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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Certiorari to Spartanburg County
J. Mark Hayes, II, Circuit Court Judge

TRAVIS MONTRE SMITH,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001696

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Travis Montre Smith,) 2008-GS-42-3530
7 Defendant.) February 26 and 27, 2009
8) Spartanburg, South Carolina
9
10

11 B E F O R E:

12 HONORABLE J. DERHAM COLE, JUDGE; and a jury
13

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

15 RYAN F. McCARTY, ESQUIRE
16 Attorney for the State

17 WILLIAM H. MCPHERSON, ESQUIRE
18 Attorney for the Defendant
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21
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23 Circuit Court Reporter
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25

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
D-1	Photograph	22	
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Jury qualification

1 (Proceedings February 26, 2009)

2 THE COURT: This is the State vs. Travis Montre Smith.
3 Mr. Smith has been indicted for trafficking cocaine.

4 Mr. McPherson, you represent him.

5 MR. MCPHERSON: Yes, I do.

6 THE COURT: Are y'all ready to begin with jury
7 selection?

8 MR. MCPHERSON: Yes, Your Honor. I'm going to want to
9 do a suppression hearing at some point on the initial stop.

10 THE COURT: Okay. Bring the jury around, please.

11 Are we only proceeding on Indictment 2008-3530?

12 MR. McCARTY: That's correct, Your Honor. It should
13 be trafficking cocaine powder, Your Honor.

14 THE COURT: All right.

15 (The following takes place in the presence of the jury
16 venire.)

17 THE COURT: Good morning, ladies and gentlemen.

18 We are ready to begin with jury selection in the next
19 case that's going to require some of your participation.

20 And the title of that case is the State vs. Travis Montre
21 Smith.

22 Mr. Smith has been accused by the state with having
23 committed the crime of trafficking in cocaine. And they
24 allege by way of the indictment that the defendant did on
25 or about February the 12th of last year traffic in cocaine

Jury qualification

1 in an amount of more than ten grams in that he did have in
2 his actual or constructive possession some amount of
3 cocaine greater than ten grams.

4 Now, as to that charge and as to those allegations the
5 defendant has entered a plea of not guilty. And as you are
6 aware, that plea of not guilty places upon the state the
7 burden of proving the allegations set forth in the
8 indictment and the burden of proving the defendant guilty
9 beyond a reasonable doubt.

10 So, again, we're going to select 13 of you to
11 participate in the trial of this case. And by way of your
12 participation you'll be called upon to examine the
13 evidence, decide the facts, apply the law and arrive at a
14 fair and just decision.

15 I'm going to ask you some questions. Again, the
16 purpose of the questions is to determine if there is any
17 reason why any one of you jurors should not be selected in
18 this particular case.

19 So as the questions are asked if you need to respond
20 to them, I'll ask that you please stand. And I'll address
21 those matters with you individually.

22 First of all, as I told you, the defendant in the case
23 is Travis Montre Smith.

24 Mr. Smith, if you will, stand and face the jury panel
25 so that they may see who you are.

Jury qualification

1 (Whereupon, the defendant stood.)

2 THE COURT: Thank you. Be seated.

3 Mr. Smith is represented by William McPherson, his
4 lawyer, who will be assisting him in the trial of the case.

5 Presenting the case on behalf of the state is Ryan
6 McCarty, an assistant circuit solicitor with the
7 7th Judicial Circuit.

8 Potential witnesses in the case include Gregg
9 Satterfield, Beth Stuart, Matt Wilde and Jack Westmoreland,
10 all with the Spartanburg County Sheriff's Department.

11 Does any member of the jury panel know any person who
12 has just been identified for your benefit? If so, please
13 stand.

14 All right. Let me start to my right, and I'll work to
15 my left. If you will, give me your name and juror number
16 please, and then tell me how that question relates to you.

17 JUROR NO. 83: Reggie Jones, Juror 83. I know Officer
18 Satterfield.

19 THE COURT: And how do you know Officer Satterfield?

20 JUROR NO. 83: Went to school together.

21 THE COURT: All right. Would that have any bearing
22 upon your decision in the case?

23 JUROR NO. 83: No, sir.

24 THE COURT: Thank you. Be seated.

25 Yes, ma'am.

Jury qualification

1 JUROR NO. 163: I'm Julia Weaver, Juror 163. I know
2 Travis.

3 THE COURT: And how do know Mr. Smith?

4 JUROR NO. 163: He used to go with my sister.

5 THE COURT: Would that have any bearing upon your
6 decision in this case?

7 JUROR NO. 163: No.

8 THE COURT: Thank you. Be seated.

9 Yes, ma'am.

10 JUROR NO. 104: Robin McDaniels, Juror 104. I know
11 Greg Satterfield.

12 THE COURT: And how do you know him?

13 JUROR NO. 104: We used to go to church together.

14 THE COURT: Would that have any bearing upon your
15 decision in the case?

16 JUROR NO. 104: No, sir.

17 THE COURT: Thank you. Be seated.

18 Does anyone think you know something about this case?
19 Have you heard about it from any person or any other
20 source? If so, please stand.

21 (No response.)

22 THE COURT: Is there anything about the nature of the
23 case itself that would prevent any juror from being able to
24 be fair and impartial? If so, please stand.

25 (No response.)

Jury qualification

1 THE COURT: Now, previously I asked if any jurors were
2 connected by blood or marriage or yourself had ever been
3 employed as a law enforcement officer or if you were
4 related to someone who is or has been. I had three jurors
5 respond. And those jurors were No. 150 and No. 7 and No.
6 90.

7 Are there any other jurors who are connected to a law
8 enforcement officer or you yourself have ever been employed
9 as a law enforcement officer? If so, please stand.

10 JUROR NO. 174: Your Honor, I am Juror 174. I used to
11 be a corrections officer at Tyger River.

12 THE COURT: All right. Thank you. Be seated.
13 Yes, sir.

14 JUROR NO. 114: 114, Douglas Oliver. I've got a
15 grandson in Maryland that is a police officer, a state
16 trooper. I did have a grandson who was a deputy sheriff in
17 Greenville County and a grandson who was a police at Lyman,
18 Wellford and Greer.

19 THE COURT: Okay. Thank you.

20 JUROR NO. 174: At one time.

21 MR. MCPHERSON: I'm sorry? What number was that?

22 THE COURT: 114.

23 MR. MCPHERSON: Thank you.

24 THE COURT: Thank you. You can be seated.

25 I also have previously asked you if you are a member

Jury qualification

1 of or if you contribute time or money to any organizations
2 like Mothers Against Drunk Drivers, Citizens Against
3 Violent Crime, the troopers association, the honorary
4 sheriff's association, the fraternal order of police or any
5 neighborhood watch association. And I threw that list away
6 yesterday. So I need for y'all to stand again if you
7 responded to it before or if you need to respond to it,
8 please. Thank you.

9 Yes, ma'am.

10 JUROR NO. 65: Juror 65, Revonda Hammett. Mothers
11 Against Drunk Driving.

12 THE COURT: Thank you.

13 Yes, ma'am.

14 JUROR NO. 139: Juror 139, neighborhood watch.

15 THE COURT: Thank you, ma'am.

16 JUROR NO. 9: Susan Berry, No. 9. Mothers Against
17 Drunk Drivers, contribute.

18 THE COURT: All right. Thank you.

19 Does any juror know of any reason why you feel like
20 you could not be fair and impartial to both sides in this
21 case if you were selected to serve as a juror? If so,
22 please stand.

23 (No response.)

24 THE COURT: Any other questions requested by the
25 state?

Jury qualification

1 MR. McCARTY: None, Your Honor. Thank you.

2 THE COURT: By the defendant?

3 MR. McPHERSON: No, Your Honor.

4 THE COURT: Draw us a jury, please, ma'am.

5 (Whereupon, a jury was impanelled.)

6 THE COURT: All right. Those jurors who were
7 selected, I'll ask you to please go with a bailiff to a
8 jury room, and I'll bring you back shortly.

9 (The following takes place outside the presence of the
10 jury.)

11 THE COURT: Are there any matters that need to be
12 addressed regarding jury selection by the state?

13 MR. McCARTY: Nothing from the state, Your Honor.

14 THE COURT: By the defendant?

15 MR. McPHERSON: No, Your Honor.

16 (Whereupon, the remaining members of the jury venire
17 were excused.)

18 (D. V. D. marked State's Exhibit No. 1 for
19 Identification; photograph marked State's Exhibit No. 2 for
20 Identification; report marked State's Exhibit No. 3 for
21 Identification; cocaine marked State's Exhibit No. 4 for
22 Identification; jacket marked State's Exhibit No. 5 for
23 Identification.)

24 THE COURT: All right. Mr. McPherson, I understand
25 you are making a motion to suppress the evidence --

Greg Satterfield (In-camera)
Direct examination by Mr. McCarty

1 MR. McPHERSON: Yes, sir.

2 THE COURT: -- obtained as a result of a traffic stop.

3 MR. McPHERSON: Yes, sir.

4 THE COURT: All right. Mr. McCarty.

5 MR. McCARTY: Your Honor, the state would call Officer
6 Greg Satterfield.

7 GREG SATTERFIELD, having been
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. McCARTY

10 Q Officer Satterfield, if you will, state your name and
11 occupation, please.

12 A Yes, sir. Deputy Greg Satterfield with the Spartanburg
13 County Sheriff's Office.

14 Q How long have you been employed there?

15 A Three and a half years.

16 Q What is your current occupation within the sheriff's
17 office?

18 A I'm on the R. S. U. team, which is regional support
19 unit.

20 Q If you could, briefly describe what type of training
21 you have received in that area if you will, please.

22 A In that I just recently got certified in Meridian,
23 Mississippi, on street drug recognition. I've been to
24 the -- certified in basic narcotic investigation and several
25 other drug classes.

Greg Satterfield (In-camera)
Direct examination by Mr. McCarty

1 Q Beyond your experience involving narcotics, I'm
2 assuming you've gone through the criminal justice academy,
3 is that correct?

4 A Yes, sir.

5 Q And you received a standardized education from that
6 course.

7 A Yes, sir, 9-week course in November.

8 Q Deputy Satterfield, let me take you back to February
9 the 28th of 2008. Were you on duty on that evening?

10 A Yes, sir, I was.

11 Q Were you with Deputy Wilde patrolling on that evening?

12 A Yes, sir, I was.

13 Q During that evening at approximately five minutes
14 before midnight did you have an occasion to come into
15 contact with a car in which the defendant was a passenger?

16 A Yes, sir.

17 Q Would you describe the circumstances under which you
18 came into contact with that vehicle, please?

19 A Yes, sir. As I was coming off Reidville Road I made a
20 right-hand turn onto South Blackstock.

21 At that time I observed a white Ford Escort, failure
22 to yield, coming out of the Sleep Inn. There was a motel
23 to the right and a motel to the left.

24 The vehicle actually failed-to-yield and actually
25 stopped in the middle of the road, actually had to slow

Greg Satterfield (In-camera)
Direct examination by Mr. McCarty

1 down to avoid hitting the white Ford Escort.

2 Q And when you say failure to yield, would you describe?

3 Does that mean pulling in a parking lot without stopping?

4 A Yes, sir, driving erratically, actually sped up out

5 without even stopping or even slowing down to oncoming

6 traffic.

7 Q And when you say he stopped, that was in the middle of

8 the roadway, am I correct?

9 A Yes, sir, in the middle of South Blackstock. He

10 stopped in the road.

11 Q In the lane of travel.

12 A Yes, sir.

13 Q Deputy Satterfield, what was, given your experience

14 and training in law enforcement, what did that indicate to

15 you possibly?

16 A Our first suspension was driving under the influence,

17 that the subject was intoxicated.

18 Q Did you have any idea whom may be driving the car or

19 who was present in that car?

20 A No, sir. At that time I could not identify the

21 occupants of the vehicle.

22 Q And, Deputy Satterfield, based upon your observations

23 and your experience did you initiate a traffic stop on that

24 vehicle?

25 A Yes, sir, I did. I initiated my blue lights once the

Greg Satterfield (In-camera)
Direct examination by Mr. McCarty

1 vehicle stopped in the road.

2 Q And where did the vehicle come to a stop at?

3 A We went across to the other motel which was the -- give
4 me a second -- the parking lot of the Super 8 which is
5 directly across from the Sleep Inn on South Blackstock.

6 Q So the vehicle left one parking lot and stopped in the
7 middle of the road and pulled into another parking lot
8 after you initiated the blue lights.

9 A Yes, sir. That's correct.

10 Q Deputy Satterfield, was the vehicle that you were in
11 that evening equipped with an audio or video recording?

12 A Yes, sir, it was.

13 Q And I show you if I may. It's going to be marked
14 under State's Exhibit 1. Do you know what that is that I'm
15 showing you?

16 A Yes, sir. That is a copy of my in-car video.

17 Q And that an in-car individual was a recording of what
18 occurred on this evening at approximately five minutes
19 before midnight, am I correct?

20 A Yes, sir.

21 Q Deputy Satterfield, just for clarification, to your
22 knowledge do you know when the video would begin recording
23 in your car?

24 A Yes, sir. When I initiate the blue lights, it
25 automatically turns on my audio and video device in my

Greg Satterfield (In-camera)
Direct examination by Mr. McCarty

1 vehicle.

2 Q So the part where you describe where the vehicle came
3 to a stop in the roadway may not be on the recording
4 itself, is that correct?

5 A Yes, sir.

6 MR. McCARTY: All right. Your Honor, at this time I
7 would ask to admit State's Exhibit No. 1 and publish it for
8 the purpose of this.

9 THE COURT: Is that going to help us on probable
10 cause?

11 MR. McPHERSON: I don't believe it will, Your Honor.

12 THE COURT: I don't either.

13 MR. McPHERSON: All right, Your Honor.

14 Q Deputy Satterfield, once the vehicle was stopped did
15 you and Deputy Wilde approach the vehicle?

16 A Yes, sir.

17 Q What did you observe, if you will?

18 A I approached the driver's side where I observed a white
19 male in control of the vehicle. The white male was
20 identified as Joy Wood.

21 Q Was there anyone else in the vehicle?

22 A Yes, sir. The passenger was Travis Smith.

23 Q All right. Your involvement was with Mr. Wood, am I
24 correct?

25 A Yes, sir.

Greg Satterfield (In-camera)
Cross-examination by Mr. McPherson

1 Q Did Deputy Wilde approach the other side of the
2 vehicle, the passenger side of the vehicle?

3 A He did, he certainly did.

4 Q While on the driver's side of the vehicle speaking
5 with Mr. Wood, can you tell me about your observations of
6 Mr. Wood, his behavior?

7 A Once I asked for his driver's license and proof of
8 insurance and registration, his demeanor was fine, a little
9 nervous, wouldn't make eye contact with me.

10 Q You didn't further notice the smell of alcohol on his
11 breath at that time though, did you?

12 A No, sir, I did not.

13 Q Subsequent to the stop, that's when the events of this
14 case unfolded, is that correct?

15 A Yes, sir.

16 MR. McCARTY: Your Honor, that would be all the
17 questions I have of Deputy Satterfield regarding the stop.

18 CROSS-EXAMINATION

19 BY MR. MCPHERSON

20 Q Deputy Satterfield, I believe you indicated that you
21 turned off of Black -- let's see. You turned off of
22 Reidville Road, is that correct?

23 A Yes, sir.

24 Q And I think you said you turned right off of Reidville
25 Road.

Greg Satterfield (In-camera)
Cross-examination by Mr. McPherson

1 A I turned right onto South Blackstock.

2 Q Onto Blackstock. And that's when you observed him
3 pulling out of Sleep Inn.

4 A Yes, sir.

5 Q And you would agree with me that that's a good, or at
6 least, several hundred yards from the intersection of
7 Reidville Road and Blackstock Road, the Sleep Inn.

8 A Sir, when I observed it I was already traveling on
9 South Blackstock.

10 Q Well, I understand, but you were still a pretty good
11 distance from him when he pulled out, weren't you?

12 A No, sir. Actually I had to apply the brakes to keep
13 from hitting the subject.

14 Q And you indicated that he pulled out into the middle
15 of the road and stopped, is that correct?

16 A Yes, sir.

17 Q And what's in the middle of the road? How is this?
18 Let me ask you this. Just describe the way the road looks.

19 A It's just a 2-lane road with a dividing lane, at that
20 time which was a double yellow line.

21 Q Just a double yellow line?

22 A Yes, sir, two lanes of traffic.

23 Q Not a median.

24 A No, sir.

25 MR. MCPHERSON: May I approach the witness?

Greg Satterfield (In-camera)
Cross-examination by Mr. McPherson

1 THE COURT: Yes, sir.

2 (Photograph marked Defendant's Exhibit No. 1 for
3 Identification.)

4 Q I'm showing you what's been marked for identification
5 purposes Defendant's Exhibit No. 1.

6 A Yes, sir.

7 Q Do you recognize that photograph?

8 A Yes, sir, I do.

9 Q And is that a photograph of the Sleep Inn and a
10 portion of Super 8 Motel that you have just been talking
11 about?

12 A Yes, sir, it is.

13 Q And it also as a picture of the roadway, is that
14 correct?

15 A Yes, sir.

16 Q And in that roadway is a median, correct?

17 A Yes, sir. I thought you were talking about a raised
18 median. You didn't specify whether it was a raised median.

19 Q Well, I understand. But when I asked you if there was
20 a median, you said no.

21 A Yes, sir.

22 Q But you would agree with me there is a median.

23 A Yes, sir. From looking at that picture, I understand.
24 I understand what you're taking about.

25 Q And the median is in the middle of the road, is that

Greg Satterfield (In-camera)
Redirect examination by Mr. McCarty

1 not correct?

2 A Yes, sir.

3 Q All right. So he pulled onto the median and then he
4 stopped, is that correct?

5 A Yes, sir.

6 Q All right. And isn't it lawful for a person to pull
7 onto the median if they're going to make a left-hand turn?

8 A Yes, sir. My question to that would be it was kind
9 of --

10 Q I'm asking you isn't it lawful --

11 A Yes, sir.

12 Q -- for a person to pull onto the median if they're
13 going to make a left-hand turn.

14 A Yes, sir.

15 Q And they can stop in the median, can they not?

16 A Yes, sir.

17 Q And that's what you're testifying that he did,
18 correct?

19 A Yes, sir, that he failed to yield and then stopped in
20 the middle of the road in the median.

21 Q All right. I have no further questions.

22 REDIRECT EXAMINATION

23 BY MR. McCARTY

24 Q Deputy Satterfield, was he indicating with the traffic
25 signal whether or not he was going to turn while in that

Greg Satterfield (In-camera)
Redirect examination by Mr. McCarty

1 median? Do you recall?

2 A To the best of my knowledge, no, no turn signal, sir.

3 Q Can you approximate the distance from when you saw him

4 pull out of the parking lot into the lane of travel until

5 he came to stop in the median of the road? Just in

6 sequence, was it a rather quick motion that all occurred --

7 A Yes, sir. The --

8 Q -- or drive down the road several hundred feet before

9 that happened?

10 A It was a fluid motion. He never, never stopped to look

11 at oncoming traffic. Shortly after that he stopped from

12 that failure to yield out of --

13 Q Pulled out and pulled right over --

14 A Yes, sir. It was longways in the middle of the road

15 versus going vertical with the median.

16 Q When you say longways, do you mean if the road were

17 traveling in the direction you and I were traveling, he was

18 sitting at a cross, apparently cross direction of that,

19 correct?

20 A Yes, sir. A vehicle would actually have to avoid his

21 vehicle to get around in that lane of traffic.

22 Q So his vehicle, nonetheless, even if it was in the

23 median, was at least obstructing part of the lane of travel

24 and ongoing traffic.

25 A Yes, sir.

Greg Satterfield (In-camera)
Recross-examination by Mr. McPherson

1 Q And, Deputy Satterfield, you, to your knowledge you,
2 you stated you don't recall whether or not he had a signal
3 light on, is that correct?

4 A Yes, sir.

5 Q And due to the nature of the time of the evening, as
6 well as what you witnessed, you suspected that a person may
7 be under the influence driving that vehicle, is that
8 correct?

9 A Yes, sir.

10 Q Thank you.

11 MR. McCARTY: Nothing further, Your Honor.

12 RECROSS-EXAMINATION

13 BY MR. MCPHERSON

14 Q You would agree with me you didn't even turn on your
15 blue lights until after he made this left turn into the
16 Super 8 Motel, correct? That's when the film picks up.

17 A Yes, sir. Well, actually, he just drove straight
18 across. It really wasn't a turn into the Super 8.

19 Q All right. But I believe according to the film that
20 y'all provided to me, that the film doesn't start until
21 he's already well into the parking lot, is that correct?

22 A I do not recall the time that I initiated the -- with
23 the secret of events -- sequence of events I'm saying I do
24 not recall. It was after he stopped in the middle of the,
25 of South Blackstock.

Greg Satterfield (In-camera)
Recross-examination by Mr. McPherson

1 Q Would it be possible, would it be possible that you
2 didn't turn on your blue lights until he was well into the
3 Super 8 parking lot?

4 A I do not recall that.

5 Q Would it be possible?

6 A It could be possible.

7 Q Okay. Now, you initially indicated the reason for the
8 stop was that he pulled out in the middle of the road and
9 failed to yield the right of way to you.

10 A Not to me, sir, to oncoming traffic. He came out of a
11 parking lot into the oncoming traffic.

12 Q This is like midnight, correct?

13 A Yes, sir. I believe it is five minutes till.

14 Q And there wasn't any oncoming traffic.

15 A Yes, sir.

16 Q Is that correct?

17 A Yes, sir, no traffic.

18 Q And you've already indicated he pulled into the
19 median, is that correct? I mean, the median is wide enough
20 to hold an entire vehicle within the double yellow lines,
21 is that correct?

22 A I would have to look back at the median again. As I
23 stated, he was obstructing the --

24 MR. MCPHERSON: Your Honor, may I approach?

25 Q I am showing you what's marked as Defense Exhibit 1.

Greg Satterfield (In-camera)
Recross-examination by Mr. McPherson

1 A Yes, sir.

2 Q Do you see a median there?

3 A Yes, sir, I do see that.

4 Q And you would agree with me that median is wide enough
5 to hold the entire width of the vehicle.

6 A Yes, sir, if he was in between the lines.

7 MR. MCPHERSON: No further questions.

8 THE COURT: You may step down.

9 MR. McCARTY: Your Honor, we would call no further
10 witnesses.

11 THE COURT: Well, I mean, was there anything seized?
12 I mean, are we doing to get to that?

13 MR. MCPHERSON: I'm sorry, Your Honor?

14 THE COURT: Are we going to get to the point of
15 evidence being obtained?

16 MR. McCARTY: We can, Your Honor, yes, sir. I'm
17 sorry. I thought we were just dealing with the stop
18 itself. I can through the actual --

19 THE COURT: Well, I mean, there was a stop, but I
20 don't know, I mean I don't know, what occurred that
21 resulted in a seizure of any evidence that might be
22 introduced.

23 MR. McCARTY: Yes, sir. I'm sorry.

24 THE COURT: So we're going to need to address that.

25 MR. MCPHERSON: If I may recall Deputy Satterfield, I

Greg Satterfield (In-camera)
Redirect examination by Mr. McCarty

1 apologize.

2 THE COURT: Okay. Is that all you're seeking to
3 determine, Mr. McPherson, as to why the vehicle was
4 stopped?

5 MR. MCPHERSON: Yes, sir. And of course it's our
6 position that they didn't have probable cause to stop the
7 vehicle, therefore anything that resulted from any searches
8 thereafter --

9 THE COURT: Is your sole concern whether or not there
10 was probable cause to stop the vehicle or whether there was
11 some lack of probable cause to search the vehicle and
12 obtain evidence?

13 MR. MCPHERSON: No. Probable cause to stop the
14 vehicle, probable cause to order my client out of the car.

15 THE COURT: Okay. Well, that's what I thought.
16 We need to develop the entire scenario --

17 MR. McCARTY: Yes, Your Honor.

18 THE COURT: -- that resulted in the seizure of
19 evidence. I thought that's what the motion to suppress was
20 about.

21 MR. MCPHERSON: I apologize Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. McCARTY

24 Q Deputy Satterfield, if I can, after you have this
25 vehicle stopped, you again spoke with deputy, or I'm sorry,

Greg Satterfield (In-camera)
Redirect examination by Mr. McCarty

1 Joy Wood, who was the driver, is that correct?

2 A Yes, sir.

3 Q During your time speaking with Mr. Wood were you able
4 to observe the vehicle and the interior of the vehicle?

5 A Yes, sir.

6 Q And you noticed the defendant was a passenger in the
7 vehicle, is that correct?

8 A Yes, sir.

9 Q Where was he located in the vehicle?

10 A The front passenger seat directly beside Joy Wood.

11 Q Are you aware if anyone else was in the vehicle?

12 A No, sir.

13 Q As you're speaking with Joy Wood did you ask Mr. Wood
14 to step from the vehicle?

15 A Yes, sir.

16 Q When Mr. Wood had stepped from the vehicle, could you
17 describe what happened next during the stop?

18 A That's when I asked for his I. D. and was actually
19 running his driver's license.

20 Q Yes, sir. Did anything that you witnessed occur in
21 your presence with Deputy Wilde and the defendants?

22 A Yes, sir. I did. I was trying to watch my partner as
23 well, and I did observe Deputy Wilde notice Travis Smith
24 wearing baggy clothes to possibly where a weapon could be
25 concealed.

Greg Satterfield (In-camera)
Redirect examination by Mr. McCarty

1 For officer-safety reasons, I did hear Deputy Wilde
2 ask Mr. Smith to step out of the vehicle, just for that
3 fact of the large quantity of clothing to check for
4 weapons.

5 Q When the defendant stepped out of the vehicle, did he
6 remain at the side of the vehicle the whole time Deputy
7 Wilde was speaking to him?

8 A No, sir.

9 Q Were you present when the sequence of events occurred
10 involving Mr. -- involving the defendant here?

11 A Yes, sir.

12 Q What did you observe?

13 A After a brief conversation between Mr. Smith and Deputy
14 Wilde, Mr. Smith then began to flee on foot from Deputy
15 Wilde.

16 Q When you say flee on foot, was he in any type of
17 custody, handcuffs or anything at that point?

18 A No, sir.

19 Q Was he at that time being placed under arrest to your
20 knowledge?

21 A No, sir.

22 Q All right. He began to ran away from Deputy Wilde, is
23 that correct?

24 A Yes, sir.

25 Q Did you leave Mr. Wood's presence and follow

Greg Satterfield (In-camera)
Redirect examination by Mr. McCarty

1 Mr. Smith?

2 A Yes, sir, I did.

3 Q Could you describe what happened during that foot
4 chase?

5 A I observed Mr. Smith actually run out of his coat, run
6 towards the Super 8, the parking lot we were in. He runs
7 towards that motel, circles back towards South Blackstock.
8 I began chasing Mr. Smith at that time.

9 Q So he came back on himself, correct?

10 A Yes, sir, just circled around.

11 Q All right. So you got involved in the foot pursuit at
12 that point.

13 A Yes, sir.

14 Q Did you witness anything, any of the actions of the
15 defendant during this pursuit?

16 A Yes, sir. At this time Mr. Smith actually turned
17 around and threw a clear plastic bag back towards the white
18 Ford Escort that was parked in the parking lot.

19 Q And you saw him make that motion with his hand, is
20 that correct?

21 A Yes, sir. I did.

22 Q The item that you saw him throw, did you see where it
23 landed?

24 A Yes, sir. It landed directly by the white Ford Escort.

25 Q In the direction of where the Ford Escort was?

Greg Satterfield (In-camera)
Redirect examination by Mr. McCarty

- 1 A Yes, sir.
- 2 Q He was throwing it towards that?
- 3 A Towards the vehicle.
- 4 Q Were you able to ultimately apprehend Mr. Smith?
- 5 A Yes, sir, in the middle of South Blackstock.
- 6 Q So he had run back out into the roadway.
- 7 A Yes, sir.
- 8 Q Did you place Mr. Smith under arrest or investigative
9 detention at that point?
- 10 A Yes, sir, I did.
- 11 Q Was he brought back to where your vehicle and the
12 white Escort were?
- 13 A Yes, sir.
- 14 Q Once there, could you describe what you did or what
15 you, what your next step was?
- 16 A Yes, sir. I placed Mr. Smith in the back of my patrol
17 car. With him being secured in handcuffs double locked, I
18 placed him in the back of the car.
- 19 I then went to the direction where Mr. Smith threw the
20 plastic bag, which would be the white Ford Escort. And I
21 then located a bag of powder, off-white powder.
- 22 Q And off-white powder, based on our experience and
23 knowledge, did you have a belief that that was a possible
24 narcotic substance?
- 25 A Yes, sir.

Greg Satterfield (In-camera)
Redirect examination by Mr. McCarty

1 Q During this pursuit of Mr. Smith, where was Mr. Wood
2 during this time?

3 A Mr. Wood never left his spot from the traffic stop.

4 Q He remained in the proximity of the white vehicle?

5 A Proximate, yes, sir.

6 Q Did you ever observe Mr. Wood approach the bag that
7 Mr. Smith threw down, that you saw him throw away?

8 A Mr. Wood did not approach the bag.

9 Q You never saw? You never had to ask him for the bag,
10 touch it, do anything like that.

11 A No, sir.

12 Q Was Mr. Wood ultimately also placed in some form of
13 investigative custody after this?

14 A Yes, sir, he was.

15 Q Okay. During -- did you subsequently search the
16 vehicle? Or let me back that up one second.

17 The white powder substance that you found, did you
18 perform any type of test on it in the field to determine
19 whether or not it was a possible narcotic substance?

