

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Anderson County

J. Cordell Maddox, Jr., Circuit Court Judge

RECEIVED

JUN 20 2012

S.C. Supreme Court

DOUGLAS L. RICE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON) IN THE COURT OF GENERAL SESSIONS

THE STATE) TRANSCRIPT OF RECORD
-vs-) 2006-GS-04-704
ANTRAN LEDRIQUEKO HALL,) 2006-GS-04-594
DOUGLAS LAMONT RICE,) 2006-GS-04-595
) 2006-GS-04-596
) 2006-GS-04-597
) DECEMBER 13, 2006
Defendants.) Anderson, South Carolina

B E F O R E:

THE HONORABLE G. EDWARD WELMAKER, JUDGE. ; and a jury.

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

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Attorney for the State

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Michael R. Watts
Circuit Court Reporter

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1 (PROCEEDINGS, December 13, 2006)

2 (Drugs marked as State's Exhibit No. 1 for
3 identification)

4 (Power Bill marked as State's Exhibit No. 2 for
5 identification)

6 (Digital Scales marked as State's Exhibit No. 3
7 for identification)

8 (Digital Scales marked as State's Exhibit No. 4
9 for identification)

10 (Bond Paper marked as Court's Exhibit No. 1 for
11 identification)

12 (Bond Paper marked as Court's Exhibit No. 2 for
13 identification)

14 (Bond Paper marked as Court's Exhibit No. 3 for
15 identification)

16 THE COURT: All right, solicitor.

17 MR. CAMPBELL: If it please the court, Your Honor,
18 the State calls the following cases for trial: The State
19 versus Antran Ledriqueko Hall in 2006-594, possession of
20 stolen goods; 06-595, failure to stop for a blue light;
21 06-596, resisting arrest; 06-597, trafficking cocaine.

22 We also call State versus Douglas Lamont Rice in
23 indictment number 06-704, trafficking cocaine.

24 Their attorneys are present, Your Honor.

25 Your Honor, I also hand up a witness list for the

1 State.

2 THE COURT: Good morning, ladies and gentlemen of
3 the jury. I'm Eddie Welmaker. I have been introduced
4 earlier before. I haven't met you this week, and we will be
5 working together some this week. I'm from Pickens County.
6 I'm glad to be down here in Anderson this week.

7 You have heard the solicitor call the case. We
8 are about ready to start a trial of a case. We need the
9 assistance of the jury in helping us with this conflict that
10 we have between the charges brought by the State and the
11 defendants.

12 You have heard the solicitor read the indictment
13 on these charges. These are merely charges. These are in
14 no way to be considered as evidence, but the individuals
15 charged with these offenses have entered pleas of not
16 guilty, and that entitles them to a trial by jury.. A plea
17 of not guilty brings into play all the rights that we as
18 citizens enjoy of being presumed innocent, the State having
19 the burden of proof, and proof beyond a reasonable doubt.
20 And you and I are going to be judges, those of you selected
21 to hear this case. While I will be judging the law that
22 takes place during the course of the trial, the State and
23 the defendants need to select fair and impartial jurors to
24 be fact finders in this case and determine what the facts
25 are.

1 These indictments against Mr. Rice and against Mr.
 2 Hall make charges that back in November last year, around
 3 the 21st of November, that each of them, while in Anderson
 4 County, had in their possession some quantities of cocaine
 5 that involved trafficking of cocaine. Under the statute
 6 they have been charged with that.

7 Also Mr. Hall has been charged with resisting
 8 arrest and failing to stop for a blue light and receiving or
 9 possessing stolen goods on the same occasion.

10 In order to get a fair and impartial jury to hear
 11 this case, I need to ask you certain questions to determine
 12 your eligibility to serve as a juror. Earlier this week you
 13 have been qualified to be a juror by Judge Nicholson, and
 14 you are certainly qualified, but I need to ask you some more
 15 questions concerning this particular case to determine your
 16 qualifications to serve as jurors.

17 First of all, I need to ask you is there any
 18 member of the jury panel who has any personal knowledge
 19 about this particular incident that happened in November of
 20 2005, either that you happened upon the scene, or you read
 21 something in the paper, or you have heard about it from any
 22 source? Does that apply to any member of the jury? If so,
 23 would you please stand?

24 Thank you. There is no response.

25 Is there any member of the jury panel who is

1 related by blood or marriage to Antran Ledriqueko Hall or to
2 Douglas Lamont Rice? If so, would you please stand?

3 Thank you. There is no response.

4 Is there any member of the jury panel who has a
5 close business, a social or a personal relationship with
6 either Mr. Rice or Mr. Hall? If so, would you please stand?

7 Thank you. There is no response.

8 Now, there is several witnesses who may be called
9 upon to testify in this case. I'm going to read a list of
10 those names to you and then I'll ask you some questions
11 about those particular names.

12 From the Anderson County sheriff's office,
13 potential witnesses would be Brad Baxter.

14 If any of these potential witnesses are in the
15 courtroom, I'll just ask if they would please stand up when
16 their name is called and face the jury.

17 . Toby Jordan.

18 All right. I'll come back with you in just a
19 moment, please, ma'am.

20 Rusty Scoggins.

21 Margaret Vecchio.

22 Tommy Clamp.

23 Ross Brown.

24 Ken Brock.

25 Michael Miller.

1 All right. Thank you, witnesses. You may be
2 seated.

3 Is there any member of the panel who is related by
4 blood or marriage to any of these potential witnesses? If
5 so, would you please stand, if you are related by blood or
6 marriage.

7 Yes, ma'am, your name, please?

8 JUROR GEORGIA BROOKS: Georgia Brooks.

9 THE COURT: Ms. Brooks, and to whom are you
10 related?

11 JUROR GEORGIA BROOKS: I'm not. I know Brad
12 Baxter.

13 THE COURT: All right. Let me ask you, is there
14 any member that's related by blood or marriage? If so,
15 would you please stand?

16 (No response)

17 THE COURT: All right. So you are not related by
18 blood or marriage? You are?

19 JUROR SUSAN HARPER: Yes.

20 THE COURT: And you are not related by blood or
21 marriage?

22 Yes, ma'am, your name, please?

23 JUROR SUSAN HARPER: Susan Harper.

24 THE COURT: And Ms. Harper, to whom are you
25 related?

1 JUROR SUSAN HARPER: Brad's second cousin.

2 THE COURT: All right.

3 THE CLERK: For the record, Your Honor, Ms. Harper
4 is juror number 84.

5 THE COURT: All right. I'm going to excuse you
6 from the trial of this case. I don't want to put you in an
7 awkward situation with family members, so if you would just
8 remain seated, please. I'll excuse you.

9 Any other person related by blood or marriage to
10 any of these potential witnesses?

11 Thank you. No response.

12 Now, is there any member of the panel who has a
13 close business, a social or a personal relationship with any
14 of these potential witnesses? If so, would you please
15 stand?

16 Yes, ma'am, you knew one of the individuals.

17 JUROR GEORGIA BROOKS: Yes, sir Brad Baxter.

18 THE COURT: What is your name, please?

19 JUROR GEORGIA BROOKS: Georgia Brooks.

20 THE COURT: All right. Do you see Mr. Baxter on a
21 social basis, or are you friends?

22 JUROR GEORGIA BROOKS: Not really.

23 THE COURT: Go to church together or --

24 JUROR GEORGIA BROOKS: I have hired his services
25 at one point about four years ago.

1 THE COURT: Have you had any contact with him in
2 the last four years?

3 JUROR GEORGIA BROOKS: Not other than just
4 passing.

5 THE COURT: All right. Would the fact that you
6 had some dealings with him four years ago, would that affect
7 your ability to be a fair and impartial juror in this case?

8 JUROR GEORGIA BROOKS: No, sir.

9 THE COURT: Do you believe that you could listen
10 to the testimony given, the law that I give you, and base a
11 decision that you may be called upon to make on the law and
12 the evidence and nothing else?

13 JUROR GEORGIA BROOKS: Yes, sir.

14 THE COURT: All right. Thank you, ma'am. Again
15 your name, please.

16 JUROR GEORGIA BROOKS: Georgia Brooks.

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

18 THE CLERK: Transfer 2.

19 THE COURT: Excuse me?

20 JUROR JANICE WHITFIELD: Janice Whitfield, number
21 194.

22 THE COURT: Ms. Whitfield, which of the potential
23 witnesses do you know?

24 JUROR JANICE WHITFIELD: I know Rusty Scoggins.

25 THE COURT: And what is the relationship of your

1 knowing him?

2 JUROR JANICE WHITFIELD: I just knew him growing
3 up through church. I know his parents.

4 THE COURT: Do you see him now?

5 JUROR JANICE WHITFIELD: No, I hardly ever see
6 Rusty.

7 THE COURT: All right. The fact that you knew him
8 in the past and you grew up together, would that affect your
9 ability to be a fair juror in this case?

10 JUROR JANICE WHITFIELD: No, I don't think so.

11 THE COURT: You could decide -- if you are picked
12 to serve on this jury, you could decide the case on the
13 evidence, the evidence alone, with the law that I give you?

14 JUROR JANICE WHITFIELD: Yes, sir, I believe I
15 could.

16 THE COURT: All right. Do you have any hesitancy
17 whatsoever that you couldn't do that?

18 JUROR JANICE WHITFIELD: No.

19 THE COURT: All right. Excuse me?

20 JUROR JANICE WHITFIELD: I could do it.

21 THE COURT: Thank you, ma'am. I appreciate that.
22 If you would be seated.

23 Yes, ma'am, your name, please?

24 JUROR AMANDA MILLER: Amanda Miller.

25 THE COURT: Excuse me?

1 JUROR AMANDA MILLER: Amanda Miller.

2 THE COURT: Yes, ma'am. Which of the witnesses do
3 you know?

4 JUROR AMANDA MILLER: Ross Brown.

5 THE COURT: And how do you know Mr. Brown?

6 JUROR AMANDA MILLER: On a social level.

7 THE COURT: Do you see him frequently?

8 JUROR AMANDA MILLER: Yes, sir.

9 THE COURT: All right. When would be the last
10 time that you would have seen him?

11 JUROR AMANDA MILLER: Probably a week ago.

12 THE COURT: All right. I'm going to excuse you
13 from the trial of this case. I'll not ask you other
14 questions. I believe that -- I don't want to put you in an
15 awkward position at all, so I will excuse you from the trial
16 of this case.

17 Is there anybody else who has any knowledge about
18 any of the potential witnesses?

19 (No response)

20 THE COURT: All right. The attorneys in this
21 case, I'll ask the solicitor if he would, please stand
22 introduce himself, as well as the attorneys.

23 MR. CAMPBELL: My name is Rame Campbell. I'm an
24 assistant solicitor here in Anderson County for Solicitor
25 Christy Adams. I represent the State in the matter.

1 THE COURT: Mr. Griffin?

2 MR. GRIFFIN: Good morning. My name is Charles
3 Griffin. I represent Mr. Rice. Thank you.

4 THE COURT: Mr. Bryholdt?

5 MR. BRYHOLDT: If it please the court, I'm Bruce
6 Bryholdt. I practice here in Anderson. Been here about 25
7 years. I'm with the law firm of Chapman, Bryholdt & Young.
8 I represent Antran Hall.

