what is necessary to determine if the suspect is armed it is no longer valid under Terry and its fruits will be suppressed

First the court used Michigan v Summer that say the risk of harm to both the police and the occupants is minimized if the officer routinely exercise a question and command of situation recognizing destruction of the evidence, flight, and safety to the officers. None of the situation was recognize I quote from all officer involved Micheal Jones what happen he first seen Mr Prather? "He was laying on the floor, face down on the floor" Officer Howard was part of the SWAT team when he came in he never mention any thing about he seen Prather tring to destroy evidence, attempting to flee or was a threat to anyone "I came in

and render the scene secure, then I assist with investigation" Officer Savell "I came in contact with him when Officer Jones called me over" There is no where in the records that any officer recognize, any destruction of evidence, flight, or any harm to Officers Each officers says that the S.W.A.T team render the scene secured, so they were able to do there investigation,

The court also used Minnesota v Dickerson stating the plain feel doctrine case and that would support the finding and immediately of the marijuana and cocaine. In Minnesota v Dickerson clearly states the police may seize nonthreatening contraband detected through the sense of touch during a protective pat-down search of the sort permitted by Terry So long as the search stays within bounds marked by Terry,

The records shows that the police went beyond the Terry Terry states the officer may do a protective sweep for officers safety looking only for weapons Mr Jones stated he started his pat down for officers safety for weapons when he came across something that felt like a plastic bag, not no weapon which turn out to be marijuana He continued to pat Prather down he could see a plastic bag hanging out of his jacket Mr Gibbons asked "What did you think

at that time?" Mr Jones responds was "more Contraband," not no weapon He said he found a gun laying under him, not on his person Prather was never charge with a gun so that would prove the officers went beyond the Terry Also in Dickerson the Supreme Court after "a close examination of the record" Held that the officers own testimony "believes any notion that he "immediately" reconized the lump as crack cocaine Rather the court concluded, the officer determined that the lump was contraband Only after "squeezing, sliding, and other wise manipulating the contents of the defendant's pocket" A pocket which the officer already knew contained no weapon Officer Jones stated as he was patting Prather down. "I felt something in the hood that was a plastic bag that was consistent with Contraband in the sweat top. At his jacket pocket I cansee a plastic bag, the the top of a plstic bag hanging out of his jacket pocket At that time I thought it was more Contraband that was on his person," The officer admitted he already knew it were more Contraband, not no weapon The Officers protective Search went beyond what is necessary to determine if the suspect is armed. Which means it is no longer valid under terry and its fruits should have been suppressed in trial For these reason, Prather

Conviction should be vacated

CONCLUSION

Based on the above, Prather's sentence and conviction should be vacated

Respectfully submitted

James Prather
James Prather

These are cases I found

On valid search warrant Art I § 10. State v. Higgins, 110 N.J.
Investigatory detention of a person *Barra v. Illinois*
Analysis report *Kenneth v. Supreme Court of the Carolinas*
412 U.S. 2d 386

Affidavits to warrants

Warrant not supported by oath or affirmation is illegal
A warrant under which a defendant was arrested, which
was not supported either by oath or affirmation was
illegal and the sheriff had no authority to keep or detain
him in custody as such arrest was unconstitutional

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South Carolina code, laws, Title 17-13-140

Constitutional Provisions

United States Constitution, Fourth Amendment

South Carolina Constitution, Article I Section 10

STATEMENT OF ISSUE ON APPEAL

Did the trial court err failing to grant appellant's motion to suppress all evidence found because the state didn't comply with warrant statute?

STATEMENT OF THE CASE

On February 13, 2006 the Aiken County Grand Jury indicted James Prather on trafficking in cocaine between ten and twenty-eight grams (26.69) grams and possession with intent to distribute cocaine within a one-half mile of a school and/or park indictment #'s 2006-GS-02-256 and 257. On May 21-26, 2006, Prather stood trial before the Honorable D.A. Early, III, and a jury. The jury found Prather guilty as charged and Judge Early sentenced him to twenty years on the trafficking cocaine second offense and fifteen years on the possession with intent to distribute cocaine within one-half mile of a school and/or park to run concurrently. Prather's probation for a prior conviction for possession of cocaine in 2003 was revoked in full (two years) as a result of his guilty sentence. That revocation was ordered to run concurrently to his other sentences. Prather filed a motion for a new trial which was heard by Judge Early on June 26, 2006 and denied. Prather filed a timely notice of intent to appeal on July 3, 2006. This appeal follows. -----

ARGUMENT

The trial court erred by failing to grant appellant's motion to suppress all evidence found because the State didn't comply with warrant statute.

Facts

Law enforcement officers with the Narcotics Division of the Aiken County Sheriff's Department obtained a search warrant based on information from an informant to search a trailer home on Edgefield Highway in Aiken, County (Tr p 20 line 8-16, p 36, lines 8-13, p 42, lines 1-14 lines 18-25, pp 44, lines 1-6) Prather was a guest in the trailer home visiting a friend. (Tr p 22, lines 10-25 p 23, lines 1-12, p 49, lines 5-25 when officers entered the home and some other people (Tr. p 100, lines 1-25 p 51 lines 21-23 p 52, lines 2-6, p 56, lines 15-20, p 69, lines 14-15) A gun was found lying underneath Prather and marijuana and cocaine were found on his person.

Prather trial counsel made a motion in pre trial to suppress any drugs found as result of the search warrant because the state didn't establish sufficient probable cause to search this home. (Tr p 18, lines 13-15). She argued there are no affidavits from Mr Butler or Mr. Coleman indicating that they actually purchased drugs out of this home on this particular date which would have given probable cause for the search warrant (Tr p 20 lines, 17-22) She argued there should have been some type of affidavit from Mr Butler. Setting

forth that he did in fact purchase drugs from this home at this address in order for them to have gotten a search warrant, (Tr p 21, lines 5-7, 9-11).

Discussion

The Constitution of the United States and the State of South Carolina require that search warrants be "supported by oath or affirmation" U.S. Const. Amend. IV S.C. Const. Art. I section 10 Under S.C. Code of laws 17-13 140 warrant statute A warrant issued here under shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of court of record establishing the grounds for the warrant State v. McKnight 352 S.E.2d 471 Search warrant supported solely by officers sworn oral testimony was defective due to its failing to meet affidavit requirement of warrant statute, through sworn oral testimony requirement of oath or affirmation Search warrant affidavit which is itself insufficient to establish probable cause may be supplemented before magistrate by sworn oral testimony, however sworn oral testimony, standing alone, does not satisfy warrant statute.

The officers didn't establish sufficient probable cause to search this home There is no record of a affidavit to comply with the Search warrant The Officers executed a invalid Search warrant For these reasons, Prathers conviction should be vacated.

Conclusion

Based on the above, Prather sentence and conviction should be vacated.

Under Terry, a police officer who makes an investigatory detention may conduct a limited pat-down frisk of a suspect outer clothing. The frisk may only be conducted if the officer has a reasonable belief that the detainee poses a threat to the officer's safety or others. The frisk must be limited in scope to a search for weapons and may not be used to search for evidence of criminal activity (warrantless searches and seizures).

Investigatory Detention of Persons

Investigatory Detention of Persons: Not all encounters and stops

and police seizures are governed by the Fourth Amendment

A seizure occurs only when a reasonable person would not

feel free to terminate an encounter with the police. Under

Terry v Ohio, while a warrantless seizure not based on

probable cause is generally invalid, an investigatory detention,

defined as a brief seizure by a police officer, is lawful if

based on reasonable suspicion. The Court emphasized

the search (or seizure) entails "to determine whether

a search or seizure is lawful. Under this balancing

approach, important government interest can justify

a brief investigatory detention based on less than probable

cause

Law enforcement officers initiate an investigatory

detention only if they have reasonable, articulable

suspicion that a person is engaged in criminal activity.

When police reasonably suspect that a person is engaged

in a criminal activity, police may stop that person, question

that person for a limited period of time, and frisk that person

for weapons. To justify an investigatory detention, the government

must point to specific and articulable facts that, together

with rational inferences drawn from those facts, reasonably

suggest that criminal activity has occurred or is imminent.

Inarticulate hunches or generalized suspicions are insufficient

Investigatory detention are valid if reasonable suspicion objectively

exists. The subjective intentions of police are irrelevant to

an evaluation of the constitutionality of a detention under

the Fourth Amendment. The primary bases for ~~exam~~

reasonable suspicion are a police officer's personal observations and the officer's knowledge that a crime has been committed. Courts afford considerable deference to the observations and conclusions of the police, reasoning that an experienced officer can infer criminal activity from conduct that seems innocuous to lay observers. Although an officer may not base reasonable suspicion on isolated or minimal instances of innocent activity, a collection of such apparently innocent activities may cumulatively create the requisite reasonable suspicion.

Reliable information from a citizen informant may also create reasonable suspicion and justify an investigative detention. Courts assess the reliability of an informant or informant's tip on a sliding scale. Greater corroboration will justify acting on a tip from an informant of uncertain or unknown trustworthiness, while a lesser showing will suffice if the information is from a known source. Generalized fear of criminal activity and the presence of a suspect in high-crime neighborhoods are factors that, standing alone, do not justify seizure. Courts may use these factors, however, in assessing the totality of circumstances surrounding a seizure. For example, a suspect's precipitous flight upon seeing the police can justify seizure when occurring in a high-crime neighborhood. Generalized suspicion of criminal activity based solely on race does not justify seizure.

The range of police activities permitted during investigatory detention must be reasonably related to the circumstances that initially justified the detention. If reasonable suspicion exists, police may detain a person to ascertain his or her identity. Police may also order occupants out of a vehicle they have lawfully detained, whether or not the police have reasonable suspicion that the occupants have engaged in criminal activity.

When action by the police exceeds the bounds permitted by reasonable suspicion, the seizure becomes an arrest and must be supported by probable cause. The Supreme Court has declined to establish a "bright-line" rule to determine when an investigatory detention becomes an arrest. Lower courts decide on a case-by-case basis whether an investigatory detention has become an arrest. In making such decisions, courts consider the diligence of police in resolving their reasonable suspicion as quickly as possible, the scope and nature of the restraints placed on an individual's liberty, and whether police transported the detainee to another location. When determining the reasonableness of the use of force, courts balance the degree of intrusion on the individual's liberty against the state's need to ensure the safety of both the public and law enforcement officers. A detention does not become unreasonable simply because the police could have used a less intrusive means of investigation when detainees' own actions contribute to the duration of a stop. A longer detention may be reasonable.

I writing you concerning

I writing you concerning my trial on May 26-29, 2006 and motion new trial on June 26, 2006 I was found guilty of trafficking cocaine in Aiken South Carolina I'm now

on direct appeal. The judge erred in not granting my motion to suppress the evidence. My lawyer motion to suppress the evidence in three different ways,

1) Suppressing of the search warrant. The search warrant did not have a attachment so how could the courts

come to determine probable cause 2) The search

and seizure of me, when it was a involuntary detention were they only put me down for a weapon, there was

no weapon found They say the found drugs in my pocket that was illegal search and seizure. 3) There was no

analysis report so that would break the chain of custody.

Thes. three I believe should have suppress the evidence

in my trial

Thank you

James P. Butler

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

James Prather,

Appellant.

Appeal From Aiken County
Doyet A. Early, III, Circuit Court Judge

Unpublished Opinion No. 2008-UP-554
Submitted October 1, 2008 – Filed October 9, 2008

APPEAL DISMISSED

Appellate Defender LaNelle C. DuRant, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
of Columbia; and Solicitor Barbara R. Morgan, of
Aiken, for Respondent.

PER CURIAM: James Prather appeals his convictions and sentences for trafficking cocaine and possession with intent to distribute cocaine within the proximity of a public park. On appeal, Prather argues the trial court erred in denying his motion to suppress evidence obtained through an unlawful search. Prather also asserts a similar pro se argument. After a thorough review of the record, counsel's brief, and Prather's pro se brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss¹ Prather's appeal and grant counsel's motion to be relieved.

APPEAL DISMISSED.

ANDERSON, WILLIAMS, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

NOV 07

Anders
*file*THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT

JAMES PRATHER

APPELLANT

Petition for Rehearing

Henry Dorgan McMaster
Attorney GeneralJames Prather
Petitioner Pro, seJohn W. McIntosh
Chief Deputy Attorney General

S.C.D.C.F-4A163

386 Redemption way

Sally W. Elliott

McCormick, South Carolina

Assistant Deputy Attorney General

29899

P.O. Box 11549

Columbia, South Carolina 29211-1549

Attorneys For Respondent

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State v. Tuffour, 613 S. E2d 814 (2005)

State v. Wilson, 545 S. E2d 827 (2001)

State v. Gatum, 492 S. E2d 822 (1997)

State v. Primus, 535 S. E2d 152 (2000)

State v. Wood, 608 S. E2d 435 (2004)

Hayes v. Com., 514 S. E2d 357 (1999)

United States v. Prieto-willa 910 F.2d 601 (1990)

Ybarra v. Illinois, 444 U.S. 85, 100 S. Ct. 338, 62 L. Ed. 2d 238 (1979)

Michigan v. Summers, 452 U.S. 692, 101 S. Ct. 2587, 69 L. Ed. 2d 380 (1981)

Constitutional Provisions

United States Constitution, Fourth Amendment

STATEMENT OF ISSUE ON APPEAL

Did the appeal Court err in dismissing Prather appeal, were his Counsel submitted a Anders brief to be relieved as counsel. When at trial Prather argues the trial court erred in denying his motion to suppress evidence obtained through an unlawful search.

STATEMENT OF THE CASE

On February 13, 2006 the Aiken County Grand Jury indicted James Prather on trafficking in cocaine between ten and twenty-eight grams (26.69) and possession with intent to distribute cocaine within a one-half mile of a school and/or park indictment #'s 2006-GS-02-256 and 257. On May 24-26, 2006, Prather stood trial before the Honorable D.A. Early, III, and a jury. The jury found Prather guilty as charged and Judge Early sentenced him to twenty years on the trafficking cocaine second offense and fifteen years on the possession with intent to distribute cocaine within one-half mile of a school and/or park to run concurrently. Prather's probation for a prior conviction for possession of cocaine in 2003 was revoked in full (two years) as a result of his guilty sentence. That revocation was ordered to run concurrently to his other sentences. Prather filed a motion for a new trial which was heard by Judge Early on June 26, 2006 and denied. Prather filed a timely notice of intent to appeal on July 3, 2006. Prather appellate lawyer LaNelle C. D. Rent filed Anders Brief on June 26, 2007. Prather appeal was dismissed on October 9, 2008. This motion for rehearing follows.

ARGUMENT

The appeal court err. in dismissing Prather appeal, were his counsel submitted a Anders brief to be relieved as counsel.

When at trial Prather argues the trial court erred in denying his motion to suppress evidence obtained through an unlawful search.

On June 26, 2007 Prather appellate lawyer LaNelle C. DuRant filed Ander Brief. Stating Prather had no merits for review. She would like to be relieved as counsel.

Prather submitted a pro se brief stating he had merits. That the trial court erred denying his motion to suppress evidence obtained through an unlawful search.

Discussion

In criminal cases, an appellate court sits to review errors of law only. The court is bound by the trial court's factual finding unless they are clearly erroneous. Further, an appellate court will reverse the circuit court's decision on the issue only if that court has abused its discretion. *State v. Tuffour*, 613 S.E.2d 814; (2005).

State v. Wilson 545 S.E.2d 827; (2001). In most cases, making a motion in limine to exclude evidence at the beginning of trial does not preserve an issue for review because a motion in limine is not a final determination; thus, in order to preserve an issue for review, the moving party must make a contemporaneous objection when the evidence is introduced. *State v. G. Gum* 492 S.E.2d 822 (1997). *State v. Primus* 535 S.E.2d 152 (2000). *State v. Wood* 608 S.E.2d 435 (2004).

In trial, Prather's lawyer made a motion in limine to suppress the evidence because of illegal search and seizure. (Tr. p. 21, lines 13-25). Prather's lawyer made a contemporaneous objection when the evidence was introduced to preserve the issue of review. (Tr. p. 51, line 24-25; p. 71, 8-9).

A warrant to search a specified residence, and not people found there in, for narcotics did not automatically carry with it the blanket authority to conduct full searches of people present. *Hayes v. Com.* 514 S.E.2d 357 (1999). Even when police have a warrant, mere fact that a person is in the company of persons for whom a warrant has been issued does not constitute probable cause for search of that person. When government claims that detention ripened into probable cause for arrest, thus justifying search, each of the investigatory measures must be shown to have been justified; there must have been reasonable suspicion to justify the detention. *United States v. Prieto-Villa* 910 F.2d 601 (1990). A warrant to search a place cannot normally be construed to authorize a search of each individual in that place. *Ybarra v. Illinois*, 444 U.S. 85, 100 S.Ct. 338, 62 (6)

11 Ed, 2d 238 (1979). A warrant to search for contraband found on probable cause implicitly carries with it the limited authority to detain the occupants of the premises while proper search is conducted. *Michigan v. Summers*, 452 U.S. 692, 101 S.Ct. 2587, 69 L.Ed.2d 380 (1981)

Prather's trial court lawyer argued they have to have a suspicion that there is danger to the police officer, none was stated in the report there was a danger to the police officers. (Tr. p. 21, lines 24-25, p. 22, lines 1-2). There has to be articulable suspicion from the officer that there might be a weapon or that there is probable cause or some type of fear for the officer's safety in order for the officer to pat the defendant down. (Tr. p. 93, lines 1-2). Officers Mike Jones stated once the S.W.A.T. team commander renders the scene safe -- Not safe, but under control. They will come in and we conduct a pat-downs of all of the individuals inside to make sure that nobody has weapons. (Tr. p. 47, 21-25). Mr. Gibbons (Solicitor) asks Mr. Jones what was Mr. Prather doing when you got to him? He was laying on the floor. Face down. And what did you do? What did you see when you first walked up?

Mr. Jones stated when he first walked up to him he observed one of the S.W.A.T. team member over Mr. Prather. He advised him then that I had him. I went to conduct a pat down search just to make sure he didn't have any weapons or anything on him and during any pat-down searched I started (Tr. p. 51, 13-23).

There was no evidence in record that the officers had probable cause to search Mr. Prather or that he committed any exigent circumstances. Although Prather was visiting in

another person's home, he still had an expectation of privacy related to his own person. For these reasons, Prather's conviction should be reversed.

CONCLUSION

Based on the above reason's, Prather's sentence and conviction should be reversed

Respectfully Submitted

James Prather

James Prather

Pro se,

James Prather 315663
 S.C.D.C., F-4A, 163
 386 Redemption Way
 McCormick, South Carolina
 29899

The Supreme Court of South Carolina, Clerk of Court
 P.O. Box 11330
 Columbia, South Carolina 29211

Re: Case No.: 2004-GS-02-00039
 2006-GS-02-00256
 2006-GS-02-00257

Dear Mr.

I would like to submit the following correspondence for the record. I have enclosed a stamped, self-addressed envelope so I can have a clock stamped copy for my records (from your office).

