



ALAN WILSON
ATTORNEY GENERAL

March 11, 2014

The Honorable Jenny A. Kitchings
Clerk of Court, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State of South Carolina v. Luther Tollie Norris, Jr.
Appellate Case No. 2012-212431

Dear Ms. Kitchings:

The above-referenced case was remanded to the circuit court by order of this Court dated November 4, 2013. Judge Clifton Newman held a hearing on December 5, 2013, changed Appellant's sentence on his distribution of crack cocaine conviction to thirteen years instead of life without parole, and subsequently issued an Order Denying Defendant's Motion to Dismiss regarding Appellant's distribution of crack cocaine in proximity to a public park conviction.

I am enclosing a copy of the December 5, 2013 transcript, Appellant's new sentencing sheet, and Judge Newman's Order Denying Defendant's Motion to Dismiss. We will await further instructions from this Court regarding the status of the appeal.

Thank you for your attention to this matter, and please do not hesitate to contact me at (803) 734-3713 should there be any questions or concerns.

Sincerely,

Christina J. Catoe
Assistant Attorney General
SC Bar No. 73562

CJC/

cc: Susan B. Hackett, Esquire

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MAR 11 2014

SC Court of Appeals

State of South Carolina)
County of Saluda)

In the Court of Common Pleas
Eleventh Judicial Circuit
2011-GS-41-0283
2011-GS-41-0284

State of South Carolina,)
Plaintiff,)
vs.)
Luther Tollie Norris,)
Defendant,)

Transcript of Record

December 5, 2013
Camden, South Carolina

B E F O R E:

The Honorable Clifton B. Newman, Judge

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

H. Franklin Young, III, Esquire
Attorney for Plaintiff

Charles E. Johnson, Sr., Esquire
Susan Barber Hackett, Esquire
Attorneys for Defendant

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MAR 11 2014

SC Court of Appeals

Maryann S. Nevers, CVR-M-CM
Circuit Court Reporter

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EXHIBITS

No Exhibits Introduced.

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TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 10:14 a.m.)

THE COURT: All right. This is the case of *State v. Luther Tollie Norris*.

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Norris was tried and convicted in the Court in Saluda County and sentenced to life without the possibility of parole. At the end of the trial, a motion for reconsideration was made. I told counsel that if you have anything else you want me to see or consider as to whether or not that's the appropriate sentence, let me see it; let me have it.

And I haven't -- didn't see or hear from anyone about anything, other than until I received an order from the Court of Appeals, I believe, or PCR judge, one of the two, saying that a PCR could not be heard until -- because the issue of what the proper sentence should be was still unresolved by me. And so I've called you all here, in essence. That's my understanding of where it is. Someone else may have a different understanding.

Yes, sir.

MR. JOHNSON: All right. If it please the Court, Your Honor: Yes, sir. Apparently, this was on appeal. Appeal court say that since it was outstanding motion that wasn't -- that was never ruled on ---

1 THE COURT: Yeah. I've never ---

2 MR. JOHNSON: --- they kicked ---

3 THE COURT: --- never given ---

4 MR. JOHNSON: --- that one.

5 THE COURT: --- anything ---

6 MR. JOHNSON: Yes, sir.

7 THE COURT: --- to rule on.

8 MR. JOHNSON: Yes, sir. And after I left the
9 courtroom and I went and did some research and the argument
10 I had in mind, I found out Supreme Court ruled on all the
11 issues beforehand.

12 THE COURT: Okay.

13 MR. JOHNSON: And I -- so I figure it wasn't no need
14 for me to submit anything because my arguments wouldn't
15 carry any weight at that point in time.

16 THE COURT: All right.

17 MR. JOHNSON: But I do have two motions, Your Honor

18 ---

19 THE COURT: Okay.

20 MR. JOHNSON: --- to -- to let pass up: one relating
21 to the finding under 17-25-45 for sentence for life without
22 parole. The original basis for that statute being
23 applicable in this instance was a prior rape that was in 19
24 -- I think -- '71 that was on the direct report, the
25 criminal record.

1 But in actuality, Mr. Norris was actually sentenced to
2 assault and battery, high-aggravated nature under the
3 common law at that time; was given a one-year sentence.
4 And since common law ABHAN was not one of the crime listed
5 under 17-25-45 and at common law, the maximum sentence on
6 that was only ten years. And that was ---

7 THE COURT: All right.

8 MR. JOHNSON: --- one of the basis ---

9 THE COURT: All right.

10 MR. JOHNSON: --- for the application of ---

11 THE COURT: And the motions you're talking about,
12 you're still holding?

13 MR. JOHNSON: Yes. If I would -- I would pass it up,
14 Judge?

15 THE COURT: Yeah. Usually, I get the motion; then I
16 hear the argument ---

17 MR. JOHNSON: Yeah.

18 THE COURT: --- not hear the argument ---

19 MR. JOHNSON: Well ---

20 THE COURT: --- and then ---

21 MR. JOHNSON: --- I haven't been ---

22 THE COURT: --- then get the motion.

23 MR. JOHNSON: I'm sorry, Your Honor.

24 THE COURT: All right. Thank you.

25 MR. JOHNSON: And as such, the basis for the

1 application of the statute is not met because there's no
2 two prior ---

3 THE COURT: All right.

4 MR. JOHNSON: --- most-serious or serious offenses.

5 THE COURT: Now, did -- did you -- you -- you tried
6 the case or ---

7 MR. JOHNSON: I tried the case, Your Honor.

8 THE COURT: You ---

9 MR. JOHNSON: Yes, sir.

10 THE COURT: --- tried the case. Okay.

11 MR. YOUNG: Your Honor, I can clarify some of this,
12 and I can make it simple for the judge in this regard: The
13 state relied upon the rap sheet. We had a subsequent look
14 at the conviction. The conviction -- I've had a copy
15 provided to the Court. In fact, there are a list of
16 convictions there from Carrabus [sic] County, North
17 Carolina; and Guilford County, North Carolina.