9 THE COURT: Thank you.

10 Is there any member of the panel who is related by
11 blood or marriage to any of these attorneys? If so, would
12 you please stand?

13 Thank you. There is no response.

14 Is there any member of the panel who has a close
15 business, a social, or a personal relationship with any of
16 these attorneys? If so, would you please stand?

17 Thank you. There is no response.

18 Is there any member of the jury panel who has a
19 member of your immediate family that is employed in the
20 Anderson County solicitor's office? If so, would you please
21 stand?

22 Thank you. There is no response.

23 Is there any member of the jury panel who has
24 expressed or formed an opinion about the matters involved in
25 this case in any way? If so, would you please stand?

1 Thank you. There is no response.

2 Is there any member of the panel who is aware of
3 any bias or prejudice that would interfere with your right
4 to be a fair and impartial juror? If so, would you please
5 stand?

6 Thank you. There is no response.

7 Is there any member of the panel who is a member
8 or a contributor of any organization primarily concerned
9 with the promotion of law enforcement or victim rights, such
10 as MADD, or SADD, or any of those organizations? If you are
11 a member or a contributor, would you please stand?

12 Thank you. There is no response.

13 Yes, ma'am, your name, please?

14 JUROR JANET DUNCAN: Janet Duncan.

15 THE COURT: Which organization are you a member
16 of?

17 JUROR JANET DUNCAN: I contribute about \$15 a year
18 to MADD.

19 THE COURT: All right. Would the fact that you
20 make a contribution to MADD affect your ability to be fair
21 juror in this case?

22 JUROR JANET DUNCAN: No, sir.

23 THE COURT: You could decide the case on the law
24 and the evidence and that alone?

25 JUROR JANET DUNCAN: Yes, sir.

1 THE COURT: All right. Thank you, ma'am. You may
2 be seated.

3 Ladies and gentlemen, as I stated to you, what the
4 State of South Carolina desires and what the defense
5 desires, and what each deserve, are fair and impartial
6 jurors, jurors who will make a decision on the facts, the
7 testimony that's given, any documents that may be presented,
8 the law that I give you relating to these events, and that
9 alone.

10 Is there any member of the panel aware of any
11 reason whatsoever that you believe that you could not be a
12 fair and impartial juror in this particular case? If so,
13 would you please stand?

14 Thank you very much. There is no response.

15 Any other questions from the State?

16 MR. CAMPBELL: None from the State, Your Honor.

17 THE COURT: From the defense?

18 MR. GRIFFIN: None, Your Honor.

19 MR. BRYHOLDT: No, Your Honor.

20 THE COURT: All right. Let's select a jury.

21 (Whereupon, the jury panel was impaneled)

22 THE COURT: Is there anything we need to take care
23 of before the jury is sent back?

24 MR. BRYHOLDT: I believe we do, Your Honor.

25 THE COURT: All right. Ladies and gentlemen, what

1 I'll ask you to do is go back to the jury room for this
2 time. I'll let the bailiff take you back there. We have a
3 matter of law that we need to take care of. And after that
4 I'll call you back. Obviously you shouldn't discuss this
5 case. You have been administered an oath as a juror. You
6 shouldn't speculate on anything. You certainly get to know
7 each other and talk about anything else, but don't talk
8 about the case. I'll ask you to go back with the bailiff at
9 this time just for few moments and we will call you back.

10 (Whereupon, the jury panel was taken out of the
11 courtroom)

12 THE COURT: All right. Ladies and gentlemen of
13 the jury who were not selected in this case, there is one
14 matter that we may need your services on, so what I'm going
15 to ask you to do at this time, if you will just follow the
16 bailiff and go out in the hallway and take a break. If you
17 would, just stay on this floor, however, outside the
18 courtroom. We will take care of this matter, and then I'll
19 call you back in just a few minutes. If you would please go
20 with the bailiff and just remain outside for a few moments.

21 (Whereupon, the jury venire panel left the
22 courtroom)

23 THE COURT: All right, Mr. Bryholdt?

24 MR. BRYHOLDT: May it please the court, I
25 represent Antran Hall, the 26 year old black male charged

1 with all these four indictments. The State used their
2 peremptory strikes. Their three peremptory strikes were
3 used to remove juror number 174, which is a black male;
4 juror number 170, who is a black male; and juror number 182,
5 who is a black female. There are a total of six blacks in
6 the jury panel, if I recall right. And out of the four that
7 were chosen, the State used their three strikes to strike
8 black members of the venire. We think that's a violation of
9 Batson, Your Honor.

10 THE COURT: Mr. Griffin, do you join in the
11 motion?

12 MR. GRIFFIN: Yes, sir, I join with him that
13 motion, Your Honor.

14 THE COURT: Mr. Campbell, I'll be glad to hear
15 from you.

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

17 Dealing with number 174, my first strike. Shown
18 on his rap sheet was a conviction of '03, an ABWIK charge
19 out of Williamston. I could find no disposition.

20 Furthermore, there was some talk prior to Mr.
21 Smith showing up about him being late, or being here, so out
22 of an abundance of caution I struck him.

23 The second one -- I don't see what name that is.

24 MR. BRYHOLDT: 170.

25 MR. CAMPBELL: Simpson has a fraudulent check

1 conviction.

2 The third one, number 182, both Mr. Baxter and I
3 didn't like her attitude when she stood up there and the
4 look she was giving, so we struck her for that reason.

5 Furthermore, Your Honor, we did seat juror number
6 3. Our second juror number two was a black male and we did
7 seat him.

8 THE COURT: Anything else, Mr. Campbell?

9 MR. CAMPBELL: No, Your Honor.

10 THE COURT: Anything you wish to present?

11 MR. BRYHOLDT: Your Honor, I don't have the rap
12 sheets, so I don't know if any other juror members have
13 minor records. I'm not sure. I'll take Mr. Campbell's word
14 on that.

15 THE COURT: Mr. Griffin, anything?

16 MR. GRIFFIN: Your Honor, I also don't have a rap
17 sheet on any of other jurors, but as stated is concerned
18 whether or not they had any minor violations on no
19 dispositions on the record.

20 MR. BRYHOLDT: We just don't have that
21 information, Your Honor.

22 THE COURT: All right. I'm going to grant the
23 motion as far as juror number 182. I believe that's a
24 pretextual reason, a bad attitude. I realize that there
25 could be quite a leeway an attorney is allowed to, but I

1 don't find that that would meet the standard.

2 Again, I don't know if you want to share the rap
3 sheet on the others, but I believe that is a valid reason on
4 the other two with criminal record, that you indicated that
5 they had ABWIK and a bad check. Even being late, I think
6 that's a neutral decision, but --

7 I'm not convinced under the totality of the
8 circumstances here the particular strikes that were made,
9 particularly as to juror number 182, meets the burden that
10 you have. I think the burden has been met by the parties
11 that showed a pretextual challenge, so we will strike the
12 jury again.

13 I'll be glad to hear from you further.

14 MR. CAMPBELL: Your Honor, we feel it's a race
15 neutral reason and --

16 THE COURT: If that's the only reason that you
17 got --

18 MR. CAMPBELL: Yes.

19 THE COURT: -- I believe the totality of the
20 circumstances that that she will be -- she will be seated as
21 an alternate.

22 All right. Let's bring all the jurors back and
23 have them assemble back in the room. We will do it again.

24 (Off the record)

25 (Back on the record)

1 (Whereupon, all the jury panel returned to the
2 courtroom)

3 THE COURT: The two jurors that I have excused,
4 you are one and, you too. I'm sorry I didn't do this
5 earlier, but I hope that you had a good visit with your
6 others, but you can leave at this time. And I understand
7 that you can leave for the week, that there is no other
8 trials to take place, so your service is over for the week,
9 since there is no other juries to be selected. Thank you
10 very much for being with us this week, and I'm sorry for the
11 delay today.

12 Ladies and gentlemen, I apologize for the delay.
13 We not only had a matter to take care of in this case, but I
14 had another emergency matter I had to take care of in
15 another case that doesn't even involve you, but sometimes
16 procedural matters have to be complied with. I needed to
17 make sure that we do these procedures right, so we are going
18 to select a jury again in this case. So we will have the
19 same opportunities to come forward. Perhaps some of you who
20 didn't get an opportunity, may not get an opportunity, but
21 we will go through the process again of selecting a jury at
22 this time.

23 (Whereupon, the jury panel was impaneled)

24 THE COURT: Any matters of law that we need to
25 take up, as far as the case at this stage?

1 MR. CAMPBELL: Nothing from the State.

2 MR. GRIFFIN: Nothing from this defendant, Your
3 Honor.

4 MR. BRYHOLDT: Nothing from Defendant Hall, Your
5 Honor.

6 THE COURT: Ladies and gentlemen who were not
7 selected for the trial of this case, I understand from the
8 clerk's office and from Judge Nicholson that all the jury
9 trials for the week have been chosen, so you will be excused
10 for the week. I appreciate your service so much this week
11 that you have been here and been on time. We will certainly
12 check on the other juror who didn't make it today, but your
13 service to the Anderson County and to your state has been
14 much appreciated. Even though you were not selected for the
15 trial of this case, your presence was still just as
16 important.

17 You are excused for the week. If you need any
18 kind of documentation for your employer, the clerk's office
19 will be glad to help you with that. Your payment that you
20 receive probably next month certainly won't help you with
21 your Christmas expenses, but it will be a small token of
22 your service here this week. Thank you very much for being
23 with us. You are excused at this time.

24 (Whereupon, the jury venire panel was discharged)

25 THE COURT: Could I see the attorneys here just a

1 minute?

2 (Whereupon, the lawyers approached the bench for
3 an off-the-record discussion)

4 THE COURT: Ladies and gentlemen, I have some
5 matters I need to take care of that have been waiting on
6 some other cases, and I'm not going to delay you very long,
7 and hopefully that's going to conclude all the other things
8 that I have to take care of with other legal matters that
9 are before me. We will be ready to start the trial in just
10 a few minutes.

11 I'm going to give you about a 30 minute break. I
12 believe it's enough time. I hope I can estimate right. I'm
13 trying to deal with other matters that we have to take care
14 of.

15 I'm going to ask you to go back to your jury room.
16 You haven't been sworn in yet on this case yet and you
17 certainly haven't heard any of the facts. You have made a
18 commitment to these parties that you are going to make a
19 decision on the facts and the law. Don't talk about this
20 case at this time. What I want to ask you to do, if you
21 would, please, is select a foreperson.

22 The foreperson doesn't mean that individual has
23 more votes than anyone else. As the case progresses,
24 though, there might be evidence that's presented in the
25 case. The foreperson would be the one that would, once that

1 evidence was presented, the attorney would hand it to the
2 foreperson to pass it around to the jurors.