Your cooperation in this matter is greatly appreciated

October 2008
 McCormick, South Carolina

Respect fully,
 James Prather, 315663
 James Prather, 315663

James Prether, 315663

S.C.D.C., F-4A, 163

386 Redemption way

McCormick, South Carolina

29899

The Court of Appeals, Clerk of Court

P.O. Box 11330

Columbia South Carolina 29211

Re: Case No. : 2004-GS-02-00039

2006-GS-02-00254

2006-GS-02-00257

Dear Mr. Kenneth A. Richstad

I would like to submit the following correspondence for the record. I have enclosed a stamped, self-addressed envelope so I can have a clock stamped copy for my records (from your office).

Your cooperation in this matter is greatly appreciated.

Respectfully

October 2008

McCormick, South Carolina

James Prether, 315663

James Prether, 315663

STATE OF SOUTH CAROLINA IN THE COURT OF APPEALS

Appeal from Aiken County
Doyet A. Early, III, Circuit Court Judge

THE STATE, RESPONDENT,

V.

JAMES PRATHER, APPELLANT

CERTIFICATE OF SERVICE

The appellant hereby certifies that a true copy of the Petition For Rehearing in the above referenced case has been served upon Salley W. Elliot, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 619, Columbia, SC 29201, and on The South Carolina Court of Appeals, Kenneth A. Richstad, Clerks, Post Office Box 11629, Columbia, South Carolina 29211, this 31, day of Oct, 2008 by United States Mail.

Sworn To Before me on This

31 Day of October, 2008

Jennifer C Frank
Notary Public of South Carolina

My Commission Expires:
6/31/2010

James Prather

James Prather, 315663

Appellant Pro se

The South Carolina Court of Appeals

The State,

Respondent,

v.

James Prather,

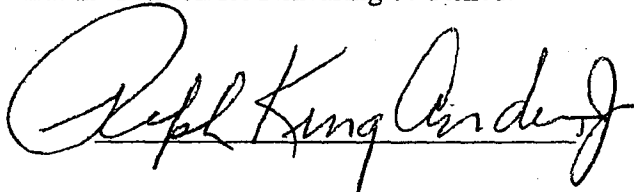
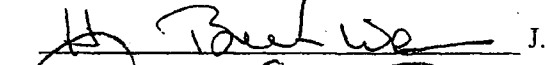
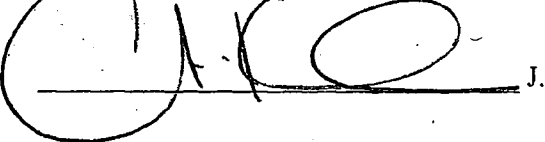
Appellant.

The Honorable Doyet A. Early, III
Aiken County
Trial Court Case No. 2004-GS-02-00039
2006-GS-02-00256
2006-GS-02-00257

ORDER

After a careful consideration of the Petition for Rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded and hence, there is no basis for granting a rehearing.

It is, therefore, ordered that the Petition for Rehearing be denied.


 J.
 J.

Columbia, South Carolina

December 19, 2008

cc: Appellate Defender LaNelle C. DuRant
James Prather, #315663
Attorney General Henry Dargan McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Salley W. Elliott
Barbara R. Morgan, Esquire



The South Carolina Court of Appeals

JEANETTE F. BARBER
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11639
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1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
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FAX: (803) 734-1839
www.sccourts.org

January 26, 2009

REMITTITUR

The Honorable Liz Godard
109 Park Ave
PO Box 583
Aiken, SC 29802-0583

Re: The State v. Prather, James
2004-GS-02-00039; 2006-GS-02-00256; 2006-GS-02-00257

Dear Mrs. Godard:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

A handwritten signature in cursive script, reading "Jeanette F. Barber".

Jeanette F. Barber
Clerk of Court

JFB/lm

cc: Appellate Defender LaNelle C. DuRant
James Prather, #315663
Assistant Deputy Attorney General Salley W. Elliott
Barbara R. Morgan, Esquire

FORM 5

2009-CP-02-01417-259
 2006-CS-02-00256
 Filed 10-19-09
 J. Lee
 Deputy Clerk
 Trial Judge
 Trial Jury
 Court Reporter
 Sec. PCR Petitioner
 General Sessions
 Appointed Any.

STATE OF SOUTH CAROLINA

County of Aiken

James Prather 315663

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence Aiken County Court House
Aiken County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2006-63-02-00256
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) May 24, 2006
- (b) 20 years for trespassing
- (c) 15 PWD 1/2 mile of a prob run concurrently
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 State of South Carolina Courts of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. October 9, 2008
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Ineffective Appeal Counsel
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? rehearing Denied
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
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. Petition for a rehearing after the Co-2 dismissed my cases for
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. S. Carolina Courts of Appeal
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Dismissed
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. 12-19-08
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- 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?

N/A

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) This is the first time I'm able to argue these issues
 (b) This is the first time I'm able to argue these issues
 (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? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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

(a) the name and address of each attorney who represented you:

i. Wallis R. Alves 410 Barnwell Avenue NW P.O. Box 2247 Aiken
S.C. 29802
 ii. LaNelle C. Durant Post Office Box 1589 Columbia, S.C.
29211-1589
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. trial
 ii. Appeal
 iii. _____

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

reverse of conviction

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

N/A

STATE OF SOUTH CAROLINA)

County of Aiken)

VERIFICATION

I, James Prather, 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.

James Prather

SWORN to and subscribed before me this 16
day of June, 2009

George L Young (L.S.)
Notary Public

My Commission Expires:

8-28-2011

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

I, James Pether, 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.

James Pether
Applicant

SWORN or affirmed to and subscribed before me this
10 day of June, 2009

Joseph L. Young
Notary Public

My Commission Expires: 8 28 2011

11. A. My trial lawyer was ineffective for not:

1. Objecting to the missing link in the chain of custody
2. Objecting to the enhancement of time was illegal
3. Not having cases to back up her motions she made in trial
4. Not objecting to the illegal entrance in the house
5. Objecting or making a motion to the prejudice by police to get the search warrant.

6. Not objecting to the evidence created jury question

7. Not objecting to Edgefield police crossing their jurisdictions to do investigations in Aiken County without permission. 23-1 215

8. Not objecting to prejudice by the police officers in trial.

b. My Appeals lawyer was ineffective for not briefing the following issues:

1. The search of my person
2. The invalid search warrant
3. The gun and other drugs that was in my trial besides what I was charged for

13 A

1. Having no merits in appeal

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

2009-CP-02-1417

James Prather, #315663,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

(Appointment of Counsel Requested)

The Respondent, making its Return to the application for post conviction relief (PCR) filed June 19, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was indicted for Possession with Intent to Distribute Within Proximity of Park (2006-GS-02-0256) and Trafficking in Cocaine (2006-GS-02-0257). Applicant was represented by Wallis Alves, Esquire. Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. Applicant was found guilty, and on May 26, 2006, Applicant was sentenced to fifteen (15) years imprisonment for Possession with Intent to Distribute Within Proximity of Park and to twenty (20) years imprisonment for Trafficking in Cocaine. Applicant was serving a probationary sentence (2004-GS-02-0039) at the time of his conviction, and two (2) years of the suspended sentence were revoked and probation terminated.

1 of 5

FILED 10-8-2009
L. H. Haddad
CLERK OF COURT
Barbara R. Rigg
Deputy Clerk

A notice of appeal was filed and an appeal perfected. An Anders brief was submitted on Applicant's behalf, and Applicant submitted a *pro se* brief. The appeal was dismissed. State v. Prather, Op. No. 2008-UP-554 (S.C. Ct. App. filed October 9, 2008). Applicant's *pro se* petition for rehearing was denied on December 19, 2008. The remittitur was sent on January 26, 2009.

Attached herewith and incorporated herein are the records of the Aiken County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel."
2. "Ineffective appeal counsel."

Applicant has failed to set forth with specificity the grounds upon which the application is based and facts in support thereof. S.C. Code §17-27-50. Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must

prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits that the allegation that appellate counsel was ineffective is without merit. 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). 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.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: Mary S. Williams
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Oct. 3, 2009.

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

2009-CP-02-1417

JAMES PRATHER, 315663)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

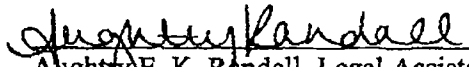
STATE OF SOUTH CAROLINA,)

Respondent.)

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

**Aaron Walsh, Esquire
Walsh Law, PA
Post Office Box 639
Aiken SC 29802**

DATED this 6th day of October, 2009.


Aughtin E. K. Randall, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA

2 COUNTY OF AIKEN

CIRCUIT COURT
2009-CP-02-01417

3
4 JAMES PRATHER,
5 Applicant,

6 -vs-

TRANSCRIPT OF RECORD

7 STATE OF SOUTH CAROLINA,
8 Respondent.

9 Post Conviction Relief Hearing

10 Heard on Thursday, July 15, 2010

11 Aiken, South Carolina

12 BEFORE:

13 THE HONORABLE W. JEFFREY YOUNG
14
15

16 APPEARANCES:

17 Counsel on Behalf of the Applicant:
18 Aaron G. Walsh, Esq.

19 Counsel on Behalf of the Respondent, State of SC:
20 Mary S. Williams, Esq.

21
22 Cheri L. Young, RPR
23 Circuit Court Reporter
24 P O Box 5232
25 Aiken, SC 29803-5232

EXAMINATION INDEX

JAMES PRATHER

DIRECT BY MR. WALSH

4

CROSS BY MS. WILLIAMS

26

WALLIS A. ALVES

DIRECT BY MS. WILLIAMS

28

CROSS BY MR. WALSH

33

REDIRECT BY MS. WILLIAMS

51

RECROSS BY MR. WALSH

55

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MAR ADM

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Applicant's

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4	Chain of custody	37	39

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JAMES PRATHER - DIRECT

1 ON THURSDAY, JULY 15, 2010 AT 10:10 A.M.:

2 THE COURT: All right. This is the case of James
3 Prather versus the State of South Carolina under Docket
4 Number 2009-CP-2-1417.

5 Present and appearing is the Plaintiff with his
6 attorney, Mr. Aaron Walsh of the Aiken County Bar. The
7 State is present represented by Ms. Mary S. Williams.

8 Are we ready to proceed?

9 MR. WALSH: Yes, sir.

10 MS. WILLIAMS: Yes, sir.

11 THE COURT: You may call your first witness.

12 MR. WALSH: I call Mr. Prather, please.

13 THE COURT: Mr. Prather, come forward and be sworn.

14 JAMES PRATHER, having been duly sworn, was examined
15 and testified as follows: sworn.

16 THE CLERK: Please have a seat in the witness box and
17 state your full name for the Court.

18 THE APPLICANT: James Prather.

19 THE COURT: All right. Mr. Walsh, you may proceed.

20 MR. WALSH: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. WALSH:

23 Q. Mr. Prather, now you have raised some allegations in
24 this case. Is it accurate to say that you've got some
25 objections as to your trial counsel and the way that that

JAMES PRATHER - DIRECT

1 was handled? And then for the appeals, what type of
2 appeal -- what type of appellate brief was submitted on
3 your behalf in this case?

4 A. An Anders brief.

5 Q. An Anders brief essentially said they couldn't find
6 any issues to appeal; is that correct?

7 A. Yes, sir.

8 Q. Now, how do you feel about -- first off, did you feel
9 that through your trial some appeal-able issues were in
10 fact objected to and raised?

11 A. Yes, sir.

12 Q. All right. And then some that you allege were not?

13 A. Yes, sir.

14 Q. All right. In order, if you would, just kind of
15 identify for the Court very basically the areas that you
16 think, first off, that you think Ms. Alves did object to
17 that you think really should have been raised in your
18 appeal.

19 A. The first issue would be the search of me, which was
20 violating my Fourth and 14th Amendments.

21 THE COURT: Slow down, slow down. Speak clearly.

22 THE APPLICANT: The first issue would be the search of
23 me that violated my Fourth and 14th Amendment; that the
24 officers didn't have the right to search me when they had
25 a warrant looking for somebody else coming into the

JAMES PRATHER - DIRECT

1 house. They didn't have --

2 BY MR. WALSH:

3 Q. It was a search warrant for the home --

4 A. Yes, sir.

5 Q. -- they were there on. We'll get to the actual --
6 we'll get to the warrant later.

7 A. Okay.

8 Q. But they were there on a search warrant for the house;
9 is that right?

10 A. Yes, sir.

11 Q. All right. And your lawyer did -- she did argue the
12 supreme court case of Michigan-Summers and some of the
13 progeny, she did argue that at your trial that you
14 remember; yes?

15 A. Yes, yes. She reserved the issue and she renewed her
16 objections when the evidence came in on the search
17 warrant.

18 Q. And essentially was her objection that no
19 particularized suspicion as to you had ever been testified
20 to; is that about right?

21 A. Yes, sir. All the officers in the case stated that
22 the only reason they searched me was because the guns in
23 the house. But in Michigan versus Summers it states that
24 they had to particularize any evidence to me. They had to
25 particularize evidence to me that I was in a threat.

JAMES PRATHER - DIRECT

1 Q. You recall that each of the narcotics investigators
2 testified under oath that they -- when they issued a
3 search warrant of the house, they searched everybody?

4 A. Yes.

5 Q. And several -- do you recall -- that's about on page
6 44, 47 and 59, at least, of your transcript?

7 A. Yes, sir.

8 Q. And it's true that each of the investigators when
9 asked by Ms. Alves, they testified not that -- they never
10 really said anything as to you, they just said we searched
11 everybody?

12 A. Yes, sir.

13 Q. So that's one of the issues that you think on the
14 appellate level --

15 A. Should have been raised.

16 Q. -- should have been raised?

17 A. Yes, sir.

18 Q. All right. Is there anything as to that issue as far
19 as the particularized suspicion that is required, is there
20 anything that you'd like to add to the Court?

21 A. Yes, sir. In Michigan versus Summers, it states -- in
22 the language of Michigan versus Summers, it states that,
23 don't get the, don't get the detention mixed up with a
24 search.

25 The whole case is about a detention. It's not about a

JAMES PRATHER - DIRECT

1 search. And in Yellow (verbatim) V -- in State V Simmons,
2 Michigan versus Summers as well Yellow versus Illinois,
3 that they have to particularize probable cause towards me,
4 not because they looking for somebody else in the house
5 don't give them the right to search me. That's stating in
6 the same case they used against me.

7 And Michigan versus Summers is all about detention.
8 And if you read the cases it states that they didn't do
9 any search until they had probable cause that Summers
10 owned the house. So, I didn't own the house. And it was
11 no probable cause particularized to me. So I don't think
12 they had the right to search.

13 Q. And then you would agree, certainly, that except for
14 saying there was a shotgun located elsewhere in the
15 residence, the prior search of you -- no officer ever
16 identified --

17 A. Anything particularized to me.

18 Q. -- anything particularized to you?

19 A. No, sir.

20 Q. Each of them testified they searched everybody?

21 A. Yes, sir.

22 Q. So, we'll move onto the next. As far as your
23 appellate counsel.

24 A. Yes, sir.

25 Q. What would be the next issue or issue area that you do

JAMES PRATHER - DIRECT

1 think that Ms. Alves objected to and, you know, you felt
2 she was effective to raise, but that was not included in
3 this Anders brief?

4 A. The search warrant. The search warrant didn't have no
5 affidavits to back up significant probable cause.

6 Q. When you say there's no affidavit, you mean there's no
7 affidavit, it wasn't put into evidence?

8 A. Yes, sir. In the record.

9 Q. And to some extent though, that was -- we'll go back
10 to that. But the search warrant, I think, we'll bring
11 back to that.

12 As far as the appellate counsel. We got the search of
13 the house and the search warrant, what other issues do you
14 think should have been in your appeals brief?

15 A. Them are the only two issues that I believe have any
16 merits to it.

17 Q. Okay. So now we get to the trial itself. Now, the
18 warrants is it your understanding -- well, all right.

19 Go ahead and tell the Court what you think was the
20 problem with the search warrant.

21 A. It was no affidavit stating that anything -- it was no
22 affidavit the State never proved on the burden that they
23 had significant probable cause by offering any affidavits
24 in the record.

25 There was never no affidavits in the record at all.

JAMES PRATHER - DIRECT

1 And 17-13-140 states they have to have -- they have to
2 have affidavits to support probable cause to get a search
3 warrant.

4 And Michigan versus Knight states the same thing
5 saying that if -- well, basically Michigan versus Knight
6 saying that under -- arguing under the statute, arguing
7 under the statute warrant that everybody who they use
8 evidence against has a right to argue saying that they
9 never had no probable cause, no affidavit.

10 Q. All right. Did you have an issue with the fact that
11 the officer submitting the search warrant application -- I
12 think I'll ask that question to Ms. Alves.

13 Now, next, as to the chain of custody in the drug
14 case. Now your lawyer filed a Rule Six objection prior to
15 trial; isn't that right?

16 A. Yes, sir.

17 Q. All right. And there was a stipulation in the record
18 only as -- well, tell us what was stipulated to at your
19 trial.

20 A. I believe it was the weight.

21 Q. Okay. But, in fact, at least two or three locations
22 Ms. Alves did say that she would stipulate to the weight
23 but not to where it came from?

24 A. Can I ask one question?

25 Q. Well, answer mine. Then when I'm done asking --

JAMES PRATHER - DIRECT

1 A. I just want to ask, could I get my paperwork?

2 Q. That would be fine. Sure.

3 A. The top folder.

4 MR. WALSH: May I approach the witness, Your Honor?

5 THE COURT: You may.

6 (Documents handed to Applicant.)

7 THE APPLICANT: Thank you.

8 THE COURT: Y'all may proceed.

9 MR. WALSH: All right.

10 BY MR. WALSH:

11 Q. Essentially was it fair to say the stipulation was as
12 to the weight, basically the weight, the weight and the
13 fact that the substance they tested was cocaine? That was
14 the stipulation; is that --

15 A. Yes, sir.

16 Q. All right. And in fact a couple times didn't she say,
17 you know, we're not stipulating to where it came from? Is
18 that -- does that match?

19 A. I think.

20 Q. Okay. All right. But when that cocaine was
21 introduced in testimony, was at -- at that point, was a
22 contemporaneous objection ever made to the chain of
23 custody on that cocaine in that trial?

24 A. No, sir; no objection.

25 Q. So, was there ever -- to your recollection, was a

JAMES PRATHER - DIRECT

1 BY MR. WALSH:

2 Q. I'm sorry. I do have one question. At the beginning,
3 isn't it true that the officer testified that he took the
4 drugs into custody, was not ever able to say whether he
5 retrieved them from you or another officer; isn't that
6 true?

7 A. Yes, sir.

8 Q. All right. And that, I think there was some objection
9 from Ms. Alves as to that issue. I think she did raise
10 it.

11 A. She didn't object. She just made -- she just
12 contradicted him on what he wrote on the paper and what he
13 said in the transcript, I mean, the trial.

14 Q. That issue certainly was not raised in the Anders
15 brief which raised no issues whatsoever; did it?

16 A. You say, what?

17 Q. The Anders brief didn't raise any issue as to the
18 chain of custody; did it?

19 A. Because it wasn't preserved.

20 Q. Back to the search warrant a little bit. Is it your
21 opinion that, that there should have been a pretrial
22 hearing, called a Franks hearing, to challenge that search
23 warrant?