18 And in Greenwood, where this -- this rape was
19 indicted, he pled guilty to ABHAN. The certified copy, I
20 believe, is on the Court's bench up there. He was
21 sentenced under the ABHAN provisions. That does not count
22 as a strike. It was a three-strike scenario, if I recall
23 correctly, for him.

24 And this would, of course, been the third such strike,
25 based upon a distribution within proximity. That scenario

1 is not present because he did not have the requisite number
2 of strikes under 17-25-45, as I read the law. So the life
3 provision and the notice for life was based upon a rap
4 sheet and not upon the conviction itself.

5 When we found the conviction, of course, it said
6 ABHAN, not rape.

7 THE COURT: All right.

8 MR. YOUNG: Therefore, you know, it's -- it -- you --
9 it's improvident in that regard. So he should not be
10 sentenced to life. The state agrees with that.

11 However, he does have a whole series of drug
12 convictions, beginning in -- I -- I can list them for the
13 Court and I have copies on the bench for the Court to look
14 at.

15 THE COURT: Okay. All right. So that -- so you agree
16 that the -- that there was evidence that -- that it should
17 not have been an LWOP?

18 MR. YOUNG: Sir, in fact, the -- the rap sheet said
19 "rape" and the -- and the actual sentence sheet and
20 indictment forms that we got from Greenwood County said
21 "ABHAN."

22 THE COURT: All right.

23 MR. YOUNG: So ---

24 THE COURT: Because at the -- at the time of
25 sentencing, I didn't have anything. And nothing was

1 subsequently provided ---

2 MR. JOHNSON: Yes, sir.

3 MR. YOUNG: Yes, sir.

4 THE COURT: --- till now.

5 MR. YOUNG: Yeah. We were ---

6 MR. JOHNSON: Yes, sir.

7 MR. YOUNG: --- we were relying on the rap sheet ---

8 THE COURT: All right.

9 MR. YOUNG: --- Judge.

10 MR. JOHNSON: Yes, sir. I also relied on it as well,
11 Your Honor. So for -- if -- if that's not issue, the --
12 the only other motion I have, Your Honor, is to -- to set
13 aside the verdict for the distribution within a proximity
14 of the school or park.

15 THE COURT: All right.

16 MR. JOHNSON: And reading the statute, the language is
17 that the state must -- well, the defendant must have
18 knowledge that he is within, on, or near the park.

19 THE COURT: You said the statute provides that?

20 MR. JOHNSON: Yes, sir.

21 THE COURT: And what does it say about that?

22 MR. JOHNSON: It specifically says that person
23 convicted of -- to -- to be convicted of distribution must
24 have knowledge that he is -- he is in, on, or within a one-
25 half-mile radius of the grounds.

1 THE COURT: That's the -- that's the language of the
2 statute you're reading?

3 MR. JOHNSON: Yes, sir.

4 THE COURT: All right. Tell -- let me look at that
5 statute while you're looking at it. What's the statute
6 number again?

7 MR. JOHNSON: That's under 40 -- 44-53-445(b)(1).

8 THE COURT: 44-53-445(b)(1).

9 MR. JOHNSON: Yes, sir.

10 THE COURT: All right. Let's take a look at that.
11 44-53-445(b)(1): "For a person to be convicted for an
12 offense pursuant to Subsection (a), the person must have
13 knowledge that he is in, on, or within a half-mile radius
14 of the grounds of a public or private elementary, middle,
15 or secondary school; a public playground or park; trade
16 school, etc., or university; and actually distribute this
17 within that half-mile."

18 All right. And in this case, what?

19 MR. JOHNSON: My argument is that the state's never
20 put forth any evidence this morning regarding whether or
21 not Mr. Norris actually knew that he was within that one-
22 half-mile radius.

23 THE COURT: All right. How about that, Mr. Young?

24 MR. YOUNG: Your Honor, I -- if I recall -- and, Your
25 Honor, I'm at somewhat a disadvantage. I don't have the

1 record of transcript to go back to. Mr. Norris had a lady
2 that was living with him at the time. And there was a --
3 this was a controlled buy.

4 The Court may recall that the testimony was that
5 Officer Brett Long put this C.I. out; she went to the
6 house; made a purchase. And then she went back later and
7 made another one. And she went to two different people.

8 But during the course of that, she actually went in
9 the back of the room. The -- the person who was -- he was
10 trying to get the drugs from was Mr. Norris, because Mr.
11 Norris was the person who had them. And this person who
12 was living in the house with Mr. Norris went back to the
13 bedroom and came back with the drugs. And she watched this
14 happen. This is the C.I.'s testimony.

15 That lady who lived in that house testified that this
16 park we're talking about, which is a -- within a quarter-
17 mile by -- by both a diagram we provided and by testimony
18 of Brett Long, the officer in charge, which is a public
19 park where everybody goes to play softball, she testified
20 that he had been to that -- that park, knew where it was,
21 and been there over and over again on the weekend --
22 weekends, where they play ball down there all the time. I
23 -- I think it's East End Park, if I recall.

24 But the long-short of it is, all that testimony was
25 before the Court and before the jury. And the jury had

1 that to consider and came back and concluded that based
2 upon that evidence, he was guilty of it. So there was
3 evidence on that, Your Honor.

4 Now, that's -- that's my recollection ---

5 THE COURT: Yeah.

6 MR. YOUNG: --- based ---

7 THE COURT: All right.

8 MR. YOUNG: --- on recall ---

9 THE COURT: Well ---

10 MR. YOUNG: --- from ---

11 THE COURT: Well, is your argument that the -- that
12 the statute says that the defendant knew that it was in a
13 half-mile -- half a mile; that that is a -- that you do not
14 have to prove it by direct knowledge, based on an
15 admission: that I know that this is within a half-mile or
16 -- or -- or that it can be based on circumstantial evidence
17 or inference from the evidence or from circumstances
18 surrounding the evidence?