20 A Yes, sir. It was field tested, and it came back
21 positive for cocaine.

22 Q Did you field test it with a substance voltox?

23 A Yes, sir, I did.

24 Q And it alerted you to the presence of cocaine, is that
25 correct?

Greg Satterfield (In-camera)
Redirect examination by Mr. McCarty

- 1 A Yes, sir.
- 2 Q At that time was the defendant then placed under
3 arrest for drugs?
- 4 A Yes, sir.
- 5 Q Subsequent to that arrest did you search the vehicle
6 from which Mr. Smith had just left?
- 7 A No, sir.
- 8 Q Did you search any of his items or his person such as
9 his pockets in his jacket or in his pants or on his shirt?
- 10 A No, sir.
- 11 Q Did Deputy Wilde do that?
- 12 A No, sir.
- 13 Q Let me ask you Mr. or Deputy Satterfield. Beyond the
14 powder substance that you found, was anything else
15 recovered from the vehicle such as money or scales or
16 anything like that?
- 17 A Yes, sir. There was a quantity of money seized from
18 the vehicle.
- 19 Q Were you the one who took that from the vehicle, or
20 was that Deputy Wilde?
- 21 A I seized the money.
- 22 Q All right. Do you recall where you took that money
23 from?
- 24 A If I'm not mistaken, that was on Mr. Smith's person.
25 The cash was on his person.

Greg Satterfield (In-camera)
Recross-examination by Mr. McPherson

1 Q Okay. Mr. Smith was ultimately, like you said,
2 arrested or placed under arrest for the presence of the
3 cocaine, is that correct?

4 A Yes, sir.

5 Q Thank you.

6 MR. McCARTY: I have no further questions, Your Honor.

7 RECROSS-EXAMINATION

8 BY MR. MCPHERSON

9 Q Sir, you're saying when you arrested Mr. Smith you
10 seized the money from his person, is that correct?

11 A Yes, sir.

12 Q So I assume it was in his pants pockets, is that
13 correct?

14 A I do not recall which pocket the money was seized from.

15 Q Do you mean whether it's either the left pocket or the
16 right pocket or one of the back pockets?

17 A Yes, sir.

18 Q But it would have been one of those pockets.

19 A I cannot recall which pocket the money was seized from.

20 Q I understand. But it could have. You're testifying
21 though it came out of one of those pockets.

22 A Yes, sir.

23 Q Okay. Now, you didn't find any drugs on Mr. Smith
24 personally, did you?

25 A No, sir.

Greg Satterfield (In-camera)
Redirect examination by Mr. McCarty
Recross-examination by Mr. McPherson

1 Q Okay.

2 MR. MCPHERSON: No further questions.

3 MR. MCCARTY: Just one follow up.

4 REDIRECT EXAMINATION

5 BY MR. MCCARTY

6 Q Your Honor or Deputy Satterfield, you said you don't
7 recall what pocket that was removed from. You recall
8 taking it from his person though, is that correct?

9 A Yes, sir.

10 Q And that person (sic) could have been even in his coat
11 after it had been removed, is that correct?

12 A Yes, sir.

13 MR. MCCARTY: Thank you, Your Honor.

14 THE COURT: Step down.

15 MR. MCPHERSON: Could I ask one more question?

16 THE COURT: Yes.

17 RECROSS-EXAMINATION

18 BY MR. MCPHERSON

19 Q So you're saying that coat was on Travis Smith when
20 you took the money?

21 A No, sir.

22 Q So if it came from the coat, then it wouldn't, didn't
23 come from his person, did it?

24 A At one time the coat was on his person.

25 Q But you really don't know where it came from, do you?

Matt Wilde (In-camera)
Direct examination by Mr. McCarty

1 A I do not recall.

2 Q All right.

3 THE COURT: Step down.

4 MR. McCARTY: Your Honor, I would call Deputy Matt
5 Wilde to the stand.

6 THE COURT: Okay.

7 MATT WILDE, having been first
8 duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. McCARTY

10 Q If you will, please, state your name.

11 A Matthew Wilde.

12 Q Where are you currently employed?

13 A At the Spartanburg County Sheriff's Office.

14 Q How long have you been employed there?

15 A About eight and a half years.

16 Q What is your current duty at the sheriff's office?

17 A I'm an investigator assigned to the regional support
18 unit.

19 Q All right. Deputy Wilde, were you on duty with Deputy
20 Satterfield on the 12th of February of 2008?

21 A Yes, I was.

22 Q And you were present when the vehicle in which the
23 defendant was traveling was stopped, is that correct?

24 A Yes, sir. I was in the passenger seat of Deputy
25 Satterfield's car.

Matt Wilde (In-camera)
Direct examination by Mr. McCarty

1 Q On the approach of this vehicle, you approached the
2 passenger side, is that correct?

3 A Yes, sir.

4 Q And the defendant was located there?

5 A Yes, sir.

6 Q Would you describe what your interactions were with
7 the defendant at that time?

8 A Well, I approached the car. I believe a window was
9 down. And I asked Mr. Smith for his I. D. He proceeded to
10 hand me a hotel room key, which I thought was kind of weird.
11 It definitely wasn't his I. D.

12 Q Okay.

13 A At that point I said, you know, sir, this isn't your I.
14 D., can I please see your I. D.

15 I noticed when he was sitting in the, in the seat --
16 it's a pretty small-size car -- he had a baggy plaid coat
17 on, and baggy jeans.

18 And as he asked for -- as I asked for his I. D., he
19 was trying to get it, and he was basically, I was on this
20 side of him and he was in the passenger seat, and he was
21 just leaning his body like this and fumbling in his pocket
22 for something.

23 I could see money, amounts of money, coming out of
24 pocket of his coat, out of his left pocket of his coat.
25 And I just, I felt like he was trying to conceal something

Matt Wilde (In-camera)
Direct examination by Mr. McCarty.

1 because he was laying his body over like this where I
2 couldn't see whatever he had in his pocket or whatever he
3 was trying to do.

4 I felt that he might have a gun. I mean, so I was
5 concerned about it. So I asked him to step out of the car.

6 Q So you were concerned for your safety as he went to
7 retrieve his I. D. again or possibly retrieve his I. D.,
8 correct?

9 A Absolutely.

10 Q You asked him to step from the vehicle.

11 A Yes, sir.

12 Q What did you do after -- or let me ask you this. Did
13 he step from the vehicle?

14 A Yeah, he, he stepped out of the car. And I asked him
15 to place his hands on top of the car so I could pat him down
16 just to make sure he didn't have guns or anything on him.

17 Q Was he still wearing the baggy red jacket that you saw
18 him in?

19 A Yes, sir. He was wearing the baggy red jacket, and
20 then he had a shirt underneath it. I don't remember what
21 the shirt looked like, not really.

22 Q As you patted him down, could you describe what you --
23 what happened throughout that sequence of events there?

24 A Yes, sir. As I patted as he placed his hands up there,
25 I started to pat him down. And as I did that he took off

Matt Wilde (In-camera)
Direct examination by Mr. McCarty

1 running.

2 Q So he broke away from you.

3 A He broke away from me.

4 Q Did you begin to pursue him on foot?

5 A Well, I grabbed him by his coat and his shirt first
6 just trying to hold him back from running. And then he
7 basically slipped out of his coat and slipped out of his
8 shirt and then started running towards the corner of the
9 Super 8 Motel with no shirt on.

10 Q All right. And I'm assuming you -- Deputy Satterfield
11 testified that he was involved in a foot pursuit. Were you
12 involved in a foot pursuit as well?

13 A Yes, sir. I was initially the first person that
14 entered the foot pursuit.

15 Q Did you witness the defendant throw anything during
16 this foot pursuit?

17 A Yes, sir. As we, we went around, I believe we went
18 around the front. I can't remember if we went around the
19 front or the back of his, of the car that he was in.

20 But we went towards the corner of the Super 8, the
21 corner away from Reidville Road. And then we basically
22 went to this little grassy area and looped around and came
23 back.

24 And as he were coming between our car and the car that
25 he was in, he turned towards, he turned back towards us and

Matt Wilde (In-camera)
Direct examination by Mr. McCarty

1 threw something that was about the size, to me it was about
2 the size, of a baseball.

3 At that point Satterfield was ahead of me and tackled
4 him in the street and then placed him in the handcuffs.

5 Q Placed him in the handcuffs. Then you were present
6 and you heard Deputy Satterfield testify about retrieving
7 the items, is that correct?

8 A Yes, sir.

9 Q You didn't retrieve it though, is that correct?

10 A No, sir. He did.

11 Q Subsequent to Mr. Smith being placed under arrest did
12 you do any search of the vehicle or search of Mr. Smith's
13 person?

14 A Well, the coat and the shirt that he had come out of
15 were laying right there at the door basically where, you
16 know, he took off running from us.

17 Q From the passenger side?

18 A From the passenger-side door. So I basically after
19 Satterfield handcuffed Mr. Smith, I went over and secured
20 Mr. Wood who was the driver and patted him down.

21 And then we recovered the, the drugs in question. And
22 then I went into the, into the coat that Mr. Smith was
23 wearing and recovered a large sum of money wrapped in
24 rubber bands in his left-front pocket, in his left pocket
25 of his coat.

Matt Wilde (In-camera)
Recross-examination by Mr. McPherson

1 Q Do you recall how much that was approximately?

2 A It was over \$6,000. I think it was about \$6,800.

3 Q Thank you.

4 MR. McCARTY: No further questions, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. MCPHERSON

7 Q You initially walked up to the passenger side because
8 you wanted to identify the passenger, is that correct?

9 A Sir, when we do traffic stops such as this if there's
10 two of us in the car like there was that day and there's two
11 people in the car, it just makes sense for, you know, the
12 driver that's on the driver's side to walk up to the
13 driver's side and the passenger that's on the passenger's
14 side to walk up to the passenger side. That's just the way
15 we do things.

16 Q And you asked Mr. Smith for his I. D.

17 A Yes, sir, I did.

18 Q But you already knew Mr. Smith, did you not?

19 A I didn't know him right at the face right at first.

20 Q Well, you recognized him according to your report, is
21 that correct?

22 A I asked him his name during that time, and he said
23 Travis Smith. But I didn't know his, his, his date of birth
24 or anything like that.

25 Q So you're saying you didn't know him prior to this

Matt Wilde (In-camera)
Recross-examination by Mr. McPherson

1 incident?

2 A I knowed him prior to this incident. I didn't
3 recognize him immediately at that time, so I asked him for
4 his I. D.

5 Q But you recognized him while he was still in the
6 vehicle, didn't you?

7 A Yes, sir, absolutely.

8 Q And you knew it was Travis Smith, isn't that correct?

9 A Oh, I knew it was him after I asked him and he said --

10 Q So there was no need for him to give you any I. D.,
11 was there?

12 A Yes, sir, there is, because I didn't know Travis'
13 birthday, I didn't know his current address, and I needed
14 all that information to check warrants on him which --

15 Q Why did you need all of that information? He was not
16 under arrest at that time.

17 A No, sir, he is not. But it's common practice for us to
18 ask anybody pretty much we deal with in cars to, for their
19 I. D. or to identify themselves so we can make sure that
20 they don't have outstanding warrants on them.

21 Q I understand. But since you walked up to the car you
22 recognized him as Travis Smith. Then you didn't need his
23 I. D. because you already knew who he was.

24 A I knew who he was, sir, but I didn't know -- I didn't
25 know his birthday; I didn't know his address. And that was

Matt Wilde (In-camera)
Recross-examination by Mr. McPherson

1 all pertinent information in the warrant check that I was
2 going to do.

3 Q Now, I believe you also testified that when Travis --
4 I assume he was running. He turned around, I guess, when
5 he was between the cars and threw the drugs.

6 A Yes, sir.

7 Q All right. So he was like between the police car and
8 the rear of Joy Wood's car.

9 A Yes, sir.

10 Q And he threw the drugs right there.

11 A Yes, sir. He turned around and tossed them like this.

12 Q Okay. Now, how far away would you say he was from
13 either vehicle when he threw the drugs?

14 A I think that we were just in between the cars or we
15 were just past being in between the cars. I don't, I can't
16 remember exactly, sir. It's been a year.

17 MR. MCPHERSON: I have no further questions.

18 MR. MCCARTY: Nothing further, Your Honor.

19 THE COURT: Step down.

20 Anything else on behalf of the state?

21 MR. MCPHERSON: Your Honor, I can call the chemist to
22 put in the drugs, that they were drugs, at this point in
23 the suppression hearing.

24 THE COURT: Well, what, what this hearing is about is
25 to determine whether or not there was probable cause for a

1 stop and a seizure of what evidence you intend to
2 introduce. So I don't think it's necessary to call a
3 chemist to identify that there were drugs.

4 The issue is -- that will have to be proven at trial,
5 of course, if you get to trial. The issue is whether or
6 not there was probable cause for a stop and a search that
7 resulted in anything being seized which you intend to use
8 as evidence in this case.

9 MR. McCARTY: Yes, sir.

10 I neglected, Your Honor, to ask him to identify the
11 items they seized. But he is here and present if I may do
12 that just for this purpose.

13 They testified about what they picked up and what they
14 tested, is voltox, but I didn't ask them to specifically
15 identify it here this morning, Your Honor.

16 THE COURT: Well, this is just a probable cause
17 hearing. It's not necessary.

18 MR. McCARTY: Yes, sir.

19 THE COURT: Mr. McPherson, do you want to put up any
20 testimony or evidence?

21 MR. MCPHERSON: No, Your Honor.

22 THE COURT: Okay. Do y'all have any arguments you
23 want to make?

24 MR. MCPHERSON: Yes, Your Honor.

25 According to their testimony, they stopped Joy Wood

1 driving a vehicle because he pulled out in the middle of
2 the highway.

3 And then as the testimony developed it was established,
4 that he pulled into the median of the road. And the law
5 allows, and, in fact, the law instructs a vehicle that's
6 going to make a left turn to pull into the median to make
7 the left turn. And they cited the driver for failure to
8 yield right of way.

9 Well, he was doing exactly as the law provides. He
10 pulls into the median and makes a left turn according to
11 their testimony. And so the stop was not legal. Therefore
12 everything that they seized as a result of that stop is not
13 legal.

14 THE COURT: All right. So your issue is with the stop
15 of the vehicle?

16 MR. McPHERSON: Yes, sir.

17 THE COURT: Well, as I understand the testimony, I
18 realize there was some confusion, but I think what I
19 understood the witness to testify to, Mr. Satterfield, was
20 that Mr. Wood, the driver of the vehicle, pulled out in
21 front of him in the direction of the median and he had to
22 slow down or put on his brakes to avoid hitting the
23 vehicle, which would be a failure to yield to the right of
24 way of oncoming traffic.

25 But he also testified, as I understand it, and I'll be

1 corrected if I'm wrong, but when he pulled into the median
2 he didn't pull into the median longways with the median.
3 He pulled across the median.

4 In other words, he wasn't between the lines in the
5 median to make a left turn. He was going straight across
6 from one building to the hotel on the other side of the
7 street.

8 MR. MCPHERSON: I don't believe that's correct, Judge.

9 THE COURT: Well, I'm just -- I don't know if it's
10 correct or not. That's what he testified to. Are you
11 saying that's not the correct testimony?

12 MR. MCPHERSON: I'm sorry?

13 THE COURT: You're saying my understanding of the
14 testimony is incorrect?

15 MR. MCPHERSON: Yes, sir.

16 THE COURT: Well.

17 MR. MCPHERSON: It's my understanding of the testimony
18 that the car was right inside the median. It wasn't cross
19 ways to the median. It was perpendicular, I mean, parallel
20 with the median and the two yellow lines that divide the
21 median.

22 THE COURT: Well, I understood that that was not the
23 case.

24 We can play the testimony back, but I understood he
25 was across the median, because, in fact, I think he said he

1 wasn't actually making a left turn, he was going straight
2 across. And he was -- his vehicle was in the roadway, not
3 all in the median.

4 MR. MCPHERSON: I would like to develop that testimony
5 further.

6 THE COURT: Okay. Well, we'll play it back.

7 All right. Let me let this jury go to lunch. I didn't
8 realize that y'all had these issues to deal with. I wish I
9 had been told that. We could have made other arrangements.
10 But let's bring this jury back so that we can excuse them
11 for lunch. And then we'll take as much time as y'all need
12 to properly prepare this case for trial.

13 (The following takes place in the presence of the
14 jury.)

15 THE COURT: All right. Ladies and gentlemen, I
16 apologize for the delay.

17 I've got some matters I'll need to address that I was
18 not aware that I was going to have to address. But,
19 nevertheless, I do have to address those. And I also have
20 a jury out deliberating, and they've got some issues that I
21 also have to deal with.

22 So I'm going to excuse you right now for lunch. And
23 I'll ask that you report back to your jury room at
24 2:30 this afternoon, at 2:30 this afternoon. And I'm
25 hopeful that at that time we'll be in a position to be able

1 to go forward with this case.

2 So thank you for your patience and understanding. You
3 are excused for lunch. Please report to your jury room at
4 2:30 this afternoon.

5 (The following takes place outside the presence of the
6 jury.)

7 THE COURT: All right. Now, we're going to have to
8 step aside with this case. I've got some issues to deal
9 with with the other jury.

10 (Whereupon, a recess was taken. The testimony of Greg
11 Satterfield was replayed for the Court and counsel in
12 chambers.)

13 THE COURT: All right. Are we ready for the jury now?

14 MR. McCARTY: Yes, Your Honor.

15 THE COURT: Are you ready for the jury?

16 MR. McPHERSON: Yes, sir.

17 THE COURT: All right. Wait a minute. Just one
18 moment before we do that.

19 So far as the motion to suppress is concerned, I'm
20 denying the motion, Mr. McPherson.

21 MR. McPHERSON: Yes, sir.

22 THE COURT: Based upon my consideration of the
23 evidence presented, I find that the traffic stop was
24 proper, it was based upon probable cause and that any
25 subsequent detention, search and seizure resulting in

1 evidence to be admitted in the trial of this case was
2 reasonable considering the totality of the circumstances.

3 MR. McPHERSON: Yes, sir. If I may, I'd like to cite
4 one case for the record.

5 THE COURT: Okay.

6 MR. McPHERSON: This is the Supreme Court case of
7 Sikes, S-I-K-E-S, vs. State. The cite is 323, South
8 Carolina, at page 28, or 448 Southeastern 2d at page 560.
9 And that dealt with a case where they wanted to or they
10 stopped an individual and ran a warrant's check on the
11 particular individual.

12 THE COURT: That's true. And I've been provided that
13 case and I've read it.

14 I think in the Sikes case, however, the reason that
15 the conviction was reversed, I believe the case said that
16 the detention under the facts of the case and under the
17 circumstances was unreasonable, the length of the
18 detention.

19 In this case I don't think the length of the detention
20 was unreasonable. The officers, I think, under the facts
21 of this case and under the law have a right to remove
22 passengers from a properly stopped vehicle.

23 Once they remove the passengers from the vehicle for
24 safety of the officers, they have a right to conduct their
25 investigation into the reason the vehicle was stopped. And

1 that's not truly contested in this case. There was
2 probable cause to stop the vehicle.

3 The detention of the defendant in this case was for
4 only a very short period of time, after which he took off
5 running. So, and the officers were simply trying to
6 protect and maintain their own safety. And that's the
7 reason for the removal of the passengers.

8 So I think the difference in this case and the Sikes
9 case is simply that the detention, the length of detention
10 and the reason for the detention, was not unreasonable. So
11 the constitution protects against unreasonable searches and
12 seizures.

13 Anything else?

14 MR. McPHERSON: Yes, Judge.

15 I think we have an agreement with Mr. McCarty that
16 after this stop and arrest they obtained a search warrant
17 and later went and searched the motel.

18 Mr. McCarty has agreed that he's not going to get into
19 that. And I would ask for a motion in limine not to
20 mention anything about that particular offense.

21 THE COURT: Well, that's not a case we're trying here,
22 is it?

23 MR. McPHERSON: No, Your Honor. We plan to offer no
24 testimony to that effect whatsoever.

25 THE COURT: Okay. Bring the jury in, please.

1 (The following takes place in the presence of the
2 jury.)

3 THE COURT: Good afternoon, ladies and gentlemen.

4 Again, thank you for your patience and understanding,
5 but I had the jury out that was deliberating, and I had a
6 question that I had to resolve. Then they reached a
7 verdict. So I had to bring them back to receive the
8 verdict. So that's why you've been waiting for us to
9 accomplish those matters.

10 But we are now ready to begin with the trial of this
11 case for which you were selected.

12 And, Ms. Berry, I'm going to ask you to serve as the
13 foreperson of the jury. As the foreperson of the jury
14 you'll have three specific duties that none of the other
15 jurors will have.

16 Number one, you'll be asked to serve as the
17 spokesperson for the jury. And so if during the trial
18 something arises that needs to be brought to my attention,
19 you or a fellow juror has some difficulty or problem or
20 question, if you'll let the bailiff know, he'll let me
21 know, and I will address those questions or try to resolve
22 those difficulties.

23 Secondly, you're going to be called upon to preside
24 over jury deliberations when the time comes. And that of
25 course won't be until the end of the trial after all of the

1 evidence has been received and I have instructed you on the
2 law that's applicable in this case. But when the time does
3 come for jury deliberations you will preside over that
4 process in the jury room simply to ensure that those
5 deliberations are carried out in some orderly fashion.

6 And, thirdly, you'll be asked to actually write the
7 verdict or the decision of the panel. And you'll do that
8 on a verdict form that I'll provide you at the trial's
9 conclusion on which you will indicate the jury's unanimous
10 decision.

11 Now, the foreperson has those specific duties that I
12 have just indicated. That does not however mean that she
13 is any more important than any of you other jurors, because
14 the verdict or the decision of a jury is the unanimous
15 consensus opinion of all 12 jurors. And so all of you will
16 have an equal say and equal vote in what the ultimate
17 decision will be in this case.

18 Someone simply has to be delegated those
19 responsibilities that I have just indicated, and I have
20 delegated those to Ms. Berry in appointing her as the
21 foreperson.

22 But all of you jurors are equally important so far as
23 the ultimate decision in the case is concerned because, as
24 I've stated, the verdict has to be unanimous. All 12 of
25 you must be agreement.

1 Now, Mr. Dobbins, you've been selected as an alternate
2 juror. And the function of an alternate juror is to take
3 the place of one of the original 12 if during the trial one
4 of the original 12 cannot continue to serve for some
5 reason.

6 If one is called away because of an emergency or an
7 illness or some other reason and they cannot continue, then
8 you would be called upon to take that person's place. In
9 that event you would become the 12th juror. In that event
10 you participate also in the jury deliberations at the
11 trial's conclusion.

12 If however when the time comes for jury deliberations
13 the original 12 are able to perform that function, then
14 your service ends. And you don't participate any further,
15 because the verdict of the jury is that of 12, and no more
16 than 12 can participate in that deliberation process.

17 But it is important that you pay just as careful
18 attention as we ask of all of the jurors in the case
19 because it does occur from time to time for one reason or
20 another one of the original 12 may be called away. In that
21 event you become the 12th.

22 So we do appreciate your participation as an alternate
23 juror just as we appreciate the participation of each of
24 you jurors who have been selected for the purpose of
25 deciding the verdict in this particular case.

Jury sworn

1 You may swear the panel.

2 (Whereupon, the jury was duly sworn.)

3 THE COURT: All right. Ladies and gentlemen, as you
4 are well aware, you have been selected to decide the
5 verdict in the case of the State vs. Travis Montre Smith.

6 He's been accused by the state of having committed the
7 crime known as trafficking in cocaine. They allege that on
8 or about February the 12th of 2008 that Mr. Smith did have
9 in his actual or constructive possession a quantity of
10 cocaine greater than ten grams. Therefore they allege that
11 he did commit the crime of trafficking under the law.

12 Now, as to those allegations and as to that charge
13 he's entered a plea of not guilty. And as you have been
14 told, that plea of not guilty places upon the state the
15 burden of proving the allegations that they have set forth
16 in the indictment, the burden of proving each of the
17 essential elements of the crime they claim the defendant
18 has committed; and therefore the burden is upon the state
19 to establish the defendant's guilt to the satisfaction of
20 you 12 jurors beyond a reasonable doubt before any verdict
21 of guilty could be returned.

22 So the way the trial will proceed is that in just a
23 moment the lawyers are going to address you in what are
24 called opening statements.

25 There are two occasions in the trial of a case where

1 lawyers are permitted to address the jury. And that is at
2 the beginning of the trial before any evidence has been
3 introduced and then again at the conclusion of the trial
4 after all of the evidence has been received.

5 Now, as I have just stated, the evidence comes in
6 between the opening and the closing statements. And
7 therefore what the lawyers tell you in their opening or
8 their closing statements is not evidence in the case.

9 You're not to consider what they tell you as being any
10 evidence upon which you will base your decision. And
11 that's because the lawyers aren't witnesses to anything.
12 And they're not going to be telling you anything about this
13 case that they know of their own personal knowledge or
14 experience as witnesses will be.

15 And if they, in fact, were witnesses, they wouldn't be
16 involved in presenting the case. They'd be testifying.
17 And so they're not going to take the witness stand, they're
18 not going to testify under oath, they're not going to be
19 subjected to direct and cross-examination as each of the
20 witnesses will be. And that's why what they tell you is
21 not evidence in the case. But you should listen to what
22 they have to say because those statements do serve a
23 purpose.

24 The openings statements serve to provide you with a
25 basic understanding as to what this case is about from the

1 perspective of each of the lawyers from each side so that
2 you'll have some context in which to place the evidence
3 that we will be receiving shortly thereafter.

4 The closing statements permit the lawyers an
5 opportunity to discuss with you the evidence that you have
6 seen and heard during the trial of the case. And through
7 that discussion each will have an opportunity to try to
8 persuade you or to convince you that that evidence does or
9 does not support a particular decision.

10 Of course it's in between those statements that we
11 will receive the evidence. The state has the burden of
12 proof because they brought the charges. So they'll go
13 forward first in their presentation of evidence.

14 After the state has presented their evidence the
15 defense has the same opportunity to present evidence by way
16 of testimony and otherwise.

17 And after all the evidence has been received and
18 you've heard the final summations of the lawyers, and I
19 will then instruct you fully on the law as it relates to
20 the criminal law in general and to this particular charge
21 specifically.

22 Then you'll be asked to go back and begin with your
23 deliberations. And through that process you will examine
24 all the evidence. From that evidence you'll determine what
25 you believe to be the true facts as they relate to these

1 allegations.

2 Once you decide those facts, you'll then apply the law
3 that I will have provided you. And you will determine
4 whether or not the defendant's guilt has been proven beyond
5 a reasonable doubt.

6 If it has, then your verdict would be guilty. If it
7 has not, then your verdict would be not guilty.

8 So all that we're going to ask for you to do is to pay
9 careful attention throughout the course of the trial. Give
10 every witness the same degree of attention as they testify,
11 because sometimes there may be a conflict in testimony, and
12 sometimes that conflict might relate to a material fact.

13 In order for you to arrive at a decision in the case
14 you've got to resolve that conflict. And so it's your
15 prerogative to determine what is the most credible
16 testimony and evidence.

17 And therefore you have a right to assess and to
18 evaluate the credibility of each witness that testifies.
19 And you can evaluate that witness' testimony in light of
20 not just that witness' testimony but in light of all of the
21 testimony and all of the evidence in the case. But that's
22 why it's important that you pay careful attention to each
23 witness so that when the time comes for jury deliberations
24 you'll be in a proper position to be able to fairly
25 evaluate and assess the credibility of each witness.

Opening statements

1 And of course it's also important that you keep an
2 open mind throughout the course of the trial. And you're
3 not to begin making up your minds or formulating your
4 opinions as to what you think the ultimate decision in this
5 case ought to be until all of the evidence has been
6 received and until I've instructed you on the law and until
7 you've been asked to begin with those deliberations. That
8 is the process that is designed for you 12 jurors to arrive
9 at a fair and just decision in this case.

10 So I do want to thank you in advance for your
11 participation, as well as for your careful attention. I
12 would ask that you please give the lawyers your attention
13 now as they give you their opening statements.

14 MR. MCPHERSON: Judge, can we approach for a minute?

15 THE COURT: Yes, sir.

16 MR. MCPHERSON: I apologize.

17 (Bench conference held off the record in the presence
18 of the jury but out of the hearing of the jury.)

19 THE COURT: Okay. Mr. McCarty.

20 MR. MCCARTY: May it please the Court, Your Honor.

21 Ladies and gentlemen, on February the 12th of 2008
22 deputies Greg Satterfield and Matt Wilde stopped a car that
23 they suspected the driver was driving under the influence
24 of alcohol. That, and they saw him commit a traffic
25 infraction for which they were able to stop the vehicle.

Opening statements

1 When they approached the vehicle it was occupied with
2 two people, one person whose name is Joy Wood who is not
3 here today. And the other person sitting in the passenger
4 seat was the defendant, Travis Smith.

5 You'll hear testimony about, of course, that traffic
6 stop, that Deputy Wilde and Deputy Satterfield were present
7 at, what they saw, what they observed and ultimately what
8 happened during the course of that traffic stop.

9 As the judge told you, the defendant is charged with
10 trafficking in cocaine. And, now, probably before I went
11 to law school, and especially before I started working as a
12 prosecutor, I would have thought trafficking in any drug,
13 that you had to be driving in a car.

14 Well, I don't want you to be confused. I mean, we do
15 have a car in this situation. But trafficking doesn't mean
16 that it's being transported on the street. It can. But
17 trafficking in and of itself is simply the weight of the
18 drug involved.