24 A. Yes, sir.

25 Q. All right. And did you -- did you discuss with

JAMES PRATHER - DIRECT

1 Ms. Alves your concerns about this search warrant, you
2 know, before y'all went to trial?

3 A. Truthfully, at that time I didn't know nothing about
4 no search warrants at that Pacific (verbatim) time.

5 Q. All right. But, I mean, she did, she did make some
6 objections to the search warrant --

7 A. Was no --

8 Q. -- during the trial; didn't she?

9 A. There was no affidavits that was produced.

10 Q. All right. And then the last issue. Later, after the
11 jury was out, did they come to the Judge with a question?

12 A. Yes, sir.

13 Q. All right. Your Honor, if I can find this page. I
14 think it's on the transcript at the bottom of page 62
15 (verbatim). It carries on.

16 Did they ask a question about why wasn't the admission
17 of the gun and marijuana when he was not charged with
18 that?

19 THE COURT: Which page?

20 MR. WALSH: I'm looking at the top of page 163 and the
21 bottom of page 162, Your Honor.

22 THE COURT: All right.

23 BY MR. WALSH:

24 Q. All right. And the Judge, he did not issue a curative
25 instruction --

JAMES PRATHER - DIRECT

1 A. No, sir.

2 Q. -- did he? He simply said he couldn't comment on
3 that?

4 A. Yes, sir.

5 Q. And at that time, Ms. Alves did not object to his
6 failure to issue a curative instruction?

7 A. No, sir.

8 Q. Do you think that was an objection that should have
9 been made?

10 A. Yes, sir.

11 Q. All right. You also have an issue as to the
12 enhancement of your trafficking conviction being a second
13 and not a first; is that correct?

14 A. Yes, sir.

15 Q. All right. Now, what was -- your prior conviction
16 that they used to enhance it was for, what?

17 A. Misdemeanor cocaine.

18 Q. All right. And --

19 A. But I was speaking of the language in the indictment.

20 Q. Correct. The indictment didn't, well -- and
21 specifically that's because -- let me get -- the statute's
22 wrong.

23 The language of 375 -- 44-53-375 does not have the
24 language that is found in, I think, 370 that defines a
25 prior as any drug offense?

JAMES PRATHER - DIRECT

1 A. Yes. Not with charge with 370.

2 Q. Right. It's silent. The one statute says, you know,
3 a second is any drug offense. But that was not the way
4 your indictment and the statute was written?

5 A. Yes, sir.

6 Q. Did I get that about right?

7 A. Yes, sir. Yes, sir.

8 Q. You believe Ms. Alves should have objected to that --

9 A. Yes, sir.

10 Q. -- at the trial and sentencing and also possibly that
11 should have been raised by your appellate attorney?

12 A. I --

13 Q. I'm not asking you to be a lawyer, but you feel that
14 one of your lawyers should have caught that?

15 A. Yes, sir. Yes, sir.

16 Q. You believe that was an error that was made.

17 Now, are there any areas that you have, that you, you
18 know, we have talked about, any areas that you allege to
19 be ineffective assistance of counsel that I did not ask
20 you about? Did I leave out any areas?

21 A. No, sir.

22 Q. Speaking with Ms. Alves, is there anything now that
23 you'd like to add before you step down as to those areas
24 or on your own behalf for the Judge?

25 A. On the Franks hearing. On the Franks hearing that

JAMES PRATHER - DIRECT

1 Ms. Alves didn't object to, I mean, ask for a Franks
2 hearing at the beginning of the trial.

3 Basically I asked you to get a -- subpoena the audio
4 and the marked money.

5 Q. Let me do this. We testified that one of your
6 objections was that the affidavits of the search warrant
7 was never put on, it was never made a part of the record
8 in your trial; is that accurate?

9 A. Yes, sir.

10 Q. All right. But since then, you have seen that there
11 was -- an affidavit was done. Now you've seen that?

12 A. It's a statement. It's not really the affidavit.
13 It's a statement.

14 Q. Well, it's listed as Attachment A. to the affidavit in
15 the application for the search warrant?

16 A. It's attachment A. of the search warrant, not the
17 affidavit.

18 MR. WALSH: May I approach the witness again?

19 THE COURT: Yes.

20 BY MR. WALSH:

21 Q. Make sure we're talking about the same thing. In that
22 statement you call it a statement, the attachment?

23 A. Yes.

24 Q. That lists everything. The affidavit for warrant, it
25 says: Reason for Affiant's belief, it's blank. It just

JAMES PRATHER - DIRECT

1 says see Attachment A. So Attachment A. is the entire
2 reason they submitted.

3 Do you agree with that?

4 A. Yes, sir.

5 Q. That's -- all right. And going through. First it
6 indicates that Investigator Young of Edgefield Sheriff's
7 Office met with a confidential informant who is just
8 numbered; is that right?

9 A. Yes, sir.

10 Q. And did Ms. Alves ever file, to your knowledge, any
11 type of motion to reveal that source? Was that source
12 ever revealed or subpoenaed or questioned to your
13 knowledge?

14 A. No, sir.

15 Q. How about Investigator Young of Edgefield County?

16 A. No, sir.

17 Q. And what he says essentially that on February 17th he
18 met the subject named Keith Butler in Edgefield County who
19 told him that he could purchase some drugs from somewhere?

20 A. Purchase some drugs from a subject called Trouble
21 Coleman that never existed.

22 Q. Well, not -- in the first -- in the first -- Trouble
23 Coleman doesn't come up in that first, I would say
24 paragraph, but there are no paragraphs on this page.

25 But that first section, Trouble Coleman doesn't come

JAMES PRATHER - DIRECT

1 up. He just says he could provide some cocaine crack if
2 he got \$100; is that correct?

3 A. Yes, sir.

4 Q. Was Keith Butler ever subpoenaed or questioned to your
5 knowledge in this case?

6 A. No, sir.

7 Q. And so what they -- they allegedly then go to the
8 mobile home in question. We'll call it that, you know,
9 talking about the mobile home where you got arrested. All
10 right. Or at least a mobile home off Highway 19.

11 It says there the residence of a subject known to
12 Keith Butler as Trouble Coleman?

13 A. Yes, sir.

14 Q. Now doesn't it say at this point that the informant,
15 this confidential informant, ESO-whatever, has an audio
16 recording device?

17 A. Yes, sir.

18 Q. Did you -- to your knowledge, have you ever heard a
19 recording of that purchase?

20 A. No, sir.

21 Q. To your knowledge, did your lawyer ever get a copy of
22 that?

23 A. No, sir.

24 Q. Do you know anything about whether there was a
25 recording at all?

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1 A. There was no --

2 Q. You don't know. All right.

3 Now at that point it also says that he had some -- all
4 right. Then it says they leave, they go back into
5 Edgefield County where they get stopped by narcotics
6 investigators of the sheriff's office; is that right?

7 A. Yes, sir.

8 Q. It doesn't identify the investigators; does it?

9 A. No, sir.

10 Q. All right. Now they say they search it and they do
11 not find the documented US currency having been given to
12 Keith Butler; is that right?

13 A. Yes, sir.

14 Q. Now as to that first batch of currency, did your
15 lawyer ask any questions or attempt to determine what
16 happened to that US currency?

17 A. No, sir.

18 Q. And to your knowledge, was any evidence of it ever
19 introduced at trial?

20 A. No, sir.

21 Q. So that would, then Keith Butler -- essentially what
22 it says is they then put an audio transmitting device on
23 him and gave some more US currency; is that right?

24 A. Yes, sir.

25 Q. And it says they sent him back to the residence along

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1 with an investigator, Elliot Gilliam?

2 A. Yes, sir.

3 Q. And to your knowledge was Investigator Gilliam ever
4 questioned? Subpoenaed?

5 A. No, sir.

6 Q. At that point they say this Keith Butler enters the
7 residence, this mobile home off Highway 19, comes back
8 out, meets with Detective Sawyer, turns over some stuff
9 believed to be cocaine and that was the grounds for the
10 warrant.

11 Is that -- have I gotten you through it straight,
12 pretty much?

13 A. No. We're missing a couple things. If you don't mind
14 me bringing it up.

15 Q. By all means. Go ahead.

16 A. All right. When it says the subject Keith Butler met
17 with Trouble Coleman in the residence.

18 Q. Yes.

19 A. In the supplement report the officer states, they
20 contradicted their self and they state that the residence
21 belongs to me.

22 Q. I know that. I'm not -- I know that, but that's fine
23 to raise that.

24 In the report that you received later, they do
25 identify that residence as belonging to you; don't they?

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1 A. Yes, sir.

2 Q. And, in fact, you didn't go to trial on it. They made
3 some charges against you --

4 A. Yes, sir.

5 Q. -- based on the allegation that it was your residence?

6 A. Yes, sir.

7 Q. But in the affidavits they're pretty clear. They say
8 it belongs to a Trouble Coleman?

9 A. Yes, sir.

10 Q. Now, no one by the name of Coleman was in the house
11 when the warrant was served; was there?

12 A. No, sir. There never was -- Coleman never existed.

13 Q. Have you and your lawyer to your knowledge ever
14 identified Trouble Coleman?

15 A. No, sir.

16 Q. And Trouble Coleman was never produced at any point?
17 He didn't testify?

18 A. No, sir.

19 Q. And, specifically -- and it says that Keith Butler was
20 wearing an audio recording to this purchase as well;
21 correct?

22 A. Yes, sir.

23 Q. To your knowledge, did you ever review an audio
24 recording of that?

25 A. No, sir.

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1 Q. And do you know whether your lawyer ever heard a tape
2 of that?

3 A. No, sir.

4 Q. You didn't hear it?

5 A. No, sir.

6 Q. All right.

7 A. There's one more issue, too.

8 Q. Now the only people -- now, and the affidavit for the
9 search warrant was submitted by Detective Clark; is that
10 right?

11 A. I believe so.

12 Q. All right. At no point in this statement does -- we
13 talked about Detective Sawyer, Detective Gilliam. Does
14 Detective Clark ever say how he came to have this
15 knowledge, to your knowledge?

16 A. Not -- no, sir.

17 Q. And at your trial was, were either Detective Clark or
18 Detective Sawyer, were they subpoenaed? Did they testify
19 as to the grounds they got for this warrant?

20 A. No, sir.

21 Q. So although your lawyer did object to the search
22 warrant, she didn't call any of these witnesses or do
23 anything --

24 A. No, sir.

25 Q. -- as to that? All right. All right.

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1 Having now gone through the problem with the
2 affidavits --

3 A. I still got one more issue on that.

4 Q. Go ahead. Go ahead, sir.

5 A. On the Rule Six, it says that Keith Butler -- at the
6 bottom it says, on the affidavit it states that Keith
7 Butler went inside the residence and returned to the
8 vehicle with Investigator Gilliam and left the area, met
9 with Detective Sawyer and turned over to Detective Sawyer
10 a quantity of white powder substance believed to be
11 cocaine. But on the --

12 Q. I'll ask Ms. Alves about that, but go ahead.

13 A. But on the Rule Six, chain of custody, it says Keith
14 Butler, the officer of Aiken County Department -- Aiken
15 County -- the police department, received the drugs from
16 suspect Slim from an undercover purchase.

17 So that's another way they contradicting their stories
18 in their affidavit to get probable cause.

19 Q. And so long as --

20 THE COURT: My understanding is they stipulated that
21 the cocaine was real cocaine and the weight of it, but not
22 how it got there.

23 MR. WALSH: That's exactly right, Your Honor.

24 THE COURT: Okay.

25 BY MR. WALSH:

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1 Q. If I put the search warrant and the affidavit and the
2 Rule Six that we talked about, if I put all of those
3 into -- if I ask your lawyer about all of that and we make
4 sure the Court sees all of that, those documents are
5 raised for the Court, is there anything else that I have
6 not raised?

7 A. I believe that would --

8 Q. Take a moment to think about it because this is your
9 -- it's our moment.

10 A. Oh. Anything that you haven't raised, that we're
11 going -- I mean, that would be it.

12 MR. WALSH: Okay. I have no further questions.

13 THE COURT: Thank you. Cross-examination,
14 Ms. Williams?

15 CROSS-EXAMINATION

16 BY MS. WILLIAMS:

17 Q. Mr. Prather, you testified at your trial; is that
18 correct?

19 A. Yes, sir -- yes, ma'am.

20 Q. And you concede that you were in the house when the
21 police entered; right?

22 A. Yes, ma'am.

23 Q. And your story -- tell me if I'm wrong, if I summarize
24 it wrong. They staged you holding the drugs and you don't
25 know how the cocaine got in your pocket?

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1 A. To a certain extent that was my story, but I knew how
2 the cocaine got in my pocket.

3 Q. Well, why did you say you didn't?

4 A. I never said I didn't. I said at the beginning of the
5 transcript that I, 'I, the officer had to put the cocaine
6 in my pocket and staged the drugs. I never said I didn't
7 know how the cocaine got in my pocket.

8 MS. WILLIAMS: I'll find the transcript reference for
9 you, Judge.

10 THE COURT: All right.

11 MS. WILLIAMS: But it will take a second so.

12 BY MS. WILLIAMS:

13 Q. And you gave a statement that wasn't admitted at the
14 trial; is that correct?

15 A. I gave a statement that wasn't admitted at trial?

16 Q. Uh-huh.

17 A. What statement that would be (verbatim)?

18 Q. You have there, mentioned there being a statement that
19 you had given and it was not admitted at the trial; is
20 that correct?

21 A. Yes, ma'am.

22 Q. Okay. And what did you say in that statement?

23 A. That the -- I can't --

24 Q. Pardon?

25 A. May I ask one question?

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1 THE COURT: No. You can answer her question.

2 THE APPLICANT: That the, the drugs in the house was
3 mine but the drugs they found that I went to trial for
4 wasn't mine.

5 MS. WILLIAMS: Okay. That's fair. Thank you.

6 THE COURT: Thank you. Any redirect, Mr. Walsh?

7 MR. WALSH: No, Your Honor.

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

9 MR. WALSH: I have no further witnesses, Your Honor.

10 THE COURT: Thank you. All right. Ms. Williams, you
11 may proceed.

12 MS. WILLIAMS: Your Honor, the State would call
13 Ms. Alves.

14 THE COURT: Ms. Alves, come forward please.

15 WALLIS A. ALVES, having been duly sworn, was examined
16 and testified as follows:

17 THE CLERK: Please have a seat and state your full
18 name for the Court.

19 THE WITNESS: Wallis Alves.

20 THE COURT: You may proceed.

21 DIRECT EXAMINATION

22 BY MS. WILLIAMS:

23 Q. Ms. Alves, can you please tell me what your current
24 position is and how long you've been there?

25 A. Chief Public Defender for Aiken County. I've been in

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1 this position since October of 2004.

2 Q. And before you were chief public defender, were you
3 practicing otherwise as well?

4 A. Yes.

5 Q. And tell me, just how long have you been practicing
6 law overall?

7 A. Since November of 1992.

8 Q. And did you come to represent Mr. Prather in
9 connection with your duties as a public defender?

10 A. Yes.

11 Q. And can you tell me -- I'm going to go through
12 briefly. Can you tell me briefly the overview of the
13 facts? And then I'll go through some of the things that
14 you did during this trial.

15 A. Mr. Prather was in a house where there were several
16 people located. The police executed a search warrant on
17 that house. They found people in the house. They found a
18 lot of drugs in the house. And he was charged with
19 possession of the items, some of the items that were
20 located in the house.

21 Q. And you objected to several items, one of them being
22 pictures of him holding some drugs; is that correct?

23 A. Yes.

24 Q. And I believe you objected to the search of him?

25 A. Yes.

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1 Q. Do you recall objections to the search warrant being
2 made?

3 A. I don't remember.

4 Q. Okay. But if the transcript reflects that a search
5 warrant was part of the record at trial, would that be --

6 A. If the transcript says that I objected to it, then I
7 did.

8 Q. All right. And at page 88 -- I have a copy of the
9 transcript if you need it.

10 A. I don't have it.

11 Q. I believe you made an objection that evidence of
12 marijuana was more prejudicial than probative under
13 Michigan V. Summers. Do you recall that?

14 A. I need to see the transcript. I'm sorry. I forgot
15 mine in the office. I asked them to bring it over when I
16 realized I didn't have it, but...

17 Q. (Document handed to witness.)

18 A. Thank you.

19 I objected to them using any reference to the
20 marijuana.

21 Q. And tell me, do you have a recollection of what your
22 basic defense argument was with regard to Mr. Prather's
23 version of events and how it came to be that maybe he had
24 drugs around him but they weren't his?

25 A. That he was just a visitor to the house. If I

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1 remember correctly, I think that's what --

2 THE COURT: Excuse me. I didn't hear what you said.

3 THE WITNESS: That he was just a visitor to the house.

4 BY MS. WILLIAMS:

5 Q. And do you recall him testifying about people running
6 and things were being thrown and he kind of just fell?

7 A. Yes.

8 Q. Okay.

9 THE COURT: He kind of did what? Just fell?

10 BY MS. WILLIAMS:

11 Q. He kind of just fell. And a lot of people were put on
12 the ground, I think is the testimony. And he was --
13 happened to be near some things. Would that be consistent
14 with your --

15 A. I'd have to look at exactly what you're referring to -
16 -

17 Q. Okay.

18 A. -- to say exactly what he said, but there were -- I
19 mean, I do remember the testimony about a lot of people
20 running. I think there were maybe seven people in the
21 house, if I remember correctly.

22 Q. And you heard testimony about the stipulation. Would
23 you have received documents regarding the chain of custody
24 as part of your discovery and investigation in the case?

25 A. Yes.

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1 Q. And did you review the chain of custody for any
2 potential issues?

3 A. Yes.

4 Q. And did you find anything that you felt warranted a
5 challenge to the chain of custody in terms of drugs going
6 to the lab and coming back?

7 A. No.

8 Q. And you did enter into the stipulation. Can you just
9 tell me briefly why you would do that, as to the weight?

10 A. If it's not one of the issues that I'm going to be
11 arguing at trial, then I don't usually -- then sometimes I
12 do stipulate to things.

13 And I can't really remember why in this particular
14 case my strategy would have been to stipulate to that, but
15 normally if it's not something that I want the jury to
16 particularly focus on then I'll stipulate to it so that
17 issue, so it becomes a non issue.

18 If you need your transcript back, my investigator
19 brought mine.

20 Q. I'm fine, thank you.

21 All right. Now, would you have reviewed items like
22 the warrant and evidence that would be presented at trial,
23 would you have reviewed those with Mr. Prather?

24 A. I don't really remember what I reviewed with
25 Mr. Prather because we didn't -- while we did meet some,

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1 he was more interested in trying to hire a private counsel
2 even up to, probably, a couple hours prior to trial. So
3 he wasn't really interested in coming to talk to me a
4 whole lot.

5 So I can't really say what we went over.

6 Q. All right. Beg the Court's indulgence for just a
7 moment.

8 THE COURT: Yes, ma'am.

9 MS. WILLIAMS: I believe that's all.

10 THE COURT: Thank you. Mr. Walsh?

11 CROSS-EXAMINATION

12 BY MR. WALSH:

13 Q. Good morning, Ms. Alves.

14 A. Good morning.

15 Q. Now you heard some of the questions that I was asking
16 particularly about the attachment to the warrant?

17 A. Yes.

18 Q. Do you recall -- I know it's been a long time. Do you
19 recall whether you were able to review either of those
20 alleged audio recordings?