19 MR. YOUNG: I -- I think we do have to prove that
20 there is knowledge on his part. And we can prove that, as
21 you have indicated, by direct or circumstantial evidence a
22 as well. And there was -- there was direct evidence that
23 he had been to the park with this lady who he lived with on
24 numerous occasions and knew where it was. And we had
25 offered other evidence to show it was exactly where it was

1 and had been since Christ was a corporal, I guess the best
2 way to put it.

3 But I think this -- this was Hare Street, if I recall.
4 And it was well within the quarter-mile. It's basically
5 down there on the road there. It's not very far at all.
6 And ---

7 THE COURT: So the -- the park in question was right
8 down the street?

9 MR. YOUNG: Not very far at all, Judge.

10 THE COURT: Not far ---

11 MR. YOUNG: I think he ---

12 THE COURT: --- at all.

13 MR. YOUNG: --- he -- it's -- if I recall correctly --
14 and I'd have -- I don't have the map in front of me, and I
15 don't recall the specific testimony. But she, in fact,
16 said that they'd been there together numerous times.
17 That's -- it's a -- it's a place where everybody goes on
18 the weekends to play ball. And it's a -- it's a big
19 hangout place for everybody ---

20 THE COURT: Uh-huh.

21 MR. YOUNG: --- in Saluda. And Saluda's not a big
22 town, and everybody pretty much knows where everything is.

23 THE COURT: Uh-huh.

24 MR. YOUNG: So -- and she said, "Yeah; he knew where
25 it was." She'd been there with him.

1 THE COURT: Did she testify to that?

2 MR. YOUNG: If I'm -- my recollection is she did, Your
3 Honor.

4 THE COURT: All right. So -- yeah. I -- I don't
5 remember -- I remember Mr. Norris. I remember the trial; I
6 remember sentencing him. The details of who said what
7 during the trial, you know -- I remember the lady who --
8 who -- I think she said she decided to help clean up the
9 town or -- or was mad with him about something or -- or for
10 some reason, she decided to cooperate with the state and
11 get him convicted. So ---

12 MR. JOHNSON: Yes, sir. Would jog -- jog memory, Your
13 Honor, that lady was Mr. Norris brother ex-girlfriend, who
14 was upset with Mr. Norris because she wasn't treated well
15 by Mr. Norris.

16 THE COURT: Okay.

17 MR. JOHNSON: So, Your Honor, the -- the statute said
18 the person must have knowledge of it -- with -- and that
19 knowledge of -- of there's a park somewhere or down the
20 street, whatever, but that within a one-half-mile radius of
21 it. And that seem -- how the statute seem to be written.
22 So not only that you had to be aware there's a park, but
23 you also had to be aware that it's within a half-a-mile
24 radius.

25 THE COURT: So ---

1 MR. JOHNSON: And ---

2 THE COURT: --- what burden does the state have of --
3 of -- of -- I mean, what's the test of whether or not the
4 state can show that knowledge?

5 MR. JOHNSON: Well, in this case, Your Honor, I think
6 what the state did, they took a map, put a point in the
7 park, and then did a radius of a half and see whether --
8 where he was, related with a half-mile radius. But the
9 state didn't put forth any evidence to say that he actually
10 knew ---

11 THE COURT: Well, how -- how ---

12 MR. JOHNSON: --- that.

13 THE COURT: --- can the state ever prove that someone
14 actually knew the distance between Point A and Point B in a
15 proximity case?

16 MR. JOHNSON: Well, that's the problem, Your Honor,
17 because it would be hard for the state to prove that. But
18 that's what the statutes, as written, seem to require.
19 Now, whether it's rational or not or reasonable or not,
20 Your Honor, that's another question that -- and whether it
21 could actually be proved. But again, the legislature, in
22 their wisdom, decided -- whoever wrote the statute had -- a
23 person must and not ---

24 THE COURT: Well, do you all ---

25 MR. JOHNSON: --- maybe ---

1 THE COURT: --- have the transcript? Are you the PCR
2 lawyer?

3 MS. HACKETT: I represent him on appeal ---

4 MR. JOHNSON: Appeal.

5 MS. HACKETT: --- and I ---

6 THE COURT: On appeal. The -- the -- and what's your
7 name?

8 MS. HACKETT: Susan Hackett.

9 THE COURT: Susan Hackett. All right. Do -- do you
10 all have the transcript of the trial?

11 MR. YOUNG: I do not.

12 MS. HACKETT: I do.

13 MR. YOUNG: Ms. Hackett does. I don't ---

14 MR. JOHNSON: Ms. Hackett ---

15 MR. YOUNG: --- have it.

16 MR. JOHNSON: --- does.

17 THE COURT: All right. You know, I -- in order to --
18 for me to -- to rule on this issue, I'd have to review the
19 transcript because it's been -- how long ago has it been?

20 MR. JOHNSON: Your Honor, I will get ---

21 THE COURT: It's been ---

22 MR. JOHNSON: --- a copy of ---

23 THE COURT: --- a year or so?

24 MR. JOHNSON: I will get a copy and -- and forward it
25 to the Court.

1 THE COURT: Yeah. How -- when was this trial?

2 MR. JOHNSON: That was ---

3 MS. HACKETT: Your Honor, the trial was May 21st
4 through the 22nd of 2012.

5 THE COURT: Yeah. So that's, goodness, a year and a
6 half ago. Yeah. Probably done 50 trials since then, so --
7 trials, pleas, everything. So I -- I just can't remember
8 those details. But as far as the sentence is concerned, on
9 this -- what did I sentence him to?

10 MR. YOUNG: Your Honor, you gave him life on the basis
11 of a three-strike provision, 17-25-45, on the distribution
12 within proximity and you gave him 15 years on the
13 distribution.

14 THE COURT: All right.

15 MR. YOUNG: And I have those sentence sheets here,
16 Your Honor. And I have prepared new sentence sheets. I
17 can hand them up.