19 You'll hear testimony from a chemist, an employee of
20 the sheriff's office, who tests these narcotics. And as
21 part of her job she'll give us an actual weight of what
22 these drugs are that she tested.

23 As I stated, it's just simply a weight question.
24 We're alleging that the defendant had in his possession
25 cocaine in a certain weight that triggers a trafficking

Opening statements

1 amount for that drug.

2 Now, as you've heard when you were first brought in
3 here to be selected for the jury, the state intends to,
4 only plans to call three witnesses. That would mean it's
5 probably going to be a pretty short trial. But I don't
6 want you to think that it's any less important of a trial.

7 Simply because of the fact that we have a few
8 witnesses as opposed to many doesn't diminish the fact that
9 this is an important and serious offense for which we are
10 alleging the defendant committed.

11 I think though at the end of the trial you will find
12 that we have put forth competent and credible evidence to
13 prove to you beyond a reasonable doubt that Travis Smith is
14 guilty of the offense of trafficking cocaine. Thank you.

15 THE COURT: Mr. McPherson.

16 MR. MCPHERSON: We believe the evidence is going to
17 show that there was a traffic stop.

18 We submit that the evidence will show that the police
19 were just making up a reason for the traffic stop. However
20 they did stop this car.

21 And there's a video that you'll see, I believe, in
22 which the driver and the passenger get out of the car. And
23 this video is going to disclose quite a bit to you. But
24 you never will see my client with any drugs. You'll never
25 see my client throw any drugs on this video.

Greg Satterfield
Direct examination by Mr. McCarty

1 I think you're going to hear a lot of discrepancy in
2 the testimony. I could be wrong, but I believe just from
3 the state's witnesses you're going to hear some
4 discrepancies.

5 So I ask that you pay close attention to what these
6 witnesses are saying. And I believe after you've heard all
7 the evidence you'll find my client not guilty of these
8 charges. Thank you.

9 THE COURT: Mr. McCarty.

10 MR. McCARTY: Deputy Greg Satterfield, Your Honor.

11 GREG SATTERFIELD, having been
12 first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. McCARTY

14 Q If you will, please introduce yourself to the jury.

15 A Yes, sir. Deputy Satterfield. I work for the
16 Spartanburg County Sheriff's Office.

17 Q How long have you been employed at the sheriff's
18 office?

19 A Three and a half years.

20 Q In your three and a half years at the sheriff's
21 office, what have been your duties over that time?

22 A I started off on uniform patrol. My current assignment
23 is in the R. S. U. division, regional support unit.

24 Q Do you have any other prior law enforcement or
25 military experience?

Greg Satterfield
Direct examination by Mr. McCarty

1 A I attended the basic law enforcement academy in
2 Columbia, a 9-week training course.

3 Q How about in the areas of detection of narcotics or
4 narcotic based substances?

5 A Yes, sir. Meridian, Mississippi, which is the R. C. T.
6 A. Academy. I had basic narcotics certification, street
7 narcotics certification, managing informant certifications.

8 Q Deputy Satterfield, on the night of the 12th of
9 February of 2008 were you on duty in Spartanburg County?

10 A Yes, sir.

11 Q Was -- or I'm sorry. Was Deputy Wilde also present
12 with you that evening?

13 A Yes, sir. He was riding with me.

14 Q You were the driver of the vehicle, am I correct?

15 A Yes, sir.

16 Q Deputy Satterfield, did you have an occasion on that
17 evening to come into contact with a car in which the
18 defendant was a passenger?

19 A Yes, sir, I did.

20 Q If you could, please tell the jury about what you
21 witnessed, what you observed before you came into contact
22 with that vehicle and the driver and the occupant.

23 A Yes, sir.

24 I made a right-hand turn from Reidville Road onto
25 South Blackstock. At this time while traveling on South

Greg Satterfield
Direct examination by Mr. McCarty

1 Blackstock I observed a white Ford Escort pull out of the
2 Sleep Inn, did not yield.

3 The only two cars on the road that night were my
4 patrol car, as well as this white Ford that didn't yield to
5 the point where I had to, actually had to, apply my brakes
6 to avoid hitting the vehicle.

7 At that time the vehicle stopped in the median
8 longways, maybe angled a little bit longways.

9 At this time I initiated a traffic stop in which the
10 vehicle pulled into the motel that was kind of
11 catty-cornered across from the Sleep Inn, which being the
12 Super 8 Motel, in the parking lot there.

13 Q So we're dealing with two different motels on opposite
14 sides of the streets.

15 A Yes, sir. That's correct.

16 Q And just to make sure, you said this was on Blackstock
17 Road, is that correct?

18 A Yes, sir.

19 Q And that's located within Spartanburg County?

20 A Yes, sir, it is.

21 Q Where you saw the initial traffic violation, that was
22 within Spartanburg County as well, correct?

23 A Yes, it was.

24 Q Now, let's talk just for a second about the initial
25 traffic violation.

Greg Satterfield

Direct examination by Mr. McCarty

1 I heard you use the word yield. Could you describe to
2 the jury what you actually -- what was -- witnessed what you
3 saw? What makes that an infraction?

4 A Yes, sir. The vehicle leaving the parking lot of the
5 Sleep Inn did not stop to see if there was any type of
6 oncoming traffic.

7 In other words, the vehicle just never slowed down at
8 all entering the oncoming traffic, which would be my
9 vehicle, my patrol car onto South Blackstock, to the point
10 where I had to apply my brakes to avoid hitting the
11 vehicle.

12 Q After you saw the vehicle exit out of the hotel
13 parking lot, the first hotel parking lot, you said it
14 entered into the median area of the street, is that
15 correct?

16 A Yes, sir.

17 Q Could you describe that street for us, please, what
18 Blackstock looks like in that area?

19 A Yes, sir. It's a 2-lane road with a median that's in
20 the middle of the, the two lanes.

21 Q And the median, is it a raised median or is it just a
22 painted-surface median?

23 A It's just a painted-surface median, no raised median.

24 Q Is that what some people call a turn lane, a center
25 turn lane?

Greg Satterfield
Direct examination by Mr. McCarty

1 A Yes, sir.

2 Q You said you observed the vehicle go out into that
3 area and stop, is that correct?

4 A Yes, sir.

5 Q At that point did you initiate the traffic stop?

6 A Yes, sir. I initiated the blue lights on my patrol
7 car.

8 Q And what happened with the vehicle, the white Escort?

9 A It proceeded to go into the parking lot of the Super 8,
10 which is kind of catty-cornered from the opposing motel.

11 Q The entrances are kind of catty-corner to each other?

12 A Yes, sir.

13 Q Once in the parking lot, what did you do with the
14 vehicle? What was your next step after you conducted or
15 initiated the traffic stop?

16 A I approached the driver's side of the vehicle as my
17 partner, Deputy Wilde, approached the passenger side,
18 standard protocol for a 2-officer unit doing traffic stops.

19 Q Who or how many people did you observe in the vehicle?

20 A There were two people.

21 Q Do you recall what their names were?

22 A The driver being Joy Wood and the passenger being the
23 defendant, Travis Smith.

24 Q The same person sitting over there is the person you
25 saw in the vehicle that evening, correct?

Greg Satterfield
Direct examination by Mr. McCarty

- 1 A Yes, that's correct.
- 2 Q And your dealings were with the driver, is that safe
3 to say?
- 4 A Yes, sir.
- 5 Q Could you describe during the course of the traffic
6 stop what you did with the driver and what your procedure
7 is in dealing with a person like that?
- 8 A Yes, sir. I asked Mr. Wood to see his driver's
9 license, registration and proof of insurance.
- 10 Q Did you or did he produce those items for you?
- 11 A He did.
- 12 Q Did you ever ask Mr. Wood to step out of the vehicle?
- 13 A Yes, sir, I did.
- 14 Q Why would you ask Mr. Wood to step out of the vehicle?
15 What type of observation would you be trying to make at
16 that point?
- 17 A With it being around midnight that night, my first
18 suspicion was he was under the influence. So I wanted to
19 pull Mr. Wood out to watch his body motion to see if there
20 would be any signs of driving under the influence, any signs
21 of intoxication.
- 22 Q At that time did you check any of those signs?
- 23 A No, sir, I did not.
- 24 Q You were standing, I'm assuming, on the driver's side
25 of the vehicle, is that correct?

Greg Satterfield
Direct examination by Mr. McCarty

1 A Yes, sir, that's correct.

2 Q Was Deputy Wilde still located on the passenger side
3 of the vehicle?

4 A Yes, sir.

5 Q Could you hear Deputy Wilde speaking with the
6 defendant?

7 A Not every word that he said, but sometimes I did.

8 MR. MCPHERSON: Your Honor, I'm going to object to
9 anything the officer, the other officer, said. It's
10 hearsay.

11 MR. MCCARTY: I'm not asking a hearsay question, Your
12 Honor, just asking if he was able to hear those
13 conversations, at least in the distance, proximity.

14 THE COURT: All right. I overrule the objection.

15 Q Deputy Satterfield, were you also able to keep a
16 visual contact with your partner that evening?

17 A Yes, sir.

18 Q Could you? Let me ask you this. Did Deputy Wilde to
19 your knowledge ask or get the defendant out of the vehicle?

20 A Yes, sir, he did.

21 Q Were you able to see Mr. Smith, the defendant, get out
22 of the vehicle, the same vehicle of course you pulled over?

23 A Yes, sir. I did.

24 Q Were you able to see what Mr. Smith did or didn't do
25 at that point?

Greg Satterfield
Direct examination by Mr. McCarty

1 A Yes, sir, I did.

2 Q Could you describe what you saw, please?

3 A At this time I observed Mr. Smith running on foot from
4 Deputy Wilde. I observed Deputy Wilde grabbing his jacket
5 and Mr. Smith actually running out of his jacket.

6 Q When he ran away, describe where he was running to and
7 what he, how he was running, and that kind of stuff,
8 please.

9 A Yes, sir. Mr. Smith was running back towards the motel
10 in the traffic stop, that the traffic stop occurred at.
11 Mr. Smith made a loop around the vehicles and was heading
12 back towards Blackstock toward the other motel.

13 Q So kind of cut back around on himself.

14 A Yes, sir, just circled around.

15 Q Did you ever involve yourself in this foot pursuit?

16 A Yes, sir, I did.

17 Q Describe what your involvement was, what you witnessed
18 during this chase.

19 A Yes, sir. At this time when he circled around the
20 front of the vehicle as I was standing with Joy, I then
21 became involved in the foot pursuit.

22 At this time before we reached Blackstock Road,
23 Mr. Smith turned around and actually threw a clear plastic
24 bag just as if he was throwing a football or baseball that
25 landed near the white Ford, of the vehicle stopped.

Greg Satterfield
Direct examination by Mr. McCarty

1 I proceeded to catch Mr. Smith in the middle of
2 Blackstock Road where I took him down to the ground and
3 handcuffed him.

4 Q This item that you saw Mr. Smith throw, did you
5 ultimately retrieve that item?

6 A Yes, sir, I did.

7 Q Let me ask you about Joy Wood during this time. Did
8 Joy Wood -- was he near that item when you collected it?

9 A No, sir. Mr. Wood never moved from the spot that he
10 was standing when I pulled him out of the vehicle.

11 Q So he was always right around the vehicle, is that
12 correct?

13 A Yes, sir.

14 Q And the item which you collected, it wasn't
15 immediately adjacent to the vehicle, was it, like laying
16 right next door to it or right at the vehicle? Was it?

17 A It was close proximity. I do not recall the exact
18 location.

19 Q But in proximity to the vehicle, right?

20 A Yes, sir.

21 Q You never saw Mr. Wood. Or did you ever see Mr. Wood
22 reach down and try to touch that object, move that object,
23 do anything with that object that you saw the defendant
24 throw?

25 A No, sir. Mr. Wood never got close to the object.

Greg Satterfield
Direct examination by Mr. McCarty

1 Q After Mr. Smith was taken into custody, you said you
2 retrieved the item, is that correct?

3 A Yes, sir.

4 Q Would you describe what happened after there, that?

5 A Once I retrieved and examined the package, I identified
6 the package to be an off-white powder substance. I then
7 field tested that with voltox, and which it came back
8 positive for cocaine.

9 Q And that's just a presumptive test, am I correct?

10 A Yes, sir, a field test if you would.

11 Q Just to test for the presence of a possible narcotic
12 substance, is that correct?

13 A Yes, sir.

14 Q Let me show you --

15 MR. McCARTY: If I may approach, Your Honor.

16 Q -- what I have marked as State's Exhibit No. 4 and ask
17 you if you recognize what I am handing you.

18 A Yes, sir, I do.

19 Q What is it that I have handed you, Deputy Satterfield?

20 A This is the powder that I retrieved in proximity to the
21 white Ford.

22 Q How do you know that that's that same powder? Do you
23 see any indication, any type of initials or dates or
24 anything like that that might indicate that that is indeed
25 the same powder?

Greg Satterfield
Direct examination by Mr. McCarty

1 A Yes, sir; yes, sir. This is the BEST bag that I placed
2 the evidence in, the agency, my name printed, as well as my
3 name signed and the date that it was sealed.

4 Q Because these folks may not know exactly what a BEST
5 bag is, just in your understanding of it, could you
6 describe to them what a BEST bag is, please?

7 A Yes, sir. A BEST bag is assigned a control number,
8 which is the number in the top. It's a sealed plastic bag
9 that we put in there, along with a copy of the evidence
10 report. You pull the tape back and it seals it. And this
11 is what we actually place into evidence.

12 Q So you've taken that then. You say your initials are
13 on there, is that correct?

14 A Yes, sir.

15 Q What do you do with it once you put it in the bag and
16 place it into evidence? Could you describe what that
17 involves?

18 A Yes, sir. Once it's placed in here and sealed up, it's
19 placed in the evidence drop box. At the time of the traffic
20 stop our evidence room was closed. But we have a drop box.
21 That item was placed in the drop box.

22 Q And it's dropped in in the BEST bag itself, correct?

23 A Yes, sir.

24 Q All right. Deputy Satterfield, the vehicle you were
25 driving that night, was it equipped with an in-car video

Greg Satterfield
Direct examination by Mr. McCarty

1 system?

2 A Yes, sir, it was.

3 Q If I may, Deputy, I'm going to show you what's marked
4 as State's Exhibit No. 1. Do you recognize that item?

5 A Yes, sir, I do.

6 Q What is the item there that I've just handed to you?

7 A This is a copy of my in-car camera.

8 Q You had an opportunity to review that video, is that
9 correct?

10 A Yes, sir.

11 Q Is it in any way altered or changed from the way that
12 it was filmed that evening?

13 A No, sir.

14 Q Has it been edited or done anything else to it?

15 A No, sir.

16 Q So it is a true and accurate copy or reflection of the
17 events that occurred on February the 12th, is that correct?

18 A Yes, sir.

19 Q All right.

20 MR. McCARTY: Your Honor, at this time I'd like to
21 admit State's Exhibit No. 1 and publish it to the jury.

22 MR. McPHERSON: Could I take him on voir dire or ask
23 him a few questions?

24 THE COURT: Well, would that be related to the
25 authenticity of the video?

Greg Satterfield
Direct examination by Mr. McCarty

1 MR. MCPHERSON: Yes, sir.

2 THE COURT: Let me see you just a minute.

3 (Bench conference held off the record in the presence
4 of the jury but out of the hearing of the jury.)

5 THE COURT: All right. It's admitted without
6 objection.

7 (D. V. D. marked State's Exhibit No. 1.)

8 MR. McCARTY: If I may have just one moment, here,
9 Your Honor.

10 (Pause.)

11 (Whereupon, the D. V. D. was played for the jury.)

12 THE COURT: Mr. McCarty, would you stop that, please?

13 Let me ask y'all. If y'all let that rope down, you
14 can move down one seat. That will give you a little bit
15 opportunity on this end to see the video. Okay.

16 (Whereupon, the D. V. D. was played for the jury.)

17 MR. McCARTY: I will stop it there.

18 Q Deputy Satterfield, again, what we just watched, those
19 were the events, again, recorded by your in-car camera on
20 the night. And actually the date stamp there was for the
21 13th. Is that because it just rolled over past midnight?

22 A Yes, sir.

23 Q Okay. So what occurred on the 12th and into the 13th,
24 right there around midnight, correct?

25 A Yes, sir.

Greg Satterfield
Direct examination by Mr. McCarty

1 Q What you saw there on the video, is that the events as
2 you remember them to be on that evening?

3 A Yes, sir.

4 Q Deputy Satterfield, let me ask you. Once you were
5 able to take Mr. Smith and place him into custody, what did
6 you do with him?

7 A He was placed in the back seat of my car.

8 Q Did you personally ever search the defendants?

9 A Prior to the -- or after he was handcuffed?

10 Q After he was handcuffed.

11 A Yes, sir. After he was handcuffed I did search him
12 before placing him into my vehicle.

13 Q Did you search any of the items which the defendant
14 may have previously been wearing?

15 A No, sir.

16 Q Did you search the vehicle from which Mr. Smith had
17 just left?

18 A After the arrest?

19 Q After the arrest, yes, sir.

20 A After the arrest I helped Deputy Wilde.

21 Q You assisted Deputy Wilde with --

22 A Yes, sir.

23 MR. McCARTY: Your Honor, I have no further questions
24 of Deputy Satterfield.

25

Greg Satterfield
Cross-examination by Mr. McPherson

1 CROSS-EXAMINATION

2 BY MR. MCPHERSON

3 Q Now, Officer, let's go back to the beginning when you
4 first turned onto Blackstock Road. You were on Reidville
5 Road, is that correct?

6 A Yes, sir.

7 Q And that's at the west end of Spartanburg, correct?

8 A Yes, sir.

9 Q And when you turned off of Reidville Road onto
10 Blackstock Road -- I think it's called South Blackstock
11 Road -- you observed this car put out of the Sleep Inn,
12 correct?

13 A Yes, sir.

14 Q And then you say it stopped in the middle of the road,
15 correct?

16 A Yes, sir.

17 Q And failed to yield the right-of-way to oncoming
18 traffic, correct?

19 A Yes, sir.

20 Q And-but you testified earlier that you, that you had
21 to jam on your brakes, right, in order to avoid him because
22 he pulled out in front of you?

23 A Yes, sir. I applied the brakes.

24 Q Right. Now, you made a report of this incident,
25 didn't you?

Greg Satterfield
Cross-examination by Mr. McPherson

1 A Yes, sir.

2 Q And do you have a copy of your report up there?

3 A Not up here.

4 MR. MCPHERSON: May I approach, Your Honor?

5 THE COURT: Yes, sir.

6 (Incident report marked Defendant's Exhibit No. 2 for
7 Identification.)

8 Q I'm showing you what's been marked for identification
9 purposes only Defendant's Exhibit 2.

10 A Yes, sir.

11 Q Do you recognize that?

12 A Yes, sir, I do.

13 Q Is that a copy of your report?

14 A Yes, sir.

15 Q And would you agree with me in your report you say,
16 "On 2/12/08 at 2356 hours I, Deputy Satterfield, and
17 Investigator Wilde" -- is that the way you say his name?

18 A Yes, sir, it is.

19 Q "Observed a white Ford Escort pull onto South
20 Blackstock Road from Sleep Inn, 501 South Blackstock Road,
21 without stopping and yielding the right-of-way to oncoming
22 traffic." Is that what you said?

23 A Yes, sir.

24 Q "The vehicle then stopped in the middle of South
25 Blackstock Road, and a traffic stop was made in the parking

Greg Satterfield
Cross-examination by Mr. McPherson

1 lot," correct?

2 A Yes, sir.

3 Q But nowhere in there does it say you had to put on
4 your brakes to stop for that vehicle, does it?

5 A No, sir. That's correct.

6 Q You would agree with that.

7 A Yes, sir.

8 Q Even though you would consider that very important,
9 correct?

10 A Yes, sir.

11 Q And so you would agree with me that you left an
12 important piece of information out of your report, right?

13 A Yes, sir. I failed to put the applying brakes in the
14 report.

15 Q And this report was made on the same day as the
16 incident, correct?

17 A Yes, sir, it was.

18 Q All right. Now, Blackstock Road runs north and south,
19 correct?

20 A Yes, sir.

21 Q And Sleep Inn would be on the west side. Do you agree
22 with that?

23 A Yes, sir.

24 Q And the Super 8 would be on the -- no. The Sleep Inn
25 would be on the east side and the Super 8 would be on the

Greg Satterfield
Cross-examination by Mr. McPherson

- 1 west side.
- 2 A Yes, sir, or my right, and the left.
- 3 Q Right. But you're going north on Blackstock Road.
- 4 A Yes, sir.
- 5 Q So the Sleep Inn would be on your right.
- 6 A Yes, sir.
- 7 Q And the Super 8 would be on your left.
- 8 A Yes, sir.
- 9 Q And you would agree with me that there are also two
10 driveways coming out of the Sleep Inn, would you not?
- 11 A I do not recall how many driveways.
- 12 Q Okay. Do you recall --
- 13 MR. MCPHERSON: May I approach?
- 14 THE COURT: You may.
- 15 Q All right. I'm showing you what is marked as Defense
16 Exhibit 1. Do you recognize that document?
- 17 A Yes, sir.
- 18 Q And do you see two driveways for Sleep Inn, one close
19 by and one further on down the street?
- 20 A Yes, sir, I do.
- 21 Q So you would agree with me there are two driveways for
22 the Sleep Inn.
- 23 A Yes, sir.
- 24 Q And also for Super 8 motel, you also observed two
25 driveways, is that correct?

Greg Satterfield
Cross-examination by Mr. McPherson

1 A Yes, sir. I do.

2 Q And you would agree with me that that's the way it
3 looked back then at the time of the alleged incident.

4 A It was nighttime, but if there's two --

5 Q Other than it being -- and this photo was taken in the
6 daylight, and you stopped them at nighttime. But you would
7 agree everything else is basically the same.

8 A Yes, sir.

9 Q Now, which driveway of the Sleep Inn did --

10 MR. MCCARTY: Objection, Your Honor, to relevance.

11 THE COURT: Overruled.

12 Q Which driveway of the Sleep Inn did you observe the
13 driver of the vehicle that pulled right out in front of you
14 come out?

15 A I do not recall that.

16 Q So it could have been either driveway?

17 A Sir, it's been a year ago. To the best of my
18 knowledge, I do not recall which entrance or exit that he
19 came out.

20 Q You've had a chance to review your report and to
21 review the videos and all of that, have you not?

22 A Yes, sir.

23 Q All right. And so you don't recall.

24 Now, isn't it true that when this vehicle pulled out
25 into the road -- you put in your, your report that he pulled

Greg Satterfield
Cross-examination by Mr. McPherson

- 1 into the middle of the road, right?
- 2 A Yes, sir.
- 3 Q And at a hearing earlier you testified that this road
- 4 didn't have a median but just had two yellow lines coming
- 5 down the middle. Do you remember that?
- 6 A Yes, sir.
- 7 Q But now you agree that there is a median in this road.
- 8 A Yes, sir, I do agree.
- 9 Q And you also agree that that median is sometimes
- 10 called a turn plane, left-hand turn lane.
- 11 A Yes, sir.
- 12 Q All right. Now, this vehicle came out of the drive
- 13 and got into the median, correct?
- 14 A Yes, sir.
- 15 Q And the car was situated completely within the median.
- 16 A I do not recall it being within the lines. As I
- 17 testified earlier, it was obstructing traffic.
- 18 Q It came out of this driveway and made a right turn,
- 19 did it not?
- 20 A Actually, it would have been more to the left. And
- 21 then when I initiated the blue lights, he went, had to go
- 22 right back into the opposite.
- 23 Q So you agree he made a right turn at some point.
- 24 A At some point when I initiated the blue lights.
- 25 Q And then he had to make a left to get back in, to get

Greg Satterfield
Cross-examination by Mr. McPherson

1 into the Super 8.

2 A Yes, sir.

3 Q And that's the way it went down, correct?

4 A Yes, sir.

5 Q And, now, you also agree that as soon as you initiated
6 the blue light that your camera starts filming.

7 A Yes, sir. There is a delay. I do not know the exact
8 time, but there is a delay when you initiate the blue lights
9 as far as the video coming on.

10 Q But you would agree with me that this video, or at
11 least what we observed on this video, didn't show anything
12 that took place in the road.

13 A Yes, sir. That's correct.

14 Q In fact, he was almost well into the parking lot ready
15 to stop, isn't that correct?

16 A Yes, sir.

17 Q So the reason for the stop and all of this was not
18 captured on video, was it?

19 A Yes, sir. That's correct.

20 Q All right. Now, which -- I think you indicated that
21 the vehicle that you were stopped with, stopped, pulled
22 into the Super 8 Motel parking lot.

23 A Yes, sir. That's correct.

24 Q And was it at the north end of the parking lot or the
25 south end of the parking lot where it finally stopped?

Greg Satterfield
Cross-examination by Mr. McPherson

- 1 A I do not recall north or south end of the parking lot
2 where the final stopping point was.
- 3 Q When it finally stopped though -- you were going --
4 you don't remember -- when the car was stopped was it
5 facing north or south?
- 6 A It would have been facing north.
- 7 Q Okay. And that was the direction you were initially
8 traveling in, correct, off Reidville Road?
- 9 A When I made a right-hand turn onto South Blackstock.
- 10 Q Right. You were traveling north.
- 11 A Yes, sir.
- 12 Q And so Joy Wood or this vehicle that you observed
13 coming out of the Sleep Inn pulled into the median and then
14 made a left turn into Super 8. So you would agree with me
15 that he was driving north for a very short distance.
- 16 A I didn't -- driving north on -- are you talking
17 about --
- 18 Q On the median. I mean, you know, he turned and got on
19 the median and then made a left turn.
- 20 A No, sir. It happened so quick, it was just a brief
21 moment of him being, stopping in the median and then seeing
22 me, me initiating the blue lights and him pulling into the
23 parking lot of the Super 8 motel.
- 24 Q But you would agree with me that it's perfectly legal
25 to make a left-hand turn from the median.

Greg Satterfield
Cross-examination by Mr. McPherson

- 1 A It's legal to make a left-hand turn from the median.
- 2 Q Okay. Now, you also testified earlier that when
- 3 Joy -- you pulled Joy out of the car, and you were talking
- 4 to him. And he wasn't intoxicated even though you thought
- 5 he might be. But you determined quickly that he wasn't
- 6 intoxicated, correct?
- 7 A Yes, sir. That's correct.
- 8 Q And you also indicated that -- and, you know, as you
- 9 were talking to Joy your partner, Officer Wilde, got
- 10 Mr. Smith out of the car, and that Mr. Smith took off
- 11 running. And you immediately took off running, is that
- 12 correct?
- 13 A Yes, sir. Once I realized that my partner was in a
- 14 foot pursuit, I helped him in the foot chase.
- 15 Q And so you left Joy unattended, correct?
- 16 A Yes, sir.
- 17 Q And there was nobody there watching Joy, correct?
- 18 A That's correct.
- 19 Q And did you just watch this video that we just showed
- 20 or that was just shown?
- 21 A Yes, sir. I was watching it.
- 22 Q And you would agree with me that Joy didn't stay put.
- 23 Did he?
- 24 A Yes, sir. I agree with that.
- 25 Q Even though you had testified earlier that he had,

Greg Satterfield
Cross-examination by Mr. McPherson

- 1 right?
- 2 A Yes, sir.
- 3 Q And, in fact, if you watch that video carefully, you
- 4 can see Joy going through all of his pockets, can't you?
- 5 A When I was there with him?
- 6 Q No. After you left. If you went back and watched
- 7 that video, while you're off camera, you and your partner
- 8 are off camera, you can see Joy going through his pockets.
- 9 A I believe he pulled a cigarette out and lit it up if
- 10 I'm not mistaken.
- 11 Q You can also see Joy walk over to the car and put all
- 12 of his paperwork on top of the car and then walk back and
- 13 start going through his pockets. Do you recall that?
- 14 A Yes, sir.
- 15 Q And then he walks off camera over in the area where
- 16 you found the drugs, isn't that correct? Would you like to
- 17 see the video again, or do you agree with that?
- 18 A I'd like to watch the video again if I could.
- 19 MR. MCPHERSON: I am going to ask we start this video
- 20 at the very beginning.
- 21 (Whereupon, the D. V. D. was played for the jury.)
- 22 Q When you're going, you've left Joy unattended, is that
- 23 correct?
- 24 A Yes, sir.
- 25 Q And I want you to keep an eye on Joy. Isn't he going

Greg Satterfield
Cross-examination by Mr. McPherson

1 through all of his pockets? Watch him.

2 (Whereupon, the D. V. D. was played for the jury.)

3 Q And then he walked off from the area where you found
4 the drugs, didn't he?

5 A Yes, sir.

6 Q Did he throw something down, or do you know? And he
7 not only doesn't stay put, he walks over to the clothes
8 that Mr. Smith left behind, doesn't he?

9 A I'm not sure. I can't see. It goes out of the view of
10 the camera.

11 Q Just keep watching the camera. He could be just right
12 off camera on the right side of that car, isn't that
13 correct, the white car?

14 A He could be.

15 Q And then you see some movement right over there just
16 right off camera, don't you? Do you see the movement?

17 A Yes, sir, I do.

18 Q And who is that?

19 A That's Deputy Wilde.

20 Q Now, you would agree with me that while you were
21 chasing Mr. Smith, Joy was going through his pockets
22 looking for something.