21 A. I don't remember.

22 Q. Okay. And is it possible that they were not furnished
23 to you?

24 A. It's possible. I mean, I don't know. I can look. I
25 don't think I have videos or audios in the file. I don't

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1 think. (Reviewing documents.)

2 Yes, I do. I have a copy of a cassette tape. I don't
3 know what's on it.

4 Q. Okay. At trial, I think during that issue it's
5 accurate that you did object and you said they maybe
6 should have had an affidavit from this Keith Butler? Do
7 you recall that?

8 A. I'd have to look in the transcript.

9 Q. I'll get you -- you got --

10 A. I've got hers.

11 Q. All right. On about page 19 is where you -- the
12 objection begins on line 13 and 14 of page 18 to the
13 search warrant itself.

14 And am I mischaracterizing it, on page -- yeah, page
15 21, lines four and five, you do argue there should have
16 been something from Mr. Butler?

17 A. That's right. I did argue that.

18 Q. All right. But you can't say today whether you were
19 able to actually listen to these two alleged purchases
20 from Trouble Coleman?

21 A. I don't remember.

22 Q. Okay. And did you at any point interview Detectives
23 Clark or Sawyer about the way they had gone about getting
24 the warrant?

25 A. I don't remember what conversation -- I had several

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1 conversations with Investigator Sawyer about this
2 particular case. I don't really remember any in
3 particular with Investigator Clark. I can't say what the
4 context of those conversations would have been.

5 Q. Okay. And did you ever attempt to identify who
6 informant ESO-01018 was?

7 A. I don't think so, but I can't really say; I don't
8 remember.

9 Q. Okay. And then on the -- do you have the search
10 warrant and attachment?

11 A. Yes.

12 Q. Okay. And is it accurate that the gist of the
13 attachment, although it's rather -- do you think I
14 mischaracterize it if I say that they went to this
15 location and allegedly made two buys from a person named
16 Trouble Coleman; is that --

17 A. I might be looking at a different search warrant.
18 Which one are you talking about?

19 Q. I'll hand you it. Get the application as well.

20 A. I'm sorry. I'm looking at it.

21 Q. Sure. Take your time.

22 A. Yes. They made two purchases from Trouble Coleman at
23 a mobile home on Highway 19-North.

24 Q. Okay. Were you able to, ever able to identify who
25 Trouble Coleman might be?

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1 A. Well, I thought he was the co-defendant whose name I
2 believe is -- no, I don't, I don't remember.

3 Q. Okay. And do you recall whether the State ever
4 introduced any evidence as to who Trouble Coleman might
5 be?

6 A. I'd have to look in the transcript. I don't, I don't
7 know.

8 Q. Now looking at Attachment A., the bottom -- I'm
9 sorry. I'm sorry.

10 Going back to Attachment A., if you read the bottom.
11 After the second purchase, what is sworn to in that, do I
12 mischaracterize it, after Detective Sawyer meets back up
13 with this informant that they turn the alleged cocaine
14 over to Investigator Sawyer. Is that --

15 A. Yes. It says that the -- Keith Butler returned to his
16 vehicle with -- and with Investigator Gilliam left the
17 area and met with Detective Sawyer and turned over the
18 powder substance believed to be cocaine.

19 Q. Okay.

20 MR. WALSH: Your Honor, just a procedural question.
21 Do you need this in evidence or is it already in?

22 THE COURT: That is not in.

23 MR. WALSH: I would move in the search warrant. I
24 move it in as one exhibit, the application for a search
25 warrant with Attachment A. as well as the search warrant

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1 and the return.

2 THE COURT: Any objection?

3 MS. WILLIAMS: If she can verify it's the same as what
4 she has in her file, I have no problem with it. It was
5 admitted at the trial as well.

6 BY MR. WALSH:

7 Q. Can you take a look at this document and let us know
8 if that's familiar? Identify it.

9 A. Can I identify it, or am I identifying it from my
10 file?

11 Q. Just, does it appear to be the same as the one you had
12 in your possession during the trial?

13 A. I'd have to look for that particular search warrant.
14 I had a different one I was looking at. I'm sorry.

15 Q. Okay.

16 (Thereupon, Applicant's Exhibit No. 1, Application for
17 search warrant with Attachment A.; Applicant's Exhibit No.
18 2, Rule Six; Applicant's Exhibit No. 3, chain of custody;
19 and Applicant's Exhibit No. 4, chain of custody, were
20 marked for identification.)

21 THE WITNESS: I don't see that particular search
22 warrant but I'm looking. I'm sorry. I can't say it
23 wasn't, but...

24 BY MR. WALSH:

25 Q. Well, do you --

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1 A. Wait a minute.

2 Q. Okay.

3 A. I'm sorry. Hold on. That's the one I had.

4 Q. Okay. Would now move this as Petitioner's One.

5 THE COURT: Without objection.

6 MS. WILLIAMS: That's all right.

7 THE WITNESS: That's the wrong one. That was mine.

8 MR. WALSH: Oh?

9 THE WITNESS: This is the one you wanted in evidence.

10 (Thereupon, Applicant's Exhibit No. 1, Application for
11 search warrant with Attachment A., was received into
12 evidence.)

13 BY MR. WALSH:

14 Q. Sorry. I'll not mess with the exhibits anymore. I'll
15 ask the clerk if you will please correct my mistake.

16 I next show you what's marked as Petitioner's Two
17 through Four. Two, Three and Four. Can you tell me if
18 you recognize those?

19 A. I recognize what they are. I mean, if you're asking
20 if this is from this particular case.

21 Q. That would be my next question. Yes, ma'am; if you
22 would.

23 A. (Reviewing file.)

24 THE COURT: Any objection?

25 MS. WILLIAMS: Just if she recognizes these.

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1 THE WITNESS: Those were the ones I had. I do
2 recognize them. They were in my possession during trial.

3 MR. WALSH: I move these in.

4 THE COURT: Two, Three and Four without objection.

5 (Thereupon, Applicant's Exhibit No. 2, Rule 6;
6 Applicant's Exhibit No. 3, chain of custody; and
7 Applicant's Exhibit No. 4, chain of custody, were
8 received into evidence.)

9 BY MR. WALSH:

10 Q. I hand you what's been marked as Petitioner's Two. Is
11 that dated on February 17th, the date of the alleged
12 controlled buy?

13 A. Yes.

14 Q. It's got a control number of A-002872 at the top?

15 A. Yes.

16 Q. And what is that? And what does that document
17 indicate?

18 A. That Keith Butler made a purchase from someone named
19 Slim pursuant to an undercover drug buy.

20 Q. And that does not identify anyone as Trouble Coleman;
21 is that accurate?

22 A. That's right.

23 Q. And nowhere in the warrant attachments or anything
24 they don't reference anyone named Slim; do they?

25 A. No.

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1 Q. Okay. I would next hand you what's marked as
2 Petitioner's Three. If you could please -- well, first.
3 That's been admitted.

4 Does that have the same control number?

5 A. Yes.

6 Q. 002. And what is that alleged to be?

7 A. It's a chain of custody form saying that Marty Sawyer
8 received drugs from Keith Butler.

9 Q. On what day?

10 A. February 21st, 2005.

11 Q. So four days after the submission of the affidavit
12 statement in which Officer Clark, actually, a different
13 officer, but some officer swore that those were received
14 immediately after the purchase?

15 A. Apparently so.

16 Q. And who does that identify? Keith Butler. This Keith
17 Butler of, and it has a blank for the agency?

18 A. Of Aiken Department of Public Safety.

19 Q. Now to your knowledge, has Keith Butler ever been
20 identified as an undercover agent of public safety or
21 anything else?

22 A. No.

23 Q. Or -- I show you what's been marked as Petitioner's
24 Four. Just to save time, does that look like Detective
25 Sawyer turning the same control number into the drug

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1 locker to, actually it says to Tina Morehouse? Would be
2 the records custodian?

3 A. This shows Tina Morehouse receiving the drugs from
4 Detective Sawyer.

5 Q. All right. Also on the 21st of February; is that
6 right?

7 A. Yes.

8 Q. Okay. Now, did you ever attempt to figure out why
9 Detective Sawyer -- where this four-day gap came from?

10 A. No, I don't think so.

11 Q. Am I misstating, and these are -- these chain of
12 custody forms are all sworn and notarized; aren't they?

13 A. Yes.

14 Q. So is it accurate to say that Detective Sawyer could
15 either have received -- he swore that he received them on
16 the 17th in one place and the 21st on another; is that --
17 would you agree with that?

18 A. Detective Sawyer?

19 Q. Yes.

20 A. He swore on the Rule Six that he received the drugs on
21 the 21st.

22 Q. But actually Detective Clark swore on Attachment A. to
23 the search warrant that they received them immediately
24 after the purchase on the 17th. Would you agree with
25 that?

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1 A. Yes.

2 Q. Okay. And received them from someone named Slim
3 initially?

4 A. Yes.

5 Q. Okay. Now, do you agree that, you know, search
6 warrants, if any part of them are found to be inaccurate
7 or reckless that it's appropriate for those parts of the
8 warrant, for those parts of the affidavit to be not
9 considered; is that --

10 A. I would think that would be appropriate.

11 Q. Okay. But, in fact, at the trial although you did
12 object to these issues that I've just raised with you, is
13 it safe to say that you didn't raise any of those with the
14 trial judge?

15 A. If the transcript reflects that I didn't, then I
16 didn't.

17 Q. Okay. All right. And you certainly agree you didn't
18 request a separate evidentiary hearing on that?

19 A. I did not.

20 Q. I show you what's been marked as Applicant's Five.
21 Can you identify that as a portion -- as a supplemental
22 report in this case?

23 A. Yes.

24 Q. And is that dated also February the 17th, that portion
25 of the report?

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1 A. Yes.

2 Q. And about three-quarters -- I'm sorry. We move that
3 in as Petitioner's Five.

4 THE COURT: Any objection?

5 MS. WILLIAMS: No.

6 THE COURT: All right.

7 (Thereupon, Applicant's Exhibit No. 5, supplemental
8 report, was received into evidence.)

9 BY MR. WALSH:

10 Q. About two-thirds of the way down, does that identify
11 the trailer, the residence? At that point they're now
12 saying this residence belongs to or is rented by James
13 Prather. Have I mischaracterized it?

14 A. Yes. They say the trailer was rented by Mr. Prather.

15 Q. And on the same day as the 17th, but nowhere in that
16 warrant application -- at that point they don't allege it
17 to be Mr. Prather's trailer; do they?

18 A. No.

19 Q. No. So the same day, they've kind of come up with a
20 new piece of information? Or at least listed a new piece
21 of information?

22 A. Yes.

23 Q. And did you -- and -- is it accurate to say the
24 transcript does not show that as part of your objection to
25 the search warrant that you included that item?

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1 A. If the transcript reflects I didn't mention it, then I
2 didn't mention it.

3 Q. Do you recall having argued it?

4 A. I don't remember it.

5 Q. Okay. Thank you.

6 On page 36 of the transcript during the opening
7 statement, the State referenced there being other drugs in
8 the house. Would you agree that you didn't object at that
9 time to that reference?

10 It says on line 18: We're not saying that these drugs
11 in the indictment were the only drugs in that house.

12 A. I see it. I did not object.

13 Q. On page 44, when Officer Jones was -- and he mentions
14 it several times, on 44 and 45 he keeps using the phrase
15 'high risk' to indicate the entry of the SWAT team?

16 A. I see that.

17 Q. All right. And at some point he talks about -- on
18 page 45, he talks about 'flash bang grenades' and page 46,
19 I think he talks about 'barricaded doors'.

20 But, in fact, none of those things took place in this
21 case; is that accurate?

22 A. That's right.

23 Q. And did you -- did you object to the reference to
24 'high risk' or tactics that might have been suggestive or
25 quotes that might have been suggestive?

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1 A. I didn't object to any of this.

2 Q. Okay. Now, do you recall arguing the individualized
3 suppression issue in the case? That was an issue you did
4 focus on quite a bit?

5 A. Yes.

6 Q. And so you agree that, just specifically I think
7 generalized it earlier, but you would agree that Officer
8 Jones on page 48 says in answer to the question: When
9 you're in charge or when you're on a search warrant, y'all
10 stop and check everybody? And he says: Yes, sir,
11 everybody inside, that's true.

12 A. Yes.

13 Q. Okay. And the same then, page 60. I'm sorry. Page
14 59.

15 A. Judge, I'm sorry. Before he gets to his question, if
16 Ms. Williams needs her transcript back.

17 MS. WILLIAMS: I got it.

18 THE WITNESS: Okay. I'm sorry.

19 BY MR. WALSH:

20 Q. Page -- the bottom of page 58, page 58 -- 59, rather.
21 Mike Jones essentially testifies to the same thing. They
22 search everybody. And again on page 60.

23 A. On page 58?

24 Q. Fifty-nine. I'm sorry. Fifty-nine about line two and
25 three, he says: For the safety of myself. Just a general

WALLIS A ALVES - CROSS

1 safety pat down is what he's testifying to?

2 A. Yes, yes.

3 Q. And then page 60, patting them down for officer safety
4 just in case he had something to which he says: Yes,
5 ma'am.

6 A. Yes, sir.

7 Q. Do you feel that you properly argued and preserved the
8 issue of particularized suspicion as required on
9 Mr. Prather's behalf?

10 A. I think I did. I thought I did at the time..

11 Q. And so, of course, you were not the appellate attorney
12 but you know that was not raised or briefed?

13 A. That's right.

14 Q. Okay. And do you agree that when the question was
15 asked as to why the guns and marijuana were referenced if
16 they weren't admitted -- well, first off.

17 Do you agree there was not a curative instruction
18 given?

19 A. For what?

20 Q. The question, the jury question came in. Back to my
21 page. Looking at the bottom of page 162 in the
22 transcript.

23 A. I did not request a curative instruction.

24 Q. And you had objected earlier to the reference to guns
25 and marijuana; that's true?

WALLIS A ALVES - CROSS

1 A. Yes.

2 Q. Okay. Your Honor, may I have a moment?

3 THE COURT: You may.

4 MR. WALSH: Thank you, sir.

5 (Pause.)

6 BY MR. WALSH:

7 Q. Ms. Alves, in your file do you have the complete
8 chains of custody on the drugs that would include it going
9 out for testing to the laboratory? Or in the alternative,
10 I guess, if you'll put out the most recent chain of
11 custody that you were given on those drugs?

12 A. I think my chain is complete.

13 Q. You have -- let me see?

14 A. (Documents handed to Mr. Walsh.)

15 Q. Is this the extent of the chain information that's in
16 your file?

17 A. For this case, yes.

18 Q. For this case. Would you agree that the last items --
19 what I showed you earlier, I think was Petitioner's Five,
20 which showed the evidence going into the drug locker on
21 the 21st of February?

22 A. Yes.

23 Q. Okay. So in fact you're not -- can you actually say
24 for certain that that chain was complete all the way
25 through testing and up to trial based on what you were

WALLIS A ALVES - CROSS

1 given?

2 A. Based on what I was given, the drugs were put into the
3 drug locker on February 21st. And, according to the
4 chemist, Sandra Alexander, the drugs were submitted to
5 her. This does not show when she took them out of there,
6 but her report was dated on 5-19-05.

7 Q. But after the 21st you would agree that you had no
8 documentary evidence as to the chain of custody on the
9 alleged drugs?

10 A. No.

11 Q. Did you ever request a supplemental Rule Five prior to
12 trial or anything to get that up to date?

13 A. I don't think so.

14 Q. And it's safe to say that you have tried a fair number
15 of drug cases here in Aiken County?

16 A. Yes.

17 Q. Do you have some familiarity with the sheriff's and
18 city's procedure for drugs?

19 A. Yes.

20 Q. All right. Is it your knowledge that they've got to
21 check that thing in and out for testing and, I mean,
22 everyone that touches it is supposed to execute some kind
23 of chain of custody form; is that your knowledge of the
24 procedures?

25 A. Yes.

1 Q. Is it fair to say you didn't -- after the 21st, you
2 didn't raise those issues as to the chain in this case?

3 A. No.

4 Q. And you'll agree that the chemist was not called at
5 trial?

6 MS. WILLIAMS: I'll stipulate to that.

7 THE COURT: All right.

8 MR. WALSH: (Conferring with client.)

9 BY MR. WALSH:

10 Q. Just to summarize. There was no documentary, whether
11 testimonial or put into the record, to your knowledge --
12 after February 21st, there was no evidence presented by
13 affidavit or otherwise as to the location of those drugs;
14 is that --

15 A. From what I remember, no.

16 Q. All right.

17 MR. WALSH: I have nothing further of this witness.

18 THE COURT: Thank you. Any redirect?

19 MS. WILLIAMS: Well, I guess just at this time because
20 of the rule of completeness and I haven't seen these
21 documents, I don't really know what gaps they show or do
22 not show because I don't have a copy to look at while I'm
23 here.

24 I think we're all going to be back here at 1:30 with
25 the exception possibly of Ms. Alves. If I could take some

WALLIS A ALVES - REDIRECT

1 time to see what I can scrounge up, looking at her file,
2 looking at the State's file.

3 I just really didn't know it was an issue. So I think
4 it would save maybe everybody a lot of time to do it that
5 way.

6 THE COURT: Then we will recess at this time and
7 resume at 1:30.

8 MR. WALSH: Thank you, Your Honor.

9 (Thereupon, the luncheon recess was taken at
10 11:20 a.m. At 1:40 p.m., the hearing of this case
11 resumed:)

12 THE COURT: Did you have an opportunity to review the
13 items that you needed to?

14 MS. WILLIAMS: I think we did. And during the lunch
15 break we discovered that there is an additional transcript
16 of a post-trial motion that exists that we didn't know
17 existed.

18 So I think we're going to order that to make that
19 complete. So we'll bring that in.

20 I think that Ms. Alves has had some time to look over
21 these documents and we'll let her resume, just to clarify
22 some things that she's talking about. And we'll be done
23 with what we can get done here today.

24 THE COURT: Okay. You're still under oath,
25 Ms. Alves.

WALLIS A ALVES - REDIRECT

REDIRECT EXAMINATION

BY MS. WILLIAMS:

Q. All right. You've got what's already been put into evidence. I believe that they're Applicant's Exhibits One, Two, Three, Four, Five; is that correct?

A. I have Two, Three, Four and Five; yes.

Q. Okay. And then that first One, the search warrant?

A. I'm sorry. I do have it. Yes.

Q. Okay. All right. Two, Three and Four, those appear to be some chain documents. And I believe you were looking at those earlier.

There may have been some confusion as to whether those were documents involving the drug seized as a result of a search warrant or the drugs seized as a result of the undercover buy.

Can you just tell me a little bit more about that, and what your thoughts are on that?

A. All right. When I had time to read the search warrant a little more carefully, I realized that, that I might have been confused about what was being, about the issues and what I was saying.

In the search warrant on Attachment A., on February 17th, a confidential informant from Edgefield County went to buy drugs from Keith Butler in Edgefield County. Keith Butler brought the confidential informant into Aiken

WALLIS A ALVES - REDIRECT

1 County and they went to the residence of Trouble Coleman.
2 And that's where Keith Butler met with Trouble and made
3 some sort of transaction to buy the drugs which he then
4 had in his possession when they, he and the confidential
5 informant, who I still don't know who that is, went back
6 into Edgefield County.