18 THE COURT: Okay. Let's see what the ---

19 MR. YOUNG: And ---

20 MR. JOHNSON: Your Honor ---

21 MR. YOUNG: --- Your Honor ---

22 MR. JOHNSON: --- I don't think ---

23 MR. YOUNG: --- there's a ---

24 MR. JOHNSON: --- that we asked ---

25 THE COURT: There would be ---

1 MR. YOUNG: --- lot of documents with ---

2 THE COURT: If he ---

3 MR. YOUNG: --- each one.

4 THE COURT: --- gets a concurrent sentence, then it
5 doesn't really matter.

6 MR. JOHNSON: Yes, sir.

7 THE COURT: Okay.

8 MR. JOHNSON: As far as the -- the -- the 15 years.

9 THE COURT: No. I said if -- if -- he's acknowledged
10 that he is not facing the LWOP ---

11 MR. JOHNSON: Right.

12 THE COURT: --- he's still -- this is -- I see here a
13 prior conviction for distribution of crack.

14 MR. YOUNG: Your Honor, I can recite his record, based
15 upon the documents that I provided the Court and give you
16 his full record for -- for crack ---

17 THE COURT: Yeah.

18 MR. YOUNG: --- and other ---

19 THE COURT: Just tell ---

20 MR. YOUNG: --- charges.

21 THE COURT: --- me the record and then what he's
22 facing on this -- this ---

23 MR. YOUNG: I -- Your Honor, my recollection is it's
24 -- is it not 10 to 30 years? I believe that's correct ---

25 THE COURT: Distribution ---

1 MR. YOUNG: --- Ms. Hackett, is it not?

2 THE COURT: --- of crack, second offense ---

3 MR. YOUNG: It's third or greater?

4 THE COURT: --- third offense?

5 MS. HACKETT: Two -- it's -- pardon me. It's 10 to 30

6 ---

7 MR. YOUNG: Yeah.

8 MS. HACKETT: --- with a \$50,000 fine.

9 MR. YOUNG: Yeah.

10 THE COURT: All right. So ---

11 MR. YOUNG: Thank you.

12 THE COURT: So in the end, I mean, if he -- if -- if
13 he gets 30 years for distribution of crack and -- what's
14 the minimum on the proximity? Is it zero to 15 or more,
15 based on a third offense?

16 MR. YOUNG: Your Honor, honestly, I ---

17 THE COURT: I have it all. I'm just in -- you know,
18 my -- I -- it's kind of hard to shift from the zone of
19 being in a civil trial to ---

20 MR. YOUNG: Yeah. I agree, Your Honor.

21 THE COURT: --- criminal ---

22 MR. YOUNG: And I'm ---

23 MR. JOHNSON: Yes, sir.

24 THE COURT: --- sentencing at an ---

25 MR. YOUNG: You know, off ---

1 THE COURT: --- at an instant.

2 MR. YOUNG: --- the top of my head, distribution
3 within proximity, I think that there is no acceleration on
4 that as a third offense, is there?

5 MS. HACKETT: There's not. It's ---

6 MR. YOUNG: It's zero ---

7 MS. HACKETT: --- straight ---

8 MR. YOUNG: --- to 15.

9 THE COURT: All right.

10 MR. YOUNG: Yeah. Your Honor, there's no -- there's
11 no enhancement based on subsequent offenses. Your Honor,
12 if I could, the -- the information I have, based upon the
13 records I've obtained from North Carolina -- but I
14 personally visited North Carolina to get these records. So
15 it -- that -- I can tell you that this is -- I've went
16 through a lot of trouble.

17 The first conviction I show from North Carolina for
18 him is for armed robbery, for which he got 15 years, in
19 October -- or during 1974. It appears that -- or for an
20 offense in 1974.

21 THE COURT: He got an armed -- but did he plead to
22 armed robbery or something else?

23 MR. YOUNG: He pled to armed robbery. It -- I -- the
24 sentence -- the -- the record of conviction's right up ---

25 THE COURT: So the ---

1 MR. YOUNG: --- there, Your Honor.

2 THE COURT: --- armed robbery is one strike. And
3 then, the armed robbery in South Carolina is another
4 strike, but you didn't give him notice of it?

5 MR. YOUNG: I -- I didn't, Your Honor.

6 THE COURT: Okay. I understand.

7 MR. YOUNG: Yeah. And I'm -- you know, I based it on
8 something I didn't have.

9 THE COURT: All right. Had you given him notice based
10 on the two armed robberies, then it would be three strikes
11 anyway?

12 MR. YOUNG: Well, he had a -- I think that armed
13 robbery was a strong-arm he pled to, Your Honor, if I
14 recall ---

15 THE COURT: A strong-arm. I see.

16 MR. YOUNG: Yes, sir.

17 THE COURT: All right.

18 MR. YOUNG: I think it's a strong-arm, not -- not an
19 armed robbery.

20 THE COURT: Okay.

21 MR. YOUNG: But he had a -- he had that. Then there
22 was a -- most of the rest of this is in Guilford County.
23 There's a guilty plea to possession of cocaine, and
24 sentence was in, I believe -- if I'm correctly stating
25 this, it's March 24th, 1986. He got four years on that.

1 He got three years on another possession of cocaine on
2 August 18th of 1992. That was three years, suspended to
3 two years' probation. And then there was a probationary
4 sentence that was revoked. That probationary sentence was
5 revoked on August 9th of 1993, when he pled guilty to
6 another charge of possession of cocaine.

7 So I counted three counts of possession of cocaine,
8 the first one being in '85, the second one in '92, and the
9 third in '93 in North Carolina. There is also a PWID-
10 marijuana charge in 1984, which doesn't work for an
11 enhancement purpose. But the state's position is -- is
12 that under the provisions of current law in South Carolina,
13 subsequent offenses do count at -- if it's -- even though
14 it's outside the ten years, subsequent offenses do count
15 for enhancement.