3 Sometimes when you are out in your jury room,
4 there might be some communication that you need with the
5 court, to find out about a time scheduling, and so forth.
6 The foreperson would be your spokesperson, the one who would
7 write out whatever information that you need or questions
8 that you have, let the bailiff bring it to the court.
9 They're sort of your presiding officer, so to speak.
10 Ultimately when you have heard all the evidence and I have
11 instructed you on the law, there would be an opportunity for
12 you to then start your deliberations and reach a verdict in
13 the case, and the foreperson would be the one on behalf of
14 all of you to sign the verdict form.

15 All of you can -- the alternate just selected, he
16 will always sit in one of those two seats, either the back
17 row or the one he's in now. The rest of you, of course, can
18 sit anywhere you want to as you come in and out. You might
19 want a front row, left side or right side. The foreperson,
20 however, I would ask to sit in the bottom row on the seat
21 closest to the witness stand here, to be the seat to your --
22 farthest to your left. That way we will know who the
23 foreperson is. And that one you elect will be the one who
24 will always sit in that seat. The alternate will always
25 have his seat, and rest of you can sit anywhere that you

1 would like.

2 Once you have selected a foreperson, if you would,
3 just write that name down and give it to the bailiff and we
4 will call you back in just a few minutes as I take care of
5 those other two or three legal matters that I have to take
6 care of with these other attorneys who have been basically
7 on us from Columbia. I'll take care of those matters and we
8 will be ready to start the trial in just a few minutes.
9 I'll ask you to go back to your jury room at this time.

10 (The following takes place outside the presence of
11 the jury panel)

12 THE COURT: All right. Anything we need to put on
13 the record, as far as this case, at this time?

14 MR. CAMPBELL: Not at this time. I'll go into it
15 after --

16 THE COURT: Well, I'll do the other plea and the
17 arraignment. I think I had arraignment hearing and plea.
18 Is that all?

19 We will take a break in this case.

20 (Whereupon, proceedings were recessed)

21 (Whereupon, proceedings were reconvened)

22 THE COURT: All right. Is there anything we need
23 to take care of before the jury is called in?

24 MR. CAMPBELL: Yes, sir, Your Honor.

25 If it please the court, I'm going to introduce

1 Court's Exhibit 1, 2 and 3 into evidence here. This now
2 appears to be a trial in absence.

3 I'll state Court's Exhibit No. 1, Antran Hall,
4 based upon possession of receiving stolen goods, resisting
5 arrest, trafficking crack cocaine. He signed a bond. This
6 is certified true copy, which he acknowledged that he would
7 attend court. He has put in a \$34,000 surety bond. And in
8 it it states that I understand I'm informed my rights that I
9 have an obligation -- right and obligation to be present at
10 trial. And should I fail to attend the court, trial would
11 proceed in my absence. He did sign this. That was
12 11-23-05.

13 Also Douglas Rice, the exact same thing. He was
14 put on a \$25,000 surety, and he signed this on 11-23-05,
15 also acknowledging that he failed to appear in court, that
16 he would be tried in his absence.

17 Furthermore, on Monday, December the 11th, Mr.
18 Antran Hall and Douglas Rice was bond carded in. I have a
19 sheet that we have printed out from our office that shows
20 that we bond card these individuals in. I did call roll.
21 Neither one of these showed up, individuals showed up. I
22 did issue a bench warrant on Mr. Rice.

23 Mr. Hall had been in contact with his attorney, so
24 at that time we did not issue a bench warrant. I have
25 spoken several times with Mr. Bryholdt. Mr. Bryholdt is

1 like his third attorney, I think. Initially he had Kurt
2 Tavernier. There was a conflict because of two people.
3 Gordan Senarius was court appointed and then privately
4 retained Mr. Bryholdt in this matter.

5 Mr. Hall has showed up for roll call. The last
6 time I actually roll called him, and my records show here,
7 was back on May 16th, '06. He did show up and he indicated
8 to me at the time he was going to retain private counsel.
9 Shortly thereafter he retained Mr. Bryholdt.

10 Mr. Bryholdt, I have spoken several times with
11 him, or about him. I know that he said he has been in
12 constant contact in conversation with him, that he knew the
13 trial was coming today. Mr. Bryholdt and I talked about
14 this and discussed it with his client.

15 Mr. Halls' mother showed up on Monday and spoke to
16 me personally about why we are trying her son. I know she
17 showed up again this morning and have spoken to myself
18 and -- or actually acknowledged me, but spoke to Mr.
19 Bryholdt, and they were trying to get in contact with Mr.
20 Hall to get him here for court. As such we are proceeding
21 forward on Mr. Hall.

22 His co-defendant, Mr. Rice, Mr. Griffin was court
23 appointed in this case off the conflict list. It is my
24 knowledge, he and I have spoken several times regarding
25 this. We did give discovery to both counsel. Mr. Griffin

1 has never seen him, to my knowledge. We have not seen him.
2 He has not responded to any -- to roll call, roll call bond
3 cards from us. Mr. Griffin and I have spoken about getting
4 this thing ready for trial, this case ready for trial. I
5 know he's attempted several times to contact him by mail.
6 He also has sent out a private investigator looking for him.
7 And he did relay this to me. And also I have seen an
8 affidavit, I assume he's going to put it in evidence,
9 regarding the private investigator's attempt to locate Mr.
10 Rice.

11 I did call both these individuals this morning in
12 court approximately about nine o'clock. Neither one of them
13 answered. One of the bailiffs did go down and called the
14 name three times at the courthouse steps and neither one of
15 them answered. I don't see him in here. So -- oh, he's in
16 the back, and there was no response either, and so I'm going
17 to move these. I'll -- they have already been marked and
18 counsel has already seen those.

19 MR. BRYHOLDT: On behalf of Mr. Hall we have no
20 objection.

21 THE COURT: Does Mr. Rice have any objection?

22 MR. GRIFFIN: No.

23 THE COURT: All right, Court's Exhibit 1, 2 and 3
24 are into evidence as court exhibits.

25 They were -- the parties -- he has been given

1 proper notification and notified the trial would proceed in
2 his absence if he were not here.

3 MR. BRYHOLDT: May it please the court, Bruce
4 Bryholdt on behalf of Defendant Hall.

5 I talked with his grandmother and aunt this
6 morning. I tried to -- he was in my office about a week
7 ago. I told him that the case was coming up for trial this
8 week. He was bond carded in for Monday. He knew that. I
9 have contacted his family every day since last Friday,
10 without success. Mr. Hall's cell phone has been
11 disconnected. I believe they have been in touch with him.
12 He knows about this case. He also knows that the case would
13 go forward in his absence if he did not appear, Your Honor,
14 and we are ready to proceed.

15 THE COURT: Thank you, Mr. Bryholdt.

16 MR. GRIFFIN: Your Honor, I have -- on behalf of
17 Mr. Rice, I attempted numerous times to contact him. We
18 wrote him a letter June the 6th stating that I have been
19 appointed to represent him and asked him to come, call, make
20 an appointment. We have never heard from him. This letter
21 did not come back. I was subsequently informed that the
22 case was being called for trial. We mailed about three
23 letters and they all came back. And, therefore, I have
24 obtained the services of a private investigator to locate
25 him and was unable to locate him.

1 THE COURT: All right. Do you want to submit that
2 affidavit?

3 MR. GRIFFIN: Yes, sir, please.

4 THE COURT: Any objection from the State?

5 MR. CAMPBELL: No, Your Honor.

6 THE COURT: All right.

7 Just for the record, I don't think it includes in
8 the affidavit how long he's been searching for him. If you
9 could -- it just says as of Monday he hadn't found him, but
10 if you could, tell me if you could --

11 MR. GRIFFIN: Your Honor, it was right around this
12 time period we were trying to get ahold of him when all of
13 our mail started coming back and the trial date was coming
14 up.

15 THE COURT: It's been over the last --

16 MR. GRIFFIN: Couple of weeks. Last few weeks, I
17 guess.

18 THE COURT: All right, sir. Thank you. We will
19 get those marked right now.

20 (Affidavit Marked as Court's Exhibit No. 4 for
21 identification)

22 (Letter marked as Court's Exhibit No. 5 for
23 identification)

24 (Letter marked as Court's Exhibit No. 6 for
25 identification)

1 (Letter marked as Court's Exhibit No. 7 for
2 identification)

3 THE COURT: Anything else from anybody to take
4 care of?

5 MR. CAMPBELL: Judge, just a little bit further on
6 the TIA, Your Honor. Bill Kilpatrick, who is the bailiff, I
7 called him in the back of the jury, if you want to put his
8 testimony on the record. He called it three times, their
9 names, on the courthouse steps and no answer.

10 MR. BRYHOLDT: Your Honor, on behalf of the
11 Defendant Hall, we stipulate to that.

12 THE COURT: Is there a sheet that he -- for the
13 bench warrant? Is there a bench warrant been issued on both
14 of them?

15 MR. CAMPBELL: On his client it was issued on
16 Monday on Mr. Rice.

17 We held off on Mr. Bryholdt because he was in
18 trial up in Oconee and hadn't had time to talk to his
19 client.

20 And the bail bondsman, Gigi's bail bondsman called
21 yesterday and talked to my assistant and she told them that
22 Mr. Hall was up for trial and that -- they said okay. So
23 the bail bondsman were notified. Actually I think Gigi's on
24 both their clients, but the only one they asked about was
25 Mr. Hall.

1 THE COURT: Thank you.

2 Mr. Bryholdt, Mr. Griffin, would you like to have
3 anything from the bailiff that he did call their name?

4 MR. GRIFFIN: I would stipulate.

5 THE COURT: All right. Thank you. There is a
6 stipulation.

7 All right. Anything else?

8 MR. CAMPBELL: No, Your Honor.

9 THE COURT: All right. Have you got a short
10 witness? I feel like we probably ought to break about one
11 o'clock for lunch. If y'all make your opening statements,
12 I'll make a few preliminary remarks. We can break earlier,
13 if that will help the flow better.

14 MR. CAMPBELL: The first couple of witnesses are
15 going to be my longest, but it's not that -- it shouldn't
16 take that long. Basically they were serving the search
17 warrants and the guy showed up.

18 THE COURT: We will see how we progress here.

19 Let's bring the jury in.

20 (The following takes place in the presence of the
21 jury panel)

22 THE COURT: Thank you very much, ladies and
23 gentlemen.

24 At this time I want to ask the clerk to administer
25 the oath to you.

1 (Whereupon, the jury panel was sworn by clerk)

2 THE COURT: Mr. Foreman, ladies and gentlemen,
3 thank you very much for your patience with us. I need to
4 make some few remarks to you. This is in no way to be
5 considered an instruction on the law. I'll do that at the
6 end of the case. I'm well aware that you are here at an
7 inconvenience for you. We have interrupted your week. We
8 have called you to be jurors in this case. I know that your
9 sacrifice to be here is one that I'm well aware of. By the
10 same token, it's an important duty that you have as jurors,
11 because you and I are going to be working together. I wear
12 the black robe. I'm referred to as the judge, but you are
13 going to be every bit as much a judge in this case as I am,
14 because you are going to be the sole and exclusive judges of
15 the facts. You are going to determine what the facts are in
16 this particular case.