7 Keith Butler was arrested. They were stopped by a --
8 narcotics investigators and they were searched, and Keith
9 Butler was arrested. He then agreed to help them make
10 purchases from other people.

11 And Edgefield County Sheriff's Department contacted
12 SLED and the Aiken County Department of Public Safety and
13 arranged for Keith Butler to go back to the trailer of
14 Trouble Coleman and make another purchase.

15 The affidavit does not say that Keith Butler bought
16 drugs from Trouble Coleman. It just says he went back to
17 the residence which they then described and mentioned that
18 the number [REDACTED] was on the front of the mobile home which
19 is the actual address where the search warrant was
20 executed.

21 Keith Butler went to the front door. He was met by a
22 male observed to be six-foot two-inches, 220 pounds with
23 braided hair. He went inside the residence and came back
24 out with the drugs.

25 Nothing in here says who he bought from in the search

WALLIS A ALVES - REDIRECT

1 warrant affidavit. And the investigator doesn't say that
2 he actually saw the transaction taking place.

3 Keith Butler then went back to meet with Detective
4 Marty Sawyer and turned over to Detective Sawyer the drugs
5 that he had purchased.

6 Q. And that chain document, it says from a Slim. We
7 don't know who Slim is?

8 A. I don't know who Slim is, but the chain document says
9 that on February 17th, 2005, Keith Butler bought drugs
10 from Slim and then turned the drugs over to Marty Sawyer.

11 Q. But these are not the drugs that are the subject of
12 the trial; is that correct?

13 A. That's right.

14 Q. And you wouldn't normally challenge the chain of
15 custody on search warrant drugs or -- but they presented
16 chain of custody on a search warrant.

17 The drugs are not at issue in the trial?

18 A. No. I mean, the affidavit to the -- I don't recall
19 that many cases when I get this much information on the
20 search warrant drugs but it was provided to me.

21 Q. And then I believe that this was, this document was
22 discussed previously and I hand you a copy. I don't
23 believe that it's in evidence yet.

24 This is -- I'll let you tell me what it is, actually.

25 A. It is the drug analysis report for drugs allegedly

WALLIS A ALVES - REDIRECT

1 belonging to James Prather from the incident on February
2 17th, 2005.

3 Q. All right. And that -- would those documents
4 represent the drugs that were at issue in this trial; is
5 that correct?

6 A. Yes.

7 Q. All right. And those were taken as far as a drug
8 locker?

9 A. According to this, the Rule Six paperwork, the drugs
10 were taken by Investigator Mark Howard from James Prather
11 at [REDACTED] Edgefield Highway on February 17th, 2005, and they
12 were put into the Aiken County drug locker.

13 Q. I think if it's not in evidence, I should probably go
14 ahead and put it into evidence.

15 THE COURT: Any objection?

16 MR. WALSH: Without objection.

17 THE COURT: This would be State's Exhibit Number One.

18 (Thereupon, State's Exhibit No. 1, drug lab analysis
19 report, was marked and received into evidence.)

20 MS. WILLIAMS: And I think that that clarifies the
21 point that we were discussing earlier, just leaving the
22 motion for a new trial.

23 And I wasn't able to procure a file on these charges.
24 They pulled a different file for me so I want to see if I
25 have anything on a chain in the drug locker.

WALLIS A ALVES - RECROSS

1 THE COURT: Do you have any recross based upon her
2 redirect?

3 MR. WALSH: I do.

4 RECROSS-EXAMINATION

5 BY MR. WALSH:

6 Q. Now in the document that's just been introduced. To
7 clarify, nevertheless, it doesn't change your answer to
8 the question that from any date subsequent to February the
9 21st, you didn't receive any information as to the
10 movement or travel, not of the search warrant drugs but of
11 the drugs in chief, if you will?

12 A. No. Actually it's February the 17th..

13 Q. Okay.

14 A. I was actually looking at the search warrant drugs
15 affidavits from the chemist before.

16 Q. Okay.

17 A. This affidavit shows that the drugs were dropped into
18 the drug locker on February the 17th, 2005. This chemist,
19 Sandra Alexander, says that the drugs were submitted to
20 her on February 17th, 2005.

21 And it does not -- there's no mention of what else is
22 done with the drugs until June 1st, 2005, when the
23 report's dated.

24 Q. And that says that it was given to the chemist on the
25 17th?

1 A. Well, it says it was -- it says that on February 17th,
2 2005, the Aiken County Sheriff's Office submitted the
3 following items for analysis. And that would be Control
4 Number L05-0157.

5 What that normally means is that they dropped them
6 into the drug locker on that day.

7 Q. So, again, we really -- and would you agree that no
8 document or testimony at the trial traced those drugs from
9 the drug locker to the lab to the trial?

10 A. That's right.

11 Q. Okay. And so really, you know, of course we know the
12 State believes they tested the right drugs, but there was
13 no submissions made by the State to actually say that the
14 drugs that were tested are the drugs that were seized; is
15 that -- after February 17th, there's no chain?

16 A. There's no chain after February the 17th.

17 MR. WALSH: Okay. Nothing further on that issue, Your
18 Honor.

19 THE COURT: All right. Thank you. You may step
20 down. Does the State have any more witnesses?

21 MS. WILLIAMS: Nothing further at this time. We'll
22 just procure the record.

23 THE COURT: I'm just looking at my calendar. I am
24 scheduled to be back here in this circuit at the end of
25 August and then in October. Which time would you prefer

1 to do this?

2 I'm in Barnwell on August the 30th for a week of
3 common pleas which means from talking to everyone that
4 I'll have about a day or two worth of trial. So I'll have
5 some time, if y'all want to do it.

6 MS. WILLIAMS: Depending on how fast I get transcript.

7 THE COURT: Right.

8 MS. ALVES: Judge, if I may. I'm scheduled to be on a
9 cruise. I was scheduled to return on -- well, the boat
10 gets back on August the 29th.

11 THE COURT: You'll be fresh, ready to go.

12 MS. ALVES: Well, I was planning on visiting my family
13 for a couple days after that, so...

14 THE COURT: I'm not like other judges on stuff like
15 that.

16 How about the week of -- I am scheduled to be here in
17 Aiken on the 4th of October for common pleas court. Do
18 y'all want to try to find a date that week?

19 MR. WALSH: That would be great.

20 MS. WILLIAMS: As far as I know, that would be fine
21 with me.

22 THE COURT: Why don't we -- look at your schedules and
23 within a week we'll go ahead and set this for a date and
24 time certain one afternoon. So if I've got another trial
25 going on we can recess that to handle this case and do

1 that. All right? "

2 MS. WILLIAMS: Sounds good.

3 THE COURT: All right. Thank you.

4 END OF PROCEEDINGS: 1:50 P.M.

5

6 CERTIFICATE OF REPORTER

7

8 STATE OF SOUTH CAROLINA)

9 COUNTY OF AIKEN)

10

11 I, Cheri L. Young, Registered Professional Reporter
12 and Official Court Reporter for the State of South
13 Carolina, Second Circuit-At Large, do hereby certify that
14 the foregoing is a true, accurate and complete transcript
15 of record of the proceedings had and evidence introduced
16 in the hearing of the captioned case, relative to appeal,
17 in the Court of Common Pleas for Aiken County, on the 15th
18 day of July, 2010.

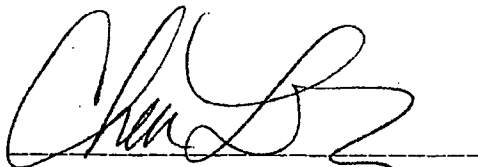
19

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

22

23 I have hereunder set my hand this Friday, the 2nd day
24 of November, 2012.

25



Cheri L. Young, RPR
Official Court Reporter



Aiken County
Sheriff's Office Forensic Lab
Michael E. Hunt, Sheriff

DRUG ANALYSIS DEPARTMENT

G. Savell
Aiken County Sheriff's Office
420 Hampton Avenue, NE
Aiken SC 29801

RULE 6
TO WA
DATE 10/24/05
Soc

Date: 6/1/2005
Lab Number: L05-0157
Incident Date: 02/17/2005
Your Case #: 05-007623
Control #: A003074
(S): Prather, James

The items submitted for analysis were examined with your assurance that the submitted specimens have not nor will be submitted to any other laboratory or agency for examination.

ITEMS OF EVIDENCE:

L05-0157

Item 1 : Plastic bag containing rock substance.

Results:

Cocaine (Crack) found 19.66 gram(s) C-II

Item 2 : Plastic bag containing rock substance

Results:

Cocaine found 26.69 gram(s) C-II

I am a Forensic Chemist employed by the Aiken County Sheriff's Office, certified by the South Carolina Law Enforcement Division (SLED) as a chemist or analyst qualified to perform testing and analysis for controlled dangerous substances prohibited by law in this state by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environment Control.

I used the following legally reliable forensic laboratory procedures in this analysis:

☒ Chemical Test	☐ Ultraviolet Spectroscopy	☐ Physical Test
☐ Microscopic Test	☒ Gas Chromatography	☐ Published Literature
☐ Infrared Spectroscopy	☒ Mass Spectrometry	☐ Other:

Signature:

Sandra Alexander

Sandra Alexander

6/1/05
Date

STATE'S
EXHIBIT

FILED

7-15-10

L. H. Hester
S.C.P. & G.S.

Archie Knepper
Deputy Clerk

RECEIVED

OCT 25 2005

PUBLIC DEFENDER

FORM 1

REPORT OF ANALYSIS FOR CONTROLLED DANGEROUS SUBSTANCES (Substance Found)

I, Sandra Alexander, am a Forensic Chemist employed by the Aiken County Sheriff's Office (ACSO), certified by the South Carolina State Law Enforcement Division as a chemist/analyst qualified to perform testing and analysis for controlled dangerous substances prohibited by law in this State by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environmental Control.

I have 3 years and 3 month(s) experience as a Forensic Chemist. During that period, I have been qualified as an expert witness and testified in court no less than 0 times. I have received the following training to be a forensic chemist:

- B.S. in Chemistry, Cum Laude Graduate, Campbell University, Buies Creek, NC 2001
- NC State Bureau of Investigation (SBI) Crime Laboratory - Trace Evidence 2000 Intern
- North Carolina SBI Crime Laboratory - Drug Chemistry/Toxicology 2002 Intern
- Florida Department of Law Enforcement (FDLE) Crime Laboratory forensic technologist Drug Chemistry/Toxicology 2002-2004
- DEA certified in Marijuana Analysis - S.L.E.D., 2004
- Training in Forensic Chemistry at S.L.E.D. - Department of Drug Analysis, 2004
- Clandestine Laboratory & Weapons of Mass Destruction Safety Certification - 2004

On February 17, 2005 the Aiken County Sheriff's Office submitted the following item(s) for analysis: L05-0157

I tested this (these) item(s) using the following legally reliable forensic laboratory procedures approved by SLED:

☒ Chemical Test	☒ Gas Chromatography
☐ Microscopic Exam	☒ Mass Spectroscopy
☐ Infrared Spectroscopy	☐ Liquid Chromatography
☐ Ultraviolet Spectroscopy	☐ Other _____
☐ Physical Test	

And am of the opinion the item(s) contain(s) the controlled substance:

See Report

Sworn before me on this 17 day of Feb in 2005 at Aiken My commission expires on 12/31/05 Notary Signature _____

Sandra Alexander
Sandra Alexander
Forensic Chemist
ACSO
(Place)
10/10/05
(Date)



AIKEN COUNTY SHERIFF'S OFFICE
STATEMENT OF PROOF OF CHAIN OF CUSTODY
RULE 6 FORM B

5/16/05
AKA

INITIAL STATEMENT OF PROOF OF CHAIN OF CUSTODY

CONTROL NO: A 003074

LAB NO.: LOS-0157

AGENCIES CASE NO. 05-007623

This is to certify that I TW. Mark Howard am employed by
(Name)
Aiken County Sheriff's Office and that on
(Name of Agency)

2/17/05 I seized from JAMES PRATHER
(Date) (Name)

at or near [REDACTED] Edgefield Hwy Aiken, SC the following
(Place Where Seized)

substance(s) or container(s):

(DESCRIPTION OF SUBSTANCE OR ITS CONTAINER TO DISTINGUISH IT)

Plastic baggie containing dark type substance
Plastic baggie containing white powder substance.

On 2/17/05 I made delivery of the above described substance(s)
(Date)

or container(s) to ACSO Meybaker of
(Name)

ACSO in substantially the same condition as when
(Agency)

I received it.

TW. Mark Howard
PRINT Name of Submitting Officer

Mark Howard
Signature

Sworn before me on this 17 day of 02, 2005 in Aiken
(Place)

[Signature]
Notary Public for South Carolina

2/26/2011
Date Commission Expires



AIKEN COUNTY SHERIFF'S OFFICE
STATEMENT OF PROOF OF CHAIN OF CUSTODY
RULE 6 FORM B

Stamps
2/10

INITIAL STATEMENT OF PROOF OF CHAIN OF CUSTODY

CONTROL NO: A 003074

LAB NO.: LOS-0157

AGENCIES CASE NO. 05-007623

This is to certify that I TWO Mark Howard am employed by

Aiken County Sheriff's Office and that on
(Name)
(Name of Agency)

2/17/05, I seized from James Prather
(Date) (Name)

at or near [Redacted] Edgefield Hwy Aiken, SC the following
(Place Where Seized)

substance(s) or container(s):

(DESCRIPTION OF SUBSTANCE OR ITS CONTAINER TO DISTINGUISH IT)

Plastic baggie containing dark type substance

Plastic baggie containing white powder substance

On 2/17/05, I made delivery of the above described substance(s)
(Date)

or container(s) to ALSO Theylance of
(Name)

ALSO in substantially the same condition as when
(Agency)

I received it.

TWO Mark Howard
PRINT Name of Submitting Officer:

Mark Howard
Signature

Sworn before me on this 17 day of 02, 2005 in Aiken
(Place)

Michael Egan
Notary Public for South Carolina

2/26/2011
Date Commission Expires

STATE OF SOUTH CAROLINA

APPLICANT'S
EXHIBIT

County of Alcon

SEARCH WARRANT

FILED 7.15.00
L. H. Hedges
CLERK
Anita Knoepfle 48
Deputy Clerk

Date February 17, 2005

Officer Det. Wayne Clark

SEARCH WARRANT

ATTACHMENT (A)

On February 17, 2005 Investigator Roosevelt Young of the Edgefield County, S.C. Sheriff's Office Narcotics Division met with a confidential Informant ESO 01018. The Informant was searched and provided with Edgefield Sheriff's Office documented US currency and audio recording device. The Informant met with a subject name Keith 7 Butler in Edgefield County, S.C.... Keith Butler told the Informant he could provide the Informant with cocaine and crack if he provided an additional one hundred dollars. The Informant and Keith Butler left Edgefield driving to Aiken, S.C. The informant was taken to a mobile home of Highway 19 North the residence of a subject known to Keith Butler as Trouble Coleman. The subject Keith Butler met with Trouble Coleman in his residence. The subject Keith Butler purchased from Trouble Coleman a quarter ounce of cocaine powder and one-half ounce of crack cocaine paying four hundred twenty dollars for the crack cocaine and cocaine powder. The two subjects Keith Butler and Informant ESO 01018 left the residence driving back to Edgefield County, S.C. Upon entering the jurisdiction of Edgefield County, S.C. the vehicle Keith Butler and Informant ESO 01018 were driving was stopped by Narcotic Investigators of The Edgefield Sheriff's Office. The officers upon searching the vehicle Investigators discovered a quantity of white powder substance believed to be cocaine powder and a quantity of rock like substance believed to be crack cocaine in the possession of Keith Butler. The Edgefield Sheriff's Office documented US currency was not found in the vehicle, on the Informant or Keith Butler. Subsequent to arrest the defendant Keith Butler agreed to cooperate with Law Enforcement and provided the aforementioned information of the purchase of cocaine powder and crack cocaine from the subject named Trouble Coleman in Aiken, County S.C. February 17, 2005. Edgefield Sheriff's Office Investigator Roosevelt Young and Keith Butler met with Narcotic Agents of the South Carolina Law Enforcement Division and Aiken Public Safety Narcotic Agents. Keith Butler was searched, provided with Aiken DPS documented US currency and an audio transmitting device and a vehicle to return to the residence of Trouble Coleman to make an additional purchase of cocaine powder from Trouble Coleman. The subject Keith Butler was escorted by Investigator Emmitt Gilliam of the Edgefield Narcotic Task Force. Investigator Gilliam observed the subject Keith Butler enter the residence, a mobile home off Highway 19 North in Aiken County, S.C. The mobile home described as White with yellow trim, aluminum underpinning with a section missing from the front of the mobile home. The number [REDACTED] were affixed to the front of the mobile home at the front door. Investigator Gilliam observed a black male open the door of the mobile home to Keith Butler the subject was approximately 6'02" 220 pounds, braided hair. The subject Keith Butler went inside the residence upon returning to the vehicle and Investigator Gilliam they left the area met with Detective Martin Sawyer turning over to Detective Sawyer a quantity of white powder substance believed to be cocaine. The substance was field tested and indicated positive for cocaine.

STATE OF SOUTH CAROLINA }
COUNTY OF Aiken

AFFIDAVIT

Personally appeared before me, Detective Wayne Clark
one

who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

All illegal drugs including but not limited to cocaine, crack cocaine, marijuana. All paraphernalia for use and manufacture of illegal Narcotic drugs. All monies and documents in close proximity to illegal narcotic drugs. Documented US currency of the Edgefield Sheriff's Office used to purchase illegal narcotics from the residence.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

A mobile home white with yellow trim, aluminum underpinning, the numbers [REDACTED] affixed to the front of the Dwelling located on a dirt road off Highway 19 North in Aiken County, nineteenth of a mile north of Rutland, Dr. turning left onto the dirt road by EN/VOGUE Styling Salon. All vehicles and out buildings on the Premises.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

See Attachment (A)

Sworn to and Subscribed before me

this 17 day of Feb, 2005.

Signature of Judge

(L.S.)

Det. Wayne Clark
Affiant

Address 251 Laurens St NW

Phone Aiken SC

STATE OF SOUTH CAROLINA }
COUNTY OF Aiken

Search Warrant

Form approved by
S.C. Attorney General
Section 17-13-160
March 15, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF
Aiken County

It Appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

A mobile home white with yellow trim, aluminum underpinning, the numbers [REDACTED] affixed to the front of the Dwelling located on a dirt road off Highway 19 North in Aiken County, ninetenths of a mile north of Rutland, Dr. turning left onto the dirt road by EN/VOGUE Styling Salon. All vehicles and out buildings on the Premises.

Now, therefore, you are hereby authorized to search the subject premises described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

All illegal drugs including but not limited to cocaine, crack cocaine, marijuana. All paraphernalia for use and manufacture of illegal Narcotic drugs. All monies and documents in close proximity to illegal narcotic drugs. Documented US currency of the Edgefield Sheriff's Office used to purchase illegal narcotics from the residence.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

Judge J. J. Candy

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such persons as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Aiken, S.C.

Feb. 17, 20 *05*

J. J. Candy
Signature of Judge

(L.S.)