16 In South Carolina there is the Greenwood rape and
17 ABHAN conviction -- rape that was pled down to ABHAN, on 11
18 February of 2000 -- 7 -- 1971. Then on -- Judge Keesley
19 apparently took a plea from him for strong-arm robbery and
20 assault of a high and aggravated nature on the 22nd of
21 January, 2004. And apparently, the -- subsequently, during
22 that week -- that next week of the term, apparently he pled
23 guilty to distribution of crack cocaine. And that was on
24 January 29th of 2004. And he ran all of that concurrent
25 for 12 years. So -- according to what I can read from the

1 sentence sheets -- so all of that ran together from the
2 22nd through the 29th, including that distribution of
3 crack, for -- for 12 years concurrent.

4 That's what I have written down, based upon what I see
5 from the sentence sheets. And, Your Honor, again, I have
6 those available for the Court. It does read 12 years
7 concurrent, according to what I'm reading on this, 2002-GS-
8 41-476, by Judge Keesley for distribution of crack. So he
9 does have one, two, three, four subsequent convictions for
10 crack, the last one being distribution of crack. And I'm
11 not counting the one that -- that began all this in 1985.

12 So the -- the subsequent convictions from 1985 are 92-
13 CR -- excuse me -- 5604 in 2001; 93-201; and then, the ---

14 THE COURT: All right.

15 MR. YOUNG: --- third one ---

16 THE COURT: Is there any dispute about this being his
17 third or subsequent offense?

18 MR. JOHNSON: Hold on.

19 (Whereupon, Mr. Johnson and the defendant conferred.)

20 MR. JOHNSON: No, sir, Your Honor.

21 THE COURT: All right.

22 MR. YOUNG: So I -- I do believe, Your Honor, that
23 really does sum up pretty much his -- Your Honor, I do
24 recall the name of that lady too. The name of the lady
25 that testified was, I believe, Crystal Ethridge.

1 THE COURT: Crystal Ethridge.

2 MR. YOUNG: I think that's her name.

3 THE COURT: Hmm.

4 MR. YOUNG: Just popped in my head.

5 THE COURT: Well, that's a pretty popular name in
6 Saluda: Ethridge.

7 MR. YOUNG: It is.

8 THE COURT: Saluda, Greenwood.

9 MR. JOHNSON: Yeah.

10 THE COURT: Yes, sir, Mr. Johnson?

11 MR. JOHNSON: Your Honor, I would just ask to -- the
12 Court give him 15 years on -- I forgot which -- I think ---

13 THE COURT: On the distribution of crack.

14 MR. JOHNSON: On the distribution in a sentence -- I
15 would ask to run concurrent with that. And if -- if my
16 motion to -- to get rid of the proximity charge doesn't
17 fly, to run it not more than 15 years and concurrent with
18 the distribution.

19 THE COURT: Yeah. It would seem as if someone
20 would've appealed that issue and there would be some
21 opinion on the proximity, the records -- that proof or lack
22 of proof as to proximity. Because, you know, it's a
23 tagalong charge with almost every drug charge -- drug sales
24 because it seems as if they all or 90 percent of them occur
25 within a half-mile of some park, school, university,

1 playground, something, you know.

2 MR. JOHNSON: Yes, sir.

3 THE COURT: Law enforcement can always find that. And
4 they usually find it and -- and plead it because they want
5 to get a strike against the person for -- for serious
6 charge that makes the sediment line for -- for three strike
7 and, hopefully, to deter them from continuing to do it as
8 well.

9 So it seems that there'd be some law on that. I've
10 got a top-of-the-line law clerk sitting over here who could
11 -- who's a whiz at that computer. So we'll see what she
12 generates on that issue.

13 MR. JOHNSON: Okay. Thank you, sir.

14 MR. YOUNG: Your ---

15 THE COURT: All right.

16 MR. YOUNG: --- Your Honor, the -- the -- this motion
17 for reconsideration, as -- as I understood it, was solely
18 on the sentencing today. I did not even realize we were
19 going to be addressing this question for a directed
20 verdict.

21 THE COURT: Yeah.

22 MR. YOUNG: But -- that's why I'm not prepared on
23 that. But ---

24 THE COURT: Well, do you want me to take that under
25 advisement and see what you come up with from ---

1 MR. YOUNG: I'll be more than happy to look at it.

2 THE COURT: --- all your resources in the 11th
3 Circuit?

4 MR. YOUNG: Yeah. We -- we have exhaustive ---

5 THE COURT: I ---

6 MR. YOUNG: --- resources.

7 THE COURT: --- I heard you have Kelly Jackson down
8 there now.

9 MR. YOUNG: We do ---

10 THE COURT: So ---

11 MR. YOUNG: --- indeed.

12 THE COURT: So he ---

13 MR. YOUNG: We do indeed.

14 THE COURT: Yeah. He has a wealth of knowledge in
15 this area.

16 MR. YOUNG: He is probably the friendliest person I
17 know in the world, Judge.

18 THE COURT: Yeah. Tell him I said hi ---

19 MR. YOUNG: He's also smart.

20 THE COURT: --- and -- and he's a -- well, all right.
21 Anything from you, Madam Appeal -- Appellate Lawyer,
22 or are you just riding shotgun?

23 MS. HACKETT: I'm just riding shotgun, Your Honor.

24 THE COURT: All right. How about you, Mr. Norris?
25 Talk to me. I'm ---

1 THE DEFENDANT: Yeah.

2 THE COURT: --- they want me to reconsider your
3 sentence ---

4 (Whereupon, Mr. Johnson and the defendant conferred.)

5 THE COURT: --- and decide what you should get. Talk
6 to me.

7 THE DEFENDANT: Your Honor, he -- he -- he -- he keeps
8 talking about this lady say I go to the park with her. I
9 don't -- I don't go to that ballpark. I know -- I know
10 where it is because the town ain't no bigger than this
11 courtroom.