17 Now, as I told you, both Mr. Hall and Mr. Rice
18 have entered pleas of not guilty to these charges. The
19 burden of proof is on the State of South Carolina to prove
20 to you each of the charges beyond a reasonable doubt.
21 Nobody in our society is required to prove themselves
22 innocent. There is a presumption of innocence that applies
23 to all of us, and the State has the burden of proving to you
24 guilt beyond a reasonable doubt.

25 You may also have noticed that neither of the

1 defendants are in the courtroom today. Under South Carolina
2 law those accused of crimes can be tried without attending
3 the trial. And the fact that they are not here at this time
4 should not be considered by you in any way whatsoever
5 against them, because they have a right to be here or not be
6 here during the course of the trial.

7 Now, I just called you fellow judges. You may
8 have some apprehension about that, thinking to yourself
9 well, goodness, I have never had any courses in law; I never
10 served on a jury before; I don't have any knowledge of the
11 law; how can I be a judge. Let me assure you that you are
12 well qualified to fulfill the duties that you have accepted,
13 because you are going to be applying your good common sense
14 and every-day experiences to determine the believability of
15 the witnesses and to make a determination of the facts in
16 this case. You have taken an oath. You have committed to
17 the State of South Carolina and to each of these defendants
18 that you are going to be fair and impartial jurors and you
19 are going to decide the case and make the determination on
20 the facts that are presented and the law that I give you,
21 and that alone.

22 At the end of the case I will instruct what the
23 law is. And under your oath, you are required to accept
24 that law and apply it, just as I give it to you.

25 My duties also are to preside over the course of

1 the trial. During the trial we will take periodic breaks.
2 We won't require you to sit longer than your comfort level,
3 but if we go longer than you feel you need to, please raise
4 your hand and let the bailiffs know. They are certainly
5 here to assist you. Ms. Phillips is here to assist you in
6 any way, and her staff from the clerk's office. But if you
7 need to take a break please let us know, because we will do
8 that. Your requirement as a juror is to be a good listener,
9 to listen to what takes place here in the courtroom, and
10 your comfort level obviously is vitally important to your
11 ability to listen. Normally we will break for lunch about
12 one o'clock, or so. And then in the afternoon we will take
13 a break after -- rarely would we sit for more than an hour,
14 hour and 15 minutes at a time, but we will try to give you
15 breaks as needed.

16 Cases take place in several stages. In a few
17 moments the attorneys are going to make opening statements
18 to you. The opening statements are not evidence. What the
19 lawyers say, even the questions the lawyers ask are not
20 evidence. The evidence is what the witness tells you and
21 what documents may be offered into evidence. I urge you to
22 listen carefully as these attorneys address you, because
23 certainly they can give you an overview of what you need to
24 be looking for in this case and the important facts that
25 they feel that you should consider in your hearing of this

1 matter.

2 After the opening statements, there will be
3 evidence presented. Witnesses will be sworn in and offer
4 testimony. There may be some exhibits offered for you to
5 examine.

6 After all the evidence has been presented, the
7 attorneys will again have an opportunity to address you and
8 make closing statements.

9 And at the end of the case I'll then instruct you
10 on what the law is.

11 As I stated to you, I'm Eddie Welmaker. I'm a
12 judge in Pickens County and I'm honored to be working with
13 you this week. You have been chosen especially to hear this
14 case, and I know that you will take your oath and your
15 commitment to these parties seriously as you hear the case.

16 Let me also introduce you to the other folks that
17 you might not have been introduced to. The gentleman seated
18 between you and me is Mike Watts. He's the court reporter.
19 He's going to be taking down everything that's said during
20 the course of the trial to preserve a record of the event.

21 Seated behind me is Riley Maxwell. He's a recent
22 law school graduate admitted to practice law. He's my law
23 clerk. You may see him coming in and out, taking care of
24 legal matters that may be taking place in this trial, as
25 well as taking care of things back in the office that may

1 need some attention. So obviously valuable assets that we
2 have, along with the clerk's staff.

3 It makes me proud that you have accepted this oath
4 to the commitment that you have made to these parties and I
5 enjoy working with you on this case.

6 At this time in order to preserve the record I
7 need to ask the attorneys if there is any objection to these
8 remarks that I have made.

9 Any from the State?

10 MR. CAMPBELL: Nothing from the State.

11 THE COURT: From the defense?

12 MR. GRIFFIN: Nothing from Mr. Rice, Your Honor.

13 MR. BRYHOLDT: Nothing from Mr. Hall, Your Honor.

14 THE COURT: You may make your opening statements.

15 MR. CAMPBELL: If it please the court. Mr.

16 Griffin, Mr. Bryholdt.

17 Ladies and gentlemen of the jury, drug dealers,
18 they kind of lead one of these reality TV shows. Their life
19 kind of goes around. They have all that drama and suspense
20 and strategy in trying to outwit law enforcement. This one
21 day it was their turn to be kicked off the island or their
22 turn to be fired, because law enforcement shows up. That's
23 what we have here.

24 November 21st, 2005, at ADDRESS here in
25 Anderson, ADDRESS officers with the Anderson County

1 sheriff's department were what we call executing or serving
2 a search warrant at this location. And they were just about
3 to wind it up when they saw a car come into the driveway, a
4 gold tan colored Buick, a four-door car. And they observed
5 this car previously under surveillance and this car belonged
6 to this house. This is where this car was staying. And as
7 soon as the driver of the car noticed all the law
8 enforcement in his front yard -- you know, he had two
9 options. He could drive up there and see what was going on,
10 or take off. He chose the latter. He took off. Officers
11 noticed that, saw him. They jumped in their cars, their --
12 actually their trucks, and they followed him and they lost
13 sight of him. But they caught back up with him. They were
14 able to catch up to him on Abbeville Highway, and he blowed
15 stopped signs, passing cars, passed a school bus that was
16 stopped --

17 MR. BRYHOLDT: I'm going to object here. This is
18 an opening statements. It's not closing evidence. None of
19 this evidence is in.

20 MR. CAMPBELL: This is what the facts are going to
21 show.

22 THE COURT: I'll overrule your objection, but I'll
23 ask you to make your opening statements brief.

24 MR. CAMPBELL: The facts are going to show that
25 that is what happened. They were finally able to catch up

1 with him and fell in behind him. And out the passenger
2 window came a ziplock bag full of white powdered substance,
3 and hit the ground. They called the radio back and it was
4 picked up.

5 The driver of that car was Antran Hall. His
6 passenger was Douglas Rice, who are on trial today. In
7 their attempt to get away, they eventually wrecked that car.
8 And after they wrecked it, they both tried to leave. Mr.
9 Rice jumped out of the passenger's side and he was caught
10 and apprehended. Mr. Hall went the other direction out of
11 the driver's side door and he was caught and apprehended.
12 And during that point he fought officers, which is why he
13 was charged with resisting arrest. He didn't want to go to
14 jail. And that is the crutch of our case.

15 And as a result of this case, we have brought
16 charges against Mr. Hall for trafficking cocaine, powdered
17 cocaine; also charged with failure to stop for a blue light;
18 charged him with resisting arrest; and also possession of
19 stolen property, which was located at his house while they
20 were executing the search warrant.

21 Mr. Rice was also charged with trafficking
22 cocaine.

23 The burden is upon the State to prove this to you.
24 We gladly look forward to meeting our burden to prove our
25 case, and we will put up the witnesses, let you hear it, and

1 let you see the evidence that we are going to produce. And
2 at the end of this trial y'all have a job to do. That's
3 either to find him guilty or not guilty.

4 . It comes down to this. Did we meet the burden?
5 If we have proved our case, you find him guilty. If we
6 didn't, find him not guilty. And that's all we ask you is
7 to give both sides a fair trial. And I look forward to
8 speaking to y'all at the end of this case. I thank y'all.

9 THE COURT: Mr. Griffin?

10 MR. GRIFFIN: If it please the court.

11 Ladies and gentlemen, my name is Charles Griffin.
12 I represent Mr. Rice, who has been charged with trafficking
13 in an illegal substance called cocaine.

14 The evidence shows that the officers were
15 executing a search warrant at Mr. Hall's residence, not my
16 client, Mr. Rice's residence. The evidence will show that
17 Mr. Hall was operating the vehicle. I believe the evidence
18 will also show that the vehicle belonged to a third party,
19 Monica Williams. That evidence will show that Mr. Hall was
20 driving the vehicle and he's the one that took off. He's
21 the one that was pulling into his residence, and he's the
22 one that wrecked the car. He's the one that they had to
23 fight.

24 The only evidence that the State can present
25 against Mr. Rice is that he was in the vehicle.

1 The State has the burden of proving beyond a
2 reasonable doubt that Mr. Rice is guilty of the crime of
3 trafficking in cocaine.

4 This trial is about fairness, evidence, things of
5 that nature. We would just ask you to pay close attention
6 to the evidence, and it will show that the only evidence
7 that they have against Mr. Rice was that he was simply in
8 the vehicle. Thank you very much.

9 THE COURT: Mr. Bryholdt?

10 MR. BRYHOLDT: May it please the court.

11 My name is Bruce Bryholdt. I have been practicing
12 law here in Anderson for about 25 years, and I represent
13 Antran Hall.

14 And on behalf of Mr. Hall we thank you for taking
15 time out of your schedule. No one likes to serve on jury
16 duty. I think everyone would rather be at home, either at
17 work or with their family, but you have an important job to
18 do today. That job under the oath that you took is to hold
19 the State the burden of proving their case beyond a
20 reasonable doubt, and they have to prove each and every
21 element of the crime charged beyond a reasonable doubt. And
22 if they fail to do that, under the oath that you took you
23 have no choice but to return a verdict of not guilty,
24 because it's not what you think happened. It's not what
25 might have happened. It's what the State proves to you

1 today.

2 What they have got to prove to you today is that
3 Mr. Antran Hall, for trafficking in cocaine, possessed a
4 certain amount of drugs and it was under his control and he
5 has in his possession. And I ask you to listen to the
6 officers when they testify about what happened during this
7 car chase.

8 There's no question I think the evidence is going
9 to show that Mr. Antran Hall was driving that car. There is
10 four charges they got him with. Resisting arrest, and ask
11 yourself, you know, when you hear the testimony, was he
12 resisting arrest, or was he trying to keep from getting beat
13 up? Did he have the drugs in his possession? And did he
14 possess stolen property? That's what this case is about.

15 We believe at the end of this case there is going
16 to be doubts that would cause you to hesitate. That's what
17 a reasonable doubt is, the kind of doubt that would cause an
18 ordinary person to hesitate to act, but hold the State to
19 that high burden.

20 Antran Hall is not here today. He's a young 26
21 year old black gentleman. He's presumed innocent. Those
22 are not hollow words. It's our system of difference from
23 those of Middle East, or Iran, or Iraq, a defendant does not
24 have to prove anything. The State must carry their burden.

25 We look forward to working with you. Hopefully we

1 can finish this case today. It's an important day for
2 Antran Hall, who is the one that's on trial here, and no one
3 else. We looking forward to working with you.