23 A Yes, sir. He was also going through his pockets when I
24 was asking for his I. D. --

25 Q Right.

Greg Satterfield
Cross-examination by Mr. McPherson

1 A -- when I was directly in front of him.

2 Q Pretty obvious he was going through all of his
3 pockets, right?

4 A Yes, sir.

5 Q And then he walks off camera. So you can't see what
6 he is doing when he is off camera.

7 A Yes, sir.

8 Q So even though you testified earlier that he stayed
9 put, he really didn't stay put, did he?

10 A There was some movement.

11 Q There was a lot of movement, wasn't there?

12 A Yes, sir.

13 Q In fact, there was a lot of things he could have done
14 while he was left unattended for a couple of minutes at
15 least. Would you agree with that?

16 A Yes, sir.

17 Q All right. Now, I believe as a part of this
18 investigation there was some other surveillance tapes that
19 were gotten or that you or Investigator Wilde got hold of.

20 A I do not recall any surveillance. I did not place any
21 surveillance tapes into evidence.

22 Q You don't remember any surveillance tapes retrieved
23 from the Super 8 or the Sleep Inn?

24 A I know we tried and that the owner of the motel could
25 not pull it.

Greg Satterfield
Cross-examination by Mr. McPherson

1 Q Do you know if a surveillance C. D. was submitted into
2 evidence or not?

3 A I do not recall. I know we tried to get one and the
4 owner could not produce. I think it was the Super 8.

5 Q Okay. And you don't think y'all got it.

6 A I do not recall.

7 Q Is it possible y'all could have retrieved the Super 8?

8 A I do not recall.

9 MR. McPHERSON: Okay. May I approach?

10 (Property report marked Defendant's Exhibit No. 3 for
11 Identification.)

12 Q I'm showing you what's been marked as Defense
13 Exhibit 3 for identification purposes only. Do you
14 recognize that document?

15 A Yes, sir. That must have been the one that doesn't
16 have any -- that had the wrong date, or you couldn't.

17 Q Is that your signature on the document?

18 A Yes, sir.

19 Q And does that document indicate that you retrieved a
20 surveillance C. D. from the Super 8 Motel?

21 A Yes, sir.

22 Q So you would agree with me that you did secure a video
23 from the Super 8 Motel.

24 A Yes, sir.

25 Q And do you recall who was the one that got it, you or

Greg Satterfield
Cross-examination by Mr. McPherson

1 Wilde, or both of you or --

2 A I do not recall.

3 Q Okay. And do you recall whether or not y'all got the
4 video, the secured video, from the Sleep Inn motel?

5 A I do not recall.

6 Q Do you recall looking at either one of these videos or
7 any videos besides the one from your car?

8 A The one from the -- I do recall that from the Super 8,
9 that was the wrong dates, or the owner messed up, had the
10 wrong date or the wrong surveillance video on there.

11 Q Okay. So did you try to go back and get the right
12 date?

13 A He could not provide that.

14 Q And how much time had transpired before y'all went
15 back and tried to get the right one?

16 A I do not recall.

17 Q It could have been over a month though, correct?

18 A I do not recall.

19 Q Okay. But I'm just asking you. Could it have been at
20 least a month?

21 MR. MCPHERSON: Objection, Your Honor. He's answered
22 yes.

23 THE COURT: Sustained.

24 Q Now, I believe you searched. One of y'all searched
25 Joy, correct?

Greg Satterfield
Cross-examination by Mr. McPherson

1 A If I am not mistaken, that was Deputy Wilde.

2 Q Would you agree with me that a little bit of cocaine
3 was found on Joy?

4 A I believe there was a charge on Joy.

5 Q And would you agree with me that a little crack was
6 found on Joy?

7 A I do recall that.

8 Q And would you agree with me that the baggy, the bag
9 that you picked up, contained cocaine and crack?

10 A This was a big bag.

11 Q Yeah. But you would agree it contained both
12 substances.

13 A Yes, sir.

14 Q Now, let's go back to the arrest of Travis Smith. He
15 was chased out into the middle of Blackstock Road, is that
16 correct?

17 A Yes, sir.

18 Q So did he make it into the median, or how far into the
19 road did he make it?

20 A We were in the middle of the road.

21 Q In the median?

22 A We were in the middle of the road.

23 Q Would you agree there's a median in the middle of the
24 road?

25 A We were in the middle of the road. That's where I

Greg Satterfield
Cross-examination by Mr. McPherson

- 1 tackled Mr. Smith.
- 2 Q Right. So you tackled him.
- 3 A Yes, sir.
- 4 Q And then who handcuffed him?
- 5 A I did.
- 6 Q And so who took charge of Mr. Smith?
- 7 A I put him back in the back seat of my patrol car after
- 8 I handcuffed him.
- 9 Q So you had charge of him the whole time. I mean
- 10 after. Once he was arrested and handcuffed, you took
- 11 charge of him until you put him in your car.
- 12 A Yes, sir.
- 13 Q Now, I believe on that video, you see that the video
- 14 just kind of shows a blur go by between the two cars.
- 15 Would you agree with that?
- 16 A Yes, sir.
- 17 Q And you would also agree. Well, let me ask you this.
- 18 You say Mr. Smith as y'all were chasing him turned around
- 19 and threw the drugs.
- 20 A Yes, sir.
- 21 Q So he's running. He turns around while he's running,
- 22 throws his drugs and turns back around and keeps on
- 23 running.
- 24 A Yes, sir.
- 25 Q And okay. So but even though he has time to do all of

Greg Satterfield
Redirect examination by Mr. McCarty

1 that, y'all didn't catch him when you went through that
2 motion, is that correct?

3 A I caught him.

4 Q Well, I know you caught him out in the middle of the
5 road but not when he threw the drugs, right?

6 A Sir, he had a big jump on me. I didn't get into the
7 foot chase until after Deputy Wilde pursued.

8 Q Well, who took the lead, you or Deputy Wilde?

9 A I passed Deputy Wilde.

10 Q Okay. You've seen the video. You would agree that
11 you were just, you and Deputy Wilde were just, a split
12 second behind him.

13 A Yes, sir.

14 Q All right. But yet he has time to turn around, throw
15 those drugs and turn back around and run on out into the
16 middle of Blackstock.

17 A Yes, sir. That's what I observed.

18 Q And so I believe I'll pass the witness. No further
19 questions.

20 MR. McCARTY: Just briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. McCARTY

23 Q Deputy Wilde, Mr. McPherson wants to portray this foot
24 chase and this throw as if the defendant came to a stop,
25 turned around and faced you and threw something and turned

Greg Satterfield
Redirect examination by Mr. McCarty

1 back around and continued to run. Is that the way it
2 occurred?

3 A No, sir. It was all one fluid motion. It was a simple
4 pulls a bag out, turn, throw it and then back. There was no
5 stopping. He never broke a stride in the foot pursuit.

6 Q So simply threw it back over his shoulder as he's
7 running.

8 A Yes, sir; yes, sir.

9 Q Deputy Satterfield, I may have called you Deputy
10 Wilde. I apologize. The camera angle on your car, we only
11 have a limited view. Would you agree with me?

12 A Yes, sir.

13 Q Is there any way to tell either how far or how short
14 Joy Wood ventured away from that vehicle?

15 A No, sir.

16 Q Joy Wood remained in close proximity to that vehicle,
17 wouldn't you agree?

18 A Yes, sir.

19 Q Did you -- let me ask you this. Where you located
20 that substance at, what's marked there -- and I believe is
21 it No. 4?

22 A Yes, sir, it is.

23 Q State's No. 4. Did you ever see Joy Wood -- did you
24 see him, I guess, get close to that substance?

25 A No, sir.

Greg Satterfield
Recross-examination by Mr. McPherson

1 Q Thank you.

2 MR. McCARTY: Nothing further, Your Honor.

3 RECROSS-EXAMINATION

4 BY MR. MCPHERSON

5 Q You indicated you saw Mr. Smith pull the drugs out and
6 then throw them.

7 A Yes, sir. I observed him throw a bag, throw a plastic
8 bag.

9 Q Okay. You said you saw him pull them out, pull the
10 drugs out and throw them.

11 A Yes, sir.

12 Q So I'm assuming he pulled them out of his pants and
13 threw them real quick in one fluid motion.

14 A Sir, I was chasing him. I'm not sure where he pulled
15 it from.

16 Q Okay. You would agree with me that his clothes were
17 real baggy, the pants he had on were baggy pants.

18 A Yes, sir.

19 MR. MCPHERSON: No more questions.

20 MR. McCARTY: Nothing, Your Honor.

21 THE COURT: Step down.

22 MR. McCARTY: Your Honor, the state would next call
23 Deputy Matt Wilde.

24

25

Matt Wilde

Direct examination by Mr. McCarty

1 MATTHEW WILDE, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. MCCARTY

4 Q If you will, please introduce yourself to the jury,
5 please.

6 A My name is Matthew Wilde. I'm an investigator with the
7 sheriff's office. I've been there about eight and a half
8 years.

9 Q As an investigator can you describe what your duties
10 are currently there?

11 A Currently I'm assigned to the regional support unit.
12 And basically what we do is take community complaints. And
13 we address them.

14 Q Mr. Wilde, on the 12th of February of 2008, were you
15 on duty with Deputy Satterfield?

16 A Yes, I was.

17 Q Do you recall coming into contact with the defendant
18 that evening?

19 A Yes, I do.

20 Q Could you describe to the jury what you observed
21 during that time?

22 A Basically, that evening Deputy Satterfield and I were
23 on our way home. I was riding in his vehicle. He was
24 taking me back to my car.

25 As we come around and turned right off of Reidville.

Matt Wilde

Direct examination by Mr. McCarty

1 Road onto South Blackstock Road, we started -- and down
2 south, Blackstock South, South Blackstock a little bit.
3 And on the right-hand side is a Sleep Inn.

4 As we approached the entrance to the Sleep Inn a white
5 in color car pulled out in front of us. Satterfield who
6 was driving had applied his brakes.

7 The car then pulled kind of into the median, and then
8 it pulled into the Super -- as we put our blue lights on,
9 it pulled into the Super 8 parking lot.

10 Q You were involved in the traffic stop then, safe to
11 say, correct?

12 A Yes, sir, I was. I was on the passenger side,
13 obviously, because I was in the passenger side of the car.
14 And Deputy Satterfield who was on the driving, approached
15 the driver's side of the car.

16 Q When the vehicle stopped did you approach this white
17 Ford car?

18 A Yes, I did.

19 Q What side of the vehicle did you approach to?

20 A I approached on the passenger side.

21 Q And can you tell me, did you come into contact with
22 anybody on that side?

23 A Yes, I did. Mr. Smith was sitting in the front
24 passenger seat.

25 Q Could you describe to the jury that evening when you

Matt Wilde

Direct examination by Mr. McCarty

1 first came into contact with Mr. Smith, how was he dressed?

2 A He was wearing, I believe he was wearing, like dark in
3 color baggy jeans. And he was wearing a very oversized
4 plaid coat with some sort of shirt underneath it.

5 Q Deputy Wilde, I ask you to identify if I may. I'll
6 ask you. I'll hand you what's marked as State's Exhibit 5.
7 Do you recognize that? If you need to pull it out --

8 A May I pull it?

9 Q You can pull it out.

10 A Okay. Yeah. That's the same coat that Mr. Smith was
11 wearing on that evening.

12 Q That was the same coat you saw him wearing that
13 evening?

14 A Yes.

15 Q Was he wearing it around his shoulder like a person
16 normally would wear a coat?

17 A Yes, sir, absolutely.

18 Q All right. And, Deputy Wilde, I'm assuming since that
19 is the same coat, you retrieved that coat subsequent to
20 this arrest, is that correct?

21 A Absolutely. I did.

22 MR. McCARTY: Your Honor, at this time I'd ask that
23 State's Exhibit 5 be admitted.

24 MR. MCPHERSON: I have no objection.

25 THE COURT: It's admitted.

Matt Wilde

Direct examination by Mr. McCarty

1 (Jacket marked State's Exhibit No. 5.)

2 Q Deputy Wilde, if you can, describe to the jury just so
3 they can see -- and let me move the jacket over to the
4 other side. As you are speaking with Mr. Smith, can you
5 describe how he was acting or what the nature of your
6 conversation was with Mr. Smith?

7 A Yes, sir. Basically, what happened was I walked up on
8 the passenger side, and Mr. Smith was seated in the front
9 passenger side of the vehicle.

10 It was a small. I believe it was like an Escort. It
11 was very small. It was a 4-door car, but it was very
12 small.

13 So he's sitting in the car, and I'm basically back
14 here on what we call the door pillar, and I'm looking into
15 the vehicle talking to him.

16 As I walked up I asked him, I said, hey, how are you
17 doing tonight, and I asked him, you know, what his name is.
18 He says Travis Smith.

19 I asked him for his identification, and he basically
20 turns and hands me a hotel key card. So obviously that
21 wasn't his driver's license.

22 So I asked him, said can I have, you know, can I see
23 your I. D. And then at that time just say that I'm seated
24 where Mr. Smith was seated, he, he turns his back to me
25 like this.

Matt Wilde

Direct examination by Mr. McCarty

1 Keep in mind he's wearing a big heavy coat in a very
2 small car. So I can't really see what he's reaching for or
3 what he's doing. And I see him turn like this. And he's
4 digging in his pocket for something.

5 And as I'm looking I could see money coming out of the
6 pocket, which I thought it was kinda strange. So I felt
7 like he might have had a gun, might have had something that
8 could hurt me. So I asked him to step out of the car at
9 that point.

10 Q Although he could have simply been reaching for his I.
11 D., is that correct?

12 A Absolutely. He could have just been simply reaching
13 for his I. D., but I couldn't see what he was reaching for.
14 And in my experience, I've been doing this eight and half
15 years, and I make a lot of traffic stops every week. And
16 that just didn't seem right. Most people don't do that.

17 Q So it's a safety concern.

18 A It was absolutely a safety concern.

19 Q And you asked Mr. Smith, the defendant, to step out of
20 the vehicle, is that correct?

21 A Yes, I did.

22 Q Could you describe what happened as he steps out of
23 the vehicle?

24 A Okay. As he steps out of the vehicle, again, because
25 he's wearing a heavy -- he steps out of the car. He doesn't

Matt Wilde
Direct examination by Mr. McCarty

1 give me any trouble.

2 And as, because he's wearing a heavy coat and
3 everything, I asked him to place his hands up on the top of
4 the car so I could just pat, check the outside of his
5 pockets and make sure he didn't have any guns or anything
6 on him. And then we continued with our business.

7 As he puts his hands up, he takes off running, or he
8 tries to take off running. So what I did was I grabbed
9 what I could grab, which was his coat, and, I guess, I got
10 part of his shirt too. And his coat and his shirt came
11 off, and then he continued running away from me.

12 Q So you were able to remove the jacket off of him as he
13 was trying to run away from you.

14 A That wasn't my goal, but, yeah, that's what happened.

15 Q And you, you ultimately were in a foot pursuit with
16 him, is that correct?

17 A Yes, sir.

18 Q And Deputy Satterfield at some point joined into that
19 foot pursuit.

20 A Yes, he did.

21 Q If you can, I know that Deputy Satterfield testified
22 that he was the one who apprehended Mr. Smith. Were you --

23 MR. McPHERSON: Your Honor, I'm going to object to him
24 saying what Satterfield testified to. I'd ask that these
25 witnesses be --

Matt Wilde

Direct examination by Mr. McCarty

1 THE COURT: Well, let me see y'all just a minute.

2 (Bench conference held off the record in the presence
3 of the jury but out of the hearing of the jury.)

4 Q Deputy Wilde, in this foot pursuit, can you describe
5 where you were in location to the defendant during this
6 pursuit?

7 A Okay. When we first took off running, I really can't
8 recall which, if we went around the back of the car or
9 around the front of the car.

10 What I remember is that we were apart. The way we
11 were apart, their car was in front of ours. And then
12 either we went around the back or went around the front.
13 But we went towards the hotel. We went back towards the
14 Super 8.

15 As we rounded the corner of the Super 8 in the dark,
16 there's a little grassy area there. And at that time
17 Mr. Smith just made a loop and came back around.

18 At that point because Satterfield was behind me, he
19 was able to get closer to Mr. Smith than I could. So
20 basically we turned around. And then we came back across
21 the cars.

22 I believe, I think we came between the cars again.
23 And as we came between the cars Mr. Smith turned and threw
24 something back behind us. It was like a, about a, baseball
25 size.

Matt Wilde
Direct examination by Mr. McCarty

1 At that point Deputy Satterfield was able to tackle
2 him. And that gave him the opportunity to tackle him in
3 the street.

4 Q You weren't able to, or were you able to see from
5 where that item was retrieved?

6 A I know it was retrieved from, I think it was retrieved
7 from the, passenger side. I'm sorry. The driver's side of
8 both of our vehicles, somewhere between there and, and
9 the --

10 Q I'm sorry. My question was not clear.

11 The item that Mr. Smith threw, you don't know from
12 where he got that on his body, do you?

13 A No, sir. I know he didn't get from his coat or shirt,
14 because that was left where it came off him.

15 Q Let me ask you this too. When he exited the vehicle
16 was he holding anything in his hands that you were aware
17 of?

18 A No, he wasn't, because I believe that he actually put
19 both of his hands up on the top, and then he took off
20 running.

21 Q Okay. So from somewhere in that pursuit he produced
22 something and threw it back.

23 A Yes, sir.

24 Q Did you retrieve the item that was thrown down or
25 thrown away as Mr. Smith was running?

Matt Wilde

Direct examination by Mr. McCarty

1 A No. Deputy Satterfield did.

2 Q Deputy Wilde, did you ever after the defendant was
3 arrested or placed into custody, did you perform a search
4 of the vehicle or a search of Mr. Smith's belongings like
5 the coat that remained there?

6 A Yes, I did.

7 After we secured, after Satterfield secured,
8 Mr. Smith, I went and secured the driver of the vehicle.
9 And then at that point I went back to the coat and started
10 looking through Mr. Smith's coat. And I found over \$6,000
11 of cash in his left pocket that was bundled up in rubber
12 bands.

13 Q The coat where you found it, where was it at? Was it
14 in the vehicle, laying on the ground, do you recall?

15 A I don't remember for sure, but most likely it was on
16 the ground beside the vehicle.

17 Q Deputy Wilde, did you ever see Joy Wood, the driver of
18 this vehicle, touch the coat or mess with the coat?

19 A No, I did not.

20 Q Did you ever see -- did you ever see Joy Wood approach
21 the item thrown by Mr. Smith?

22 A No, I did not.

23 MR. McCARTY: I believe that's all the questions I
24 have, Your Honor. Thank you.

25

Matt Wilde
Cross-examination by Mr. McPherson

1 CROSS-EXAMINATION

2 BY MR. MCPHERSON

3 Q Now, I believe you indicated while you were
4 questioning Mr. Smith and he was still in the car, you saw
5 some money fall from his pocket.

6 A Yes, I did.

7 Q Or a pocket, correct?

8 A Yes, I did.

9 Q Which pocket?

10 A His left coat pocket.

11 Q Okay. And you would agree with me that you made a
12 report at or near the time of the incident in question.

13 A Yes. I did.

14 MR. MCPHERSON: May I approach?

15 THE COURT: You may.

16 (Supplemental report marked Defendant's Exhibit No. 4
17 for Identification.)

18 Q I'm showing to you what's been marked for
19 identification purposes only as Defense Exhibit 4. Would
20 you agree with me that this is a report that you made?

21 A Yes. I do.

22 Q Would you agree with me that in this report that you
23 made you indicated you saw money falling out of his pants?

24 A Yes, sir. I did write that. I have to clarify myself,
25 because the way he was sitting in the car, I mean, he's

Matt Wilde

Cross-examination by Mr. McPherson

1 sitting up against the center console. And, you know,
2 sitting in the car, your pocket, your coat pockets, is close
3 to your pants pocket. I mean, it could be either-or.

4 Q So which was it?

5 A I'm not sure. It's coming from that area, sir. I
6 mean, the area is --

7 Q You testified under oath that it was his coat.

8 A Okay. Well, that's where I found the rest of the
9 money, sir.

10 Q Right. But now in your report you say it was his
11 pants.

12 A Okay.

13 Q You agree with that, right?

14 A I agree it was coming from that area which would be the
15 same area.

16 Q Well, you didn't say it came from the pants area. I
17 mean, you said, "I saw money falling from his pants in this
18 area," isn't that correct?

19 A Yes, sir.

20 Q So you're pretty explicit that it was his pants.

21 A Yes, sir.

22 Q You agree with that.

23 A I agree.

24 Q But now you're saying, well, since I said coat, maybe
25 it wasn't his pants, maybe it was his coat.

Matt Wilde
Cross-examination by Mr. McPherson

- 1 A I'm just saying it came from that area, sir.
- 2 Q Okay. Now, were y'all in a marked vehicle or an
- 3 unmarked vehicle?
- 4 A We were in a marked black and white patrol car.
- 5 Q All right. And who was driving the car?
- 6 A Deputy Satterfield was driving the car.
- 7 Q Okay. And you're in the front passenger seat?
- 8 A Yes, sir.
- 9 Q And y'all are turning off of Reidville Road.
- 10 A Yes, sir, we were.
- 11 Q And off Reidville Road, you turned onto Blackstock
- 12 Road.
- 13 A We turned onto South Blackstock Road.
- 14 Q And that put y'all going in a northerly direction.
- 15 A Yes, sir. We were headed towards Highway 29.
- 16 Q And you would agree with me that if you're traveling
- 17 north on South Blackstock Road, Sleep Inn would be on the
- 18 right and the Super 8 would be on the left.
- 19 A Yes. It would.
- 20 Q And you would agree with me too that there is a median
- 21 or a turn lane on South Blackstock Road.
- 22 A Yes. There is.
- 23 Q Okay. Now, would you also agree with me that there
- 24 are two driveways that come out of Sleep Inn?
- 25 A I'm not sure.

Matt Wilde

Cross-examination by Mr. McPherson

1 MR. MCPHERSON: May I approach?

2 THE COURT: Yes.

3 Q I'm showing you what's been marked for identification
4 purposes only, a photograph. Do you recognize that
5 photograph?

6 A Yes, sir. It appears to be the area where we're
7 talking about.

8 Q Okay. Only difference is this is in daytime, correct?

9 A Correct.

10 Q And this incident happened at nighttime.

11 A Yes, sir.

12 Q And would you agree with me that there's a drive here
13 and a drive there shown on this photograph?

14 A There is one, but I believe that there's a driveway
15 before that also that's not in the photograph.

16 Q Okay. So it could be three driveways?

17 A Could be three, yes, sir.

18 Q All right. And so which driveway did he pull out of?

19 A He pulled out of the one closer to Reidville Road.

20 Q All right. And are you very familiar with this area?
21 Is this one of the areas you travel a lot or not too much?

22 A No, sir, I don't. I don't really travel that area that
23 much. I don't live near the area. I don't really work over
24 there all of that much.

25 Q And do you know how many driveways there are that pull

Matt Wilde
Cross-examination by Mr. McPherson

1 into Super 8?

2 A Not off the top of my head. I don't know. I know
3 there's one on the upper end and I know there's at least one
4 on the lower end. But I'm not really sure.

5 Q But you would agree there's at least two.

6 A There's at least two, yes, sir.

7 Q You would agree with that, at least two.

8 A Yeah. Absolutely.

9 Q Okay. Now, I noticed that you remarked that Officer
10 Satterfield had to jam on his brakes because the car pulled
11 out in front of you.

12 A Yes. I did.

13 Q Is that correct?

14 A Yes, sir, it is.

15 Q And you've had an opportunity to review your report.

16 A Yes, sir.

17 Q Have you not?

18 A Yes, sir.

19 Q And you would agree with me that in the report you
20 didn't say anything about Officer Satterfield having to jam
21 on his brakes. Did you?

22 A No, sir, I didn't, because I didn't believe that was my
23 car the -- I wasn't driving. So I just, I just listed what
24 my involvement was in the, in the stop.

25 Q And you didn't think it was important, did you?

Matt Wilde

Cross-examination by Mr. McPherson

1 A At the time I just listed the things, the major parts
2 of the case that were important. And I thought that Deputy
3 Satterfield would list that part since he was the one that
4 initiated the traffic stop.

5 Q Okay. Now, when this car pulled out of the Sleep
6 Inn -- I believe it's your testimony.

7 A Yes, sir.

8 Q Pulled onto the median.

9 A No.

10 Q Back in the center of the road, right?

11 A Do you want me to tell what happened, sir?

12 Q No. Just you answer my questions. Did it pull onto
13 the median?

14 A The car pulled into the median, yes.

15 Q Okay. And it eventually had to make a left turn into
16 the Super 8 Motel, correct?

17 A Eventually it did, yes.

18 Q And so it made a left turn from the median into the
19 Super 8 Motel.

20 A Yes, after it pulled out in front of us.

21 Q Okay. But if you -- now, and you would agree that the
22 blue lights were activated immediately as soon as he pulls
23 out in front of you. I mean, I realize it takes a second
24 or so to flip the button. But once you observed that, the
25 button is flipped, correct?

Matt Wilde
Cross-examination by Mr. McPherson

1 A Once we observed the violation, the button is flipped.
2 And then it takes another second or two for the camera to
3 come on, yes, sir.

4 Q Okay. So only a couple of seconds should be missing
5 from, you know, from that immediately after you activated
6 those blue lights, correct?

7 A Yes, sir.

8 Q So you would agree with me that it should have caught
9 him driving down the median to make the left turn.

10 A I don't know, sir.

11 Q Okay.

12 A I really can't answer that.

13 Q Okay. Do you recall which entranceway he or which
14 driveway he pulled into on the Super 8? Would it be the
15 one on the south side or the one on the north side?

16 A I'm not a hundred percent sure. I just know where we
17 ended up.

18 Q Where did you end up?

19 A We ended up on the north side closer to 29 towards that
20 corner.

21 Q Okay. So he could have pulled in either driveway.
22 You don't remember.

23 A He could have. I don't remember off the top of my
24 head. I'm sorry.

25 Q But you agree with me it's a pretty good distance

Matt Wilde

Cross-examination by Mr. McPherson

1 between both driveways.

2 A Yes. It is.

3 Q Okay. Now, did you retrieve any videos, surveillance
4 videos?

5 A I did go -- I have a question.

6 Q I'm sorry?

7 A I can't answer that question right now because it might
8 involve something else.

9 Q Did you retrieve a surveillance video from Super 8?

10 MR. MCCARTY: Your Honor, may we approach on this just
11 for a moment?

12 THE COURT: Yes.

13 (Bench conference held off the record in the presence
14 of the jury but out of the hearing of the jury.)

15 Q Did you get a video from the Super 8 motel, yes or no?

16 A Yes, I did.

17 Q Did you get a video from the Sleep Inn Motel, yes or
18 not?

19 A Yes, I did.

20 Q And would you agree with me that the video from the --
21 the video from the Sleep Inn, you didn't even view it for
22 about a month, is that correct?

23 A No, sir. I viewed it within, I viewed it within a few
24 days of the incident, and the video quality was terrible.
25 It wasn't worth watching.

Matt Wilde
Cross-examination by Mr. McPherson

1 Q And the video from the Sleep Inn was for the wrong
2 date, wasn't it?

3 A No, sir. The video from the Super 8 was the wrong
4 date.

5 Q Okay. The video from the Super 8 was the wrong date.
6 But when y'all went back to get the right date it had
7 already been recorded over or something like that, correct?

8 A Yes, sir. That's what happened. Basically, what had
9 happened was the manager was the person who had to give us
10 the video. And we had back, gone by the day after this
11 happened to try to get the video.

12 He gave it to me a few days later. And then I
13 realized it was the wrong video. I went back and then she
14 did it again. By the time I get to the manager, it had
15 already been recorded over.

16 Q Now, you would agree with me y'all, after you realized
17 you had a bad video, you waited weeks before you went back
18 to get the right video.

19 A Are you referring to the Super 8 video?

20 Q The one that was messed up where you got the wrong
21 day.

22 A The wrong day.

23 Q Yes.

24 A No, sir. As soon as I realized we had the wrong one, I
25 called over there and tried to get in touch with the manger.

Matt Wilde

Cross-examination by Mr. McPherson

1 And it took a couple of days before we could get ahold of
2 him.

3 Q But you never got the right video, did you?

4 A No, sir, because it was recorded over. The system
5 recorded over it.

6 Q You would agree with me that the Super 8 video is
7 right there in the parking lot where everything went down.

8 A I really don't recall. I believe it may have been,
9 because obviously I was interested in getting it. So it
10 could have been, yes.

11 Q And most likely it would have captured everything that
12 your car camera didn't capture.

13 A That was the goal, yes.

14 Q Now, y'all didn't get that video until two or three
15 days later though, right, the one from Super 8?

16 A Yes, sir. Because the incident happened on a Tuesday,
17 and then by the time we were able to go back there and get
18 with the manager it was, I think, I believe it was Friday
19 before we even got the original video. That was the wrong
20 one.

21 Q All right. And then you waited some more days before
22 you went back to retrieve the right one.

23 A We were off Saturday and Sunday. So I believe we went
24 back on Monday to try to retrieve the right one, and I
25 wasn't able to get it.

Matt Wilde
Cross-examination by Mr. McPherson

1 Q So you didn't, didn't deem it important enough to go
2 back as soon as you realized you had the wrong tape, and
3 didn't deem that it was important enough to try to go back
4 and get that tape knowing that it might be recorded over.

5 A It was important, but, you know, this is the way things
6 worked out, sir.

7 Q But not as important as a weekend.

8 A It was important.

9 Q Even though a man's life and liberty is at stake.

10 MR. MCCARTY: Objection, Your Honor.

11 THE COURT: Sustained.

12 Q So you would agree with me the Sleep Inn and the Super
13 8 videos really don't show anything.

14 A The Sleep Inn video didn't show anything because it had
15 been recorded over about 200 million times and had lines all
16 through it. It was dark and rainy.