12 THE COURT: Well ---

13 THE DEFENDANT: Everything that's in that town, I know
14 where everything at. But ---

15 THE COURT: Yeah. Well you ---

16 THE DEFENDANT: --- what he ---

17 THE COURT: --- you ---

18 THE DEFENDANT: --- talking about, I hate ---

19 THE COURT: Well, I mean ---

20 THE DEFENDANT: --- to say it ---

21 THE COURT: --- I didn't -- I didn't ask you to stand
22 up and start confessing about knowing it -- where
23 everything is and how far it is and all that. I mean, what
24 -- talk to me about what I -- what you think your sentence
25 should be for -- if you want to say anything about it. I

1 know you have your case on appeal. You don't have to ---

2 THE DEFENDANT: Being honest ---

3 THE COURT: --- say anything ---

4 THE DEFENDANT: --- Your Honor ---

5 THE COURT: --- that might ---

6 THE DEFENDANT: --- I don't feel like I should -- I
7 deserve no time, because what they framed me for, I didn't
8 do it.

9 THE COURT: All right, sir. Well, you know, you had
10 your -- you had your people of -- of Saluda listening. We
11 pulled them in from all over the place, those 12 that put
12 in -- that got in the box. They probably knew you, and you
13 probably knew them.

14 THE DEFENDANT: Your Honor, he's saying -- he -- and I
15 don't -- don't know none of them people in the jury.

16 THE COURT: Yeah.

17 THE DEFENDANT: But I'm ---

18 THE COURT: Well, that was ---

19 THE DEFENDANT: --- talking about ---

20 THE COURT: --- that's a good thing, because they
21 shouldn't know you and that makes it -- you know, you
22 should be -- you shouldn't be judged by people who know
23 you, especially if you have a long rap sheet, because that
24 might work against you. But go ahead.

25 THE DEFENDANT: And then, one of the jury was a -- was

1 -- was a -- how -- what they call it? -- crack smoker too.
2 I mean, they had him on there a long -- and he was a friend
3 to the lady that testified against me ---

4 THE COURT: I thought ---

5 THE DEFENDANT: --- saying that ---

6 THE COURT: --- you said ---

7 THE DEFENDANT: --- she come ---

8 THE COURT: --- you didn't know ---

9 THE DEFENDANT: --- to my house.

10 THE COURT: --- any of those people.

11 THE DEFENDANT: I know all of them ---

12 THE COURT: You know all ---

13 THE DEFENDANT: --- around ---

14 THE COURT: --- of them. All right.

15 THE DEFENDANT: Yeah.

16 THE COURT: Well, it's generally that way in a small

17 ---

18 THE DEFENDANT: Like I ---

19 THE COURT: --- town. You ---

20 THE DEFENDANT: --- said, the town ain't that big. We
21 -- we -- we know each other.

22 THE COURT: Well, that's ---

23 THE DEFENDANT: It ain't ---

24 THE COURT: --- Saluda County. It includes all that
25 countryside, all those places, the people with all those

1 cows and all of that. I mean, it's -- we -- we pull them
2 from all over that county.

3 All right. Saluda -- what's the other towns in there?
4 Is Ridge Spring in there?

5 MR. YOUNG: Yes, sir.

6 THE DEFENDANT: Ridge ---

7 MR. YOUNG: We got ---

8 THE DEFENDANT: --- Spring ---

9 MR. YOUNG: --- we got Ridge ---

10 THE DEFENDANT: --- Ward ---

11 MR. YOUNG: --- Spring. We got ---

12 THE DEFENDANT: --- Batesburg ---

13 MR. YOUNG: --- got ---

14 THE DEFENDANT: --- Johnson ---

15 MR. YOUNG: --- got a little tiny piece of Monetta.

16 Yes, sir. Well, a little bit of Batesburg -- little bit.

17 THE COURT: Yeah. Peach groves and all, we had them
18 all in there.

19 But how much time do you think you should get? I
20 mean, the state thinks you should go into retirement.

21 You're 50 -- you're -- how old are you now?

22 MR. JOHNSON: Sixty.

23 THE DEFENDANT: Sir?

24 THE COURT: How old are you now?

25 THE DEFENDANT: I'm 60.

1 THE COURT: You're 60?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: So the state thinks you should be retired;
4 that you've committed crimes throughout your lifetime, you
5 -- drug cases, robberies, different things; that -- that
6 you should get a sentence that puts you in retirement,
7 where the police won't have to worry about you on the
8 streets anymore. Now, what's ---

9 THE DEFENDANT: No, sir.

10 THE COURT: --- your position ---

11 THE DEFENDANT: I don't ---

12 THE COURT: --- about it?

13 THE DEFENDANT: --- think that -- Your Honor, all them
14 charges concerning drugs, I was strung out on drugs during
15 that time. And when I got them charges, them charges in
16 North Carolina, they -- they are not -- they're different
17 in North Carolina to South Carolina. They are nothing but
18 misdemeanors up there.

19 They -- they -- they -- they really sentence you to
20 get you help. They don't -- like, what he trying, like I
21 was a criminal. I wasn't no criminal. I was just strung
22 out on drugs.

23 And when they come around, I got caught with them
24 sometime. Sometime I ain't never took -- the two charges
25 that I got down here for drugs, I ain't never been tried

1 for them drug. I -- they just gave them to me because I
2 was tried for something else. They just added them onto me
3 to get them off the -- off the record.

4 THE COURT: I just remember your trial. And seems as
5 if -- when you came in, weren't you dressed to the -- I
6 mean, you were -- weren't you dressed pretty sharp and real
7 clean and -- and ---

8 THE DEFENDANT: Well, I also worked.

9 THE COURT: --- smooth and ---

10 THE DEFENDANT: I worked. And -- and -- and I'd like
11 ---

12 THE COURT: I mean, it made -- it could've given the
13 impression to the jury that you -- I mean, I don't know
14 what impression it would've given. But -- but it did not
15 seem to me that you were a total stranger to the
16 environment that they were -- accused you of being involved
17 in.