4 THE COURT: Solicitor, you the may call your first
5 witness.

6 MR. CAMPBELL: Your Honor, the State calls Ross
7 Brown.

8 OFFICER ROSS BROWN, having been first duly sworn,
9 testified as follows:

10 THE CLERK: State your full name and spell your
11 last name for the record.

12 THE WITNESS: Yes. My full name is Christopher
13 Ross Brown, B-R-O-W-N.

14 DIRECT EXAMINATION BY MR. CAMPBELL:

15 Q. Mr. Brown; where are you employed?

16 A. I'm employed by the Anderson County sheriff's office.

17 Q. And how long have you been employed with law
18 enforcement?

19 A. I have been a certified law enforcement officer in the
20 State of South Carolina since the beginning of 1999.

21 Q. And where are you currently -- what capacity or
22 position are you employed in at the sheriff's department?

23 A. I have been a narcotics investigator at the sheriff's
24 office since the beginning of 2003.

25 From January of 2006, to the present, I'm currently

1 assigned to the Drug Enforcement Administration, Greenville
2 residence office. I'm federally deputized as a federal
3 officer to enforce drug activity there.

4 Q. Now, were you working with the sheriff's department or
5 are you with DEA task force back on November 21st of 2005?

6 A. I was still at the sheriff's office in that capacity as
7 a narcotics investigator.

8 Q. And as part of your job as an investigator, did you
9 have occasion to do an investigation at the location of ADD
10 here in Anderson county? RESS

11 A. I did. I did.

12 Q. And what precipitated that or brought you to do this
13 location?

14 A. On a daily basis at the sheriff's office in the
15 narcotics unit we receive a lot of telephone calls, a lot of
16 anonymous information as far as drug activity in the
17 community. That information comes from people in the
18 neighborhoods, concerned citizens, estranged family members.
19 Just different areas of the community.

20 MR. BRYHOLDT: Objection, Your Honor, hearsay, if
21 it's coming on office phone calls.

22 THE COURT: I'll overrule the objection as to what
23 he said so far, but caution you not to discuss any hearsay
24 in the content of the discussions.

25 BY MR. CAMPBELL:

1 Q. As a result of these anonymous phone calls, what, if
2 anything, did you do?

3 A. We started receiving information from several different
4 sources. I received information of a drug activity at
5 ADDRESS

6 Also at the time we had a confidential informant in our
7 control that also was aware of the drug activity at
8 ADDRESS and informed us that a black male at the
9 residence by the name of Trans was selling cocaine, powdered
10 cocaine, out of the residence.

11 MR. BRYHOLDT: Objection, Your Honor. That's
12 hearsay.

13 THE COURT: All right. I sustain the objection.

14 BY MR. CAMPBELL:

15 Q. Now, as a result of the information that you received,
16 did you personally do anything regarding this location?

17 A. I did. We began to do what we call drive-by
18 surveillance of the house, just driving by periodically to
19 kind of check the traffic flowing in and out of the
20 location.

21 Q. What did you observe?

22 A. We observed cars coming and leaving on a regular basis
23 on the evenings, what I believe to be consistent in my
24 training as far as a drug house.

25 We also observed security cameras on the outside of the

1 residence, which is usually not consistent, you know, with
2 an every-day house.

3 We observed at the house the car in question, the early
4 90's model Buick.

5 After sustained surveillance on the house over several
6 days to a week and a half, we ended up getting the informant
7 under our control in a vehicle, at which time we did see Mr.
8 Hall operating the vehicle. The informant confirmed to me
9 that that was the subject he knew as Trans that sold drugs
10 out of the house.

11 Prior to the 21st we equipped him with some audio
12 surveillance equipment, which is the standard procedure.
13 Supplied him with a quantity of controlled funds, which we
14 call buy money. Sent him to the residence where he
15 approached and knocked on the door.

16 MR. BRYHOLDT: Your Honor, I'm going to object to
17 the relevancy of this. This is before the incident we are
18 talking about. We are talking about November the 21st. Is
19 this matter to be taken up outside the presence of the jury,
20 Your Honor, this is other acts.

21 THE COURT: Does this have anything to do --

22 MR. CAMPBELL: Yes, it does. It has everything to
23 do with how they got the search warrant, Your Honor. And
24 that was the basis of them being there on that day.

25 THE COURT: All right. Let me see the lawyers

1 here just a minute.

2 (Whereupon, the lawyers approached the bench for
3 an off-the-record discussion)

4 MR. BRYHOLDT: I think we have it resolved, Your
5 Honor.

6 THE COURT: All right. Good.

7 Yes, sir, you may proceed.

8 BY MR. CAMPBELL:

9 Q. Now, Detective Brown, as a result of your activities
10 you obtained a search warrant, is that correct?

11 A. That's correct.

12 Q. And what premises or property did you obtain a search
13 warrant for?

14 A. ADDRESS in Anderson County, South Carolina.

15 Q. And can you describe the type of property it is?

16 A. Yes, it's what they call a modular home. I believe
17 it's a doublewide. It was setting perpendicular to the
18 road, which means the one end of the trailer was facing the
19 road. I believe it was light or white in color with some
20 gray trim.

21 Q. And as a result did you do anything with this search
22 warrant?

23 A. That's correct, we executed it on the -- I believe it
24 was November 21st.

25 Q. When you say you execute, what, in fact, are you

1 talking about?

2 A. We go to the residence, make entry to the residence,
3 secure it, and search it for evidence of the crime under the
4 scope of the search warrant.

5 Q. And did you do that in this case?

6 A. That's correct, we did.

7 Q. And what day did you do that on?

8 A. That was on November 21st, 2005.

9 Q. Now, approximately what time of the day was this?

10 A. You know, I don't have the exact time exactly what it
11 was, but it was after lunch. I do remember that.

12 Q. And do you recall the weather conditions that day?

13 A. It was overcast maybe -- I believe it had rained
14 previously.

15 Q. And when you went to serve the search warrant or carry
16 it out, how do y'all as law enforcement go about doing that?

17 A. We like to -- naturally we drive unmarked vehicles. We
18 are plainclothesed officers. They are equipped with blue
19 lights. We arrive at the residence. We try to take a
20 uniform presence with us to, not two, if possible more,
21 logically of marked units, somebody with a marked patrol car
22 with the light bar and uniform. We are fortunate to have a
23 unit attached to us. It's a uniformed arm of narcotics.
24 They deployed to the house with us. We went up, made forced
25 entry to the house and secured it.

1 Q. And when you went into the house, was anybody
2 present --

3 A. Yeah.

4 Q. -- inside the house?

5 A. Yes, sir, we located one person inside. It was a black
6 female. I have her name. I don't know it off the top of my
7 head.

8 Q. And when you conduct a search warrant, what, if,
9 anything are you looking for?

10 A. We are looking for -- naturally we are looking for
11 quantities of drugs, currency. Stolen property is common to
12 find at these houses. We like -- a lot of times baggies,
13 mass quantities of quart sized, gallon sized ziplock
14 baggies. Digital scales. Normally there is more than one
15 pair. Normally there is more than one pair. Sometimes we
16 find nonfunctioning sets in the house as well. Firearms,
17 ammunition. You know, stuff that's consistent with illegal
18 activity.

19 Q. And what did you find -- did you write down what items
20 that you find in this house?

21 A. Yes, we do an -- in our office we do what we call an
22 evidence sheet, which has information of the property that's
23 taken from the house.

24 We also file a return on the search warrant, which
25 lists all the inventory taken under the search warrant. And

1 we also within our unit do a search inventory as well.

2 Q. And what items did you take from this house at ADD
3 RESS

4 A. This is -- I'm getting this from the copy of the search
5 warrant. We found one Smith & Wesson .357 caliber revolver.

6 - We found one yellow bag containing miscellaneous
7 shotgun shells and bullets.

8 One black magazine to a handgun.

9 We found a white bag containing miscellaneous rifle
10 cartridges and rounds.

11 Three boxes of ammo. I don't have the exact caliber on
12 that that we found.

13 We found a box of sandwich bags.

14 We found a Duke Power bill addressed to Mr. Hall, the
15 defendant.

16 We found some photographs of Mr. Hall, I believe. I
17 don't have the exact description of the photographs with me.

18 We found a scanner, which is also consistent with
19 illegal activity.

20 We found two sets of digital scales. I'm sorry, five
21 sets of digital scales inside the house.

22 And also the motorcycle was found outside, along with
23 inside another 9-millimeter pistol. A Lorcin model was
24 found inside the residence.

25 Q. Was either Mr. Hall or Mr. Rice present when you

1 executed this search warrant?

2 A. No, they weren't, just a black female was at the house.

3 Q. Mr. Brown, I'm going to show you what's been marked for
4 State's identification Exhibit No. 2, 3 and 4. Can you
5 please identify what these are, sir?

6 A. This is Exhibit 2. It is the power bill found inside
7 the residence that's addressed to Mr. Hall.

8 Q. And what's the name on the power bill?

9 A. It's Antran L. Hall and it's addressed to Camden
10 Drive.

11 Q. And what did you do with this once you received it?

12 A. We took it or seized it under the authority of the
13 search warrant and placed it into evidence at the Anderson
14 County sheriff's office.

15 Q. And is that the same one that you put into evidence on
16 that day?

17 A. That's correct, it is.

18 MR. CAMPBELL: Your Honor, I move State's Exhibit
19 No. 2 into evidence.

20 THE COURT: Any objection.

21 MR. BRYHOLDT: No objection for Defendant Hall.

22 THE COURT: Without objection?

23 MR. GRIFFIN: No.

24 THE COURT: Exhibit 2 is into evidence without
25 objection.

1 BY MR. CAMPBELL:

2 Q. Please identify what State's Exhibit No. 3 and 4 are,
3 please, sir.

4 A. 3 and 4 are two separate bags of digital scales. There
5 is three in one bag two in the other.

6 Q. And what are these scales typically used for?

7 A. I have never seen it be used for anything but drug
8 trafficking personally. They are very commonly found inside
9 houses that we execute narcotic search warrants on.

10 Q. And you collected these from the scene on November
11 21st, 2005?

12 A. I did, inside the residence.

13 Q. And what, if anything, did you do with these?

14 A. I seized them again under the scope of the search
15 warrant and placed them into evidence at the Anderson County
16 sheriff's office.

17 Q. Are these the scales that you identified in the return
18 on the search warrant?

19 A. That's correct, I did.

20 MR. CAMPBELL: Your Honor, at this time I move
21 State's Exhibit 3 and 4 into evidence.

22 MR. BRYHOLDT: Object, Your Honor, outside the
23 scope of the search warrant. We can hand it up.

24 THE COURT: All right, Mr. Campbell?

25 MR. CAMPBELL: Your Honor, the property sought

1 goes to the fact we are looking for anything having to deal
2 with the distribution of illegal narcotic drugs, in this
3 case cocaine. And, as such, it falls under items used to
4 distribute. And, therefore, we feel it comes in under the
5 search warrant.

6 THE COURT: All right. I overrule your objection
7 Mr. Bryholdt.

8 MR. BRYHOLDT: Yes, sir.

9 THE COURT: Any other objection to the exhibit?

10 MR. BRYHOLDT: No, Your Honor.

11 MR. GRIFFIN: None, Your Honor.

12 THE COURT: Exhibits 3 and 4 are admitted into
13 evidence over objection.

14 BY MR. CAMPBELL:

15 Q. Now, Mr. Brown, after this part, after you were doing
16 this, you record everything on the return, is that correct,
17 that you take out the house?