17 And then the Super 8 video, we never got the right
18 one, so it doesn't show anything.

19 Q Now, when you, when, your primary focus was on, on
20 Mr. Smith, correct?

21 A Yes, sir.

22 Q And when Mr. Smith took off running, I believe you
23 indicated you were right behind him.

24 A Yes, sir. I was as close as I could be.

25 Q And do you remember how he ran? Did he run in front

Matt Wilde

Cross-examination by Mr. McPherson

1 of the white car that was stopped or between the two cars
2 that you were in, between the car that you were in and the
3 car that y'all stopped?

4 A I already testified, sir, that I don't recall whether
5 or not we ran around the front of the car or around the back
6 of the car.

7 Q So you don't remember how it went. But you weren't
8 really focused on Joy at all during this chase, were you?

9 A No, sir. I was focusing on the person that was running
10 from me.

11 Q And you were trying to catch him.

12 A Absolutely.

13 Q And I assume you were running as fast as you could.

14 A Yes.

15 Q And so was Mr. Smith.

16 A I'm sure he was.

17 Q And I believe you indicated that when he got out of
18 the car he didn't have anything in his hands.

19 A No, sir. He didn't.

20 Q Okay. So you're testifying that as he's running he
21 reaches into one of his pockets and pulls out this bag and
22 turns around and throws it and keeps on running.

23 A Yes, I am.

24 Q Okay. And then Satterfield catches up to him out in
25 the middle of Blackstock Road.

Matt Wilde

Cross-examination by Mr. McPherson

1 A Yes, sir.

2 Q And you don't think a person running, going through
3 his pockets and pulling something out and turning around
4 and throwing it, would slow him down enough for y'all to
5 catch him right there when he's throwing it?

6 A When, when he took off from me, he pulled. Of course I
7 was trying to hold onto his clothes to keep hold of him.
8 And he pulled out of his clothes. That delayed me for a,
9 you know, a few seconds.

10 And by the time I got in behind him, we run into the
11 grass area where it was very dark. And I didn't notice if
12 he pulled the stuff out of his pants or not. But what
13 slowed him down is when we came back across. He turned
14 around backwards and threw that stuff past us, over our
15 heads as we were chasing after him.

16 Q And when you came back to the car, Joy was over there
17 where they'd dropped the clothes, right, or where Mr. Smith
18 had left his clothes? He was in that general area.

19 A I don't remember which. I'm pretty sure he was still
20 in the driver's side. I'm not a hundred percent sure. I
21 have to look at the video to find out.

22 Q You think he was on the driver's side?

23 A That's what I think.

24 Q Would it help you if you saw the video?

25 A A hundred percent, yeah.

Matt Wilde
Cross-examination by Mr. McPherson

1 (Whereupon, the D. V. D. was played for the jury.)

2 Q On the right side of the car do you see --

3 A Yes, sir.

4 THE COURT: Mr. McPherson, can you repeat that

5 question? I'm not sure the court reporter heard it.

6 Q I said on the right side of the car you can see some
7 moving. Is that you? Is that correct?

8 A Yes, that's me.

9 (Whereupon, the D. V. D. was played for the jury.)

10 Q You're right, one of y'all is right, behind him,
11 right?

12 A Yes, sir.

13 Q Maybe five feet behind him, you would agree?

14 A Yes, sir. At that point we were.

15 Q Okay. At that point.

16 A Yes, sir. If you go back and look where we came
17 through the trucks, we were back. We were back pretty far
18 behind them.

19 Q Okay. I know when you first took off. But by the
20 time he had crossed in front of the two cars or in front of
21 your car, y'all were fairly close to him.

22 A It seems so.

23 Q After he had passed or while he was in front of the
24 cars that he turned around and threw the drugs, right?

25 A I think so.

Matt Wilde
Cross-examination by Mr. McPherson

1 Q Okay. Now, I want you to keep an eye on Joy and see
2 if he's standing still.

3 (Whereupon, the D. V. D. was played for the jury.)

4 Q You would agree with me Joy got off screaming in the
5 area where you found the drugs, correct?

6 A Yes.

7 Q Goes off again in that same area. I want you to watch
8 the right side of the car and see if you see any movement
9 over there. Do you see something moving over there?

10 A Yes, I do.

11 Q So you would agree Joy didn't stay put, right?

12 A From watching the video, yes, sir, I do, from, you
13 know, chasing.

14 Q And you would agree that Joy was right in the area
15 where the drugs were found, correct?

16 A I believe so, yes.

17 Q And you would also agree that he was over there in the
18 area where the money was found in the coat.

19 A Yes. He was.

20 Q And you saw how close y'all were, correct?

21 A At which point, sir?

22 Q When you passed in front of the car.

23 A Going which way?

24 Q Coming from Super 8 Motel in front of the cars headed
25 toward the road.

Matt Wilde

Cross-examination by Mr. McPherson

- 1 A Yes, we were close. We were getting close.
- 2 Q Very close. But yet it's your testimony he had time
- 3 to reach in a pocket, turn around and throw the drugs and
- 4 run on out into Blackstock Road.
- 5 A Yes. He did. I saw him throw the dope, and that's
- 6 what happened.
- 7 Q Okay. Now, you would agree that a small amount of
- 8 cocaine was found on Joy.
- 9 A Along with a crack pipe, yes.
- 10 Q And the crack pipe was found on Joy.
- 11 A Yes.
- 12 Q And so it was crack and cocaine found on Joy, correct?
- 13 A I'm not sure if there was crack found on Joy. I know
- 14 there was a crack pipe found on Joy, along with cocaine.
- 15 Q And you're just not sure. So there was a crack pipe
- 16 and cocaine found on Joy as far as you remember.
- 17 A Yes.
- 18 Q And you would agree that this bag that y'all picked up
- 19 contained crack and cocaine, correct?
- 20 A Yes.
- 21 Q Now, did you fingerprint the bag?
- 22 A No. I saw whose hand it came from. I didn't need to
- 23 fingerprint it.
- 24 Q Okay. You didn't think that would be prudent?
- 25 A No. I saw exactly whose hand it came from. There was

Matt Wilde
Cross-examination by Mr. McPherson

1 no need to fingerprint it.

2 Q That would have been helpful to the jury if my
3 client's fingerprints had been on the bag, correct?

4 MR. McCARTY: Objection, Your Honor.

5 THE COURT: Overruled.

6 A I'm sorry?

7 Q That would have been helpful for the jury if my
8 client's fingerprints had been on the bag.

9 A It could have been helpful. But in my experience,
10 we've fingerprinted bags of drugs before, and we very rarely
11 ever get anything off them.

12 Also, it was raining that night. So the water would
13 have also taken effect and decreased the possibility of us
14 getting fingerprints off the bag.

15 Also, I saw whose hand the bag came out of. So there
16 was really no need to fingerprint it.

17 Q But you would agree that that bag that y'all picked up
18 off the road or off the parking lot was a plastic bag and
19 it was sufficient to hold a fingerprint.

20 MR. McCARTY: Objection, Your Honor. There has been
21 no foundation laid as to whether or not Deputy Wilde even
22 has any knowledge.

23 THE COURT: Well, I understand. But if he doesn't
24 know, he can say he doesn't know.

25 A Although I've been trained as an investigator and I've

Matt Wilde

Cross-examination by Mr. McPherson

1 worked in police work for eight and a half years, I'm not a
2 fingerprint technician. And I'm not a hundred percent
3 familiar of every substance that a fingerprint can be lifted
4 off of.

5 I just know in my experience that a lot of times just
6 the way the bags are tightened up and rolled up that
7 they're very difficult to get fingerprints off of.

8 Q Okay. So then, lastly, you would just agree with me
9 that while y'all were chasing Travis, Joy was practically
10 just left alone.

11 A Yes, sir. He was left beside the car.

12 Q For a pretty good while..

13 A For, yeah, 15 or 20 seconds or whatever it was.

14 Q It would be more than that, wouldn't you agree?

15 A I don't know. I didn't count it down as we left the
16 car and --

17 Q For like a minute or two.

18 A I don't know. Like I said, I didn't count it down.

19 MR. MCPHERSON: No further questions.

20 MR. McCARTY: Nothing on redirect, Your Honor.

21 THE COURT: You may step down.

22 MR. McCARTY: Your Honor, the last witness will be
23 Beth Stuart.

24 THE COURT: All right. Let me see y'all just a
25 minute.

Beth Stuart
Direct examination by Mr. McCarty

1 (Bench conference held off the record in the presence
2 of the jury but out of the hearing of the jury.)

3 MR. McCARTY: Investigator Stewart.

4 THE COURT: This will be a relatively short witness,
5 and then we will recess for the afternoon.

6 BETH STUART, having been first
7 duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. McCARTY

9 Q If you will by way of introduction, just tell the jury
10 who you are, please.

11 A Mary Elizabeth Stewart.

12 Q Where are you currently employed?

13 A At the Spartanburg County Sheriff's Office.

14 Q In what capacity?

15 A Forensic chemist.

16 Q As a chemist, would you tell me what type of education
17 or training experience you have to be performing that job
18 there at the sheriff's office?

19 A Sure. I have a bachelor's of science degree in
20 chemistry and a bachelor's of science degree in biochemistry
21 from the College of Charleston. I also have a master's
22 degree in chemistry from the University of South Carolina.

23 I've been to the South Carolina Law Enforcement
24 Academy. I've been to the D. E. A. Forensic Chemist
25 School. I've been to the D. E. A. Clandestine Laboratory

Beth Stuart
Direct examination by Mr. McCarty

1 School. I've been to numerous training and instrumentation
2 in the lab.

3 Q Have you had the opportunity in the past to as part of
4 your job do an analysis on a substance that is or is not a
5 possible narcotic substance?

6 A Yes. I've tested approximately 2,500 drug cases, which
7 includes about 5,000 different drug items.

8 Q And those drug items, would one of those drug items be
9 cocaine or cocaine based items?

10 A Yes, sir.

11 Q Have you had the opportunity prior to today to testify
12 in a trial regarding your analysis?

13 A Yes. I believe 19 times.

14 Q Nineteen times. Of those 19 times have you been
15 qualified as an expert in the area of chemical analysis?

16 A Yes, all 19.

17 MR. MCPHERSON: Your Honor, at this time I would offer
18 Ms. Stewart as an expert in the field of chemistry and
19 narcotics analysis, Your Honor.

20 THE COURT: Any objection?

21 MR. MCPHERSON: No, Your Honor.

22 THE COURT: She is so qualified.

23 Q If you will, will you describe to the jury your
24 process and procedure for when you receive a substance in
25 for testing, how that works?

Beth Stuart
Direct examination by Mr. McCarty

1 A Sure. We pick up our evidence from the evidence room.
2 They're packaged in what's called a BEST bag, which stands
3 for best evidence sample testing. It's basically we test
4 drugs from all over the county and other counties. So it's
5 basically just a uniform way for officers to turn in drugs
6 to us.

7 These bags are not tamper proof, but they're tamper
8 evident, which means you have to physically cut them open.
9 Or if you try to rich them, rip them, the lines on the side
10 will distort. So they're in these bags.

11 When I'm in the evidence room I look at them and make
12 sure they're sealed before I ever take them into my
13 custody.

14 When we get back to the lab they're logged into a
15 computer system. When I actually pull the case out to work
16 it, I again check it and initial that it's sealed. And
17 then I open the case. I open one case at a time.

18 I will take my samples, weigh the substance, put
19 everything on the instrument that we use and then reseal it
20 back up with my initials and put it into a safe until it's
21 returned to evidence.

22 Q What would be -- what would happen if you were to
23 receive a substance in a BEST bag that appeared to be
24 tampered with?

25 A We would not even remove it from evidence if it weren't

Beth Stuart
Direct examination by Mr. McCarty

1 sealed properly.

2 Q So you wouldn't even perform an analysis.

3 A No, sir.

4 Q I show you what's marked as State's Exhibit No. 4 and
5 also State's Exhibit No. 3 and ask you if you recognize
6 those items there, please.

7 A Yes. This is a BEST bag. It corresponds to Lab No.
8 L080122, which is a number I assign to it. It has my
9 initials on it, the date I checked it and okay. The okay
10 means that before I opened it it was sealed. And also it
11 has my initials and the date and the lab number where I
12 resealed it after I tested it.

13 This is a copy of my analysis report that goes along
14 with this BEST bag in this case. It has my signature at
15 the bottom.

16 Q The analysis report corresponds to the items that you
17 tested that are in that bag, correct?

18 A It does. It has the same lab number that I assigned,
19 and the same case number.

20 Q And does it reveal what the items were that are within
21 Item No. 4, State's Exhibit No. 4?

22 A Yes.

23 Q And what their weights are?

24 A Yes.

25 Q If you will, please tell the jury what those are.

Beth Stuart
Direct examination by Mr. McCarty

1 A Yes. A white powder substance corresponding to cocaine
2 with a weight of 11.10 grams.

3 Q 11.10 grams?

4 A Yes, sir.

5 Q Had that bag appeared to be tampered with or damaged
6 in any way would you have tested those items at all?

7 A No, sir. Like I say, my initials, the date that I
8 checked it and the letters okay, which is my signal to
9 myself that it was sealed before I opened it is on it, so.

10 Q After you analysis you complete the report, is that
11 correct?

12 A Yes, sir.

13 Q And then where are the substances returned to, or what
14 do you do with them?

15 A They're sealed back up just like you see them right now
16 with my initials actually sealed inside of here. So if
17 anyone were to reopen them, I would know immediately.

18 They're placed into a safe which myself and the other
19 chemist only have the combination to. And then they're
20 returned to the evidence room.

21 Q Thank you.

22 MR. McCARTY: No further questions, Your Honor, or if
23 I may, Your Honor, I apologize. If I can, I would like to
24 admit State's 3 and 4 into evidence.

25 MR. McPHERSON: I object to the report coming into

Beth Stuart
Cross-examination by Mr. McPherson

1 evidence. That just amounts to bolstering. It's hearsay.
2 She's already testified as to what's contained in her
3 report.

4 THE COURT: Okay. Let me see the two exhibits,
5 please.

6 (Bench conference held off the record in the presence
7 of the jury but out of the hearing of the jury.)

8 THE COURT: I sustain the objection as to Exhibit 3.
9 (Cocaine marked State's Exhibit No. 4.)

10 MR. MCPHERSON: Thank you, Your Honor. Your Honor,
11 again, thank you. I have no further questions.

12 THE COURT: Because the witness has testified to it,
13 it would be cumulative. There is no objection to
14 Exhibit 4.

15 MR. MCPHERSON: Correct.

16 CROSS-EXAMINATION

17 BY MR. MCPHERSON

18 Q Ma'am, I believe you also tested drugs or some
19 substances that were taken from a person by the name of Joy
20 Wood, is that correct?

21 A I'd have to have any files or anything relating to that
22 case to know that, sir.

23 Q All right.

24 MR. MCPHERSON: May I approach? I would like to have
25 this marked.

Beth Stuart
Cross-examination by Mr. McPherson

1 MR. McCARTY: Your Honor, the state is willing to
2 stipulate if he's going to show Ms. Vaughn a copy of the
3 report involving substances taken from Mr. Wood that they
4 are crack and cocaine, or cocaine based items, Your Honor.

5 THE COURT: All right. Well, let me see y'all just a
6 minute.

7 (Bench conference held off the record in the presence
8 of the jury but out of the hearing of the jury.)

9 MR. McPHERSON: In view of the stipulation, then I am
10 going to withdraw the question. I have no further
11 questions.

12 MR. McCARTY: Nothing, Your Honor.

13 THE COURT: All right. You may step down.

14 MR. McCARTY: Your Honor, may this witness be excused?

15 THE COURT: She may.

16 MR. McCARTY: Thank you.

17 (Whereupon, the witness was excused.)

18 MR. McCARTY: Your Honor, at this time the state would
19 rest its case.

20 THE COURT: All right. Ladies and gentlemen, that is
21 all of the testimony or other evidence to be offered by the
22 state, at least in their case in chief.

23 We're going to recess now. We'll resume in the
24 morning beginning at 9:30 with the continuation of the
25 trial.

1 During the overnight recess you're not to discuss the
2 case with anybody whatsoever in any fashion whatsoever.
3 That includes family, friends, as well as fellow jurors.

4 You're also not to conduct any investigation or do
5 your own research into any issue that might arise during
6 the trial. You have to base your decision upon the
7 evidence received during the trial. You can't be
8 influenced by any outside consideration.

9 With that instruction in mind, do have a good evening.
10 Please report directly to your jury room by 9:30 in the
11 morning, 9:30 in the morning. And you'll be going to a
12 different jury room. So be sure you talk to the bailiff
13 about that before you leave.

14 (The following takes place outside the presence of the
15 jury.)

16 THE COURT: Any matters we need to address before we
17 recess?

18 MR. MCPHERSON: Yes, Your Honor.

19 I'd like to make a directed -- motion for a directed
20 verdict of trafficking cocaine on the grounds that the
21 evidence is totally insufficient to prove that my client
22 committed this act, constructive possession or actual
23 possession of ten grams or more of cocaine.

24 Also, nobody has specifically identified my client as
25 the person that had these drugs, even though they've

1 referred to a Mr. Smith. They never pointed him out.

2 THE COURT: All right. Mr. McCarty.

3 MR. McCARTY: Thank you, Your Honor.

4 Your Honor, I believe Deputy Satterfield did identify
5 the defendant at the very beginning of his testimony as
6 that being the person that he stopped in the traffic stop
7 as Travis Smith.

8 Your Honor, I think that inference is enough to carry
9 on that they're dealing with the same Travis Smith in light
10 of the fact that the only other person there was a guy
11 named Joy Wood.

12 Your Honor, as to the question or the other issues, I
13 believe there's been enough evidence presented by the state
14 to at least allow the jury to decide the factual question
15 as to whether or not he was in actual or constructive
16 possession of the drugs.

17 THE COURT: Okay. Well, clearly the defendant has
18 been introduced to everybody in the courtroom as Travis
19 Smith. He stood and presented himself. And the witnesses
20 have testified that it was Travis Smith. There is not but
21 one here in the courtroom.

22 So I think that's sufficient. The jury may not accept
23 it, but I think that's sufficient for them to make that
24 determination.

25 Where is the evidence lacking on his actual or

1 constructive possession of the cocaine, Mr. McPherson?

2 MR. McPHERSON: Your Honor, the video clearly shows
3 Joy Wood walking over to the area where they picked up
4 these drugs and clearly shows him walking over to where the
5 coat was. And even though you can't see him planting the
6 money, he obviously threw the drugs. He planted the money.

7 THE COURT: It's obvious?

8 MR. McPHERSON: Very obvious.

9 THE COURT: Well, maybe it is to you and maybe to some
10 others, maybe to the jury, in fact. But the witnesses
11 testified. And I've got to consider the evidence
12 presented. The witnesses testified they saw him throw that
13 bag containing the cocaine.

14 MR. McPHERSON: Your Honor, you saw the video, I
15 assume.

16 THE COURT: I certainly did more than once.

17 MR. McPHERSON: And you saw that they were within
18 about five feet of him. And the testimony was that he
19 reached into his pocket while he was running and turned
20 around while he was running and he threw those drugs while
21 he was running.

22 THE COURT: Right.

23 MR. McPHERSON: And that's not credible.

24 THE COURT: Oh, I see. So what you're saying is that
25 I should find as a matter of law that that's not credible

1 evidence.

2 MR. McPHERSON: Correct.

3 THE COURT: All right. Well, I'm not going to do
4 that. I think that's evidence from which the jury could
5 make that determination.

6 So I am going to deny your motion for a directed
7 verdict.

8 Anything else?

9 MR. McPHERSON: No, sir.

10 THE COURT: All right. Court is in recess until
11 9:30 in the morning.

12 Let's do this before we go. Have you talked to
13 Mr. Smith about his right to testify or not?

14 MR. McPHERSON: Yes, sir.

15 THE COURT: He is going to testify?

16 MR. McPHERSON: No, sir.

17 THE COURT: He is not.

18 Mr. Smith, do you understand you have an absolute
19 right to remain silent, as well as testify if you wish to?
20 It's your decision. Only you can make it.

21 Have you and Mr. McPherson discussed your right to
22 testify, as well as not testify?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And has Mr. McPherson explained to you the
25 advantages and disadvantages of your testifying, as well as

1 not testifying?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And do you appreciate what those
4 advantages and disadvantages are?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And have you had time to reflect upon your
7 decision as to whether or not you'll testify?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And have you made a decision?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And what is it?

12 THE DEFENDANT: Not take the stand.

13 THE COURT: Okay. And is that a decision that you
14 made of your own free will and accord?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Anybody force you into it or pressure you
17 into it?

18 THE DEFENDANT: No, sir.

19 THE COURT: You made that decision on your own?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: You're satisfied with it?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Do you have any other
24 witnesses you want Mr. McPherson to call on your behalf?

25 THE DEFENDANT: No, sir.

1 THE COURT: All right. Thank you.
2 Court's in recess until 9:30 in the morning.
3 END OF PROCEEDINGS FEBRUARY 26, 2009
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1 (Proceedings February 27, 2009)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Any matters we need to address before the
5 jury is brought in?

6 MR. MCPHERSON: Yes, sir, Your Honor.

7 I've requested a mere-presence instruction. And it's
8 my understanding you're going to deny that requested
9 instruction.

10 THE COURT: Well, do y'all want to be heard?

11 MR. MCPHERSON: Yes, sir.

12 THE COURT: Okay.

13 MR. MCPHERSON: It's my position that based on the way
14 the testimony developed yesterday that a jury could infer
15 from the testimony that my client was merely present at the
16 time of the alleged offense. And so I'm requesting a
17 charge of mere presence. And I have submitted this
18 requested charge to the Court.

19 THE COURT: All right. Mr. Mr. McCarty.

20 MR. MCCARTY: Thank you, Your Honor.

21 Your Honor, the state doesn't believe that a
22 mere-presence charge would be appropriate given the
23 testimony elicited from the officers. The testimony
24 elicited from the officers, as the Court knows, was that
25 the defendant had in his actual physical custody at some

1 point the drugs that were recovered on the scene. Albeit
2 he threw them down before he was physically taken into
3 custody, they were in his actual physical custody and
4 possession prior to the arrest, Your Honor.

5 THE COURT: All right. And the state's theory of the
6 case is not going to be any argument or inference that he
7 constructively possessed it.

8 The state's position is that it's an actual-possession
9 case, he did have in his actual possession the cocaine that
10 is alleged.

11 MR. McCARTY: Yes, sir. Prior to the arrest he had in
12 his possession crack cocaine.

13 THE COURT: All right. Okay.

14 MR. McCARTY: Thank you.

15 THE COURT: Well, Mr. McPherson, I think based upon an
16 actual-possession theory that the mere presence is not an
17 applicable instruction, because the state is alleging that
18 he had it in his actual possession. They're not relying
19 upon any constructive-possession theory.

20 So I think mere presence would have no application
21 under those circumstances. And I'll instruct the jury that
22 they have to find that he had it in his actual possession
23 before he can be found guilty, with knowledge of the
24 character of the drug too.

25 All right. Anything else?

1 MR. McPHERSON: The only other thing is I believe that
2 I get to go last on the arguments this time.

3 THE COURT: You do if you don't introduce any
4 evidence.

5 MR. McPHERSON: I'm sorry?

6 THE COURT: You do if you don't introduce any
7 evidence.

8 MR. McPHERSON: And I didn't introduce any.

9 THE COURT: We haven't finished yet. But I'm going to
10 give you that chance to rest.

11 MR. McPHERSON: Yes, sir.

12 THE COURT: If you do rest without presenting
13 evidence, you will go last.

14 MR. McPHERSON: Yes, sir.

15 THE COURT: All right. Anything else?

16 MR. McCARTY: No, Your Honor. Thank you.

17 THE COURT: All right. Bring the jury in please.

18 (The following takes place in the presence of the
19 jury.)

20 THE COURT: Good morning, ladies and gentlemen.

21 As you know, when we recessed yesterday the state had
22 concluded with their presentation of evidence. So we'll
23 now proceed with any additional evidence to be offered by
24 the defense.

25 MR. McPHERSON: The defense rests, Your Honor.

Closing arguments

1 THE COURT: All right. Ladies and gentlemen, that is
2 all of the evidence that's going to be introduced in the
3 trial of this case. And therefore what remains to be done
4 are the lawyers' final summations, after which I'll
5 instruct you on the law. And then you'll begin with your
6 jury deliberations.

7 So please give the lawyers your attention now as they
8 give you their final summations.

9 Mr. McCarty.

10 MR. McCARTY: Thank you, Your Honor. May it please
11 the Court.

12 Yesterday afternoon you got to see and hear from the
13 officers involved in this case.

14 You watched the video that was recorded from Deputy
15 Satterfield's in-car camera three times. You saw the
16 events as they unfolded that night.

17 The question I think you need to ask yourself is why
18 did Travis Smith run, why did the defendant run from Deputy
19 Wilde that night.

20 Now, we saw on the video that Joy Wood is there. He's
21 moving around. You can see that on the video. He even
22 goes off camera at least once.

23 But Joy Wood maintains his presence right next to that
24 car while the defendant is running to the motel, running
25 back across the parking lot, running out into Blackstock.

Closing arguments

1 And while running, he's throwing something.

2 You heard Deputy Satterfield and Deputy Wilde testify
3 that as they were chasing the defendant they saw him throw
4 something back over his shoulder as he was running past
5 them.

6 Now, Mr. McPherson would like for you to reward the
7 defendant because they didn't apprehend him right at that
8 time. Travis Smith had outrun the police at that point.
9 Congratulations.

10 He didn't catch him then. They caught him out in the
11 middle of Blackstock Road, but they went back and looked
12 for that item that they saw him throw over his shoulder.

13 Deputy Satterfield collected that balled-up item that
14 he saw that looked like a baseball that the defendant had
15 in his hand, removed from some place on his body, had it in
16 his hand and threw over his shoulder. Deputy Wilde
17 testified he saw the same thing.

18 Now, why would both of these deputies both see this
19 defendant throw something? Why would Deputy Satterfield
20 feel compelled to go back and look in an area -- again
21 off-camera you saw him walk all the way across the camera
22 and look off camera for something on the ground -- if he
23 had not seen the defendant throw something to begin with?

24 If the defendant hadn't thrown anything, why would he
25 have gone all the way back across the camera back to the

Closing arguments

1 other side of that parking lot and begin to look for
2 something? And then you saw him right at the end of one of
3 the -- watch the video -- walk back into the video holding
4 it up.

5 Now, the defense attorney would like for you to
6 believe that Joy Wood is out there that night and Joy Wood
7 puts this down on the ground back over here and comes over
8 here on this side of the car and stuffs \$6,000 into the
9 coat that the defendant was wearing before he got out of
10 the car.

11 How do we know that's not true? Deputy Wilde
12 testified that he was on the passenger side of that
13 vehicle.

14 THE COURT: Excuse me, Mr. McCarty.

15 Mr. O'Shields, I want the door shut. As I indicated,
16 there is no coming and going during these arguments or the
17 instructions.

18 I don't understand why we can't get that clear.
19 They'll have to go back outside. Now, I don't want any
20 more interruptions, Mr. O'Shields.

21 Excuse me, Mr. McCarty.

22 MR. McCARTY: Thank you, Your Honor.

23 As I was saying, Mr. McPherson for the defense would
24 love you to believe that Joy Wood sticking the money in
25 that coat, that he's thrown the drugs down back over on

Closing arguments

1 that side of the parking lot. But we know from Deputy
2 Wilde's testimony that as he's on the passenger side of the
3 vehicle he's looking down in the car. He's asking the
4 defendant for his I. D. when he first hands him a room key,
5 wait a second that's not your I. D., let me have your I. D.

6 The defendant turns his body around. He's hiding
7 something. He's moving something. Now, whether the money
8 fell out of his jacket pocket at that point, or his pants
9 pocket or in the seat, it was in the area of his waist.

10 We know that prior to even getting out of that vehicle
11 Deputy Wilde sees the money falling out of the defendant's
12 pockets, jacket pocket, pants pocket wherever it may have
13 been in that immediate area right there.

14 Deputy Wilde not knowing what the defendant's doing
15 down here, turning his back away from him, says, hey, wait
16 a second, little scared here, got to be concerned about my
17 safety first. "Defendant, step out of the car for me,
18 please, and we'll just pat you down and make sure you don't
19 have a gun, a knife, something that's going to hurt me
20 during this traffic stop."

21 And what does he do? As soon as that defendant gets
22 out of the car Deputy Wilde begins to just perform that
23 little patdown to make sure that everything is okay. The
24 defendant takes off running.

25 You heard Deputy Wilde testify he had to grab hold of

Closing arguments

1 him to get him to stop. He rips that jacket off of him.
2 He leaves it laying on the ground and begins the chase of
3 Travis Smith through the parking lot, to the Super 8 Motel,
4 back through the parking lot and out onto South Blackstock
5 Road before they stop him.

6 Another point of Joy Wood. Ask yourself this. And I
7 think that we both agree Joy Wood was also arrested that
8 night with drugs in his possession.

9 Why would Joy Wood -- those drugs over there -- put
10 the money and the coat over here and still keep drugs on
11 him? Why would Joy Wood allow himself to be arrested with
12 drugs anyway but get rid of some of them but not all of
13 them? Why would Joy Wood not run himself?

14 Joy Wood although he had wandered around -- I admit
15 that. He wandered around that car. He stayed there. He
16 stayed there to the point where the officers were able to
17 after they got hold of Mr. Smith get Mr. Wood.

18 So why didn't Joy Wood run? If these were Joy Wood's
19 drugs, why didn't he run? Why wasn't he the first person
20 out of that car running across the parking lot, running
21 back up to the hotel, through the parking lot and out onto
22 South Blackstock Road?