1265 Edgfield Hwy

Sworn to and Subscribed before me

This 17 day of July, 2005[Signature]
Signature of Judge[Signature]
AffiantAddress 251 Laurens St NWPhone Aiken SC

Return

I received the attached Search Warrant 2-17-, 20 05, and have executed it as follows:
 On 2-17-, 20 05 at 2230 o'clock P M, I searched
 (the person) described in the warrant and (the premises)

I left a copy of the warrant with Resident

Name of the person searched or "at the place of search" with
 Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

- 1) One High Point 9mm mod. C9 SN-P152826 With one magazine w/5 rounds 9mm.
 Found on Kitchen Counter (Savell)
- 2) One black shaving bag containing Two traffic tickets, One warrant, One torn
 ten dollar bill, one torn 5 dollar bill, Three baggies of suspected powder cocaine,
 Two bags of suspected crack cocaine, ~~one bag of suspected~~ one sprint cell phone, one
 digital scale. Found on Kitchen counter (Savell)
- 3) One digital scale Found on Kitchen counter (Savell)
- 4) One Remington 12 gauge model 870 Express magnum SN-C.824820M found in LR
 by (Savell).
- 5) One plastic bag containing suspected crack cocaine found on Kitchen floor by (Savell)
- 6) One plastic bag containing suspected marijuana found on Kitchen floor by (Savell)
- 7) One plastic bag containing suspected marijuana found on the person of James Prather.
- 8) One plastic bag containing suspected cocaine found on the person of James Prather.
- 9) One S&W .22 LR pistol SN-TFP11649 With one magazine and 8 rounds of Ammo.
 found on the person of James Prather.

This inventory was made in the presence of Lt. Jones, Inv. Savell, Abbott.
 AND _____

I swear that this Inventory is a true and detailed account of all property taken by me on the warrant.

SWORN to before me this 28
 day of Feb, 2005
[Signature] (L.S.)
 Signature of Judge

[Signature: Mark Howard]
 (Signature of Officer Executing Warrant)

CONTROL NO. A-12872LOS-01915/10/05
JA

PRINT ALL INFORMATION EXCEPT WHERE SIGNATURE IS REQUIRED

FORM B (RULE 6)**CERTIFICATE OF PROOF OF CHAIN OF PHYSICAL
CUSTODY OR CONTROL**

(Initial Custody)

This is to certify that I Keith Butler am employed by
(Name)A.D.P.S.

(Name of Agency or Department)

and that on

2-17-05
(Date)I seized from "Slim"

(Name)

pursuant to Under Cover Drug Purchase
(State Whether Subject to a Warrant, Lawful Arrest or Otherwise)at or near Edgefield Hwy
(Place Where Seized)

the following substance(s) or container(s):

(Describe substance or container with sufficient particularity to distinguish it.)

A quantity of white powder believed to be cocaine.

7-15-10

WILLIAM
L. HODGES
Sergeant
Anita Knepper
Deputy ClerkOn 2-17-05, I made delivery of the above described
(Date)substance(s) or container(s) to M.E. Sawyer Jr. of
(Name)A.D.P.S.

(Law Enforcement Agency)

in substantially the same condition

as when I received it.

Keith L. Butler
(Signature)Place: Aiken S.C.
Date: 2-17-05Sworn before me on this 17 day of Feb., 2005APPLICANT'S
EXHIBIT

2

William L. Hodges
Notary Public for South Carolina
My Commission expires: 7-15-10



AIKEN COUNTY SHERIFF'S OFFICE
STATEMENT OF PROOF OF CHAIN OF CUSTODY
RULE 6 FORM C

Sho/CS
RA

SUBSEQUENT STATEMENT OF PROOF OF CHAIN OF CUSTODY

CONTROL NO: A 002872

LAB NO.: 105-0191

AGENCIES CASE NO. 05-000023

This is to certify that I M.E. Sawyer Jr. am employed by
A.D.P.S. (Name)
 (Name of Agency) and that on

2-21-05
 (Date)

I received

in Person
 (Specify whether by Mail or in Person)

from

Keith Butler
 (Name)

of

A.D.P.S.
 (Name of Agency)

the following substance(s) or container(s) which were originally seized by

Keith Butler

(Description of Substance or its container to distinguish it.)

A quantity of white Powder believed to be cocaine.

7-15-10

FILED

[Signature]
 A.C.S.O.

[Signature]
 Aiken County Clerk

On 2-21-05 I made delivery of the above described substance(s) or
 (Date)

container(s) to

Tina Morehouse
 (Name or Place)

of A.C.S.O.
 (Agency)

M.E. Sawyer Jr.
 PRINT Name of Submitting Officer

[Signature]
 Signature

Sworn before me on this 24 day of Feb in AKS

(Pl) **APPLICANT'S EXHIBIT**

[Signature]
 Notary Public for South Carolina

Date Commission Expires

3



AIKEN COUNTY SHERIFF'S OFFICE
STATEMENT OF PROOF OF CHAIN OF CUSTODY
RULE 6 FORM C

5/10/05
 JA

SUBSEQUENT STATEMENT OF PROOF OF CHAIN OF CUSTODY

CONTROL NO: A 602572

LAB NO.: 655-0191

AGENCIES CASE NO. CS-007623

This is to certify that I Tim T. McVane am employed by

Aiken Co. Sheriff's Office and that on

2-21-05 I received in person

from Det. Schaefer of Aiken Dept. of Public Safety

the following substance(s) or container(s) which were originally seized by

Keth Butler

(Description of Substance or its container to distinguish it.)

A quantity of white powder believed to be
cocaine

7.15.10

FILED

Deputy Clerk
Deputy Clerk

On 2-21-05 I made delivery of the above described substance(s) or

container(s) to Dug Locker of AISC

APPLICANT'S
 EXHIBIT

4

Tim T. McVane
 PRINT Name of Submitting Officer

Tim T. McVane
 Signature

Sworn before me on this 21st day of Feb, 2005 in Aiken, SC

Mark Howard
 Notary Public for South Carolina

November 16, 2011
 Date Commission Expires

**APPLICANT'S
EXHIBIT**

FILES

7-15-2001

L. J. Howard
D.C.P. & G.S.

Deputy Clerk

 AGENCY I.D.
SC0020000

SUPPLEMENTAL REPORT

05-007623

☐ ORIGINAL REPORT	☒ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIM	☐ ADDITIONAL STOLEN PROPERTY
☐ MODIFIES ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDER	☐ ADDITIONAL RECOVERED

Page 3 of 3 Pages

INCIDENT TYPE: Trafficking Crack Cocaine / Traff. Cocaine

DATE: 02/17/05

TIME: 2230

VICTIM'S NAME: State of South Carolina

SUBJECT'S NAME: James Prather, Trevis Johnson

On 02/17/05 at approximately 2230 hours the Aiken County Sheriff's Office Narcotics Section and members of the Aiken County Sheriff's Office Entry Team and Detectives Sawyer And Clark with the Aiken Department of Public Safety executed a search warrant on the residence of 1265 Edgely Rd. Members of the Entry Team would conduct the initial entry of the residence and keep subjects in their places to be searched and photographed.

Subjects found present in the residence were Subject #1 James Prather Subject #2 Trevis Johnson, James Frazier, Fred Culbrath, Kelvin Cave and Staleen Davis.

This Investigating Officer and Investigators Howard, Morehouse and Lt. Jones conducted the search of the residence. This Investigating Officer observed subject James Prather in the Hallway of the singlewide trailer. This Investigating Officer and Lt. Jones searched the subject James Prather and found 1 plastic baggie of marijuana in the hood of his jacket. When Investigators turned over Prather to conduct a pat down of the subject Investigator Abbott found a loaded .22 Smith and Wesson Pistol. Under his person. Lt. Jones found a plastic baggie containing Cocaine more that 10 grams in Prather's right jacket pocket.

During the search of the residence this Investigating Officer found a black medicine bag on the counter in the kitchen which had inside \$6152.00, 3 plastic baggies of cocaine, 1 plastic baggie of crack cocaine and a set of digital scales and 2 UTC in the Name of Travis Johnson and a arrest warrant with the name of Trevis Johnson. There was also a plastic baggie of marijuana. This Investigating Officer also found in the kitchen area a plastic baggie of Crack Cocaine and a plastic baggie of marijuana. This Investigating Officer also found a 12 gage shot gun in the corner of the living room.

This Investigating Officer found a small quantity of marijuana in a purse, which belonged to Staleen Davis. This Investigating Officer issued Davis a Citation for simple possession Marijuana with a court date of 03/15/05 at 10:00.

Subject #1 James Prather was charged with Trafficking cocaine, trafficking crack cocaine and PWID Marijuana because the trailer was rented by James Prather and used to facilitate the sale of cocaine and crack cocaine the marijuana and crack cocaine found in the kitchen was put on Prather and he was charged with it.

Subject #2 Trevis Johnson was charged with Trafficking Cocaine and Trafficking Crack Cocaine and PWID Marijuana.

Inv. Howard put all drugs in BEST Kits and secured them in the Aiken County Sheriff's Office Drug Locker. Inv. Abbott secured the \$6152.00 in the Aiken County Sheriff's Office Evidence Locker.

Also secured in the Aiken County Evidence Locker were 9mm High point model c9 SN-p152826 with one Mag and 5 rounds of ammo. One Black shaving bag containing 2 traffic tickets bearing the name Trevis Johnson and 1 warrant also bearing Trevis Johnson. One Sprint cell phone and 2 digital scales. Remington 12 Gauge model 870 Sn-C824820M, S&W .22 Long Rifle Pistol SN-TFP1649 with one Mag. and 8 rounds of ammo. One Black Kevlar

SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE		ADM CLOSED		ARRESTED UNDER 18		EX-CLEARED UNDER 18	
YES ☐	NO ☐	YES ☐	NO ☐	☐	☐	☐	☐	☐	☐	☐	☐
				UNFOUNDED				ARRESTED 18 & OVER		EX-CLEARED 18 & OVER	
REASON FOR EXCEPTIONAL CLEARANCE		OFFENDER DEATH		NO PROSECUTION		EXTRADITION DENIED		VICTIM DECLINES COOPERATION		JUVENILE NO CUSTODY	
REPORTING OFFICER Inv. G. Savell		DATE 02/17/05		UNIT # 4976		APPROVING OFFICER <i>William [Signature]</i>		DATE 3-3-5		UNIT # 2481	
FOLLOW UP INVESTIGATION YES ☐						OFFICER					

THE STATE OF SOUTH CAROLINA
In the Court of Common Pleas

Case No. 2009-CP-02-1417

James Prather Petitioner

v.

The State of South Carolina.....Respondent

PCR BRIEF


s/ Aaron G. Walsh
P.O. Box 639
Aiken, SC 29802
(803) 642-9700
SC Bar# 71222
Attorney for Petitioner

COPY
ORIGINAL FILED
DEC 6 2011
WILKINS
AIKEN COUNTY
CLERK OF COURT

PETITIONER'S STATEMENT OF THE CASE

After a trial and conviction for Trafficking Cocaine, this matter came before the court by Petitioner's timely filing of an application for Post Conviction Relief (PCR), alleging various deficiencies by his trial, and appellate counsel. The State timely filed a Return, and an evidentiary hearing was held in the Aiken County Court of Common Pleas. At the conclusion of the hearing, it was discovered that the transcript of Petitioner's Post Trial Motions had not been made available to either Party, and a continuance was Ordered for the attorneys to obtain that additional transcript.

The Court initially scheduled more Court time to hear arguments, but as no further testimony was being sought, only arguments as to the Post Trial Motions, the Court, at the request of both counsel, instead Ordered each party to submit briefs making their remaining legal arguments.

Petitioner asserts that trial counsel raised a number of arguments and made repeated timely objections, and the Trial Court's rulings created appealable issues, but Petitioner's appellate counsel submitted an Anders brief, and was completely deficient in failing to identify any appealable issues, when there were a significant number, as outlined and explained below.

ARGUMENTS

**I. APPELLATE COUNSEL WAS DEFICIENT IN FAILING TO RAISE
AND ARGUE THE LEGAL ISSUES CREATED BY TRIAL COURT'S
RULING(S) AS TO THE SEARCH WARRANT AND AFFIDAVIT.**

On February 17, 2005, Detective Wayne Clark submitted an Affidavit seeking a warrant to search a certain mobile home. The affidavit did not indicate that Clark was present for any of the activity described. The affidavit indicates that on February 17, 2005, on two occasions, while under the control and observation of law enforcement, and using "marked" currency, a subject named Keith Butler made purchases of powder and crack cocaine, once from an individual identified as Trouble Coleman, and once from an individual described only as a black male, height and weight given, with braided hair. The height and weight given do not in any way match that of Petitioner.

During the first purchase alleged to be from Trouble Coleman, an unidentified CI was alleged to be with Butler. In the affidavit, the house was identified as belonging to Trouble Coleman, the source of the alleged drugs.

Petitioner's trial counsel objected to the search warrant (T p.18 . 13-15), however appellate counsel identified no appealable issues. Petitioner believes that had the trial court done a proper hearing under Franks v. Delaware 438 U.S. 154 (1978), the search warrant may have been set aside.

There was no person named Trouble Coleman at the residence when the search warrant was served on February 17, 2005, immediately after the two

purchases were alleged to have been made. No testimony was offered as to who the home belonged to. Petitioner believes the affidavit was false, and that no Trouble Coleman exists, or if he does, that he was in some other location. The Supplemental Report indicates the house was rented by Petitioner, in clear dispute with the warrant affidavit indicating the residence to be the home of Trouble Coleman. A Franks hearing would have identified the falsehoods and/or reckless disregard for the truth found in the warrant affidavit. Petitioner's appellate counsel was ineffective for failing to identify and argue any issues with the validity of the search warrant.

**II. APPELLATE COUNSEL WAS DEFICIENT IN FAILING TO RAISE
AND ARGUE THE LEGAL ISSUES CREATED BY TRIAL COURT'S
RULING(S) AS TO THE SEARCH OF PETITIONER'S PERSON.**

The search warrant was a premises-only warrant, and did not include individuals present. As such any search of Petitioner was not based on the search warrant, but on another search justification. There were two areas of Error created by the Court's rulings, which trial counsel properly objected to: the first was the Court's ruling that the search of Petitioner's person was a proper warrantless search, which is discussed in this section. Secondly, and discussed in the next section, under the guise of supporting the search of Petitioner's person,

the State was allowed to present extensive testimony about other drugs and weapons on Petitioner and in the home, which were not the subject of the charge for which Petitioner was on trial.

A warrant to search a specific residence, and not people found therein, for narcotics does not automatically carry with it the blanket authority to conduct searches of people present. A warrant to search a place cannot normally be construed to authorize a search of each individual in that place. See Ybarra v. Illinois, 444 U.S. 85, 100 S.Ct.338 (1979).

Despite the spin put on it by the State, there can be no question that Petitioner was searched because he was in a place being searched. Investigator Jones testified at least twice (p.47 l 21-25; p.48 l 12-14) that everyone in a home is searched when he executes a search warrant. Jones went on to say he searched Petitioner for weapons "or anything," at which time trial counsel objected. (p. 51 l21-25). A great deal of argument was later done about whether exigent circumstances existed, or independent probable cause, but the testimony is that the search was done not under those reasonings, but simply because they were going to search everyone, contrary to law. Appellate counsel should have raised the issues related to the search of Petitioner's person, which were properly raised and preserved by Trial Counsel.

III. APPELLATE COUNSEL WAS DEFICIENT IN FAILING TO RAISE AND ARGUE ERROR IN THE INTRODUCTION OF TESTIMONY TO THE

**JURY ABOUT DRUGS AND GUNS NOT RELEVANT TO THE CHARGE
BEING TRIED.**

A complicated web of issues was created when Petitioner's counsel made her motion to suppress the drugs allegedly found on Petitioner for which he was on trial, but instead of having a suppression hearing with proffers outside the presence of the jury, the trial court held its ruling, subject to the evidence when presented, wanting to "see how the facts develop on that before I make a ruling" (p. 26 l 16-23). The court's deferred ruling, properly objected to (p. 27 l.14-18), led to the admission of vast amounts of prejudicial testimony about weapons and drugs not at issue.

Upon pre-trial motion by Petitioner to exclude the pistol allegedly found on him during the search (p. 27 l 23- p. 24 l 6), the Court again deferred ruling, even mockingly suggesting "maybe he had a concealed weapons permit. I don't know. What do you say to that?" (p. 28 l 7-8). The Court was well aware Petitioner would not have been eligible for such a permit, but the indicated hostility towards the exclusion of the weapon should have been raised on appeal.

The State took the leeway the Court gave it, and proceeded to repeatedly mention drugs and weapons which were not the subject of the indictments on trial. Because the Defense moved to suppress the drugs, in order to present the "totality of the circumstances" allegedly (though falsely) used to justify the search of Petitioner, the State was able to present testimony as to drugs and

weapons in the home and allegedly on the Petitioner, which even the State agreed pre-trial were not properly presented.

In Opening statement, the Solicitor says "we're not saying that these drugs that are in this indictment were the only drugs in that house," (p. 36 l 18-19). Investigator Jones testified that this was a "high-risk" entry (p. 44 l 15), and that a high-risk entry exists, and the SWAT team used, when "weapons are involved" (p. 45 l 1-3). Upon solicitation by the State, Jones testified when he entered the home he saw marijuana and crack cocaine in multiple locations (p. 49 l 23- p. 50 l 2; p. 50 . 21-24), and that he saw two weapons in plain sight in two locations (p. 51 l 6-9). Describing the search of Petitioner, Jones testified, over separate and timely objections by trial counsel, about finding marijuana not at issue before the Court (p. 52 l 2- p. 53 l1), and a loaded .22 Smith and Wesson handgun, placed into evidence as State's Exhibit 6 over objection (p. 56 l 22- p.57 l 17; p. 58 l 8-11). Investigator Savell testified about the marijuana and shotgun observed upon entry (p. 77 l 10-12; 78), then repeated it for emphasis before testifying about the marijuana found on Petitioner (p. 78 l 4-9). Savell then testified a third time about the shotgun, and about a handgun found in the kitchen (p. 79 l 10-22), and finally about the handgun found under Petitioner (p. 80 l 23- p. 81 l 5). Trial Counsel renewed the objections after the State rested, and at length in the Post Trial Motions hearing (Post Trial Trans pp. 6-13.)

It was made Clear by the Court that in order to exercise his right to challenge the warrantless search of his body, Petitioner had to accept the

introduction of all that prejudicial testimony, (p. 28 l 17-18; p. 90 l 13-16.; Post Trial Trans p. 15 l 12-25) That raises issues for an appeal.

There can be no question the testimony and evidence affected the jury, as evidenced by their question to the Court during deliberation asking why they had heard about the guns and other drugs when Petitioner was not on trial for those items (p. 162 l 24- 163 l 3), which confusion and prejudice was compounded by the Trial Court's refusal to comment on that question. The jury also asked to re-hear the testimony of Investigators Jones and Savell about entering the trailer to serve the warrant, which is the time frame during which both were talking about shotguns, handguns, and drugs not the subject of the trial indictments.

The admission of all that evidence, the mocking by the Court of the motion to exclude the pistol, and the refusal to issue any corrective instruction to the jury were all areas which should have been addressed and briefed by appellate counsel, who was ineffective for failure to do so.