18 A. Being that I obtained the search warrant, I did not do
19 the return. I believe one of the other investigators
20 actually filed the return.

21 Q. But everything is included on there that y'all removed
22 from the house?

23 A. That's correct.

24 Q. Now, was there any other items that you found? You
25 mentioned a motorcycle in this. Can you please describe or

1 tell the jury about that?

2 A. Yeah, also while prior to obtaining the search warrant
3 we did observe a large -- I don't know if they call it
4 Enduro type, but a large dirt bike type motorcycle sitting
5 on a -- I don't know if it was on milk cart, or something.
6 It was up off the ground sitting in the driveway. That was
7 there on pre-surveillance.

8 When we executed the search warrant, we noticed that
9 the motorcycle ignition was punched, which led us to believe
10 that something wasn't right with it. So we ended up running
11 the VIN number through our dispatch, who checks it through a
12 national database, and it was indeed found to be stolen out
13 of Buncombe County, North Carolina, at which time I notified
14 our dispatch that we possession of this piece of property.
15 They concluded all NCIC transactions, which is the anagram
16 for the system that we use that keeps all this information
17 on the nationwide database. They communicated through that
18 terminal with Buncombe County, whatever agency it was that
19 was stole from, and concluded that it was still, in fact,
20 listed as stolen. So it was also seized from the residence
21 and placed into evidence at the sheriff's office.

22 Q. And do you know the approximate value of this
23 motorcycle?

24 A. I'm not sure. I think we had it as --

25 MR. BRYHOLDT: Object, Your Honor. It calls for

1 speculation. He doesn't know the value.

2 THE COURT: I sustain the objection.

3 A. I have it. I think it's listed in the NCIC
4 transactions.

5 BY MR. CAMPBELL:

6 Q. All right. Now, what year was the motorcycle?

7 A. It was a -- excuse me just a minute.

8 A 2005.

9 Q. And it was 2005, and you found it in 2005?

10 A. That's correct.

11 Q. As a result of that, in your opinion do you feel that
12 it's worth more than a \$1,000?

13 A. I do.

14 Q. Now, after -- at this point were you finishing up the
15 execution of the search warrant?

16 A. Yes, sir. Actually I was outside, along with several
17 other investigators, obtaining information on the motorcycle
18 and processing it, as far as taking it -- actually taking
19 physical control of it. But I think I believe we had made
20 contact with one of our departmental personnel to come and
21 pick the motorcycle up in a truck to take it back to the
22 office.

23 Q. And while you were outside, y'all were finishing up,
24 did anything else happen?

25 A. Yes, sir, that's when we observed the vehicle in

1 question drive by.

2 Q. What color vehicle was it?

3 A. It was a tan -- it was a tan, I believe, Buick.

4 Q. And how many doors did it have on it?

5 A. Four door.

6 Q. And where was this car coming from?

7 A. It was coming -- if you are standing in the driveway
8 with the residence over your left shoulder, the road comes
9 down. Like I said mentioned earlier, the residence is
10 perpendicular to ADDRESS And as you look to the left
11 towards the mobile home, the road kind of goes up a hill.
12 And we saw it break the top of the hill and start coming
13 down and approaching the driveway. You know, we naturally
14 had -- I believe my truck was there, along with two or three
15 other investigator vehicles.

16 Q. Did you have any marked units there?

17 A. I know there were marked units there. I don't know
18 about the exact time frame.

19 Q. And could the driver of this vehicle see that there was
20 law enforcement officers in the yard?

21 A. Yeah, we were -- we were actually -- we have clear
22 identification on us that shows us as law enforcement, we
23 execute a search warrant for safety reasons. We -- I think
24 that day we had a black pullover with sheriff down both
25 sleeves, as well as a star on the front, and sheriff on the

1 back. Everybody there should know us as identified as.

2 Q. So you clearly could be identified as law enforcement
3 officers in this yard?

4 A. From a substantial distance, yes, sir.

5 Q. And what did you observe -- this vehicle that you
6 observed coming towards the driveway, had you previously
7 seen this vehicle?

8 A. Yes, it was the same vehicle the confidential
9 informant, while inside my vehicle, pointed out as the car
10 that he knows this subject as Trans driving.

11 Q. Had you seen this vehicle previously at ADDRESS

12

13 A. It was parked at the residence on several occasions
14 while we were doing surveillance.

15 Q. And what, if anything, did the driver of this vehicle
16 do?

17 A. As he came down the hill, like he hesitated for a
18 moment. The vehicle started to slow and then it accelerated
19 rapidly away from the house.

20 Q. At that point did you have anything further to do with
21 this case?

22 A. No, I didn't. I actually was there in custody of
23 evidence, so I was pretty much stuck with doing what I was
24 doing. I couldn't go any further.

25 Q. Did any other officers on the scene do anything?

1 A. Several officers left and tried to locate the vehicle.
2 I don't know anything other than that.

3 Q. And that's the only involvement you had of it after
4 that, up to that point, is that right?

5 A. Up to that point, until everybody was in custody, yes,
6 sir.

7 MR. CAMPBELL: Court's indulgence.

8 (Off the record)

9 (Back on the record)

10 BY MR. CAMPBELL:

11 Q. Mr. Brown, I have no further questions for you. Please
12 answer any questions that the defense counsel may have.

13 A. Yes, sir.

14 THE COURT: Mr. Griffin, you may cross-examine the
15 witness.

16 MR. GRIFFIN: I have no questions of the witness
17 at this time.

18 THE COURT: Mr. Bryholdt.

19 MR. BRYHOLDT: May it please the court.

20 CROSS EXAMINATION BY MR. BRYHOLDT:

21 Q. Tell the jury how much drugs that you found in Antran
22 Hall's house.

23 A. We didn't find any drugs inside the house.

24 Q. No drugs?

25 A. No drugs.

1 Q. Nothing at all?

2 A. No, sir.

3 Q. Any residue on the scales that you put in evidence?

4 A. They weren't tested for residue, no, sir..

5 Q. Wouldn't that make your case? You said they used them
6 for drugs. Why didn't check to see if there was any drug
7 residue?

8 A. We didn't locate any substantial quantity of drugs in
9 the house.

10 Q. Did you check for fingerprints?

11 A. No, sir.

12 Q. You found a motorcycle that you claim was stolen. Did
13 you check fingerprints on the motorcycle?

14 A. It was wet. The conditions, it was wet.

15 Q. It was wet? I thought they asked earlier it was clear
16 and drive that day?

17 A. No, sir, I stated it was overcast and it had rained
18 previously.

19 Q. Okay. It had rained.

20 Did you have this house under surveillance for a number
21 of days?

22 A. Yes. Periodic surveillance, yes, sir.

23 Q. Did you ever see Mr. Antran Hall riding the motorcycle?
24 You didn't, did you?

25 A. No, sir, it was parked in the same spot.

1 Q. Did you ever see him park the vehicle there?

2 A. No, sir.

3 Q. Did you ever see Antran Hall have any contact with that
4 vehicle at all?

5 A. No, sir, it stayed stationary in the driveway.

6 Q. No drugs in the house at all?

7 A. No, sir, none were located.

8 Q. Thank you, sir.

9 A. Yes, sir.

10 THE COURT: Redirect?

11 REDIRECT EXAMINATION BY MR. CAMPBELL:

12 Q. Mr. Brown, during your years of being a narcotics
13 officer, is it common not to find drugs in a house when you
14 execute a search warrant?

15 A. It is. It is.

16 Q. Why is that?

17 A. Well, a lot of times they say this level of drug
18 trafficker or dealer normally keeps several people around
19 him. Also this house, you know. With the traffic coming in
20 and out, I would assume that there would be a lot of people
21 around. We have found in the past on occasions that the
22 dealer will keep the product either close to him along with
23 the money either on his person or with somebody that he
24 trusts. Naturally if he wasn't at the house, I would
25 believe that the drugs would be him. I don't think there

1 was anybody there trustworthy enough to take possession of
2 them.

3 MR. CAMPBELL: I have no further questions.

4 THE COURT: All right. Thank you, sir. You may
5 step down.

6 MR. CAMPBELL: Thank you.

7 Your Honor, may we approach.

8 THE COURT: Yes, sir.

9 (Whereupon, the lawyers approached the bench for
10 an off-the-record discussion)

11 THE COURT: Mr. Foreman, ladies and gentlemen, I
12 think this is a good time for us to take a break for lunch.
13 I'm going to ask you to go back to your jury room. You will
14 be free to go to lunch. You need to be back at ten after
15 two. That will give you time hopefully to find a place to
16 have your lunch.

17 When you get back to the jury room, or even while
18 you are at lunch, I don't know whether you plan to have
19 lunch with your fellow jurors, meet a business associate, a
20 family member. You now being selected on a jury, you are
21 going to perhaps come into contact with some folks that are
22 real curious about wanting to know how did it go today, did
23 you get picked, what's the case about, tell me about what's
24 happened so far. During the course of the trial while you
25 are hearing this case, it would be improper for you to talk

1 about the case with anyone. Families, friends, other
2 acquaintance says that you have, there will be opportunities
3 for to you share your experience with them when the case is
4 over and done with. But during the course of the trial it
5 would be improper for you to talk about the case in any
6 manner whatsoever with your fellow jurors or with anyone
7 else.

8 I don't suspect that there would be anyone who
9 would want to approach you about the case, but if someone
10 were to come up and, whether they identified themselves or
11 not, want to talk to you about the case or ask you questions
12 or give you information about this particular case, please
13 let them know that you are on the jury and you can't talk
14 about the case that you have been warned by me not to talk
15 about the case. And if a person were to persists and just
16 want to give you information or ask you questions, if you
17 can, please get the name of that individual, excuse yourself
18 as quickly as you can. Report that back to us and we will
19 certainly take care of that matter for you.

20 Have a good lunch and we will see you. If you
21 will be back in your jury room at ten after two. You are
22 excused at this time.

23 (The following takes place outside the presence of
24 the jury panel)

25 THE COURT: All right. We will be at ease until

1 2:10.

2 (Whereupon, proceedings were recessed)

3 (Whereupon, proceedings were reconvened)

4 THE COURT: Ready to proceed?

5 MR. CAMPBELL: The State is ready, Your Honor.

6 MR. GRIFFIN: Defendant is ready.

7 MR. BRYHOLDT: Defendant ready.

8 THE COURT: Let's bring the jury back.

9 (The following takes place in the presence of the
10 jury panel)

11 THE COURT: All right, Mr. Foreman, ladies and
12 gentlemen, we are ready to proceed.

13 Solicitor, you may call your next witness.

14 MR. CAMPBELL: Thank you, Your Honor.

15 Your Honor, the State calls Brad Baxter.

16 OFFICER BRAD BAXTER, having been first duly sworn,
17 testified as follows:

18 THE CLERK: State your full name and spell your
19 last name for the record, please, sir.

20 THE WITNESS: Larry Bradley Baxter, B-A-X-T-E-R.

21 DIRECT EXAMINATION BY MR. CAMPBELL:

22 Q. Mr. Baxter, where are you employed?

23 A. Anderson County sheriff's office.

24 Q. And what position are you employed as?

25 A. Sergeant of the narcotics unit.

1 Q. And how long have you been in law enforcement?

2 A. All together about eight, nine years.

3 Q. Has all of it been here?

4 A. No, sir.

5 Q. Where else has it been?

6 A. I started here in late eighties in Anderson County when
7 another sheriff was here. I went to North Charleston. I
8 came back here and I went to work for several lawyers here
9 in town. I went back to work at the sheriff's office in
10 2000.