23 My last question to you will be why did the defendant
24 or why were they also able to recover that \$6,000 plus from
25 that jacket on the ground after Deputy Wilde saw that in

Closing arguments

1 the car?

2 They want you to believe that Mr. Wood was able to
3 come over there and place all of that money in that jacket.
4 But he doesn't explain how Deputy Wilde saw that money in
5 the jacket prior to the defendant exiting that vehicle.

6 I anticipate that when Mr. McPherson, the defense
7 attorney, comes up here he's going to try and hang this case
8 on Joy Wood. But those are some questions you need to ask
9 yourself as you're considering this case and deliberating on
10 it.

11 Why didn't Joy Wood run? Why did the defendant? Why
12 two deputies see Travis Smith throw something back over his
13 shoulder, and if they didn't see that, then why would Deputy
14 Satterfield have crossed back in front of that camera to
15 that side of the parking lot looking for something that if
16 he didn't see the defendant have something in his possession
17 and throw it away as they're running?

18 Now, the judge is going to instruct you after we both
19 get done talking about what the law is in this case. And
20 anything that I tell you that may be different from what he
21 tells you, you need to follow him. He is the judge on the
22 law. I'm just trying to present to you the facts of the
23 case and try to tell you a little bit about what I
24 understand the law to be.

25 Now, the elements of a defense are kind of like -- and

Closing arguments

1 I don't like to think of elements because I never was good
2 at chemistry or science in high school or college. But I
3 like to think of it as bacon because I'm kinda a guy -- you
4 can look at me and tell I like to eat.

5 But in a recipe you have to have certain ingredients.
6 That's the same way with any criminal offense. There has to
7 be certain ingredients that we have to have in order to have
8 a criminal conviction.

9 The elements of trafficking, and you'll hear the judge
10 explain them all, but in a nutshell are this. The defendant
11 had to knowingly and actually possess more than ten grams of
12 cocaine. Knowingly, actually possess more than ten grams of
13 cocaine.

14 Now, knowledge. I have to show you that he knew what
15 he had in his presence. How do we know he knowingly had it
16 in his presence? I think that's kinda obvious. He takes
17 off running out of the car and tries to get rid of it by
18 throwing it. Why else would you be running away? Why else
19 would you be trying to throw something if you didn't know
20 what you had was something you weren't supposed to have?

21 Now, actual possession. Listen to the judge's
22 instruction on actual possession. Actual possession means
23 that at some point that evening he had those drugs in his
24 actual physical possession.

25 It may not be at the time of arrest and it need not be

Closing arguments

1 at the time of arrest. When they took him down at
2 Blackstock Road he didn't have to have it physically on his
3 possession at that point. But at some point prior to that
4 that, that evening between the point they initiated the
5 traffic stop and the point at which arrested him, he had to
6 have had those drugs actually in his possession.

7 How do we know he had them actually in his possession?
8 We hear Deputy Satterfield and Deputy Wilde. Both saw him
9 throw that item over his shoulder. They recovered that
10 item. That item was tested. You heard the chemist come up
11 here. It's cocaine.

12 And the threshold amount for trafficking, like I told
13 you yesterday, is the weight. Trafficking is based on
14 weight. It's not based on driving it in a car. It's based
15 on the weight of the drug.

16 The threshold weight for a powdered substance such as
17 cocaine is ten grams. You heard her testify that it was 11,
18 more than 11, grams of cocaine that was actually found
19 inside recovered by Deputy Satterfield that night.

20 Mr. McPherson is going to come up here too I anticipate
21 and talk to you about reasonable doubt in a case.

22 What is reasonable doubt? Reasonable doubt is that
23 type of doubt that would cause you to hesitate to act. And
24 that's what it is. And think about that in its most-common
25 sense terms, because reasonable doubt is not proof to you

Closing arguments

1 beyond all doubt.

2 In fact, if it was proof to you beyond all doubt,
3 probably no criminal case would ever be able to proceed
4 because there may be some doubt in every case. There may be
5 a question in every case. But it's proof to you beyond all
6 reasonable doubt, not proof to you beyond the horizon of
7 doubt, not proof to you beyond all doubt, but just beyond a
8 reasonable doubt.

9 Mr. McPherson is going to get you to try to believe
10 that Joy Wood in this situation is that reasonable doubt.
11 But he's not. There's too many questions involving Joy Wood
12 in this case that leaves you to wonder why he didn't run,
13 why if he got rid of the drugs would he still link himself
14 with these drugs? Why did Deputy Wilde see this money
15 falling out of the pocket in the car before he ever exited
16 the vehicle? And then why would Deputy Satterfield have
17 crossed way back over that parking lot to recover something
18 if he hadn't seen Travis Smith throw it down to begin with?

19 Ladies and gentlemen, these, as you've heard, are the
20 facts of the case. And I believe that that was the
21 testimony elicited.

22 You will have the chance to decide and go back there to
23 decide on the credibility of the witnesses that you've
24 heard. You can believe all the testimony you heard, some of
25 the testimony, parts or none of it.

Closing arguments

1 But I believe to you that the state has presented to
2 you a case in which you can decide that Travis Smith, the
3 defendant, is guilty of the crime of trafficking in cocaine
4 more than ten grams. Thank you.

5 MR. MCPHERSON: You know, the officers thought a lot
6 of things. One of the things they thought was that when
7 they observed Joy Woods coming out of the Sleep Inn that
8 night he pulled right in front of them and they had to jam
9 on their brakes. And that was the reason for the stop.

10 But if you'll recall the testimony, neither officer
11 put in their report that they had to jam on their brakes.
12 And that's very important. So they left out a very
13 important item for the stop even. And there is nothing in
14 their report of either officer that they had to jam on
15 their brakes.

16 One of the officers you heard testify that when they
17 took off chasing Travis Smith, that Joy stood still. But
18 then we showed you the video. Joy didn't stand still. Joy
19 is over there going through all of his pockets. And you
20 can see him.

21 And he even actually walked over to the police car and
22 put his paperwork down, whatever he had, and starts going
23 through his pocket. And then he walks off camera into the
24 area. According to the police officer's own testimony, Joy
25 walks right into the area where the drugs were found.

Closing arguments

1 Not only that. As you're watching that video in the
2 right-hand corner of the white car where the jacket was
3 dropped you can see somebody fiddling around on the ground.
4 And the only person there at that time was Joy Smith. And
5 all of that is captured on video, even though they
6 testified under oath that Joy stood still. Joy didn't
7 stand still.

8 And then they would have you believe that my client is
9 running for his life full speed -- running, running,
10 running -- and that he while he's running for his life
11 reaches into his baggy-pants pockets still running full
12 speed, pulls out a bag, a large bag, turns around, still
13 running while he turns around, throws the drugs backwards,
14 turns back around and runs on out into the middle of
15 Blackstock Road.

16 And that video showed you they were no more than about
17 5 feet apart, only a split second. He wouldn't have had
18 time to do all of that. So I'm telling you they thought a
19 lot of things that they were wrong about.

20 The officers testified that he saw the cash fall out
21 of his coat pocket. But then we showed him his report.
22 And his report said pants pocket. They're getting
23 everything confused. Pants pockets.

24 Then there was no mention of retrieving any money out
25 of the car, nothing, even though they saw it fall out in

Jury charge

1 the car. And they recovered videos. And the videos from
2 both motels were both worthless because they waited too
3 long to go back and get the correct video from one of the
4 motels.

5 And then they raised the question about Joy Wood,
6 well, he had some drugs on him, why didn't he get rid of
7 those. Well, Joy Wood, Joy, got rid of the drugs that
8 would have put the case into a trafficking amount. He just
9 had very small amounts left on him.

10 So we submit to you that there is reasonable doubt in
11 this case, that Joy Wood very well could have planted those
12 drugs. It was obvious that he walked off camera twice, at
13 least twice, into the area where those drugs were found.
14 And you can see him on camera proceeding around to the
15 other side of his car. And if you watch the film you can
16 see something fiddling around on the ground near the coat.

17 So we submit to you that Joy threw those drugs and
18 that Joy planted the money in my client's jacket. And
19 therefore we request that you come back with a not-guilty
20 in this case. Thank you.

21 THE COURT: Madam forelady and ladies and gentlemen of
22 the jury, you of course have now heard and seen all the
23 evidence, as well as the summations of the lawyers. So I'm
24 going to instruct you on the law that's applicable in the
25 case. And then you'll be asked to go back and begin with

Jury charge

1 your deliberations. And through their process you'll
2 examine the evidence, decide the facts, apply the law and
3 arrive at a fair and just decision.

4 It is your exclusive duty to determine what the facts
5 are. And you do that through your own common sense
6 examination and evaluation of all of the testimony and
7 other evidence received during the trial of this case.

8 You 12 jurors alone will decide what weight, value and
9 effect to give to any particular testimony or other
10 evidence in the case. Your sole objective is to simply
11 reach the truth in the matter. And by doing that you will
12 have fulfilled our obligations as jurors, and that is to
13 simply give both the state and the defendant a fair and
14 impartial trial.

15 Now, in this case, as you know, the state through the
16 solicitor has accused the defendant, Travis Montre Smith,
17 with the crime of trafficking in cocaine.

18 The allegations setting forth that charge are
19 contained in that document called the indictment which I
20 referred to prior to your selection.

21 The indictment is not evidence of anything. It's not
22 proof of anything. It will be in the jury room because it
23 is going to be on the back of the indictment, Madam
24 Forelady, that you're going to be asked to indicate the
25 jury's unanimous decision. But other than serving as the

Jury charge

1 verdict form, the indictment serves no purpose so far as
2 you jurors are concerned.

3 But in that indictment the defendant is accused of
4 having committed the crime of trafficking in cocaine. And
5 as to those charges he has entered a plea of not guilty.
6 And, as you know, that plea of not guilty has therefore
7 placed upon the state the burden of proving the allegations
8 that are set forth in the indictment, the burden of proving
9 each of the essential elements which I'll tell you about
10 later of the crime that they allege against the defendant;
11 and therefore the burden is upon the state to establish the
12 defendant's guilt to the satisfaction of you 12 jurors
13 beyond a reasonable doubt before any verdict of guilty
14 could be returned.

15 Every person accused of a crime, and it does not
16 matter how serious the offense might be, is presumed to be
17 innocent of that charge. And that presumption of innocence
18 remains with every defendant, as it does with this
19 defendant, from the time that he is placed under arrest and
20 throughout the course of the criminal process and even
21 throughout the course of the actual trial in the case.

22 That presumption of innocence will be with this
23 defendant even as you go back into your jury room to begin
24 with your deliberations. And that presumption of innocence
25 will be with him in the jury room. And it will be with him

Jury charge

1 forever unless you 12 jurors determine that he no longer
2 entitled to that presumption of innocence.

3 That is after you have carefully examined all the
4 evidence and evaluated the testimony of witnesses, and from
5 that evidence you've decided the facts, and upon deciding
6 the facts you apply the law that I will have provided you,
7 if you 12 jurors determine that his guilt has been proven
8 beyond a reasonable doubt, then he would no longer be
9 entitled to that presumption of innocence. But it's only
10 if, unless and until you are satisfied of his guilt beyond
11 a reasonable doubt that the presumption of innocence would
12 no longer be applicable.

13 Now, while the state does have the burden of proving
14 the defendant's guilt beyond a reasonable doubt, that
15 doesn't mean that they have to prove his guilt beyond all
16 doubt or beyond any possible doubt. But it does require
17 the state to prove his guilt to your satisfaction beyond a
18 reasonable doubt.

19 The term reasonable doubt should be given its plain
20 and ordinary meaning. A reasonable doubt is the kind of
21 doubt that would cause a reasonable person to hesitate to
22 act upon the information provided.

23 A defendant in a criminal trial is entitled to any
24 reasonable doubt that arises from the evidence or lack of
25 evidence in a case. And if upon any factual issue

Jury charge

1 essential to a finding of a verdict of guilty you have some
2 reasonable doubt as how that issue should be resolved, it
3 would be your duty to resolve that reasonable doubt in
4 favor of the defendant.

5 Therefore if upon your consideration of the whole case
6 you have a reasonable doubt as to his guilt, you must
7 resolve that reasonable doubt in his favor and return a
8 verdict of not guilty.

9 And, at the same time, after you've considered all the
10 evidence and decided the facts and applied the law, if you
11 have no reasonable doubt as to his guilt, then it would be
12 your corresponding duty to convict the defendant of the
13 crime where it has been proven to your satisfaction beyond
14 a reasonable doubt.

15 Now, the same law that provides that you are the
16 judges of the facts also provides that I am the judge of
17 the law. And that simply means that nobody is going to
18 tell you how to arrive at your determination of fact in
19 this case.

20 You do that, as I have stated, through the exercise of
21 good judgment and common sense conscientiously applied to
22 the testimony and the evidence in the case. You must
23 however under your oath as a juror accept the law as I
24 provide it to you as being the law that is applicable in
25 this particular case.

Jury charge

1 In other words, you're never to concern yourself with
2 what you thought the law was before you came to serve as a
3 juror this week or what you think the law ought to be. You
4 must simply under your oath accept the law as I provide it
5 to you as being the law that is applicable in this case.

6 Then you take that law and you apply it to the facts
7 as you 12 jurors determine those facts to be based upon
8 your common sense examination of the evidence in the case.

9 Now, as I've told, you are the sole judges of the
10 facts in this case, and you are therefore necessarily the
11 sole judges of the credibility of each witness that has
12 testified during the trial.

13 There are a number of factors which you should
14 consider in arriving at your assessment as to the
15 credibility of a witness. And therefore I'm going to list
16 those factors for you.

17 You may consider the demeanor of the witness, that is
18 how the witness appeared to you as the witness testified
19 from the witness stand. Was the witness straightforward in
20 responding to questions, or was the witness hesitant or
21 evasive in responding to any questions that were asked of
22 the witness? Simply put, did the witness appear to you to
23 be telling the truth and to have knowledge of the facts to
24 which that witness has testified?

25 You may also consider whether or not the testimony of

Jury charge

1 a witness is consistent, or is it inconsistent with that
2 witness' own testimony or with other testimony or other
3 evidence in the case?

4 You may also consider how the witness came to know the
5 facts to which a witness has testified. In other words,
6 what was that particular witness opportunity and ability to
7 perceive the existence of those facts to which that witness
8 has testified by having previously used his or her senses?
9 And then what is that witness' ability to be able come into
10 court and to accurately recollect to you as to what they
11 have previously perceived?

12 You may also consider any bias or prejudice or
13 interest that a witness might have in the case. In other
14 words, do you find some reason that a particular witness
15 would come into court and would testify one way or another
16 to help or to hurt one side or the other.

17 And you may consider any interest that a witness might
18 have in the outcome of the case if you determine that a
19 witness does have such an interest and you find that that
20 interest would bear upon that particular witness'
21 credibility.

22 You may also consider whether or not the testimony of
23 a witness is strengthened, or is it weakened by other
24 testimony or other evidence received during the trial?

25 Now, because you are the sole judges of the facts in

Jury charge

1 this case and necessarily the sole judges of the
2 credibility of each witness, you are permitted to believe
3 as much or as little of what a witness has testified to as
4 you deem is appropriate.

5 Therefore you may believe everything that a witness
6 testified to. You may choose to believe none of it. You
7 may believe one portion of a witness' testimony and reject
8 some other portion of that same witness' testimony. In a
9 given case you could believe one witness as opposed to
10 several, or several as opposed to one.

11 But whatever your good judgment and common sense tells
12 you is the most believable and credible testimony is the
13 testimony you should accept, and you should reject any
14 testimony or other evidence that you find not to be
15 credible or believable.

16 Again, your sole objective is to simply reach the
17 truth in the matter, and by doing that you will have
18 fulfilled your obligations as jurors, and that is to give
19 both sides a fair and impartial trial.

20 Now, in the case the state has charged the defendant
21 with trafficking in cocaine. And that's a statutory
22 offense. And that just means that the legislature has
23 passed a law that prohibits certain conduct relating to the
24 drug known as cocaine. Where a person is found to have
25 engaged in conduct in violation of the statute, then it

Jury charge

1 subjects that person to some form of punishment or penalty.

2 Now, please understand that a jury is never to be
3 concerned with punishment or penalty. A jury is never to
4 be concerned with the consequences of any decision that you
5 make.

6 Your sole duty and obligation in this case, as in any
7 case, is to simply determine whether or not the defendant's
8 guilt has been proven beyond a reasonable doubt without
9 consideration for any consequence of that decision.

10 Now, the statute that the state alleges the defendant
11 has violated is set forth in Section 44-53-370. And that
12 particular code section provides that any person who
13 knowingly sells, manufactures, cultivates, delivers,
14 purchases or brings into this state; or any person who
15 provides financial assistance or otherwise aids, abets,
16 attempts or conspires to sell, manufacture, cultivate,
17 deliver, purchase or bring into this state; or any person
18 who is knowingly in actual or constructive possession or
19 who knowingly attempts to become in actual or constructive
20 possession of ten grams or more of cocaine or any mixtures
21 containing cocaine is guilty of the crime of trafficking in
22 cocaine.

23 Now, while it's not necessary that the state prove all
24 or more than one of the acts described above in order for
25 the defendant to be found guilty of trafficking in cocaine,

Jury charge

1 it is necessary that the state prove beyond a reasonable
2 doubt that the defendant committed at least one of those
3 acts described before the defendant could be found guilty
4 of the crime of trafficking in cocaine.

5 Now, in this particular case the state is alleging
6 that the defendant did traffic in cocaine by knowingly
7 having in his actual possession a quantity of more than ten
8 grams of cocaine.

9 And therefore before the defendant may be found guilty
10 of trafficking in cocaine in this case it would be
11 necessary that the state has proven to your satisfaction
12 beyond a reasonable doubt that the defendant did knowingly
13 have in his actual possession a quantity of ten grams or
14 more of cocaine or any mixture containing cocaine.

15 And within the meaning of that statute knowingly is
16 defined as having knowledge of the fact. When an act is
17 done knowingly, it refers to an act being done wilfully,
18 intentionally, purposefully and consciously.

19 The term actual possession within the meaning of the
20 statute occurs when the substance is shown to have been in
21 the actual physical custody or control of the person
22 charged with possession so long as it is further shown that
23 he did have knowledge of the presence and character of the
24 substance.

25 Knowledge and intent may be inferred from evidence

Jury charge

1 presented during the trial of the case, because sometimes a
2 fact may not be proven by direct evidence but may only be
3 proven by circumstantial evidence.

4 Direct evidence is the testimony of a person or
5 persons who have perceived some fact and they come into
6 court and they testify what they perceived.

7 Circumstantial evidence, on the other hand, is proof
8 of some other facts or set of facts which taken either
9 singly or collectively may prove some fact in question as a
10 necessary consequence, that is by an inference, an
11 inference simply being a deduction of fact that may
12 logically and reasonably be drawn from the proof of some
13 other fact or set of facts.

14 And of course the state must prove that the substance,
15 even if the defendant is shown to have possession of the
16 substance, the state has to prove that he did, in fact,
17 have possession of ten grams or more of cocaine or any
18 mixture of a substance containing cocaine.

19 Now, you are further instructed, and I emphasize to
20 you, that the fact that a defendant does not testify during
21 the trial of a case is not something that the jury may
22 consider in any fashion whatsoever during your
23 deliberations or in your determination as to whether or not
24 his guilt has been proven beyond a reasonable doubt.

25 As I have already stated, the burden is always upon

Jury charge

1 the state to prove a defendant guilty beyond a reasonable
2 doubt because they bring the accusation.

3 The burden is never upon a defendant to prove that he
4 is not guilty or to prove that he is innocent because in
5 some cases that would not be possible.

6 And therefore you may not reach any conclusion nor
7 draw any inference from the fact that a defendant does not
8 testify during a trial, nor may that fact be even discussed
9 by the jurors while engaged in your deliberations.

10 Now, Madam Forelady and ladies and gentlemen of the
11 jury, I am not in any way concerned with what your verdict
12 is, but I do tell you that the decision of the jury must be
13 unanimous. All 12 of you must be in agreement.

14 And so, Madam Forelady, as you and your fellow jurors
15 deliberate, once you have arrived at a unanimous decision,
16 I'm going to ask that you indicate that decision on the
17 back of the indictment. And you'll see on the back of the
18 indictment at the bottom left-hand corner there's the word
19 verdict. And it's beneath that word that you'll indicate
20 the jury's unanimous decision.

21 In this case you have two potential verdict forms.
22 Those two forms are guilty and not guilty. So whatever the
23 decision is, indicate it in the space provided, and also
24 sign your name as the foreperson and place the appropriate
25 date.

Jury charge

1 Now, Madam Forelady, you will notice that on this
2 verdict form there is a stamp, a clock stamp, in the space
3 where you are to write the verdict. That clock stamp
4 shouldn't be there. I don't know why they insist on
5 putting it there. It's in the wrong place. But they
6 continue to put it there. Just ignore it and write through
7 it.

8 Whatever the verdict is, you write in that space
9 provided, notwithstanding there's a clock stamp there.
10 Just act as though it were not there. And then sign your
11 name as the foreperson and let the bailiff know you have
12 reached a decision. We'll bring you back to receive that
13 decision.

14 Now, during your deliberations if there comes a time
15 where you have a question about the facts or the evidence
16 and you're wondering if there's some other piece of
17 evidence that you could have that might assist you in some
18 way, I can't answer those questions. And no additional
19 evidence can be introduced once you go back to begin
20 deliberations.

21 So even if some other evidence existed, you couldn't
22 have it. So don't inquire about the existence of any other
23 evidence in the event that should come to your mind.

24 If you have any question about the law that is
25 applicable, I can always answer those questions. So while

Jury charge

1 I cannot respond to any question as it relates to issues of
2 fact or evidence, I can always answer questions that you
3 have about the law that's applicable should you have one.

4 So if at any time you need an additional explanation
5 of the law or a clarification of the law, if you'll let me
6 know, I'll be happy to provide you with that explanation or
7 clarification.

8 If you have a question about testimony and you think
9 having testimony replayed will answer that question for
10 you, while I don't have transcripts available of a witness'
11 testimony, if you need to rehear testimony we can bring you
12 back into the courtroom to have testimony replayed in whole
13 or in part.

14 So should you have a question that can be resolved by
15 the rehearing of testimony, if you'll let the bailiff know,
16 we can bring you back for that purpose.

17 I don't know if any we have any smokers on the jury.
18 But if we do, you can smoke during your deliberations. You
19 can't smoke in the jury room. If you want to smoke you
20 have to go outside. It might be raining. I'm not sure.
21 But understand that all deliberations have to stop.
22 Deliberations may only be resumed and engaged in when all
23 12 jurors are present so that all may participate.

24 All right. With that I'm going to ask the primary 12
25 jurors if you'll please go with a bailiff back to your jury

Jury charge

1 room. But do not begin deliberations until I send you word
2 to do so.

3 (Whereupon, the jury retired to deliberate at
4 10:15 a.m.)

5 (Whereupon, the alternate juror was excused.)

6 THE COURT: Are there any exceptions taken to the
7 instruction or requests for additions to the instruction by
8 the state?

9 MR. McCARTY: No, Your Honor.

10 THE COURT: By the defendant?

11 MR. McPHERSON: Your Honor, I would just like to renew
12 my request for a mere-presence instruction. That would be
13 the only exception I have.

14 THE COURT: All right. Thank you. I'm going to
15 decline that request.

16 Let me ask y'all to verify any exhibits before they go
17 back.

18 (Pause.)

19 THE COURT: All right. Take the exhibits back and
20 tell the jury to begin deliberations and notify us when
21 they have concluded.

22 (Whereupon, a recess was taken.)

23 THE COURT: All right. The jury has reached a
24 verdict. Are we ready to receive it?

25 MR. McPHERSON: Yes, Your Honor.

Verdict

1 MR. McCARTY: Yes, sir, Your Honor.

2 THE COURT: Okay. Bring them in, please.

3 (Whereupon, the jury returned to the courtroom at 3:28
4 p.m. to report its verdict.)

5 THE COURT: Madam forelady, have you and your fellow
6 jurors reached a unanimous decision?

7 THE FOREPERSON: Yes.

8 THE COURT: Have you indicated that decision on the
9 back of the indictment as requested?

10 THE FOREPERSON: Yes, sir.

11 THE COURT: Did you sign your name as the foreperson?

12 THE FOREPERSON: Yes, sir.

13 THE COURT: If you will, please hand that up by way of
14 the bailiff.

15 All right. You may publish the verdict.

16 THE CLERK: State of South Carolina, County of
17 Spartanburg, State vs. Travis Smith, Indictment No.
18 2008-GS-42-3530, we, the jury, find the defendant guilty.
19 Signed today's date. Foreperson, Susan Berry.

20 If this is your verdict and still your verdict, please
21 raise your right hand.

22 (Whereupon, all jurors responded in the affirmative.)

23 THE CLERK: So say you all.

24 THE COURT: All right. Any other matters that need to
25 be addressed with the jury present?

Verdict

1 MR. MCCARTY: Yes, Your Honor. I'd like to poll the
2 jury.

3 THE COURT: Okay. Poll the jury, please, ma'am.

4 THE CLERK: Ladies and gentlemen, I will pose to you a
5 question, that question being is this your verdict and
6 still your verdict. When I call your name and number,
7 please answer yes or not.

8 Susan Berry.

9 THE JUROR: Guilty.

10 THE CLERK: Richard Bianchi.

11 THE JUROR: Yes.

12 THE CLERK: Tyrone Roberson.

13 THE JUROR: Yes.

14 THE CLERK: Coletta Girault.

15 THE JUROR: Yes.

16 THE CLERK: Aaron Bray.

17 THE JUROR: Yes.

18 THE CLERK: Barney Jones.

19 THE JUROR: Yes.

20 THE CLERK: Ranee Martin.

21 THE JUROR: Yes.

22 THE CLERK: Floyd Bryant.

23 THE JUROR: Yes.

24 THE CLERK: Anita Cassell.

25 THE JUROR: Yes.

Motion and sentence

1 THE CLERK: Donnell Ellis.

2 THE JUROR: Yes.

3 THE CLERK: Elizabeth Charles.

4 THE JUROR: Yes.

5 THE CLERK: And Douglas Arthur.

6 THE JUROR: Yes.

7 THE CLERK: The jury has been polled.

8 THE COURT: All right. Any other matters we need to
9 address with the jury present?

10 MR. McCARTY: No, Your Honor.

11 MR. McPHERSON: No, Your Honor.

12 (Whereupon, the trial jury was excused.)

13 THE COURT: All right. Any other matters to address
14 before I impose a sentence?

15 MR. McPHERSON: Yes, Your Honor.

16 I would like to make a motion for a new trial based on
17 our original motion to suppress. We still maintain that
18 the evidence that was, resulted from the stop and ordering
19 the defendant out of the car should have been suppressed.
20 And also we would argue that the verdict was not supported
21 by the evidence.

22 THE COURT: All right. Your motion for a new trial, I
23 guess, is denied.

24 All right. Anything further on behalf of the state?

25 MR. McCARTY: Your Honor, just maybe a recitation of

Sentence

1 the prior record.

2 Your Honor, Mr. Smith is facing under this charge a
3 third or subsequent offense.

4 Your Honor, for the Court and purposes of the record
5 I'd pass up -- I have four certified copies of the prior
6 sentences. Two of the offenses in each case were both pled
7 on the same date but covered different offenses, Your
8 Honor, if I may pass those up.

9 I shared them with Mr. McPherson, and I believe he
10 shared it with his client.

11 Your Honor, he has some other charges beyond just
12 those if the Court is interested in that as well.

13 THE COURT: Yes. Tell me about that.

14 MR. MCCARTY: Your Honor, from 1997, as captioned in
15 the 1998 indictments, he had a possession of cocaine and a
16 possession with intent to distribute cocaine.

17 Your Honor, he also during that year had two simple
18 possessions of marijuana charges from 1998. Your Honor, he
19 had a probation violation.

20 2000, Your Honor, he had an open container and two
21 distributions of cocaine, crack cocaine, Your Honor. I
22 believe those are captioned under the '01 indictments, Your
23 Honor.

24 Your Honor, in 2001 he had a C. D. V.

25 And in 2006 he had a driving under suspension, Your

Sentence

1 Honor.

2 (Copies of indictments marked Court's Exhibit No. 1.)

3 THE COURT: All right. Mr. McPherson, are you and
4 Mr. Smith in agreement that he had two distributions of
5 crack cocaine convictions occurring on June the 26th of
6 2002 and he had a conviction for possession with intent to
7 distribute cocaine in June of 1998 and a conviction for
8 possession of cocaine in June of '98? So two drugs charges
9 in 1998, two in 2002.

10 MR. MCPHERSON: Yes, sir.

11 THE COURT: Making this a third offense.

12 MR. MCPHERSON: Yes, sir.

13 THE COURT: It carries a mandatory minimum of not less
14 than 25 years and a maximum of 30.

15 MR. MCPHERSON: Correct.

16 THE COURT: Okay. Anything else you'd like to tell
17 me?

18 MR. MCPHERSON: Yes, Your Honor.

19 I mean, obviously this is an 85 percent case. My
20 client is going to be in jail a long, long time.

21 His girlfriend is here in court. She has three small
22 children by him. They'll be grown by the time he gets out,
23 no matter what the sentence.

24 I know it's a very narrow range that you have to
25 operate in. We would ask that you give him the minimum 25

Sentence

1 years in this case.