IV. APPELLATE COUNSEL WAS DEFICIENT IN FAILING TO RAISE AND ARGUE ERROR IN THE INTRODUCTION OF PHOTO EVIDENCE THAT DID NOT ACCURATELY REFLECT THE CRIME SCENE.

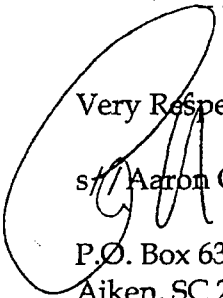
State's Exhibits 4 and 5 were photographs taken of the Petitioner by the officers, one showing a bag of cocaine slightly in his pulled-out pocket, which

had been pulled out by law enforcement, the other one with the cocaine taken placed by law enforcement into his then-handcuffed hands, behind his back. Trial Counsel moved to exclude them pre-trial (p. 17 l3-24), and objected to their introduction during the examination of Investigator Jones (p. 55 l 15-p. 56 l 12). Because the photos showed a scene staged by law enforcement, their admission should have been raised and argued by appellate counsel.

CONCLUSION

For all the reasons outlined above, and the reasons already argued to the Court at the evidentiary hearing, Petitioner believes his trial counsel, but particularly appellate counsel, were ineffective.

Very Respectfully Submitted,

 s/ Aaron G. Walsh

P.O. Box 639
Aiken, SC 29802
(803) 642-9700
SC Bar# 71222
Attorney for Petitioner

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	2009-CP-02-1417
James Prather, #315663.	)	
	)	
Applicant.	)	
	)	
v.	)	MEMORANDUM
	)	
State of South Carolina.	)	
	)	
Respondent.	)	
	)	

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 19, 2009. An evidentiary hearing into the matter was convened on July 15, 2010, at the Aiken County Courthouse. The Applicant was present at the hearing and was represented by Aaron Walsh, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office. At the conclusion of the July 15 hearing, the record was left open for supplementation of a post-trial hearing transcript. Upon submission of the transcript, the court directed briefing of issues by both parties.

At the hearing, the Applicant testified on his own behalf. Also testifying was Wallis Alves, Esquire. This Court had before it the records of the Aiken County Clerk of Court, the trial transcript, the appellate records, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections

pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was indicted for Possession with Intent to Distribute Within Proximity of Park (2006-GS-02-0256) and Trafficking in Cocaine (2006-GS-02-0257). Applicant was represented by Wallis Alves, Esquire. Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. Applicant was found guilty, and on May 26, 2006, Applicant was sentenced to fifteen (15) years imprisonment for Possession with Intent to Distribute Within Proximity of Park and to twenty (20) years imprisonment for Trafficking in Cocaine. Applicant was serving a probationary sentence (2004-GS-02-0039) at the time of his conviction, and two (2) years of the suspended sentence were revoked and probation terminated.

A notice of appeal was filed and an appeal perfected. An Anders brief was submitted on Applicant's behalf, and Applicant submitted a *pro se* brief. The appeal was dismissed. State v. Prather, Op. No. 2008-UP-554 (S.C. Ct. App. filed October 9, 2008). Applicant's *pro se* petition for rehearing was denied on December 19, 2008. The remittitur was sent on January 26, 2009.

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

1. "Ineffective assistance of counsel."
2. "Ineffective appeal counsel."

As set forth in his memorandum, Applicant pursues the following issues:

1. Ineffective assistance of appellate counsel.
 - a. Appellate counsel was deficient in failing to raise and argue the legal issues created by the trial court's ruling(s) as to the search warrant and affidavit.
 - b. Appellate counsel was deficient in failing to raise and argue the legal issues created by the trial court's ruling(s) as to the search of the Petitioner's person.

- c. Appellate counsel was deficient in failing to raise and argue error in the introduction of testimony to the jury about drugs and guns not relevant to the charge being tried.
- d. Appellate counsel was deficient in failing to raise and argue error in the introduction of photo evidence that did not accurately reflect the crime scene.

ARGUMENTS

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 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.

In the present case, it is important to note that appellate counsel submitted a brief in accordance with Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.F.L2d 493 (1967). Pursuant to the procedure outlined in Anders, the appellate court “then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous.” Id. at 744, 87 S.Ct. 1400. The appellate court may either (a) agree and grant counsel's request to withdraw and dismiss the appeal or (b) “if it finds any of the legal points arguable on their merits (and therefore not frivolous)” the court will direct briefing by the parties. Id. The court undertakes this review with the full transcript, looking for any issues of arguable merit. Jean Hoefer Toal et al., Appellate Practice in South Carolina (2nd ed. 2002). See also Garv v. State, 276 S.C. 634, 281 S.E.2d 226 (1981) (reversing on issue presented in Anders brief, noting that the court had “fully reviewed the entire record presented on appeal and conclude[d] that there [were] no other reversible errors at trial or arguably meritorious grounds for appeal.”) A decision in an Anders case is on the merits. State v. McKennedy, 348 S.C. 270, 559 S.E.2d 850 (2002)

CONCLUSION

Based on all the foregoing, Respondent request that the application be denied and dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

2009-CP-02-1417

JAMES PRATHER, 315663,)

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 **Memorandum** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Aaron G. Walsh, Esquire
Walsh Law, PA
Post Office Box 639
Aiken, SC 29802-0639

DATED this 8th day of December, 2011.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

James Prather, #315663,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2009-CP-02-1417

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 19, 2009. An evidentiary hearing into the matter was convened on July 15, 2010, at the Aiken County Courthouse. The Applicant was present at the hearing and was represented by Aaron Walsh, Esquire. The Respondent was represented by Mary S. Williams of the South Carolina Attorney General's Office. At the conclusion of the July 15 hearing, the record was left open for supplementation of a post-trial hearing transcript. Upon submission of the transcript, the court directed briefing of issues by both parties.

At the hearing, the Applicant testified on his own behalf. Also testifying was Wallis Alves, Esquire. This Court had before it the records of the Aiken County Clerk of Court, the trial transcript, the appellate records, and the Applicant's records from the South Carolina Department of Corrections.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was indicted

1 of 5

FILED 119 2012
L. J. Hester
 C.C.P. & G.S. 8:30am
Deputy Clerk

for Possession with Intent to Distribute Within Proximity of Park (2006-GS-02-0256) and Trafficking in Cocaine (2006-GS-02-0257). Applicant was represented by Wallis Alves, Esquire. Applicant proceeded to a jury trial before the Honorable Doyet A. Early, III. Applicant was found guilty, and on May 26, 2006, Applicant was sentenced to fifteen (15) years imprisonment for Possession with Intent to Distribute Within Proximity of Park and to twenty (20) years imprisonment for Trafficking in Cocaine. Applicant was serving a probationary sentence (2004-GS-02-0039) at the time of his conviction, and two (2) years of the suspended sentence were revoked and probation terminated.

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 - b. Appellate counsel was deficient in failing to raise and argue the legal issues created by the trial court's ruling(s) as to the search of the Petitioner's person.
 - c. Appellate counsel was deficient in failing to raise and argue error in the introduction of testimony to the jury about drugs and guns not relevant to the charge being tried.

- d. Appellate counsel was deficient in failing to raise and argue error in the introduction of photo evidence that did not accurately reflect the crime scene.

ARGUMENTS

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 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.

In the present case, it is important to note that appellate counsel submitted a brief in accordance with Anders v. California, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). Pursuant

to the procedure outlined in Anders, the appellate court "then proceeds, after a full examination of all the proceedings, to decide whether the case is wholly frivolous." Id. at 744, 87 S.Ct. 1400. The appellate court may either (a) agree and grant counsel's request to withdraw and dismiss the appeal or (b) "if it finds any of the legal points arguable on their merits (and therefore not frivolous)" the court will direct briefing by the parties. Id. The court undertakes this review with the full transcript, looking for any issue(s) of arguable merit. Jean Hoefer Toal et al., Appellate Practice in South Carolina (2nd ed. 2002). See also Gary v. State, 276 S.C. 634, 281 S.E.2d 226 (1981) (reversing on issue presented in Anders brief, noting that the court had "fully reviewed the entire record presented on appeal and conclude[d] that there [were] no other reversible errors at trial or arguably meritorious grounds for appeal."). A decision in an Anders case is on the merits. State v. McKennedy, 348 S.C. 270, 559 S.E.2d 850 (2002). This Court cannot review the appellate court's findings, and Petitioner suffered no prejudice from failure to raise any of the preserved issues found in the record.

Other Allegations

No other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

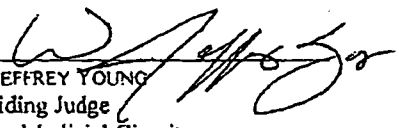
This Court advises Applicant that he must file a notice of intent to appeal within thirty (30)

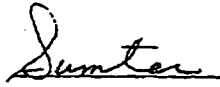
days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be DENIED AND DISMISSED WITH PREJUDICE; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 28 day of Dec, 20 11.


W. JEFFREY YOUNG
Presiding Judge
Second Judicial Circuit

 South Carolina.

James Prather vs. State Of South Carolina

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a),
SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Dated at Aiken, South Carolina, this 9th day of January, 2012.

Court Reporter: _____

PRESIDING JUDGE -

This judgment was entered on the 9th day of January, 2012, and a copy mailed first class this 9th day of January, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Aaron G. Walsh 118 Laurens St Nw Ste. 103 Po
Box 639 Aiken, SC 29802

Mary Shannon Williams Attorney General Po Box
11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard

Liz Godard - Clerk of Court

STATE OF SOUTH CAROLINA.) IN THE COURT OF COMMON PLEAS
County of Aiken

James Prather, #315663) Case No # 2009-CP- 02-1417
Applicant

Vs.

MOTION FOR RULE 59 (e)
S.C.R.C.P.

FILED

1-31-2012

State of South Carolina
Respondent,

Liz Givens
S.C.R.C.P. 00
Anita Knoepfle
Deputy Clerk

To Respondent

This matter comes by way due to order of dismissal sign by the Honorable Judge Young. Which a Post-Conviction Relief hearing was heard in the Court of Common Pleas.

Counsel for the applicant alleges serveral grounds in his Post-Conviction Relief Application and required by law S.C. Code Ann 17-27-90, Post-Conviction Relief Judge is required to rule upon all grounds alleges in his Post-Conviction Relief Application and all grounds address at his P.C.R. hearing by Counsel S.C.R.C.P Rule 71.1 (g).

The records shows that the Counsel for the applicant address serveral grounds and the P.C.R. Judge "must and "Shall make a ruling upon these grounds listed below:

1) Ineffective Assistance Counsel;

- A) Not objection to the missing link in chain of custody.
- B) Not requesting to enhancement of time, Without enhancement code.
- C) Not requesting for a Franks hearing.
- D) Not objection to the jury question.

The records will show on July 15,2010 That the applicant properly raise the above issue on P.C.R. The applicant requested his lawyer Aaron walsh to assist the applicant but lawyer declined.

Applicant enter this Motion Pro-Se on the his behalf. Applicant didn't recieve dismissal until January 24, 2012.

Date 1-30- 2012.

s *James Prather*
James Prather 315663
386 Redemption Way
McCormick S.C.29889

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
County of Aiken)

James Prather 315663
Applicant)

Case No# 2009-CP-02-1417

PROOF OF SERVICE

VS.)

State of South Carolina
Respondent,)

1-31-12

Liz Codard
LCCP
Amity M. Little
Deputy Clerk

To Respondent,

I certify that James Prather , 315663 has served a true copy of the Rule 59 (e) Motion upon my Counsel Aaron At P.O.Box 639, Aiken South Carolina, 29802, By Placing a true copy in the United States

Parties below

Sworn before me this day 30 of
2012.

Notary

Expires

Ms. Mary S. Williams
Attorney Genral Office
Post Office Box 11549
Columbia, S.C. 29201

Liz Codard
Clerk of Court
PO Box 583
Aiken, S.C. 29802-0583

S. James Prather
James Prather, 315663
386 Redemption Way
McCormick S.C. 29899



ALAN WILSON
ATTORNEY GENERAL

February 2, 2012

The Honorable Liz Godard
Clerk of Court, Aiken County
Post Office Box 583
Aiken SC 29802

Re: James Prather, 315663 v. State of South Carolina
2009-CP-02-1417

Dear Ms. Godard:

I received a *pro se* document entitled "Motion for Rule 59(e) S.C.R.C.P." in the aforementioned post-conviction relief matter.

Please be advised that Rule 11, SCRCP, requires every pleading, motion, or other paper of a party represented by counsel to be signed by at least one attorney of record who is an active member of the South Carolina Bar. If a pleading, motion, or other paper is not signed, "it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant." Rule 11, SCRCP. See, e.g., Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

The Respondent is fully aware of our Court's recent ruling that "Rule 11 of the South Carolina Rules of Civil Procedure does not apply to PCR proceedings." Hiott v. State, 2009 WL 649785, 4 (S.C.) (2009). However, the Respondent interprets the Hiott decision to be narrowly tailored to the issue(s) presented in Hiott and not to negate any and all applicability of Rule 11(a) for PCR proceedings. The Respondent, respectfully, does not interpret Hiott to implicitly abrogate Jones v. State, 348 S.C. 13, 558 S.E.2d 517, (2002), see also Foster v. State, 298 S.C. 306, 307, 379 S.E.2d 907, 907 (1989).

Therefore, the State does not consider this *pro se* document a part of this action. According to our records, Inmate James Prather was represented by Aaron G. Walsh, Esquire, in this matter. By copy of this letter, I am notifying opposing counsel of the State's position.

Sincerely,


Mary S. Williams
Assistant Attorney General

MSW/lm

cc: Aaron G. Walsh, Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
James Prather,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS

2009-CP-02-1417

FILED 22 Feb 2012Liz Hadard
C.C.P. & G.S.2:30 pm Angel Miles am
Deputy ClerkRETURN AND MOTION TO DISMISS
MOTION TO ALTER OR AMEND
DENIAL OF PCR PETITION

This matter comes before the Court by way of the Applicant's Motion pursuant to Rule 59(e), SCRCP, in which he asks the Court to alter or amend its Order dismissing his Application for post-conviction relief (PCR). The Respondent (the State) would submit the following:

I.

This post-conviction relief matter came before the Court for an evidentiary hearing on July 15, 2010. Following the hearing, the record remained open for supplementation of a post-trial motion transcript and the parties submitted memoranda. Thereafter, this Court issued an Order of Dismissal with Prejudice dated December 28, 2011, and filed with the clerk on January 9, 2012. Applicant was represented in this matter by Aaron Walsh, Esq.

The Applicant submitted a *pro se* Motion to Alter or Amend dated January 30, 2012, and filed with the clerk on January 31, 2012 ("*Pro Se* Motion"). The State responded by way of a letter dated February 2, 2012. Applicant's *Pro Se* Motion was also filed by counsel for the Applicant on February 2, 2012 (hereinafter "*Motion*").

II.

The Applicant's *Pro Se* Motion is improper under Rule 11(a), SCRCP ("[e]very pleading, motion or other paper of a party represented by an attorney shall be signed . . . by [the] attorney of record"). See also Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989) (no right to hybrid representation). Because Applicant is represented by counsel in this matter, the motion should be dismissed.

III.

Applicant's motion is not timely filed and should be summarily dismissed. "A motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCRCP. Respondent submits that the Order of Dismissal was mailed to counsel of record on January 9, 2012. Therefore, whether this court considers the January 31, 2012, filing or the February 2, 2012, filing, the Motion is untimely.

IV.

Should this court elect to reach the merits of the issues in the motion, Respondent submits that these claims would be without merit. The issues Applicant submits should have been addressed in the court's order are as follows:

Failure to object to missing link in chain of custody. State's exhibit 1 shows that a bag containing a rock type substance and a bag containing a white powder substance were taken from James Prather and stored in an evidence locker on February 17, 2005. These were the narcotics for which Prather was tried. An additional form showing recovery of white powder from someone named "Slim" and delivered to Marty Sawyer

on February 17 and then to an evidence custodian at the sheriff's office on February 21 were not the subject of trial. Therefore there was no defect in custody regarding the narcotics for which Prather was on trial. Counsel was not ineffective in this regard.

"Not requesting to enhancement of time, without enhancement code." It is unclear what this allegation involves, and it is impossible to respond.

Failure to request a Franks hearing. "To be entitled to a Franks hearing for an alleged omission, the challenger must make a preliminary showing that the information in question was omitted with the intent to make, or in reckless disregard of whether it made, the affidavit misleading to the issuing judge. There will be no Franks violation if the affidavit, including the omitted data, still contains sufficient information to establish probable cause." State v. Missouri, 337 S.C. 548, 554, 524 S.E.2d 394, 397 (1999). The search warrant as introduced at hearing contains Attachment A, the basis for the search warrant. Applicant has failed to demonstrate that the affidavit contains any omission or addition such as to make the affidavit misleading. Therefore, there is no evidence upon which to base a finding that Counsel was ineffective in failing to request a hearing pursuant to Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978) inasmuch as there has been no showing that Counsel's performance was unreasonable or any prejudice from failure to request such a hearing.

No objection to the jury question. It appears that Applicant argues that Counsel should have objected to the court's response to a jury question about why evidence of marijuana and a gun was admitted but Applicant was not charged with a crime as to those items. The judge "simply told them that the court couldn't comment on that question." It is unclear what objection Applicant would have Counsel make to this question. The trial

judge cannot comment on the evidence or the weight to be given it. Therefore, Applicant has failed to carry his burden in this regard.

V.

The State therefore requests that the relief requested by the Applicant be denied and that his Motion be dismissed.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT

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

Columbia, South Carolina
Feb. 21, 2012.

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS

2009-CP-02-1417

JAMES PRATHER, 315663,)

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 and Motion to Dismiss Motion to Alter or Amend Denial of PCR Petition** in the above-captioned matter on the following persons by depositing same in the United States mail, postage prepaid:

Aaron G. Walsh, Esquire
WalshLaw, PA
Post Office Box 639
Aiken, SC 29802-0639

FILED 22 Feb 20 12

Liz Hodard
C.C.P. & G.S.

2:30 *Angel Miles* am
pm Deputy Clerk

DATED this 21st day of February, 2012.

Lauren Meara
Lauren Meara, Legal Assistant
For Respondent

1 THE STATE OF SOUTH CAROLINA

2 County of Sumter

3

4

5 James Prather,
6 Plaintiff

PRC Motions
2009-CP-02-1417

6

7

vs.

8

The State of South Carolina,
9 Defendant

September 20, 2012
Sumter, S.C.

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10

11

Before The Honorable W. Jeffrey Young, Judge.

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

17

Mr. Aaron Walsh,
Attorney for Applicant

18

19

Ms. Megan Harrigan,
Attorney for state

20

21

22

23

Margaret T. Sullivan,
Court Reporter

24

25

1 MS. HARRIGAN: The next case the state
2 will call is James Prather versus the State of
3 South Carolina. Docket No. 2009-CP-02-1417.
4 Applicant was indicted for possession with the
5 intent to distribute within proximity of a park
6 and trafficking in cocaine. He was represented by
7 Wallis Alves. And proceeded to a jury trial
8 before the Honorable Doyet Early.