18 THE DEFENDANT: I can't stand here and lie and say
19 that I was total stranger to it, because I wasn't. I mean,
20 I was raised up in the street, mored [sic] or less ---

21 THE COURT: All right.

22 THE DEFENDANT: --- you know.

23 THE COURT: And that's sort of the impression that --
24 that -- that was given that I got of everything that took
25 place before me in Saluda. I don't go there but ---

1 THE DEFENDANT: But my ---

2 THE COURT: --- once every ---

3 THE DEFENDANT: --- clothes is ---

4 THE COURT: --- three or ---

5 THE DEFENDANT: --- something that ---

6 THE COURT: --- four years.

7 THE DEFENDANT: --- I work hard -- I -- I -- I ---

8 THE COURT: What kind ---

9 THE DEFENDANT: --- I like ---

10 THE COURT: --- of work do ---

11 THE DEFENDANT: --- clothes.

12 THE COURT: --- you do or did you do?

13 THE DEFENDANT: I like neat clothes. I don't -- I
14 mean, you know, I was raised up to dress the best, you know
15 ---

16 THE COURT: Yeah. Well ---

17 THE DEFENDANT: --- and not walk around looking any
18 kind ---

19 THE COURT: But you ---

20 THE DEFENDANT: --- of way.

21 THE COURT: --- said you work. What kind of work do
22 you do or did you do?

23 THE DEFENDANT: I worked at the chicken plant. I done
24 roofing. I done carpentry. I worked on the -- serving the
25 highway -- paving roads. I done all kind of work, I mean,

1 you know.

2 THE COURT: All right.

3 THE DEFENDANT: I worked in -- in ---

4 THE COURT: I'm just ---

5 THE DEFENDANT: --- my lifetime.

6 THE COURT: --- want -- you know, I got to decide how
7 much time to give you. I'm just giving you an opportunity
8 to convince me one way or the other or say something to me.

9 THE DEFENDANT: The truth, Your Honor, like I said, I
10 don't deserve none.

11 THE COURT: Yeah. Well, you -- well, the -- the --
12 the minimum is -- based on your conviction, the minimum is
13 10 years; the maximum is -- is 30 years. That's on the
14 distribution charge. Then, I have to deal with the
15 proximity charge. So I can't give you none. The minimum
16 is 10 years.

17 THE DEFENDANT: Well, can I get the ---

18 THE COURT: The maximum ---

19 THE DEFENDANT: --- 10, then?

20 THE COURT: --- is 30 years. Well, I -- well, it's
21 more than just asking. I'm saying you have to convince me.
22 I need to know -- I said talk to me. This is your moment.
23 You -- where did they bring you from this morning?

24 THE DEFENDANT: Broad River Correctional Institution.

25 THE COURT: Oh. You didn't come too far. I mean, you

1 know, I'm here to listen to you for next few minutes,
2 because we're in the middle of a trial. But go ahead.
3 Anything you want to tell me that you think would help me
4 decide how much time to give you, I'm happy to hear it.

5 THE DEFENDANT: What you mean, anything I want to tell
6 -- I'm -- I'm -- I'm ---

7 THE COURT: Understand, you're not obligated to say
8 anything. But anything you want to tell me, this is your
9 -- this is your opportunity; this is your moment. I'm sure
10 you have a whole lot to say about it back at Broad River.

11 THE DEFENDANT: Had a whole lot to say? What you
12 mean?

13 THE COURT: About your case, about your situation.

14 THE DEFENDANT: I never talk much because I don't know
15 that much about the law to talk that much about the case.

16 THE COURT: All right. All right. Well, anything
17 else you want to tell me? .

18 THE DEFENDANT: No, sir.

19 THE COURT: All right. Well, thank you, sir.
20 Anything else, Mr. Johnson?

21 MR. JOHNSON: No, sir, Your Honor.

22 THE COURT: All right. Mr. Young?

23 MR. YOUNG: Your Honor, I believe you got the -- the
24 record of convictions in front of you and leave it to the
25 discretion of the Court.

1 THE COURT: Now, with this offense he has, does he
2 have to do 85 percent of it?

3 MR. YOUNG: If it carries 30 years, I believe he does.
4 Yes, sir. If it carries 30 years, I believe it -- that it
5 would count for an 85 percent service. Yes, sir.

6 THE COURT: All right.

7 MR. YOUNG: My recollection is that's correct.

8 THE COURT: And most of these are no-parole offenses.
9 Yeah. I think so.

10 MR. YOUNG: Excuse me.

11 THE COURT: All right. Well, on the -- the
12 distribution case, I'm going to modify that to 13 years.
13 Give him a -- you seem -- seem to still be in good shape
14 and doing -- doing well. I -- I hope you are. I will
15 reduce that to 13.

16 And the -- on the other case, I mean, I know you all
17 want some finality to this so that you can pursue -- move
18 ahead with your appeal. But I -- I think I -- I'm duty-
19 bound to look at the transcript to decide the second issue
20 about the proximity charge and see whether the evidence
21 supports the conviction. If I -- if I decide that it does,
22 then it -- it'll be a -- a concurrent sentence that would
23 not be more than the distribution charge.

24 So -- so he knows what the -- it's just a question of
25 whether or not -- so in -- in effect, it's -- it's going to

1 be meaningless to ruling on that, unless you win an appeal
2 on the main case. But -- but I'll take that under
3 consideration and then decide that and then send the
4 sentence -- then notify everyone, complete the sentence
5 sheet, and send it to Mr. Young.

6 But I'm going to complete the -- the distribution-of-
7 crack sentence sheet and give you that.

8 MR. YOUNG: Yes, sir. I can take that back ---

9 THE COURT: Yes, sir.

10 MR. YOUNG: --- to the clerk.

11 THE COURT: Anything else? Any questions about
12 anything?

13 MR. YOUNG: Your Honor, I believe there may be a need
14 to provide a copy to the Department of Corrections. And if
15 I could get one ---

16 THE COURT: All right. Oh, yeah. That ---

17 MR. YOUNG: --- I'll do ---

18 THE COURT: --- the clerk office over there, they're

19 ---

20 MR. YOUNG: Yes, sir.

21 THE COURT: --- they're very dutiful around here.

22 MR. YOUNG: Yes, sir, they are.

23 (Whereupon, Mr. Young and Mr. Johnson conferred.)