11 Q. And were you employed in your capacity as a sergeant of
12 narcotics on November 21st, 2005?

13 A. Yes, sir.

14 Q. On that day did you have occasion to participate in the
15 execution of a search warrant?

16 A. Yes, sir.

17 Q. And what location was that?

18 A. ADDRESS

19 Q. Is that here in Anderson County?

20 A. Yes, sir.

21 Q. And while you were participating or doing the search
22 warrant, did you notice or did you have an occasion to come
23 into contact with Mr. Hall and Mr. Rice?

24 A. Yes, sir.

25 Q. And how did that come about?

1 A. We seen them periodically -- or seen Mr. Hall
2 periodically the weeks prior to the date of the search
3 warrant. And then came -- seen him again on that day when
4 we was at the -- doing a search warrant. He come driving
5 across the hill -- over the hill. He seen us and was going
6 to turn into the driveway, and then he darted out real quick
7 and headed down the road. He and Mr. Antran Hall was
8 driving.

9 Q. And what, if anything, did you do?

10 A. Well, I looked at several guys that was with us.
11 Some -- they are out here with me today, and I said there he
12 goes, and we seen him. We ran to my truck and attempted to
13 find him.

14 Q. And which direction or what did you do at that point in
15 time? Which correction did you go?

16 A. We left his driveway, took a right on Camden on --
17 off -- out of his drive, took a right on Camden. Went back
18 down to -- we didn't know where he was at at this time. We
19 was just guessing. And got to the stop sign and south at
20 McDuffie Street Extension and took a right. Went all the
21 way out into approaching 28, Abbeville Highway, and seen him
22 just below the stop sign right there at 28 and I was
23 thinking South McDuffie. That's the name of the street.

24 Q. When you went through the stop sign what did you do?

25 A. When he went through the stop sign, I -- we was just

1 approaching -- when I got to 28, I turned my lights and
2 siren on.

3 Q. What kind of vehicle were you in?

4 A. I was in a silver Chevrolet Avalanche.

5 Q. Were you wearing any identification indicating that you
6 were law enforcement?

7 A. I had on my raid vest and had my blue lights and siren
8 on my truck.

9 Q. And which direction did y'all go?

10 A. We went north on 28 toward Eddie's Mini-Mart.

11 Q. Please continue.

12 A. While he was -- after he seen we was behind him with
13 blue lights on, he started driving very erratic, passing
14 cars on the double yellow line. Speeding. Then we seen --
15 I seen a bag fly out of the passenger's side of the car.
16 And I looked at Officer Brock and Officer Scoggins, "did
17 y'all see that?" And we all seen it him throw it out. I
18 mean, we continued to chase. Agent Scoggins called it in on
19 the radio to Agent Jordan to pick it up. He picked it up
20 shortly right after -- just a minute after he threw it out
21 and we continued the chase.

22 Q. And while he was -- how far behind him were you?

23 A. Maybe a hundred yards at that point. Not very far.

24 Q. And he was passing the other cars, is that correct?

25 A. Yes, sir, he was driving very, very erratic, passing

1 cars on the double yellow line. Stopped -- passed a stopped
2 school bus when they was letting off kids. We had to be
3 very careful. We slowed down at that time waiting on,
4 making sure we wasn't going to hurt anyone, and we got back
5 up behind him after we got around the school bus.

6 Q. Did the school bus have its lights going on, or the
7 little signal lights?

8 A. Yes, the school bus was stopped letting -- with the
9 lights on and I believe the stop sign was out.

10 Q. And after that you continued to chase?

11 A. After that continued the chase.

12 Q. At what point did the chase come to a stop?

13 A. Well, when he passed Eddie's Mini-Mart, I think it's
14 Drake Circle. I think that's the road it was at. He tried
15 to make that turn, and he skidded. He slid on the road and
16 it ran into some bushes and the car stalled, and Antran Hall
17 got out of the driver's side and ran, and Mr. Rice got out
18 of the passenger's side and ran just a short distance and he
19 was apprehended.

20 Q. And what did you do?

21 A. I ran -- myself and Officer Brock chased Antran Hall
22 down Key Street where he ran into a bunch of trailers. He
23 passed -- he turned -- he ran past some trailers. He went
24 one way around this trailer and Brock chased him around this
25 way. I ran around the other side of the trailer and was

1 going to cut him off. And when I did, when I come around
2 this other side, I observed Mr. Hall physically trying to
3 get away from Brock. He was fighting. They was fighting.
4 So when I ran around there, that's when we had to physically
5 subdue him to affect the arrest.

6 Q. And after that -- tell the ladies and gentlemen, what
7 kind of weather conditions did you have that day?

8 A. It was wet. It had been raining and I think it was
9 drizzling rain then.

10 Q. And when you were affecting the arrest, did you
11 identify yourself as law enforcement?

12 A. Well, yeah, he seen our raid vests. You know, no
13 mistaking that we was police officers.

14 Q. How were you identified? How does it show that you are
15 the police?

16 A. We have a vest. It's a vest. It's black in colored,
17 vest with yellow star here and a big star on the back and
18 sheriff's office on the sleeves, plus we had badges. We had
19 our badges out.

20 Q. And did you -- did you have anything to do with picking
21 up the dope?

22 A. No, I did not pick up the dope.

23 Q. And did you -- you were the sergeant -- you were
24 supervisor on the scene, is that correct?

25 A. Yes, sir.

1 Q. And based on your -- you have had sufficient knowledge
2 of dealing with drug transactions here in Anderson, is that
3 right?

4 A. Yes, sir.

5 Q. And have you had any previous experience with dealing
6 with powdered cocaine?

7 A. Yes, sir.

8 Q. And basically how many arrests do you think that you
9 have done on powdered cocaine here in Anderson?

10 A. Me personally, or my unit?

11 Q. Your unit.

12 A. This is purely a guesswork, you know, maybe 75, or --

13 MR. BRYHOLDT: Object, Your Honor. Calling for
14 speculation.

15 THE COURT: I sustain the objection.

16 BY MR. CAMPBELL:

17 Q. As a result of your experience personally and with your
18 unit, do you have an idea of value of what a gram of
19 cocaine, powdered cocaine, goes for in Anderson?

20 A. Yes, sir.

21 Q. How much would that be?

22 A. It varies from \$60 for a gram to \$75 per gram.

23 Q. Now, is that what a person is selling, a dealer is
24 selling it to a customer for, or is that what he's buying it
25 for?

1 A. No, that's what typically a drug dealer who deals with
2 this kind of weight, he will gram it out and sell it for 60,
3 \$75, depending upon what he wants to sell it for at that
4 time. And he will just take that out of his -- if he had a
5 several ounces, he would just take that out, an ounce, and
6 weigh it out and sell it for 65, or 75, or maybe more a
7 gram.

8 Q. And based on your knowledge, you had occasion to look
9 at the dope, is that correct?

10 A. Yes.

11 Q. And based on that, did you -- were you able to form an
12 opinion on the street value of this narcotics?

13 A. Him selling it to individuals that would come by his
14 house, he probably could have made anywhere from 10 to 12,
15 15,000 on that much -- on that amount of dope.

16 Q. I'll show you what's been marked for identification
17 State's Exhibit No. 1. Can you identify that, sir?

18 A. Yes, sir, I can.

19 Q. What is that?

20 A. This is --

21 MR. BRYHOLDT: Your Honor, I object. It's not in
22 evidence yet. It's merely marked for I.D. at this point.

23 MR. CAMPBELL: I'm having him identify what it is.

24 THE COURT: Well, I'll ask him -- without showing
25 it to the jury, if you could identify what's in the bag to

1 the response to the question.

2 A. This is a ziplock bag and it's got powdered cocaine in
3 it.

4 BY MR. CAMPBELL:

5 Q. Is this the bag that was retrieved on November 21st,
6 2005?

7 A. Yes, it is.

8 Q. Is this the type of bag that you saw coming out of the
9 car?

10 A. Yes, it is.

11 Q. Now, did you search Mr. Hall after you arrested him?

12 A. Yes, I did.

13 Q. Did he have any narcotics on him?

14 A. No, sir.

15 Q. Is it typical when you arrest someone that you find
16 narcotics on them?

17 A. No, he was in the -- he did a very good job in getting
18 rid of what he had on him to -- he didn't want anything to
19 do with any drugs.

20 Q. And you don't always find drugs on a person when you
21 are making an arrest, is that correct?

22 A. No, sir, a lot of time when they were being pursued by
23 the police, they are going to get rid of them quick.

24 Q. Is that typical in your experience that an individual
25 that you are chasing trying to get rid of what they have on

1 them that ain't illegal?

2 A. Yes, just about every time when we get behind somebody
3 on foot, or car, they know the police is on them, they are
4 going to get rid of that dope. They are going to throw it
5 away because they don't want to be locked up for it. They
6 are going to do what they can to get away from them.

7 MR. CAMPBELL: Court's indulgence, please.

8 (Off the record)

9 (Back on the record)

10 MR. CAMPBELL: I have no further questions of this
11 witness. Mr. Baxter -- Deputy Baxter, if you would please
12 answer any questions that they may have.

13 THE COURT: You may cross-examine the witness, Mr.
14 Griffin.

15 MR. GRIFFIN: If it please the court.

16 CROSS EXAMINATION BY MR. GRIFFIN:

17 Q. Brad, you say you were about 200 yards behind that
18 Buick?

19 A. No, it was approximately a 100 yards.

20 Q. 100 yards. It wasn't very far when the bag flew out
21 the window?

22 A. Yeah.

23 Q. Okay. And Mr. Hall was driving the car, is that
24 correct?

25 A. Yeah.

1 Q. Okay. And it was raining?

2 A. It had been raining probably -- I think it was
3 drizzling just a little bit right during that time.

4 Q. You had your wipers on?

5 A. Did I have my wipers on?

6 Q. Yeah.

7 A. I don't recall that. I don't recall having them on.

8 Q. Okay. You did testify earlier that Mr. Hall did a good
9 job of getting rid of what he had on him?

10 A. Yeah, the occupants in the car had -- did a good job of
11 throwing it out of the car.

12 Q. Thank you.

13 THE COURT: Mr. Bryholdt?

14 MR. BRYHOLDT: May it please the court.

15 CROSS EXAMINATION BY MR. BRYHOLDT:

16 Q. Mr. Baxter, you are not telling this jury that you saw
17 Antran Hall throw that bag out the passenger's side window,
18 are you, because you didn't see that?