2 THE COURT: All right. Mr. Smith, anything you want
3 to add to what your lawyer has told me?

4 THE DEFENDANT: Mercy on me, Your Honor.

5 THE COURT: Okay. On Indictment 2008-3530, an
6 indictment for trafficking in cocaine, ten grams or
7 greater, third or subsequent offense, Sentence of the
8 Court, wherein you have been found guilty by the jury,
9 Sentence of the Court is you, Travis Smith, be confined to
10 the South Carolina Department of Corrections for a period
11 of 25 years.

12 Mr. Smith, you have a right to appeal the verdict of
13 the jury and the Sentence of the Court. You must file any
14 notice of your intention to appeal those decisions within
15 ten days of today's date.

16 MR. MCPHERSON: Can he get credit for time served?
17 That's automatic I believe.

18 THE COURT: It is.

19 END OF REQUESTED TRANSCRIPT OF RECORD
20
21
22
23
24
25

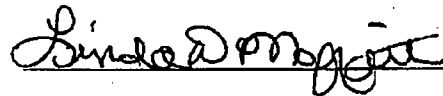
Certificate

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 26th and 27th days of February 2009.

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

March 25, 2009



Linda D. Moffitt
Circuit Court Reporter

Spartanburg County Courthouse

RANDOM STRIKE SHEET

JUDGE NAME : Cole, J. Derham

TRIAL TYPE : Criminal

PANEL ID : 2008-GS-42-3530

COURTROOM JAR

DESCRIPTION : STATE V. TRAVIS M. SMITH

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTF	DEF	GRT	REMARKS
1 Berry, Susan L	9	W	F	(✓)	(✓)	()	
2 Bradley, Gregory N	16	W	M	(✓)	(X)	()	
3 Bianchi, Richard J	176	W	M	(✓)	(✓)	()	
4 Roberson, Tyrone G	138	B	M	(✓)	(✓)	()	
5 Pruitt, Barbara G	133	W	F	(✓)	(X)	()	
6 Girault, Coletta M	58	B	F	(✓)	(✓)	()	
7 Barber, Dustan A Dr	7	W	M	(✓)	(X)	()	
8 Sprouse, Leslie	150	W	F	(✓)	(X)	()	
9 Bray, Aaron H	18	W	M	(✓)	(✓)	()	
10 Jones, Barney Lewis	82	W	M	(✓)	(✓)	()	
11 Martin, Rancee H	100	W	F	(✓)	(✓)	()	
12 Bryant, Floyd T	23	B	M	(✓)	(✓)	()	
13 Layton, Kevin S	90	W	M	(✓)	(X)	()	
14 Cassell, Anita M	29	W	F	(✓)	(✓)	()	
15 Young, Rodney F	174	B	M	(X)	()	()	
16 Ellis, Donnell J	48	B	M	(✓)	(✓)	()	
17 Charles, Elizabeth L	30	W	F	(✓)	(✓)	()	
18 Hill, Penny	71	W	F	(X)	()	()	
19 Oliver, Douglas L	114	W	M	(✓)	(✓)	()	
20 Turnage, Deborah C	160	W	F	(✓)	(X)	()	
21 Roberts, Deborah A	139	W	F	(✓)	(X)	()	
22 Dobbins, Robert D	46	W	M	(✓)	(✓)	()	
23 Browning, Doris E	22	B	F	()	()	()	
24 Cosgrove, Kevin	39	W	M	()	()	()	

DOCKET NO. 3530

WITNESSES

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

SPARTANBURG CO SHERIFF'S OFFICE

1. SENTENCE MADE

2. REPORT ENDED

4. INDEXED

3. CHECKED WARRANTS

5. CHECKED SIGNATURE

ARREST WARRANT NUMBER
FINE CARD MADE

TRAFFIC VIOLATIONS COPY

M020526

COURT OF GENERAL SESSIONS

JUL 07 2008

TERM

THE STATE

VS.

ACTION OF GRAND JURY

TRAVIS MONTRE SMITH

Foreperson of Grand Jury
Date:

VERDICT

MARC KITCHENS
GUILTY

2008 JUL - 1 AM 10:12

Foreperson of Petit Jury
Date:

Juan L. Berry

Feb. 26, 2009

19.1.17 2009

Indictment for
TRAFFICKING IN COCAINE

SC Code: 44-53-370

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

JUN 26 2008

At a Court of General Sessions, convened on _____, the
Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING IN COCAINE

That Travis Montre Smith did in Spartanburg County on or about February 12, 2008, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more than (10) ten grams of Cocaine, a schedule II controlled substance, in violation of §44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE

VS.

Travis Smith

AKA:

Race: Sex: M Age: 30

DOB: SS#

Address:

DL#: SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS4203530

A/W#: M020526

Date of Offense: 2/13/2008

S.C. Code § : 44-53-0370

CDR Code #: 0147

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Trafficking in Cocaine 10-28g- 3rd Offense (25-30 yrs.)

in violation of § 44-53-0370 of the S.C. Code of Laws, bearing CDR Code # 0147

☐ 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. (Defendant initial)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

MCCARTY, RYAN F

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 25 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; ~~provided that upon the service of~~ days/months/years and/or payment of \$; plus costs and assessments as applicable*; ~~the balance is suspended with probation for~~ months/years and subject to 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.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

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)	\$	\$ 6.15
§ 90.11 TP (SCCJA Surcharge)	\$5	\$ 5.00
TOTAL		\$ 236.15

 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: 2

Sentence Date: February 27 2009

SCCA 17 (07/2008)

Clerk of Court/ Deputy Clerk

Court Reporter: L. Moffitt

FORM 5

2011-CP-42-5555

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURGTRAVIS MONTRE SMITH #285273
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE CORRECTIONAL INST.
2. Name and location of Court which imposed sentence GENERAL SESSIONS COURT HOUSE 180 MAGNOLIA STREET SPARTANBURG, S.C. 29306
3. Name(s) of co-defendant(s) (if any) JOEY WOOD
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-42-3530
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 2-27-09 25 YEARS
 - (b) _____

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Revised 3/2003

- ~~(c)~~ _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ~~ii.~~ _____
- ~~iii.~~ _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED
- ~~ii.~~ _____
- ~~iii.~~ _____
- (c) the date of each such result:
- i. MAY 3, 2011
- ~~ii.~~ _____
- ~~iii.~~ _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. UNPUBLISHED OPINION NO. 2011-UP-201
- ~~ii.~~ _____
- ~~iii.~~ _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- ~~(b)~~ _____
- ~~(c)~~ _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

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- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) PROSECUTORIAL MISCONDUCT
- (c) _____

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

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

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

(a) the specific nature thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____

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- ~~iv.~~ _____
- (d) the date of each such disposition:
- i. N/A
- ~~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?
No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ~~ii.~~ _____
- ~~iii.~~ _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- ~~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) FIRST COLLATERAL ATTACK
- (b) FIRST COLLATERAL ATTACK
- (c) _____
17. Were you represented by an attorney at any time during the course of:

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- (a) your arraignment and plea? N/A
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO N/A
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. WILLIAM Mc PHERSON 366 NORTH CHURCH STREET
SUITE 3000 SPARTANBURG, S.C. 29303
- ii. KATHARINE H. HUDGINS 1330 LADY STREET, SUITE 401 COLUMBIA
S.C. 29201-3332 POST OFFICE BOX 11589 COLUMBIA, S.C. 29211-1589
- (b) the proceedings at which each such attorney represented you:
- i. JURY TRIAL
- ii. DIRECT APPEAL
19. State clearly the relief you seek in filing this application:
NEW TRIAL BY REVERSE AND REMANDING
20. Are you now under sentence from any other court that you have not challenged?
NO

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STATE OF SOUTH CAROLINA)

County of SPARTANBURG)

VERIFICATION

I, TRAVIS MONTRE SMITH #285273, 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.

Travis Smith

SWORN to and subscribed before me this 13
day of December, 2011.

Debra Sines (L.S.)
Notary Public

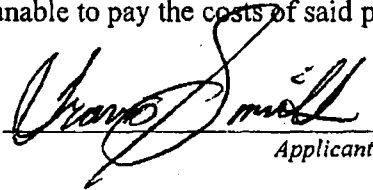
My Commission Expires: 11-4-2015

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M. HOPE BLACKLEY

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

TRAVIS MONTRE SMITH #285273
I, **TRAVIS MONTRE SMITH**, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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


Applicant

SWORN or affirmed to and subscribed before me this

13 day of December, 2011.


Notary Public

My Commission Expires: 11-4-2015

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ATTACHMENT

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

a.) Ineffective Assistance of Counsel

1. Failure to Investigate Case.
2. Failure to Request for Exculpatory Evidence.
3. Failure to ~~Represent~~ or Challenge Initial Arrest.
4. Failure to Prepare for Pre-Trial Suppression Hearing or Trial.
5. Failure to Subpoena Witnesses.
6. Failure to Present Favorable Evidence at Pre-Trial Hearing or Trial.
7. Failure to Object to Indictments.
8. Failure to Move for Dismissal of Indictments.
9. Failure to Request for a Continuance.
10. Failure to Raise Evidence Tampering.
11. Failure to Object to Inadmissible Evidence and its admissions.
12. Failure to Object to Testimony of Prosecution Witness resulting in Hearsay.
13. Failure to Move for Impeachment of Prosecution Witness or Misconduct.
14. Failure to Object to Experts Qualifications.
15. Failure to Challenge Chain of Custody.
16. Failure to Object to Inflammatory Closing Argument of Prosecution.
17. Failure to Challenge Evidence during Pre-Trial Stage.
18. Failure to Challenge Initial Search and Seizure in form of Probable Cause.
19. Failure to Challenge Forensic Analysis's Manner of Process and Procedure of Handling such Control Substances.
20. Failure to challenge Evidence and Facts that was not into Evidence.

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KL

INDICTMENT #
2008-65-42-3530ATTACHMENT

1-27-12

II. STATE CONCISELY AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE GROUNDS SET OUT IN (10):

a.) INEFFECTIVE ASSISTANCE OF COUNSEL

1. FAILURE TO INVESTIGATE CASE. (VIOLATE APPLICANT 6th AMENDMENT TO THE S.C. CONST. ART. 1 § 14)
2. FAILURE TO REQUEST FOR EXCULPATORY EVIDENCE. (VIOLATE APPLICANT 6th AMENDMENT TO THE S.C. CONST. ART. 1 § 14)
3. FAILURE TO REPRESENT OR CHALLENGE INITIAL ARREST. (VIOLATE APPLICANT 5th AMENDMENT TO THE S.C. CONST. ART. 1 § 12)
4. FAILURE TO PREPARE FOR PRE-TRIAL SUPPRESSION HEARING OR TRIAL. (VIOLATE APPLICANT 6th AMENDMENT TO THE S.C. CONST. ART. 1 § 14)
5. FAILURE TO SUBPOENA WITNESSES. (VIOLATE APPLICANT 6th AMENDMENT TO THE S.C. CONST. ART. 1 § 14th)
6. FAILURE TO PRESENT FAVORABLE EVIDENCE AT PRE-TRIAL HEARING OR TRIAL. (VIOLATE APPLICANT 6th AMENDMENT TO THE S.C. CONST. ART 1 § 14)
7. FAILURE TO OBJECT TO INDICTMENTS. (VIOLATE APPLICANT 5th AMENDMENT TO THE S.C. CONST. ART 1 § 12)
8. FAILURE TO MOVE FOR DISMISSAL OF INDICTMENTS. (VIOLATE APPLICANT 5th AMENDMENT TO THE S.C. CONST. ART 1 § 12)

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9. FAILURE TO REQUEST FOR A CONTINUANCE (VIOLATE APPLICANT 6th AMENDMENT TO THE S.C. CONST. ART 18 14)

10. FAILURE TO RAISE EVIDENCE TAMPERING. (VIOLATE APPLICANT 14th AMENDMENT TO THE S.C. CONST. ART. 18 3 AND 6th AMENDMENT TO THE S.C. CONST. ART. 18 14)

11. FAILURE TO OBJECT TO INADMISSIBLE EVIDENCE AND ITS ADMISSIONS. (VIOLATE APPLICANT 14th AMENDMENT TO THE S.C. CONST. ART. 18 3) AND 6th AMENDMENT TO THE S.C. CONST. ART. 18 14)

12. FAILURE TO OBJECT TO TESTIMONY OF PROSECUTION WITNESSES RESULTING IN HEARSAY. (VIOLATE APPLICANT 6th AMENDMENT TO THE S.C. CONST. ART 18 14)

13. FAILURE TO MOVE FOR IMPEACHMENT OF PROSECUTION WITNESSES FOR MISCONDUCT. (VIOLATE APPLICANT 6th AMENDMENT TO THE S.C. CONST. ART 18 14)

14. FAILURE TO OBJECT TO EXPERTS QUALIFICATIONS (VIOLATE APPLICANT 6th AMENDMENT TO THE S.C. CONST. ART. 18 14)

15. FAILURE TO CHALLENGE CHAIN OF CUSTODY. (VIOLATE APPLICANT 14th AMENDMENT TO THE S.C. CONST. ART 18 3) AND 6th AMENDMENT TO THE S.C. CONST. ART 18 14)

16. FAILURE TO OBJECT TO INFLAMMATORY CLOSING ARGUMENT OF THE PROSECUTION. (VIOLATE APPLICANT 14th AMENDMENT TO THE S.C. CONST. ART 18 3 AND 6th AMENDMENT TO THE S.C. CONST. ART 18 14)

17. FAILURE TO CHALLENGE EVIDENCE DURING PRE TRIAL STAGE. (VIOLATE APPLICANT 14th AMENDMENT TO THE S.C. CONST. ART. 18 3 AND 6th AMENDMENT TO THE S.C. CONST. ART 18 14)

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M. MORGAN
BLACKLEY

18. FAILURE TO CHALLENGE INITIAL SEARCH AND SEIZURE IN FORM OF PROBABLE CAUSE. (VIOLATE APPLICANT 14th AMENDMENT TO THE S.C. CONST. ART 19.3 AND 6th AMENDMENT TO THE S.C. CONST. ART 18.14)
19. FAILURE TO CHALLENGE FORENSIC ANALYSIS'S MANNER OF PROCESS AND PROCEDURE OF HANDLING SUCH CONTROL SUBSTANCES. (VIOLATE APPLICANT 14th AMENDMENT TO THE S.C. CONST. ART 19.3 AND 6th AMENDMENT TO THE S.C. CONST. ART 18.14)
20. FAILURE TO CHALLENGE EVIDENCE AND FACTS THAT WAS NOT INTO EVIDENCE. (VIOLATE APPLICANT 14th AMENDMENT TO THE S.C. CONST. ART 19.3 AND 6th AMENDMENT TO THE S.C. CONST. ART 18.14)

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CONCLUSION

FOR REASON SET FORTH, APPLICANT REQUEST
TO HAVE THE COURT TO ATTACH ISSUES TO PCR
APPLICATION.

: 2008-05-42-3530
INDICTMENT ~~#~~

Unro M. Smith

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M. HOPE BLACKLEY

1-26-12

4 OF 4

cc:

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Travis Montre Smith #285273,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
IN THE SEVENTH CIRCUIT

2011-CP-42-5555

RETURN

In response to the post-conviction relief application filed on December 14, 2011, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Spartanburg County Grand Jury indicted the Applicant at the July 2007 term of General Sessions for trafficking in cocaine (08-GS-42-3530). The Applicant was represented by William H. McPherson, Esquire. On February 27, 2009, the Applicant proceeded to trial and was convicted as indicted. The Honorable J. Derham Cole sentenced the Applicant to confinement for a period of twenty-five (25) years.

A timely Notice of Appeal was filed on behalf of the Applicant and an appeal was perfected. The South Carolina Court of Appeals affirmed the conviction. State v. Smith, Op. No. 2011-UP-201 (Filed May 3, 2011). The Remittitur was issued on May 19, 2011.

Attached herewith and incorporated herein are the Spartanburg County Clerk of Court records, the South Carolina Department of Corrections' records, Applicant's appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel; in that,
 - a. Counsel failed to investigate the case,
 - b. Counsel failed to request for exculpatory evidence,
 - c. Counsel failed to represent or challenge initial arrest,
 - d. Counsel failed to prepare for pre-trial suppression hearing or trial,
 - e. Counsel failed to subpoena witnesses,
 - f. Counsel failed to present favorable evidence at pre-trial hearing or trial,
 - g. Counsel failed to object to indictments,
 - h. Counsel failed to move for dismissal of indictments,
 - i. Counsel failed to request a continuance,
 - j. Counsel failed to raise evidence of tampering,
 - k. Counsel failed to object to inadmissible evidence and its admissions,
 - l. Counsel failed to object to testimony of prosecution witness resulting in hearsay,
 - m. Counsel failed to move for impeachment of prosecution witness for misconduct,
 - n. Counsel failed to object to expert's qualifications,
 - o. Counsel failed to challenge chain of custody,
 - p. Counsel failed to object to inflammatory closing argument of the prosecution,
 - q. Counsel failed to challenge evidence during pre-trial stage,
 - r. Counsel failed to challenge initial search and seizure in form of probable cause,
 - s. Counsel failed to challenge forensic analysis's manner of process and procedure of handling such controlled substances,
 - t. Counsel failed "to challenge evidence and facts that was not into evidence."

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

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, Id. 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.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE WHITE
Assistant Attorney General

By:


Attorneys for the Respondents

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

September 11, 2012

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Travis Montre Smith,

2011-CP-42-5555

Applicant,

v.

CERTIFICATE 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 Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Kenneth P. Shabel, Esquire
Campbell & Shabel, LLC
P.O. Box 1793
Spartanburg, South Carolina 29306


Anne A. Mueller
Legal Assistant for the Respondent

DATED this 11th day of September, 2012.

1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF COMMON PLEAS
3 COUNTY OF SPARTANBURG)
4 Travis Montre Smith,)
5 Applicant,) TRANSCRIPT OF RECORD
6 -vs-) 2011-CP-42-5555
7 The State,)
8 Respondent.) April 5, 2013
9 Spartanburg, South Carolina
10

11 B E F O R E:

12 HONORABLE J. MARK HAYES, II, JUDGE
13
14

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

16 KENNETH P. SHABEL, ESQUIRE
17 Attorney for the Applicant

18 SUZANNE H. WHITE, ESQUIRE
19 Attorney for the Respondent
20
21
22

23 ORIGINAL
24
25

Margaret A. Woods
Circuit Court Reporter

INDEXWITNESSESPAGE

TRAVIS MONTRE SMITH

Direct examination by Mr. Shabel

6

Cross-examination by Ms. White

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Redirect examination by Mr. Shabel

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Certificate of reporter

22

MOTIONS AND MATTERS

1 MS. WHITE: Thank you, Your Honor. This is the case of
2 Travis Smith vs. the State, it's Case Number 2011-CP-42-5555.
3 This application was filed December 14th 2011. Mr. Smith was
4 indicted and in July 2007 for trafficking in cocaine was
5 represented by William McPherson at trial and was convicted
6 February 27th 2009. He received a sentence of 25 years, an
7 appeal was filed and a conviction was affirmed, uh, through
8 the Court. He's raised various claims of ineffective
9 assistance of counsel and I would, uh, turn Your Honor's
10 attention to the return for the detail 'cuz there are
11 numerous, numerous claims but Mr. Shabel may be able to
12 clarify which ones they're proceeding on. Uh, also, just for
13 a note in your packet, Your Honor, is a copy of a deposition
14 transcript because Mr. McPherson now lives out in Texas. We
15 did complete a deposition of, uh, his testimony prior to this
16 hearing and are submitting that for the record as well so I'll
17 turn it over to Mr. Shabel at this time.

18 MR. SHABEL: May it please the Court.

19 THE COURT: Um-hum.

20 MR. SHABEL: Your Honor, I'm here on behalf of Travis
21 Smith, uh, we are prepared to go forward on our ineffective
22 assistance of counsel claim. Uh, the almost exclusive focus
23 of the testimony today would be based on the, uh, admission
24 into evidence of a BEST bag, uh, that contained, uh, two
25 different bags, we'll get more into the testimony in just a

MOTIONS AND MATTERS

1 minute, but for the record I think it's important to note that
2 Your Honor and the counsel of record on both sides met prior
3 to the call of the case and before we went on the record.
4 Uh, Ms. Gail Moffitt from the clerk's office brought, uh, what
5 was introduced into evidence at the trial of this case back in
6 February of 2009 as State's Exhibit Number 4 which is BEST bag
7 that was claimed by law enforcement on the scene. Uh, what
8 we've agreed to do Your Honor is I have taken several
9 photographs of that bag, uh, one of the front, one of the back
10 which shows the State's Exhibit Number 4 mark and one again of
11 the front but with a ruler, uh, at the bottom to show the
12 length of the, of the various, uh, of the larger bag as well
13 as the small bag within it. Uh, Ms. White has agreed to allow
14 me to supplement the record following the testimony today, uh,
15 with those three photographs that would all be collectively
16 one exhibit for the Court's consideration before ruling, uh,
17 it's my understanding Your Honor also had an opportunity to
18 visually observe the bag itself in the presence of the deputy
19 clerk, uh, and Ms. White and myself, with that information we
20 are prepared to go forward at this time.

21 THE COURT: And the I did, uh, view what was marked as
22 State's Exhibit 4 that was used that that was my understanding
23 used at the trial of the case that was -- that did contain,
24 uh, the two substances, one was described to me as being the
25 crack cocaine which was the larger item in the bag, the

MOTIONS AND MATTERS

1 smaller item in the bag was described to me as being just
2 cocaine, ---

3 MR. SHABEL: That's correct ---

4 THE COURT: --- um, ---

5 MR. SHABEL: --- Your Honor.

6 THE COURT: --- so I had viewed that and I did instruct
7 and allow the attorneys permission to supplement the records
8 with those photographs referenced by counsel.

9 MR. SHABEL: Thank you.

10 THE COURT: Be more than happy to hear from you.

11 MR. SHABEL: Thank Your Honor, I call Mr. Smith to the
12 stand.

13 THE COURT: Sir, just come right up here (indicating),
14 uh, as best you can place your left hand on the Bible and
15 raise your right hand and allow me the opportunity to swear
16 you in.

17 (Whereupon, the applicant came forward.)

18 THE COURT: Right here (indicating), hold still, right
19 there, yeah.

20 TRAVIS MONTRE SMITH, having
21 been first duly sworn, testified as follows:

22 THE COURT: Alright, sir, have a seat in the chair.
23 Watch that step up when you go to step up into the chair and
24 pull the chair up to the microphone.

25 MR. SHABEL: May it please the Court.

TRAVIS MONTRE SMITH - DIRECT EXAMINATION BY MR. SHABEL

1 THE COURT: (Nodded in the affirmative.)

2 DIRECT EXAMINATION BY MR. SHABEL:

3 Q. Sir, would you state your full name for the record.

4 A. Travis Montre Smith.

5 Q. And spell your middle name.

6 A. M-O-N-T-R-E.

7 Q. Mr. Smith, how old are you?

8 A. Thirty-four.

9 Q. What's the highest level of education you've completed?

10 A. Ninth grade.

11 Q. Are you currently incarcerated?

12 A. Yes.

13 Q. In what facility?

14 A. Uh, Tyger River.

15 Q. How long have you been at Tyger River?

16 A. Uh, uh, since, uh, January the 2nd or 1st.

17 Q. Of this year?

18 A. Yes, sir.

19 Q. Where were you before that?

20 A. Uh, at Lee County Correction Institution.

21 Q. Got ya. Are you currently serving a sentence of 25 years
22 for trafficking cocaine?

23 A. Yes, sir.

24 Q. Did you go to trial on that charge in February of 2009?

25 A. Yes, sir.

- 1 Q. Who was your attorney?
- 2 A. William F. McPherson.
- 3 Q. Alright, without getting too far into the facts,
- 4 Mr. Smith, you were arrested approximately when?
- 5 A. Uh, February, uh, the 13th of 2008.
- 6 Q. Now it's my understanding you were arrested and charged
- 7 with three different crimes that day, is that correct?
- 8 A. Uh, ---
- 9 Q. One was the trafficking of cocaine that you were -- went
- 10 to trial on, correct?
- 11 A. Yes, sir.
- 12 Q. Were you also charged with a misdemeanor loitering in
- 13 drug activity?
- 14 A. Yes, sir.
- 15 Q. And were you also charged with trafficking of crack ---
- 16 A. Yes, sir.
- 17 Q. --- cocaine base of greater than a hundred grams?
- 18 A. Yes, sir.
- 19 Q. You were charged with all three of those.
- 20 A. Yes, sir.
- 21 Q. Alright, let me start with the loitering drug activity
- 22 charge, that went to a misde -- that went to the magistrate
- 23 court level, correct?
- 24 A. Yes, sir.
- 25 Q. You were tried by a jury?

1 A. No, sir.

2 Q. Okay. You were found not guilty though, correct?

3 A. Yes, sir.

4 Q. Alright. Now in the course of your work with
5 Mr. McPherson, approximately how many times did you meet with
6 him from the time you got arrested until the time you went to
7 trial in February of '09

8 A. Approximately like four times.

9 Q. Okay. Were you out on bond or were you in jail?

10 A. Well I was out, I bond out -- well can you repeat that
11 again.

12 Q. Were, during this period a time were you in jail or were
13 you on -- out on bond?

14 A. In jail.

15 Q. Okay. Mr. McPherson was he retained or was he appointed
16 through the public defender's office?

17 A. He was appointed by the public defender's office.

18 Q. Thank you. Now during the course of your involvement
19 with Mr. McPherson were you shown elements of discovery,
20 documents that the State was going to use against you?

21 A. Yes, sir.

22 Q. Was one of those the forensic testing of some various
23 substances that were collected at the scene of the crime?

24 A. Yes, sir.

25 Q. Alright, was one of those field tested for powder

1 cocaine?

2 A. Yes, sir.

3 Q. And it came back as powder cocaine.

4 A. Yes, sir.

5 Q. Was that approximately 11 grams?

6 A. Yes, sir, 11.10 grams.

7 Q. Did the other substance come back as cocaine base or
8 crack cocaine?

9 A. Yes, sir.

10 Q. Do you know approximately how much?

11 A. 94.17 grams.

12 Q. And you were initially charged with over a hundred but it
13 came back as '94.

14 A. Yes, sir.

15 Q. Alright. Let's go back a little bit to the day of the
16 arrest. There was a video ---

17 A. Yes.

18 Q. --- of of the arrest sequence and your attorney, did your
19 attorney make argument that -- well let me, let me back up a
20 little bit. At your trial did law enforcement testify as to
21 what they found?

22 A. Can you repeat that again.

23 Q. Sure. I confused myself a little bit, let me try again.
24 At your trial did law enforcement testify to finding drugs on
25 the scene?

1 A. Yes, sir.

2 Q. How did they say they found the drugs? How did the law
3 enforcement officer say they found the drugs?

4 A. 'cordin' to their testimony, uh, they said that they
5 found, uh, two substance in one bag, ---

6 Q. Okay.

7 A. --- separated in one bag.

8 Q. Alright. What time a day was this when you were
9 arrested?

10 A. Uh, this was like five minutes to twelve.

11 Q. When you say twelve, twelve midnight or twelve noon?

12 A. Midnight.

13 Q. Was it dark out?

14 A. Yes, sir.

15 Q. What did they say, what did they testify that they saw?

16 A. They say that they, uh, they they say that they saw, uh,
17 what, I mean, actually what actually happened?

18 Q. No, what did they testify that they saw?

19 A. Oh, that, uh, that I threw, uh, ---

20 Q. That you threw?

21 A. Yeah, they they ---

22 Q. What did they say you threw?

23 A. 94.17.

24 Q. What did they say you threw specific?

25 A. Control controlled substance.

1 Q. Okay, but what di -- how did they describe what they
2 threw, what you supposedly threw?

3 A. Uh, they say I threw, uh, a a large amount over their
4 head at at at -- in -- at the scene.

5 Q. Did they specifically describe what you threw as large?

6 A. Can you repeat that again.

7 Q. Did they specifically describe what you supposedly
8 threw ---

9 A. Yes, sir.

10 Q. --- as large.

11 A. Yes, sir.

12 Q. And again, this is at night.

13 A. Yes, sir.

14 Q. They describe as a large object.

15 A. Yes, sir.

16 Q. Okay. Now when you went to trial in February of 2009,
17 were you expecting to go to trial on both trafficking
18 charges?

19 A. Uh, can you be more pacific, I mean, ---

20 Q. Were you expecting to go to trial on the crack and the
21 cocaine?

22 A. Yes, sir.

23 Q. When you got to trial, did one of the charges get
24 dropped?

25 A. Uh, from my understand yes, sir.

TRAVIS MONTRE SMITH - DIRECT EXAMINATION BY MR. SHABEL

1 Q. Which one got dropped?

2 A. The 94.17 grams of crack.

3 Q. Of crack.

4 A. Yes, sir.

5 Q. The larger of the two.

6 A. Yes, sir.

7 Q. So all that you went to trial on was 11 grams of powder.

8 A. Yeah, 11 grams point 10 grams powder.

9 Q. Alright, can you tell the Court what the jury saw -- well
10 let me start over. Did the State introduce drugs into
11 evidence at trial?

12 A. Yes, sir.

13 Q. Okay. Did they introduce the drugs in what's called a
14 "BEST bag"?

15 A. Yes, sir.

16 Q. Alright, I'm not asking you define what a BEST bag is but
17 you heard the testimony of a BEST bag and that BEST bag went
18 into evidence.