24 THE COURT: Is this a most-serious or serious or what?

25 MR. YOUNG: Distribution ---

1 THE COURT: Yeah.

2 MR. YOUNG: --- third?

3 THE COURT: Yes.

4 MR. YOUNG: Oh, my goodness.

5 THE COURT: Serious?

6 MR. JOHNSON: Okay, Frank. Use your brain here,
7 Frank.

8 MS. HACKETT: The proximity is serious.

9 MR. YOUNG: The proximity ---

10 MR. JOHNSON: Proximity ---

11 MR. YOUNG: --- is. The -- I don't think
12 distribution's ever ---

13 MS. HACKETT: I don't think ---

14 MR. YOUNG: --- described ---

15 MS. HACKETT: --- it is.

16 MR. YOUNG: --- Your Honor.

17 MS. HACKETT: It's not.

18 (Whereupon, Mr. Johnson and the defendant conferred.)

19 MR. YOUNG: By itself distribution's not. But
20 proximity always is a strike. But -- and -- and there's no
21 enhancement. The -- the -- the problem with the statute is
22 there's no enhancement of the distribution with proximity,
23 but there is under straight distribution. There's a strike
24 under proximity, but no strike under distribution. So it's
25 kind of a convoluted way to explain the law.

1 THE COURT: All right. Okay. Well, thank you all for
2 coming and good luck to you, Mr. Norris.

3 MR. JOHNSON: Thank you, Judge.

4 THE COURT: All right.

5 MR. YOUNG: Judge, you're going to keep that other
6 sentence sheet?

7 THE COURT: Yeah. If you'll just -- you'll follow up
8 and ---

9 MR. YOUNG: Thank you so much.

10 THE COURT: Who's going to give me the transcript to
11 look ---

12 MR. YOUNG: I'll get ---

13 THE COURT: --- at?

14 MR. YOUNG: --- it. I'll ---

15 THE COURT: Okay.

16 MR. YOUNG: --- get it.

17 MS. HACKETT: May I e-mail it to Your Honor or ---

18 THE COURT: Oh, that'd be fine.

19 MS. HACKETT: Okay.

20 THE COURT: That'll be fine.

21 MR. JOHNSON: All right.

22 MR. YOUNG: Could -- Ms. Hackett, could you send me
23 one too?

24 MR. JOHNSON: All right.

25 MS. HACKETT: Oh, I wouldn't communicate with the

1 judge without talking to ---

2 MR. YOUNG: Thank you.

3 MS. HACKETT: --- you too.

4 MR. YOUNG: Thank you.

5 THE COURT: And if you all have any comments ---

6 MR. JOHNSON: All right.

7 THE COURT: --- about anything or -- anyone wants to
8 comment on anything about what's in the transcript or
9 anything else, I'll -- you know, I'll say plan to decide,
10 say, within ten days. So within that period of time, if
11 you want to submit anything else, I'll be happy to look at
12 it.

13 MR. YOUNG: Thank you, sir.

14 MR. JOHNSON: All right. Thank you, sir.

15 THE COURT: All right.

16 (Whereupon, the proceeding was concluded at 10:49 a.m.)

17 --- END OF TRANSCRIPT OF RECORD ---

18

19

20

21

22

23

24

25

CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE EXCERPT OF TRANSCRIPT OF RECORD IN THE
HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN
THE CIRCUIT COURT FOR SALUDA COUNTY, SOUTH CAROLINA,
ON THE 5TH DAY OF DECEMBER, 2013.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

FEBRUARY 28, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Saluda
STATE VS.
Luthur Tollie Norris Jr
AKA:
Race: Sex: M Age: 60
DOB: SS#:
Address:
City, State, Zip:
DL#: SID#:

INDICTMENT/CASE#: 2011GS4100283
A/W#: K616074
Date of Offense: 3/29/2011
S.C. Code §: 44-53-0375(B)(1)
CDR Code #: 3014

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: CONVICTED OF or PLEADS
Distribution of Crack Cocaine (3rd offense)
in violation of § 44 53 - 375(B) of the S.C. Code of Laws, bearing CDR Code # 3039
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)
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.

Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 13 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:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$
days/hours Public Service Employment

Payment Terms:
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

Recipient:
Other:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$840, TOTAL \$288.40

Clerk of Court/ Deputy Clerk
Court Reporter:
SCCA/217 (03/2011)

ATTORNEY AT LAW COPY
Clerk of Court
Saluda Co. S.C.

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.
Presiding Judge
Judge Code: 2129
Sentence Date: December 5, 2013

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)

2014 FEB 24 AM 11:23

CLERK OF COURT
SALUDA CO. S.C.

THE STATE)

Indictment Nos. 2011-GS-41-²⁸³515 through -²⁸⁴522

v.)

ORDER DENYING DEFENDANT'S
MOTION TO DISMISS

LUTHER TOLLIE NORRIS,)
Defendant.)

PDA
2-28-14

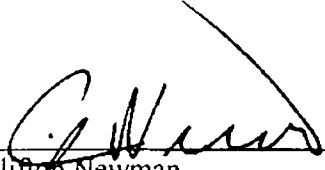
The Defendant seeks a post-trial Order dismissing his conviction of Distribution of Crack Cocaine within Proximity of a Public Park. The basis for the Motion is the Defendant's contention that the evidence presented at trial was insufficient to establish that the Defendant had actual knowledge that the public park was located within a half-mile of the location where the distribution of crack cocaine occurred. The Defendant's Motion is DENIED.

The evidence presented at trial established that the incident location was less than one-half a mile from a public park, *see* May 21-22, 2012, Hearing Transcript, pages 41 and 50, and that the Defendant, a long-time resident of the area, knew where the park is located, *see* May 21-22, 2012, Hearing Transcript, page 79.

Based on the evidence presented, a jury issue existed as to whether the Defendant was aware that a public park was located within one-half mile of where the crack cocaine was distributed.

The Motion to dismiss is therefore DENIED.

AND IT IS SO ORDERED.


Clinton Newman
Presiding Judge

Greenville, South Carolina
February 7, 2014