9 Applicant was found guilty. And On May
10 26th 2006, applicant was sentenced to 15 years
11 imprisonment for possession with intent to
12 distribute within the proximity of a park. And 20
13 years for trafficking in cocaine. Applicant was
14 serving a probationary sentence at the time of his
15 conviction. And two years of his suspended
16 sentence were revoked. And his probation was
17 terminated. This matter came before Your Honor
18 for a PCR hearing.

19 An evidentiary hearing was convened before
20 Your Honor on July 15th 2010. And an order was
21 subsequently signed by Your Honor, and filed with
22 the Aiken County Clerk of Court on January 9th
23 2012. At this time, it is the state's
24 understanding Mr. Walsh has a motion before this
25 court.

1 THE COURT: Mr. Walsh.

2 MR. WALSH: Thank you, Your Honor. Aaron
3 Walsh. Essentially the grounds for the motion
4 which a bit of background was, actually drafted
5 and sent by Mr. Prather.

6 THE COURT: Right.

7 MR. WALSH: But thereafter, he's, I've not
8 been formerly been relieved. He may or may not
9 request to make some argument on his behalf when I
10 am done. But I think I am only going to -- I
11 believe I can lay out the essential grounds. As
12 the state said, we had a PCR hearing on July 15th.
13 At that hearing, it was discovered that there had
14 been some post-trial motions made that we thought
15 related to; in other words, things were properly
16 argued post-trial perhaps. It doesn't reflect on
17 counsel's performance. The court asks to do was
18 to brief those issues---

19 THE COURT: Well before you do that,
20 before you even go into that, he filed this
21 motion. How did you get back involved?

22 MR. WALSH: Simply because it was
23 scheduled, Judge. I have not been released. And
24 I certainly feel appropriate sending my file---

25 THE COURT: The case was over but...

1 MS. HARRIGAN: Your Honor, when the state
2 received a pro se 59 E, we sent a letter to the---

3 THE COURT: You just being diligent, I
4 think.

5 MR. WALSH: I err on the side of caution,
6 Your Honor. He's here, and he filed it. And I
7 didn't ever file a motion, but I sent it to the
8 Clerk of Court and he had as well. And so felt
9 that was tied to it.

10 THE COURT: Okay. Well that's being
11 responsible.

12 MR. WALSH: I would rather err on the side
13 of caution and have him totally sit down and not
14 be here.

15 THE COURT: Well have you talked to
16 Mr. Prather? Does he want you here today?

17 MR. WALSH: Your Honor, I do not know if
18 he wants me here.

19 THE COURT: Do you want a minute to talk
20 to him?

21 (Whereupon, Mr. Walsh talks with Mr.
22 Prather.)

23 MR. WALSH: At the conclusion of my
24 argument, he asked if the court would hear from
25 him.

1 THE COURT: No. No. It's either him or
2 you.

3 MR. WALSH: Yes, sir.

4 (Whereupon, Mr. Walsh talks to
5 Mr. Prather.)

6 MR. WALSH: He would like to represent
7 himself on this motion.

8 THE COURT: Mr. Prather, you understand
9 that you are going to be representing yourself.
10 Okay. Very well. All right, sir, you may stand
11 and make your motion. Did you all have an
12 objection to the motion?

13 MS. HARRIGAN: We do, Your Honor. The
14 state filed a return in notice to dismiss. The
15 motion was filed pro se while applicant was still
16 represented by counsel, who had not yet been
17 relieved. And according to Rule 11, that is in a
18 violation. And the court cannot consider it to be
19 a filing. And we do have case law, which we will
20 hand to the court, supporting that preposition.
21 And also, the 59 E is untimely. It was filed more
22 than 10 days after the formal order was served on
23 counsel.

24 The state would move to dismiss on both of
25 those counts, Your Honor.

1 THE COURT: I am going to take that under
2 advisement. I am going to hear what he has to
3 say.

4 MS. HARRIGAN: Yes, sir, Your Honor.

5 THE APPLICANT: Your Honor, I didn't
6 receive the answers. When I received the answers,
7 it was a month later he had made the decision. I
8 didn't see the answers until a month later. So
9 when I seen the answer, the second day, I seen
10 Arthur Wilson. It was within 10 days when I was
11 supposed to answer. You've got 10 days for of
12 this---

13 THE COURT: What day did you see it?
14 You've got to tell me that. What day did you get
15 the final order? The final order was signed, and
16 what was the date?

17 THE APPLICANT: The final order was signed
18 on---

19 THE COURT: December 28th 2011.

20 THE APPLICANT: I didn't receive it until
21 January 24th 2012, sir.

22 THE COURT: Have you got proof of that?

23 THE APPLICANT: All I have is---

24 THE COURT: Do you have the letter that it
25 came in, or anything like that? And he was

1 represented by counsel.

2 MS. HARRIGAN: He was represented by
3 counsel, and the state did mail copies out on
4 January 9th. So the service to counsel is
5 January 9th 2012, Your Honor.

6 THE COURT: Mr. Walsh, can you show that
7 you forwarded it on to your client?

8 MR. WALSH: That's what I am looking to
9 find out, Your Honor.

10 THE COURT: So at that point and time,
11 there is no question Mr. Walsh was still his
12 attorney.

13 MS. HARRIGAN: Yes, Your Honor. That is
14 the state's contention. And it was filed pro se.

15 THE COURT: Well I am looking at his
16 affidavit and proof of service. He says he served
17 it on his counsel on January 3rd. Is that
18 correct, Mr. Prather? When did you file it in
19 court?

20 THE APPLICANT: When I filed this motion
21 for 59 E?

22 THE COURT: Yes, sir. When did you file
23 it in court? I see where you said you sent it.
24 Your proof of service says that you served a copy
25 of Rule 59 E motion on Mr. Aaron Walsh. Is that

1 Aaron? Aaron, is that who you are talking about?

2 P.O. Box 69. Is that you, Mr. Walsh?

3 MR. WALSH: Yes, sir, Your Honor.

4 THE COURT: Filed on the 30th of January
5 2012. Okay, it looks like it was filed in Aiken
6 on February 2nd.

7 THE APPLICANT: Yes, sir. It's stamped
8 February 2nd.

9 MS. HARRIGAN: And, Your Honor, there are
10 two clocked copies. There is a copy that was
11 clocked pro se on January 31st 2012. And then
12 Mr. Walsh has a pro se motion clocked again on
13 February 2nd.

14 THE COURT: Okay. So if he received it on
15 January 24th, I think it would be within the 10
16 days. Either way.

17 MS. HARRIGAN: Yes, Your Honor.

18 THE COURT: Okay.

19 MS. HARRIGAN: The state still contends
20 that it is filed in violation of Rule 11.

21 THE COURT: Mr. Prather, what do you want
22 to tell me?

23 THE APPLICANT: Well when we to the PCR on
24 July 15th 2009, there were six issues that I
25 raised. In answer to the issues, but the four

1 issues he did not answer. When we put it on the
2 record. And the exhibits stated that we preserved
3 the issue properly. But the issues have never
4 been -- the four issues were never answered. So I
5 am asking the court to amend -- I mean to answer
6 the issues that were never answered.

7 THE COURT: Yes, ma'am.

8 MS. HARRIGAN: And in all candor to the
9 court, I was not here in this circuit at this
10 time. I was not present at the evidentiary
11 hearing. However there were notes found in the
12 file that do indicate that some of these issues
13 were at least touched on. I don't know how much
14 detail, but it does indicate that these issues
15 were brought up at a PCR hearing, and left out of
16 the order.

17 And if the court would so like, the state
18 is willing to expedite the transcript, and order
19 that, if Your Honor. So....

20 THE COURT: Yeah, do that. And then in a
21 brief and then send it to.

22 MS. HARRIGAN: All right.

23 THE COURT: And then I will look at those
24 issues in the transcript. Okay.

25 MS. HARRIGAN: Thank you, Your Honor.

1 THE COURT: I will give you my ruling
2 within 30 days.

3 MS. HARRIGAN: Thank you.

4 THE COURT: And you are hereby relieved.

5 MR. WALSH: That's what I was going to ask
6 you.

7 THE COURT: Yes, sir.

8 MR. WALSH: Thank you. May I be excused?

9 THE COURT: Yes, sir. You are on your own
10 now, Mr. Prather. You understand that.

11 THE APPLICANT: I am not allowed to hire a
12 lawyer from here?

13 THE COURT: No, sir. You have dismissed
14 Mr. Walsh. You are done. You are on your own.

15 THE APPLICANT: But I still can't hire
16 one?

17 THE COURT: Oh, you can hire one. Oh,
18 sure. You can hire one all you want to. I'm just
19 not going to appoint one for you.

20 --End of Requested Transcript of Record--

21

22

23

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25

C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third 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 evidence introduced in the Common Pleas/nonjury PCR, September 20, 2012, in Sumter County, Sumter, South Carolina.

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

8/21/13
DATE

Margaret T. Sullivan

COURT REPORTER

My Commission expires: 9/7/21

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN)	FOR THE SECOND JUDICIAL CIRCUIT
James Prather, #315663,)	Case No. 2009-CP-02-1417
Applicant,)	
v.)	ORDER DENYING APPLICANT'S
State of South Carolina,)	MOTION TO ALTER OR AMEND
Respondent.)	DENIAL OF PCR PETITION

This matter comes before this Court by way of the Applicant's "Motion for Rule 59(e) S.C.R.C.P." in which he asks the Court to alter or amend its Order dismissing his Application for post-conviction relief.

I. Procedural History

Applicant filed an application for post-conviction relief on June 19, 2009. Respondent made its return on October 3, 2009. An evidentiary hearing on this application was held before this Court on July 15, 2010 at the Aiken County Courthouse. Applicant was present and represented by Aaron Walsh, Esquire. Respondent was represented by Assistant Attorney General Mary S. Williams of the South Carolina Attorney General's Office. Following the hearing, this Court left the record open for supplementation of a post-trial motion transcript and requested both parties submit memoranda to this Court. Thereafter, this Court issued an Order of Dismissal with Prejudice, dated December 28, 2011, and filed with the clerk on January 9, 2012.

Applicant submitted a *pro se* Motion to Alter or Amend dated January 30, 2012, and filed with the clerk on January 31, 2012. Respondent responded by way of a letter dated February 2, 2012, stating that it would take no action on this *pro se* document.

4-18-12
 J. Garland
 R.C.C.P.E.T.S.
 120

pursuant to Rule 11, SCRCP, as Applicant was represented by counsel. Thereafter, Counsel for Applicant filed a copy of Applicant's *Pro Se* Motion on February 2, 2012. The Respondent made its Return to this motion on February 21, 2012, asking that the motion be denied and dismissed.

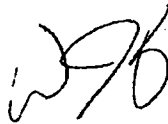
A hearing on this motion was held before this Court on September 20, 2012 at the Sumter County Courthouse. Applicant was present, as was his appointed counsel Aaron Walsh, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. At this hearing, Applicant made a motion to relieve his counsel and proceed *pro se* with this motion, which was granted by this Court.

II. Findings of Fact and Conclusions of Law

This Court has reviewed Applicant's motion, the State's return and the record in this matter and finds the following:

This Court finds that Applicant's motion is not timely filed and must be dismissed. "A motion to alter or amend the judgment shall be served not later than ten days after receipt of written notice of the entry of the order." Rule 59(e), SCRCP. This Court's Order of Dismissal was mailed to counsel of record on January 9, 2012. Therefore, whether this court considers the January 31, 2012, filing or the February 2, 2012, filing, the Motion is untimely and must be dismissed.

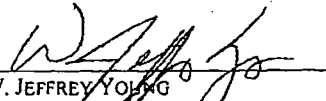
Additionally, this Court finds that the Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976), and Rule 52(a) SCRCP. See also, McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991).

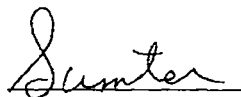


Therefore, based upon a careful reconsideration of all of the evidence in this case and upon full consideration of Applicant's motion and supporting testimony, this Court is not persuaded to alter or amend the judgment.

IT IS THEREFORE ORDERED that the Applicant's Rule 59(e) Motion to Alter or Amend is **DENIED**.

AND IT IS SO ORDERED this 11 day of April, 2013.


W. JEFFREY YOUNG
Presiding Circuit Court Judge
Second Judicial Circuit

, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

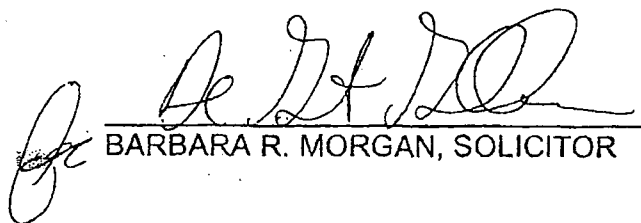
INDICTMENT

At a Court of General Sessions, convened on February 13, 2006, the Grand Jurors of Aiken County present upon their oath:

POSSESSION WITH INTENT TO DISTRIBUTE COCAINE WITHIN
PROXIMITY OF PARK

That JAMES DEMOUNT PRATHER did in Aiken County on or about February 17, 2005, knowingly or intentionally possess with intent to distribute a controlled substance, to wit: Cocaine while in, on, or within a one-half mile radius of the grounds of a public playground or park, to wit: Weaver Street Park.

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


BARBARA R. MORGAN, SOLICITOR

WITNESSES

G. Savell, A.C.S.O.

FILED

February 9, 2006

J. S. S. S. S. S.

Deputy Clerk

Deputy Clerk

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: February 9, 2006

Fuller

VERDICT

DOCKET NO. 2006-GS-02-

256

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

FEBRUARY 13, TERM 2006

THE STATE

vs.

JAMES DEMOUNT PRATHER

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE WITHIN
PROXIMITY OF PARK

SC Code: 44-53-445(B)(1)

CDR Code: 0107

Class FEL/E

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF AIKEN
 STATE VS.
James D. Prather
 AKA:
 Race: B Sex: M Age: 27
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip AIKEN, SC 29801
 DL# [REDACTED] SID# [REDACTED]

INDICTMENT/CASE#: 2006 GS 02 - 256
 A/W#: DIRECT
 Date of Offense: 2-17-05
 S.C. Code §: 44-53-445 (B)(1)
 CDR Code #: 0111017
☐ CASE RESTORED
 SENTENCE
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
 TO: Poss. w/ intent distr. cocaine prox. park (0-15y \$10,000)
 in violation of § 44-53-445 (B)(1) of the S.C. Code of Laws, bearing CDR Code # 0111017
☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The 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 15 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 South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 06-65-02-257
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
 Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211(A)(2) (DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$ 35.13 (Public Def/Prob)	\$500	\$
\$73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
\$33.7, 1B TP (Drug Court Surcharge)	\$100	\$ 100.00
\$50-21-114(BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 6.75
TOTAL		\$ 231.75

PTUP

_____ 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: 01361Sentence Date: May 26, 2006

Clerk of Court/ Deputy Clerk

Court Reporter: Lisa Dickler

STATE OF SOUTH CAROLINA)

INDICTMENT

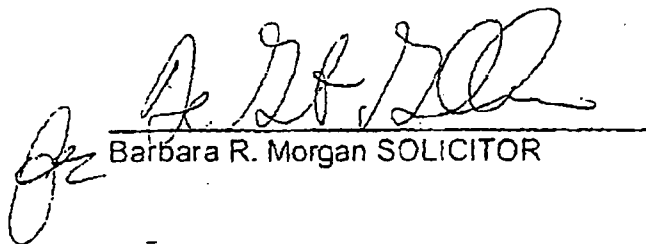
COUNTY OF AIKEN)

At a Court of General Sessions, convened on February 13, 2006 the Grand Jurors of Aiken County present upon their oath:

TRAFFICKING IN COCAINE

That JAMES DEMOUNT PRATHER did in Aiken County on or about February 17, 2005, commit the offense of Trafficking in Cocaine, to wit: James Demount Prather did knowingly or intentionally have in actual or constructive possession 26.69 grams of Cocaine, a controlled substance under provisions of §44-53-110, et seq., *Code of Laws of South Carolina* (1976), as amended, such possession not having been authorized by law.

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


Barbara R. Morgan SOLICITOR

WITNESSES

G. Savell, A.C.S.O.

DOCKET NO. 2006-GS-02-257

The State of South Carolina

County of Aiken

FILED

February 9, 2006

Jerry Steland

CLERK

Deputy Clerk

COURT OF GENERAL SESSIONS

FEBRUARY 13, TERM 2006

ARREST WARRANT NUMBER

H847286

THE STATE

vs.

JAMES DEMOUNT PRATHER

ACTION OF GRAND JURY

The Bill

Foreperson of Grand Jury

Date: February 9, 2006

Phillip

VERDICT

Indictment for

TRAFFICKING IN COCAINE

SC Code: 44-53-370(e)(2)(a)2

CDR Code: 0387

Class FEL(A/V)

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF AIKEN
STATE OF SOUTH CAROLINAINDICTMENT/CASE# 2006 GS 257ARV James D. Proctor
DOB 03-11-1971
Address 1000 1st St
City AIKEN
State SCMVA H-17296
Date of Offense 05-17-05
S.C. Code W-53-70(a)(3)(a2)
S.C. Grade 1-3-1-8-1-7☒ CASE RESTORED
☐ SENTENCE
☒ PLEA ☒ TRIALIn disposition of the said indictment comes to the Defendant who was ☒ CONVICTED OF ☐ PLEADS
to Violating General Statute 56-2-21
in violation of General Statute 56-2-21
☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The defendant, as charged, ☒ Leson, includes offense ☐ Defendant Waives Prosecution to Grand Jury
The defendant ☐ Without Recommendation ☐ Recommendation ☐ Recommendation by the State
Attorney James D. Proctor Defendant James D. Proctor Attorney for Defendant James D. ProctorWHEREFORE, the Defendant, James D. Proctor, is in the custody of the South Carolina Department of Corrections ☐ County Detention Center
for a detention term of 21 days/months/years ☐ under the Youthful Offender Act not to exceed 2 years
order to pay a fine of \$0.00 ☐ or that upon the service of 0 days/months/years and/or payment
of \$0.00 ☐ the balance is suspended with probation for 0 days/months/years
for the defendant and subject to the South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.
☐ CONCURRENT ☐ CONSECUTIVE to sentence on
☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard ☐ Waived ☐ Granted
Total \$0.00 plus 4% fee \$0.00
Payment Terms
☐ on by GEDT-PS☐ PTUP 0 days/hours Public Service Employment
Obtain GED
Attend Voc Rehab or Job Corp
May serve W/E beginning 05-17-05
Substance Abuse Counseling
Random Drug Alcohol Testing
Fines may be pd in equal consecutive weekly/monthly
pmts of \$0.00 beginning 05-17-05
paid to Public Defender Fund
Other 0Fees
\$14.10 (Assessment ID 7-50)
\$14.12 (MVA) (Conv. Surcharge)
\$14.12 (MVA) (DU Surcharge)
\$66.25 (Assessment)
\$35.13 (Public Def Fee)
\$7.33 (TP) (Use Expense Fund)
\$33.75 (TP) (DU) (Conv. Surcharge)
\$50.21 (MVA) (Assessment)
\$50.21 (MVA) (Assessment)
\$35.13 (Public Def Fee)
\$35.13 (Public Def Fee)
TOTAL \$531.05☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE MT Easley
Judge Code 0136
Sentence Date May 26, 2006

White - Clerk

Green - Corrections

Grey - Probation

Pink - Defendant

SCCA/217 (7/2003)