19 A. Yes, sir.

20 Q. Inside that BEST bag was there supposedly a -- was there
21 powder cocaine?

22 A. Yes, sir.

23 Q. Describe what the powder cocaine was inside. What what
24 how di -- what was the powder cocaine inside of?

25 A. The BEST bag.

1 Q. Okay, but was the powder cocaine just laying in the bag
2 or was it in another little bag?

3 A. It was supposed to been in another little bag the way
4 he ---

5 Q. In another ---

6 A. --- described.

7 Q. --- little bag, okay.

8 A. Yes.

9 Q. Not a very big bag, just a small bag.

10 A. Yes, sir.

11 Q. Alright. Did your attorney object to the BEST bag coming
12 into evidence?

13 A. No, sir.

14 Q. What else was in the BEST bag?

15 A. The 94, the 94.17 grams of crack.

16 Q. Compare from your knowledge the size of the 94 point,
17 what the 94 point some grams of crack looked like ---

18 A. Uh, ---

19 Q. --- compared to the bag of of powder cocaine.

20 A. --- uh, 94.17 grams of crack from my understanding what
21 looked more like a a baseball size ---

22 Q. Okay, alright.

23 A. --- or maybe a little larger.

24 Q. You believe that the jury seeing that crack cocaine
25 affected their decision-making?

1 A. Yes, sir.

2 Q. Do you believe it prejudiced you?

3 A. Yes, sir.

4 Q. Was there any other solid evidence to justify your
5 conviction?

6 A. No, sir.

7 Q. Okay. For the record there was a video of the arrest,
8 correct?

9 A. Yes, sir.

10 Q. And the State tried to say that the video showed you
11 dropping the drugs, correct?

12 A. Yes, sir.

13 Q. Did your attorney argue otherwise?

14 A. No, sir.

15 Q. Did your attorney argue that someone else could have
16 dropped the bag?

17 A. Yes, sir.

18 Q. Alright, so in your mind the video was not conclusive
19 evidence of your guilt, is that correct?

20 A. Ye -- yes, sir, wasn't.

21 Q. Mr. Smith, are you asking this court to grant you post-
22 conviction relief?

23 A. Yes, sir.

24 Q. Do you understand that if you are granted post-conviction
25 relief you will be granted a new trial on this charge?

TRAVIS MONTRE SMITH - CROSS-EXAMINATION BY MS. WHITE

1 A. Yes, sir.

2 Q. Do you understand that if you go to trial on that new, on
3 on this charge again the results could come out very
4 differently?

5 A. Yes, sir.

6 Q. You could come out with an acquittal.

7 A. Yes, sir.

8 Q. You could still come out with a conviction and face
9 possibly an additional period of time of of a prison sentence.

10 A. Yes, sir.

11 Q. And knowing all of that are you asking this court to
12 grant you post-conviction relief?

13 A. Yes, sir.

14 Q. Thank you. Please answer any questions Ms. White or the
15 Court might have for you.

16 CROSS-EXAMINATION BY MS. WHITE:

17 Q. Just briefly, Mr. Smith. You testified that there was no
18 evidence, uh, conclusive evidence, to support your conviction,
19 both of the officers testified that as they were stopping the
20 car getting ya'll out to kind of frisk you, check for weapons,
21 that you took off running, did they not?

22 A. Yes, sir.

23 Q. Okay.

24 A. I mean, yes, ma'am, I'm bad. I'm sorry.

25 Q. That's fine. And both of them also testified that they

1 saw you throwing a bag, maybe a baseball-size bag, uh, off to
2 the side as you ran.

3 A. Yes, ma'am.

4 Q. Okay. Now the video, and your attorney attacked the fact
5 that you can't really see the co-defendant, uh, on the video
6 and that maybe it was that person that put the drugs there,
7 right?

8 A. Yes, ma'am.

9 Q. Okay, uh, but the testimony was that they saw you
10 throwing 'em?

11 A. Yes, ma'am.

12 Q. Okay. And ultimately you were charged with and the drugs
13 that were mentioned as in the charges when they went back to
14 the jury were to consider whether or not you were guilty of
15 trafficking in cocaine, is that right?

16 A. Can you repeat that.

17 Q. When when the charge went back to the jury to, for them
18 to deliberate, the charge that went back was to determine if
19 you were guilty of trafficking in cocaine, powder cocaine, is
20 that right?

21 A. Yes, ma'am.

22 Q. Okay. And there's no mention of determining if you're
23 guilty of trafficking or possession of crack at the time that
24 it went to the jury.

25 A. Can you repeat that.

TRAVIS MONTRE SMITH - REDIRECT EXAMINATION BY MR. SHABEL

1 Q. There was no mention by the judge to the jury of them
2 considering if you were guilty of possessing or trying to
3 traffic in crack cocaine, correct?

4 A. Can you repeat that one more time.

5 Q. Sure. Did -- when the judge asked the jury to
6 deliberate, he asked them to deliberate on whether or not they
7 thought you were guilty of trafficking in cocaine, he did not
8 ask them to consider if you were guilty in any way of deal
9 with anything having to do with crack cocaine, right?

10 A. Yes, ma'am.

11 Q. Okay. Alright, and your attorney had filed and argued
12 motions ahead of time attacking the the probable cause for the
13 stop initially, uh, attacking the the police stop of the car
14 and the search and seizure?

15 A. Uh, yes, ma'am.

16 Q. Okay.

17 MS. WHITE: Alright, I think that's all I have at this
18 time, Your Honor.

19 MR. SHABEL: Brief redirect?

20 THE COURT: Yes, sir, based limited to what she went
21 into.

22 REDIRECT EXAMINATION BY MR. SHABEL:

23 Q. Ms. White asked you whether or not the judge asked the
24 jury to consider you guilty or not guilty of, uh, trafficking
25 the crack cocaine, did the jury re -- did the judge instruct

TRAVIS MONTRE SMITH - REDIRECT EXAMINATION BY MR. SHABEL

1 the jury to disregard any of the crack cocaine?

2 A. No, sir.

3 Q. Okay. Did your attorney ask the judge to instruct the
4 jury ---

5 A. No, sir.

6 Q. --- to disregard the crack cocaine?

7 A. No, sir.

8 Q. Thank you.

9 MS. WHITE: Nothing further, Your Honor.

10 THE COURT: Thank you, sir, you may step down.

11 (Whereupon, the applicant left the stand.)

12 THE COURT: Does the applicant have any other witness?

13 MR. SHABEL: No, Your Honor, we stand as the testimony
14 presented and it's my understanding the deposition of
15 Mr. McPhers -- Mr. McPherson is in the Court's file.

16 THE COURT: I do have that.

17 MS. WHITE: And, Your Honor, that would be our witness,
18 uh, Mr. McPherson with the deposition.

19 THE COURT: Alright, uh, let me, uh, for some reason I
20 feel like I don't have a full package. Uh, ---

21 MS. WHITE: Okay.

22 THE COURT: --- I've got the transcript of the trial ---

23 MS. WHITE: Alright.

24 THE COURT: --- that goes through has jury list. I don't
25 have, I don't have the application.

MOTIONS AND MATTERS

1 MS. WHITE: Oh, you don't?

2 THE COURT: I've got the return, uh, got Mr. McPherson's
3 deposition, I've got the final brief, ---

4 MS. WHITE: Huh.

5 THE COURT: --- but let me see if it's stuck in here.

6 MS. WHITE: I am so sorry. It must have ---

7 THE COURT: Yeah.

8 MS. WHITE: --- here is the application, ---

9 THE COURT: Yeah.

10 MS. WHITE: --- Your Honor.

11 THE COURT: And, uh, ---

12 MS. WHITE: And ---

13 THE COURT: --- this ---

14 MS. WHITE: --- you have the appellate records?

15 THE COURT: Uh, I don't have the indictment, I don't have
16 the sentencing sheet, ---

17 MS. WHITE: Okay.

18 THE COURT: --- I don't have those things I usually see.

19 MS. WHITE: And I have got -- I'll give you my packet,
20 Your Honor. Apparently ---

21 THE COURT: Okay.

22 MS. WHITE: --- when the packets were getting put
23 together -- this is the packet that we gave ya'll ---

24 (Whereupon, a discussion was held off the record.)

25 MR. SHABEL: The one thing you don't have in there which

MOTIONS AND MATTERS

1 my client was kind enough to provide me was the general
2 sessions record containing pages 1 and 3 of the police
3 report ---

4 MS. WHITE: Okay.

5 MR. SHABEL: --- but do not contain page 2. I have page
6 2 but it's my only copy.

7 MS. WHITE: Okay.

8 THE COURT: Do we need to make a copy of it?

9 MR. SHABEL: Yes.

10 MS. WHITE: This is page 1 of 1, that's a ---

11 MR. SHABEL: Go back.

12 MS. WHITE: --- supplemental ---

13 MR. SHABEL: I've got, ---

14 MS. WHITE: --- report.

15 MR. SHABEL: --- I've got ---

16 MS. WHITE: Okay.

17 MR. SHABEL: --- 1 of 3 and 3 of 3.

18 MS. WHITE: Three of 3, okay.

19 MR. SHABEL: My client has 2 of 3 ---

20 MS. WHITE: Okay.

21 MR. SHABEL: --- and he's making a copy.

22 MS. WHITE: Okay, and, Your Honor, here is the in the
23 packet I -- the general sessions records. I'm sorry about
24 that.

25 (Whereupon, a discussion was held off the record.)

MOTIONS AND MATTERS

1 MR. SHABEL: Suzanne, you need one?

2 MS. WHITE: I would like one then 'cuz ---

3 MR. SHABEL: May I approach, Your Honor?

4 MS. WHITE: --- we don't have that either.

5 (Whereupon, a discussion was held off the record.)

6 THE COURT: Okay, then I will let you know.

7 MR. SHABEL: Thank Your Honor.

8 THE COURT: Thank ---

9 MS. WHITE: Thank you, ---

10 THE COURT: --- you.

11 MS. WHITE: --- Your Honor.

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CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on April 5, 2013 at the time and place heretofore set forth; and that the foregoing pages numbered from 3 through 21, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

October 24, 2013

Margaret A. Woods

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH CIRCUIT

Travis Montre Smith, #285273,

Applicant,

-VS-

State of South Carolina,

Respondent.

CASE NO.: 2011-CP-42-5555

Deposition of WILLIAM MCPHERSON, a witness called by Counsel on behalf of the Defendant, pursuant to the applicable provisions of the South Carolina Rules of Civil Procedure, taken via telephone by Cynthia L. Weathers, a Professional Court Reporter and Notary Public in and for the State of South Carolina, on March 18, 2013 at the Spartanburg County Courthouse, 180 Magnolia Street, Spartanburg, South Carolina, commencing at the hour of 10:20 a.m.

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Claude Smith, SCDC
Travis Montre Smith, #285273

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S T I P U L A T I O N S

It is hereby stipulated by and between Counsel for the respective parties that the reading and signing of the deposition transcript is waived.

BY MS. WHITE:

Hey, William. This is Suzanne. How are you?

MR. MCPHERSON: I'm fine, thank you. How are you?

MS. WHITE: We're doing fine. We have Mr. Smith, Ken Shabel, his attorney, and our court reporter here. Are you ready for us this morning?

MR. MCPHERSON: I'm ready.

MS. WHITE: All right. I think we're going to be swearing you in over the phone, and then Ken, do you want to start?

MR. SHABEL: I'll let you start. It's your witness.

MS. WHITE: Okay. All right. And then I'll start, and then we'll do some cross and redirect if we need to.

MR. MCPHERSON: Okay.

Whereupon,

WILLIAM MCPHERSON,

having been first duly sworn,
was examined and testified as follows:

DIRECT EXAMINATION

BY MS. WHITE:

Q. Okay. William, I'm going to start off with some of the basic questions, if you wouldn't mind. At the time that you represented Mr. Smith, it was a trial in February of 2009. In what capacity were you working when you represented him?

A. I worked for the Public Defender's Office in South Carolina as a defense attorney.

Q. And how long had you been working for that office, and then in the criminal field of law in general?

A. That office, about three years, and then criminal law in general, it's hard to say. About 25 years.

Q. Okay. And this was a trafficking case. Was this the first trafficking case you'd ever handled, or had you handled any others previously?

A. I handled others previously.

Q. In reviewing the case, do you recall how far in advance of the trial you had been appointed to represent Mr. Smith?

A. I don't recall exactly, but I know it was months.

Q. Okay. And do you recall any meetings with him?

A. Well, yeah. We met several times. I don't remember how many, but I know we met. We discussed the case at length. I talked to him about offers

1 that had been made by the Solicitor's office, and
2 we discussed how we would go about trying the case.

3 Q. Okay. And had you filed a discovery motion?

4 A. Yes.

5 Q. And had you received discovery materials from the
6 State?

7 A. Yes.

8 Q. What were some of the things that they had that you
9 felt they might use for evidence in the trial, if
10 you went to trial?

11 A. Well, we had statements by the two police officers
12 that were -- they were in a vehicle and observed
13 what happened. And we had a video that was
14 recorded from the -- I guess it would be the dash
15 cam on the police vehicle. And if I remember
16 correctly, they had a drug analysis expert to come
17 in and testify regarding the drugs.

18 Q. Okay.

19 A. And that was probably early in the case.

20 Q. And in your discussions with Mr. Smith, you
21 mentioned some offers. Was this something that he
22 always wanted to take to trial, according, you
23 know, from your conversations? Do you believe
24 trial or plea?

25 A. Well, I believe he wanted to take it to trial

1 because I felt like we had a very reasonable offer,
2 based on the amount of drugs involved. And it was
3 rejected.

4 Q. Okay. What was the offer? Do you recall?

5 A. As best as I recall, it was 12 years.

6 Q. Okay. And so in preparing for this at trial, and
7 you said you discussed kind of your trial strategy,
8 what was the plan to attack, or for the defense?

9 A. That the drugs weren't his, that there was a co-
10 defendant that was arrested the same night who was
11 driving the vehicle that the Defendant was in. And
12 we were trying to make it look as if the co-
13 defendant dropped the drugs while they were chasing
14 the Defendant.

15 Q. And that was Mr. Wood?

16 A. Correct.

17 Q. Okay. And in fact, he was on video, and the jury
18 saw the video of him moving around and kind of
19 going through his pockets and things; isn't that
20 right?

21 A. That's correct. And it, you know, it could have
22 been reasonably interpreted that perhaps he put the
23 drugs there.

24 Q. Okay. In regards to -- You made a pretrial motion
25 to suppress the evidence of the drugs.

1 A. Correct.

2 Q. And the basis for that was what?

3 A. That it was an improper stop, that the co-defendant
4 had pulled out into the median. The median was
5 wide enough for a car to pull into. At first, the
6 testimony of the police officer was that there was
7 no median. But then after I showed them a picture,
8 they changed their mind and said there was a
9 median. But they still claimed they had to jam on
10 their brakes because he pulled out in front of
11 them. The co-defendant pulled out in front of
12 them, and they had to jam on their brakes to stop,
13 that he failed to yield the right-of-way.

14 Q. Okay. And were there witnesses in the pretrial
15 motion?

16 A. Primarily, just the police officers.

17 Q. All right. And ultimately, the Judge ruled that
18 the stop and subsequent seizure of the Defendant
19 were proper; is that right?

20 A. That's correct.

21 Q. Okay. At that point, was there any discussion
22 about what to do to continue on, or was it just
23 they continue with the defense of the video showing
24 that the co-defendant moved around, or?

25 A. The best I recall, there was no further discussion

1 regarding any offers. They didn't make any more
2 offers. And as best as I could tell, Mr. Smith
3 just wanted to go to trial and take his chances.

4 Q. Okay. Did you have -- Was there anything that he
5 ever asked you to do or told you he wanted to do
6 that you felt you couldn't?

7 A. No.

8 Q. Okay. In general, did you feel like ya'll had good
9 communication?

10 A. Yes. I felt like it was good. I do recall that he
11 had another attorney. I don't recall his name.
12 Another attorney representing him on, it seems like
13 some other drug cases, and that for awhile in the
14 beginning, I thought this other attorney was going
15 to take over the case because he was employed
16 whereas I was court-appointed.

17 Q. Right.

18 A. But this other attorney did not take over the case.

19 Q. Okay. Other than that -- I mean this was a fairly
20 short trial; was it not?

21 A. That's correct.

22 Q. Okay. And the testimony, the defense, ya'll didn't
23 put up any witnesses?

24 A. That's correct.

25 Q. Other than -- was there anything else that

1 happened, anything during trial other than the
2 video and the co-defendant kind of moving around
3 and stuff, that you thought was going to be helpful
4 or more harmful to the case?

5 A. The only thing I thought was the way they claimed
6 that he was running real hard, trying to get away
7 from them. But at the same time, they testified he
8 turned around, which I thought was practically --
9 it would have been very difficult to do, that he
10 turned around while he was running and threw the
11 drugs back.

12 Q. Towards --

13 A. Yeah. Towards the co-defendant. And I thought
14 that was kind of a weakness in their testimony,
15 because it would have seemed to me that if he was
16 going to throw the drugs back, he would have just
17 flipped them over his head as opposed to turning
18 around and throwing the drugs. I thought the jury
19 might find that hard to believe --

20 Q. Right.

21 A. -- on the police officers.

22 Q. And you did question the police officers and try to
23 show some inconsistencies?

24 A. Correct. Well, there were a lot of
25 inconsistencies, but the jury believed them,

1 anyhow.

2 Q. Okay. I think at this time, that's all I have.

3 I'm going to turn it over to Mr. Shabel for cross-
4 examination?

5 A. Okay.

6 CROSS-EXAMINATION

7 BY MR. SHABEL:

8 Q. Good morning, Mr. McPherson. How are you, sir?

9 A. I'm fine, thank you. How are you?

10 Q. Doing well. Thank you for taking the time to talk
11 with us this morning. I will try to be as brief as
12 I can. If I'm remembering correctly, they did a
13 personal pat-down search on Mr. Smith and found no
14 drugs on his person; is that correct?

15 A. That might be correct, after they arrested him --

16 Q. Sure.

17 A. -- or after they caught him. I know they, you
18 know, initially asked him for his ID, and he handed
19 them like a motel key, and they saw him fumbling
20 around, and --

21 Q. Okay.

22 A. -- then they asked him to get out of the car. He
23 got out. And then they got hold of his coat. He
24 just fled the scene and left his coat behind.

25 Q. Okay. So they couldn't finish the pat-down, but

1 when they caught him, they did another one and
2 didn't find anything. Is that your recollection?

3 A. Yes.

4 Q. What about Mr. Wood? Did they find any drugs on
5 his possession?

6 A. Uh-huh. If I remember correctly, they found drug
7 paraphernalia, and they may have found a small
8 amount of drugs.

9 Q. Okay. Do you recall whether or not the State
10 actually stipulated to that fact in front of the
11 jury?

12 A. I don't recall.

13 Q. Okay. The transcript would be a little more
14 indicative of that, if you don't remember?

15 A. That's correct.

16 Q. Okay. You said you met several times with Mr.
17 Smith. Can you recall whether he was out on bond
18 or whether he was in jail when you met with him?

19 A. I believe he was in jail.

20 Q. Okay. Do you recall ever meeting with him when he
21 was not in jail?

22 A. You know, it's hard for me to say. I don't recall.

23 Q. That's fine. I believe the best bag was introduced
24 into evidence into trial without objection from
25 you; is that correct?

1 A. I believe that's correct.

2 Q. Do you recall what was actually in the best bag
3 when it was introduced at trial?

4 A. Well, the drugs they picked up off the ground.

5 Q. Okay. It's my understanding that they found 100
6 grams of powder, as well. Is that your
7 recollection?

8 A. Yes. But I think it came in weighing a little less
9 than 100 grams.

10 Q. Okay. But that was -- I think the reports
11 indicated approximately 100. Now the report came
12 in about 90-something?

13 A. I believe that's correct.

14 Q. But the focus of the actual testimony was just on
15 the -- oh, I'm sorry. It was 94 grams of the off-
16 white rock substance. That was the rock, not the
17 powder.

18 A. Correct.

19 Q. And then 11 grams of the powder.

20 A. Correct.

21 Q. Was all --

22 A. I believe that's correct.

23 Q. Was all of that still in the best bag when the jury
24 saw it?

25 A. I don't recall.

1 Q. Okay. Why wasn't he ever -- Do you know whether or
2 not he was ever prosecuted for the 94.17 grams of
3 the off-white rock substance?

4 A. To my knowledge, -- Which one was he not prosecuted
5 for?

6 Q. The rocks, the 94.17 grams of crack.

7 A. Well, my guess would be once they got a conviction
8 on one, that was enough for them.

9 Q. Okay. How many actual bags did they find on the
10 ground that had been thrown?

11 A. I believe one bag that had both drugs in it.

12 Q. You indicated earlier that the two police officers
13 had indicated statements. I believe those are the
14 two different reports that they issued from the
15 crime scene; correct?

16 A. Yes.

17 Q. Are you aware that those reports tell two
18 completely different stories about the number of
19 bags?

20 A. No. I wasn't aware of that.

21 Q. Are you aware that, I think it's Mr. Satterfield,
22 says that there were two bags?

23 A. No. I wasn't aware of that.

24 Q. Do you think that would have --

25 A. My impression was there was two different drugs

1 found in, you know, they were in separate bags, but
2 then they were in a larger bag.

3 Q. Okay. So it's your understanding it was two little
4 bags in one big bag?

5 A. Correct. Or the rock-like substance in the bag,
6 and then the --

7 Q. And the powder in the small bag.

8 A. -- the powder was in a separate bag --

9 Q. Okay.

10 A. -- in the bag with the rock-like substance.

11 Q. Okay. Bear with me just one moment. Let me ask my
12 client a question or two.

13 A. Yes.

14 (Off the record)

15 BY MR. SHABEL: (Resuming)

16 Q. Mr. McPherson, can you hear me?

17 A. Yes.

18 Q. One last question. Do you recall the Solicitor
19 coming up to you at any point in the trial and
20 asking for your permission to separate the drugs?

21 A. No.

22 Q. Okay. All right. I believe that's all I have for
23 you. Thank you, sir.

24 A. Thank you.

25 MS. WHITE: And I think, William, that based

1 on the transcript and the questions today, that I
2 do not have anything else for you.

3 WITNESS: Okay.

4 MS. WHITE: And so I appreciate you being with
5 us this morning, and I will see you via the phone
6 this afternoon.

7 WITNESS: Okay. Very good. I appreciate it.

8 MS. WHITE: Thank you.

9 MR. SHABEL: Thank you.

10 (Whereupon, the deposition concluded at 10:40 a.m.)

STATE OF SOUTH CAROLINA

CERTIFICATE

Be it known that I, Cynthia L. Weathers, a Professional Court Reporter and Notary Public, did take William McPherson's testimony via telephone on March 18, 2013 at the Spartanburg County Courthouse, 180 Magnolia Street, Spartanburg, South Carolina;

That the witness was duly sworn under pains and penalties of perjury to testify the truth, the whole truth, and nothing but the truth;

That the foregoing pages constitute a true and accurate transcription of the testimony given at that time and place aforesaid to the best of my skill and ability;

I further certify that I am not counsel or kin to any of the parties to this cause of action, nor am I interested in any matter of its outcome.

In Witness whereof, I have hereunto set my hand and seal this 26th Day of March, 2013.

Cynthia L. Weathers
Notary Public For South Carolina
My Commission Expires January 13, 2021

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Travis Montre Smith #285273,

2011-CP-42-5555

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed December 14, 2011. The Respondent filed its Return on September 11, 2012. An evidentiary hearing into the matter was convened on April 5, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Kenneth P. Shabel, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. The transcript of a telephone deposition conducted with William McPherson, Esquire, ("Counsel") was submitted to the Court on behalf of the Respondent. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, the trial transcript, memoranda of law presented by both Applicant and Respondent, and as Court's Exhibits, three photos of the BEST bag submitted to the jury during trial.

SCANNED

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Spartanburg County Clerk of Court's orders of commitment. The Spartanburg County Grand Jury indicted the Applicant at the July 2007 term of General Sessions for trafficking in cocaine (08-GS-42-3530). The Applicant was represented by William H. McPherson, Esquire. On February 27, 2009, the Applicant proceeded to trial and was convicted as indicted. The Honorable J. Derham Cole sentenced the Applicant to confinement for a period of twenty-five (25) years.

A timely Notice of Appeal was filed on behalf of the Applicant and an appeal was perfected. The South Carolina Court of Appeals affirmed the conviction. State v. Smith, Op. No. 2011-UP-201 (Filed May 3, 2011). The Remittitur was issued on May 19, 2011.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel; in that,
 - a. Counsel failed to investigate the case,
 - b. Counsel failed to request for exculpatory evidence,
 - c. Counsel failed to represent or challenge initial arrest,
 - d. Counsel failed to prepare for pre-trial suppression hearing or trial,
 - e. Counsel failed to subpoena witnesses,
 - f. Counsel failed to present favorable evidence at pre-trial hearing or trial,
 - g. Counsel failed to object to indictments,
 - h. Counsel failed to move for dismissal of indictments,
 - i. Counsel failed to request a continuance,
 - j. Counsel failed to raise evidence of tampering,
 - k. Counsel failed to object to inadmissible evidence and its admissions,
 - l. Counsel failed to object to testimony of prosecution witness resulting in hearsay,
 - m. Counsel failed to move for impeachment of prosecution witness for misconduct,
 - n. Counsel failed to object to expert's qualifications,

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- o. Counsel failed to challenge chain of custody,
- p. Counsel failed to object to inflammatory closing argument of the prosecution,
- q. Counsel failed to challenge evidence during pre-trial stage,
- r. Counsel failed to challenge initial search and seizure in form of probable cause,
- s. Counsel failed to challenge forensic analysis's manner of process and procedure of handling such controlled substances,
- t. Counsel failed "to challenge evidence and facts that was not into evidence."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

This Court notes the Applicant informed this Court that he would be proceeding solely on the allegation of ineffective assistance of counsel because of Counsel's failure to object to the BEST bag being sent back to the jury, when it appeared to contain both the bag of cocaine and the bag of crack cocaine. All other allegations raised in the application were not pursued by the Applicant at the hearing; therefore, this Court finds that those allegations are voluntarily waived.

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged 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."

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Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984);
Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 180, 180 S.E.2d 733, 735 (1997) (citing Strickland).

Applicant testified that he was arrested for trafficking in cocaine and trafficking in crack cocaine on February 13, 2008. Applicant testified that he was also arrested for loitering for purposes of drug activity, but was found not guilty in magistrate's court on that charge. Applicant testified that although he was charged with both drugs, at trial, the State only proceeded on the charge of trafficking in cocaine. However, following the chemist's testimony, Counsel failed to object to the entry of the BEST bag into evidence, in particular since it appeared to contain both the cocaine and the crack cocaine.

Counsel testified that he did not object to the entry of the BEST bag into evidence.

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Counsel testified that he did not recall if both the eleven grams of cocaine and ninety-four grams of crack cocaine were contained in the BEST bag.

This Court finds that the Applicant failed to meet his burden of proof as to this claim.

This Court remains shocked by Counsel's failure to stop the crack from going back to the jury and believes that Counsel was clearly deficient for failing to object to the jury viewing the BEST bag which contained both packages of drugs. However, there is sufficient evidence in the record to support the Applicant's conviction. The testimony presented to the jury included the very credible testimony of two officers and the chemist that tested the drugs, along with the evidence of the dash cam video. This Court finds that it would require speculation to determine if the jury was influenced negatively against the Applicant by Counsel's failure to stop the crack cocaine from going into the jury room.

This Court finds that the Applicant was not prejudiced by any alleged deficient representation because there was overwhelming evidence of the Applicant's guilt. In a direct appeal matter, the South Carolina Supreme Court found that although testimony regarding a much larger buy of cocaine was more prejudicial than probative, any error was harmless beyond a reasonable doubt based upon the overwhelming evidence of appellant's guilt. State v. Garner, 304 S.C. 220, 222, 403 S.E.2d 631, 632 (1991). In a post-conviction relief matter, the Supreme Court reversed the finding of a PCR judge, finding that although the court correctly determined that trial counsel was deficient in failing to object to the solicitor's "Golden Rule" closing argument, the Applicant failed to prove that there was a reasonable probability that but for this error the result of his trial would have been different, in addition to the Court finding that there was overwhelming evidence of the Applicant's guilt. Brown v. State, 383 S.C. 506, 519, 680 S.E.2d 909, 916 (2009). "[N]o prejudice occurs, despite trial counsel's deficient performance,

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where there is otherwise overwhelming evidence of the defendant's guilt. Smith v. State, 386 S.C. 562, 566, 689 S.E.2d 629, 631 (2010) (citing Rosemond v. Catoe, 383 S.C. 320, 325, 680 S.E.2d 5, 8 (2009)). Likewise, because of the overwhelming evidence of guilt, the Applicant has failed to demonstrate the requisite prejudice resulting from deficient representation.

Summary

Accordingly, this Court finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

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.

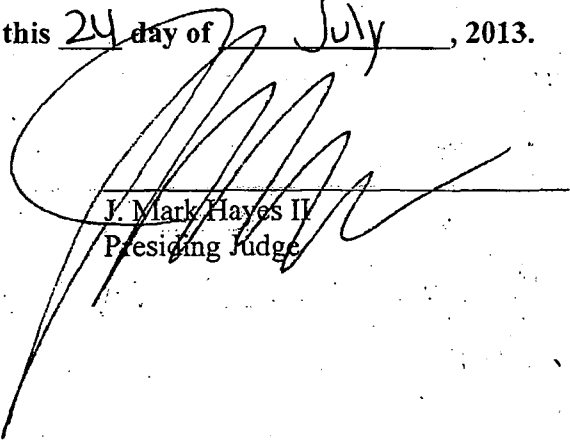
This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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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 24 day of July, 2013.


J. Mark Hayes II
Presiding Judge

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ACCEPTANCE OF PERSON

NAME OF PERSON: _____

SIGNATURE OF PERSON: _____

DATE: _____

FOR USE ONLY: _____

INSTRUCTIONS:

1) DIRECTOR OF _____

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