19 A. I saw --

20 Q. You saw a bag come out the window?

21 A. I saw somebody inside the car throw the bag from the
22 car out the window.

23 Q. Well, tell this jury if it was Mr. Hall. You can't do
24 that, can you? It came out the passenger's side?

25 A. It came out the passenger's side, yes, sir.

1 Q. Who was sitting in the passenger's seat?

2 A. Mr. Rice.

3 Q. Okay. Can you tell this jury today under oath that you
4 ever saw Mr. Hall handle that bag of dope?

5 A. I did not see him which one threw it out the car.

6 Q. Okay. So you can't tell them that, can you?

7 A. I can just tell them that -- tell y'all that I seen the
8 dope, the bag, that bag come out out of that car.

9 Q. The passenger's side?

10 A. Out of the passenger's side.

11 Q. From a 100 yards in the drizzle?

12 A. Approximately a 100 yards.

13 Q. The length of a football field, in the rain?

14 A. It was -- it was wet, drizzling. It wasn't raining.

15 Q. It would be like seeing maybe a bag that size, or
16 something -- how far is it from here to the Bales building?

17 A. Bales building?

18 Q. 100 yards? More than a 100 yards?

19 A. That's probably 300 yards. Three for 400 yards.

20 Q. Old courthouse, maybe a 100 yards?

21 A. Old courthouse, maybe 150.

22 Q. In the drizzle.

23 Did you get any fingerprints off the bag?

24 A. No, sir, it was wet.

25 Q. Did you even attempt to get fingerprints?

1 A. When?

2 Q. In any part of this investigation, did anybody from law
3 enforcement fingerprint any object at all?

4 A. We did not fingerprint the bag of dope that was found
5 outside that was thrown from the car because it was wet.
6 The bag was wet. The ground was wet, and it had been
7 raining that day.

8 Q. How about the --

9 A. You can't lift latent prints off of objects that are
10 wet.

11 Q. How about the stuff in the house? Any of the stuff,
12 did you get -- did you even check? The truth of the matter
13 is you didn't, did you?

14 A. We didn't call for fingerprints on it.

15 Q. You didn't call for fingerprints.

16 Was that hard to do?

17 A. I'm sorry?

18 Q. Would that have been hard to do, to ask somebody to
19 print this stuff to see who had it?

20 A. No, it wouldn't have been hard.

21 Q. Thank you, sir.

22 THE COURT: Any redirect?

23 MR. CAMPBELL: Yes, Your Honor.

24 REDIRECT EXAMINATION BY MR. CAMPBELL:

25 Q. Now, Deputy Baxter, both individuals - Mr. Hall and Mr.

1 Rice - were both charged with trafficking in this case,
2 weren't they, correct?

3 A. Yes.

4 Q. Did you directly, personally, yourself, see the bag
5 come out of the car?

6 A. Yes, we all three did. Like I said, when it come out
7 the passenger's side, it was like -- I looked at the -- my
8 two guys that was with me and I said "did y'all see that,"
9 and we all seen it. I mean, it just come out. It was just
10 like woof, there goes a bag of dope.

11 Q. Based upon your direct observation, did you feel it was
12 necessary at that point to fingerprint the bag?

13 A. No, it wasn't, plus it was wet. I mean, we --

14 Q. And based on your observation the way that both
15 defendants acted in this case --

16 MR. BRYHOLDT: Object, Your Honor, leading.

17 THE COURT: Rephrase your question.

18 BY MR. CAMPBELL:

19 Q. Do you feel the defendants actions indicates that you
20 needed to fingerprint the bag?

21 A. No, because they both -- when the car stalled, they
22 both ran. They both knew exactly what was going on.

23 MR. GRIFFIN: Objection, Your Honor. Calls for
24 conclusion.

25 THE COURT: I sustain the objection as to the last

1 comment.

2 MR. CAMPBELL: I have no further questions.

3 THE COURT: All right. Thank you, sir. You may
4 step down.

5 You may call your next witness.

6 MR. CAMPBELL: Your Honor, the State would call
7 Deputy Jordan.

8 OFFICER TOBY JORDAN, having been first duly sworn,
9 testified as follows:

10 THE CLERK: If you would please state your full
11 name and spell your last name for the record.

12 THE WITNESS: Robert Larry Toby Jordan,
13 J-O-R-D-A-N.

14 DIRECT EXAMINATION BY MR. CAMPBELL:

15 Q. Mr. Jordan, are you employed with the Anderson County
16 narcotics unit?

17 A. Yes, sir, I am.

18 Q. How long have you been employed in narcotics?

19 A. Approximately six years.

20 Q. How long have you been employed in law enforcement?

21 A. Just over ten.

22 Q. And you were employed in the narcotics units on
23 November 21st, 2005?

24 A. Yes, sir, I was.

25 Q. And were you part of the team that went down to execute

1 the search warrant at ADDRESS

2 A. Yes, sir, I was.

3 Q. Now, on that particular day, at that time, did you have
4 an occasion to observe Mr. Hall and Mr. Rice?

5 A. Yes, sir, I did.

6 Q. And where was that?

7 A. It wasn't until the end. While I was at the house at
8 ADDRESS I heard everybody say there is the
9 vehicle. You know, by the time I turned around, I seen a --
10 seen the vehicle come by, which was tannish gold Buick. I
11 seen it go by. I saw Sergeant Brad Baxter and a few -- I
12 wasn't sure who went with him at the time. They got in the
13 vehicle. I got in my vehicle. I saw Sergeant Baxter's
14 vehicle go the way the target vehicle went, so -- I believe
15 it was Deputy Lindsay hopped in with me. We went the
16 opposite way just in case the vehicle tried to cut back.

17 Q. Did you know which direction the vehicle was going at
18 that time?

19 A. I knew which way it was going as it went by the house,
20 but after that is when I lost sight. I wasn't sure where it
21 went.

22 Q. So you were just doing pure guesstimation, basically?

23 A. Yeah, my best guesstimate was he was going to come back
24 out on Abbeville Highway somewhere, so I went around the
25 opposite way.

1 Q. And which way did you proceed?

2 A. I come off Camden -- I went opposite the way the
3 vehicle went by the residence, turned onto Bateman and then
4 right onto Abbeville Highway right there at that red light
5 at Carolina Road right there.

6 Q. While you were there, did you observe anything?

7 A. I heard the radio traffic. They had got behind the
8 vehicle. I looked down Abbeville Highway, which you can see
9 a good ways and I seen a vehicle coming at a high rate of
10 speed and saw Sergeant Brad Baxter's vehicle behind them
11 with lights and siren.

12 Q. And the vehicle that you saw, what vehicle was it?

13 A. It was the gold or tan in color Buick, four-door.

14 Q. And it passed you, is that right?

15 A. Yes, it did. I pulled out into the intersection and
16 cut my blue lights and sirens on, just because I seen the
17 school bus just down, and traffic at that intersection is
18 pretty bad, so I pretty much just stopped right there,
19 leaving his lane of traffic he was coming in open, but just
20 trying to make everybody else stop, because the rate he was
21 going, he wouldn't have been able to stop if he had to.

22 Q. And did he stop?

23 A. No, sir.

24 Q. And what -- did he pass you?

25 A. Yes, sir, he did.

1 Q. And Sergeant Baxter behind him?

2 A. Yes, sir, he was.

3 Q. Did he have his blue lights and sirens going?

4 A. Yes, sir, he did.

5 Q. And what was the distance between the two when they
6 passed you?

7 A. By the time they got to me, it had been closed a little
8 bit. I'm guessing 60, 70 yards, guessing.

9 Q. Was it fairly obvious that in your opinion that the
10 defendant knew that he was being chased by the police?

11 A. Yes.

12 Q. And he failed -- he didn't stop or attempt to stop or
13 slow down, did he?

14 A. No, sir, moving on at a good rate of speed.

15 Q. Now, did you follow then with the chase, or what did
16 you do next?

17 A. No, sir, I listened to radio traffic. I heard Agent
18 Scoggins, who was calling the chase for Baxter while he was
19 driving. I heard him say that a bag had been thrown out of
20 the passenger's side of the vehicle and that it was sitting
21 right there at the entrance at a business right there on
22 Abbeville Highway. So once they got by me and, you know, I
23 pretty much come out of that intersection, I went back down
24 Abbeville Highway from the direction that they came from and
25 it wound up being at ABS Trucking, I believe it was, which

1 was down on the left. And they explained to me it was right
2 at the entrance just sitting off in the grass, and I pulled
3 up and there I seen a big plastic bag.

4 Q. And it was right where they indicated to you? Your
5 understanding where it was going to be found, you found it?

6 A. Yes, sir, it was.

7 Q. And what was the distance or time between the time it
8 was called in to you to the time that you actually picked it
9 up?

10 A. At the most, 30 to 45 seconds.

11 Q. And I'm going to show you what's been marked for
12 identification State's Exhibit No. 1. Could you please
13 identify this, sir?

14 A. Yes, sir, that's the plastic bag that was laying on the
15 side of the road there.

16 Q. And is this the bag that you picked up that day?

17 A. Yes, sir, it is.

18 Q. And what was the weather conditions that day?

19 A. It had rained earlier in the day. It was still a
20 little cool, because I still had my vest on when we did the
21 search warrant at the residence. It had been raining.
22 There was puddles.

23 You know, at the time of the pursuit I said it was a
24 very light drizzle at that time, but it had rained hard
25 earlier that morning or late that night before, because

1 there was large puddles on the side of the road.

2 Q. And where did you locate -- when you located the bag,
3 was it on the pavement, or was it in the roadway, or was it
4 in the grass?

5 A. It was actually in the grass just a few steps off of
6 what I would call the entrance driveway to this business.

7 Q. And was the grass pretty wet?

8 A. Yes, sir, it was.

9 Q. And when you picked the bag up, was it wet?

10 A. Yes, sir, it was.

11 Q. The outside of it?

12 A. Yes, sir.

13 Q. What did you do with this bag after you picked it up?

14 A. Well, basically I went ahead and secured it, once I
15 pulled up, because of the weather, the puddles and vehicles
16 coming by. I went ahead and secured it with myself in my
17 vehicle.

18 Q. And what did you do next after that?

19 A. At that time, once I secured it, I -- you know, no
20 lights, no siren. I loaded it, made my way up to where the
21 car chase had ended at.

22 Q. And after all the arrest and everything took place,
23 what did you do with this piece of evidence?

24 A. It stayed with me until we got back to the sheriff's
25 office. Once back at the sheriff's office, I field tested

1 it, which is -- I field tested the white powdered substance,
2 which did field test positive for cocaine, and at that time
3 gave it -- weighed it for approximate weight, which is the
4 approximate weight that was still in the package.

5 Q. What kind of weight when you weighed it did it come up
6 to?

7 A. 263.5 grams.

8 Q. And do you know what that is in ounces? Do you have
9 any idea?

10 A. Not off the top of my head.

11 Q. And what did you do at that point in time when this
12 cocaine was field tested?

13 A. Once it was field tested and weighed, it was placed
14 into a best evidence kit and sealed back up.

15 Q. Is that the bag that it's inside of?

16 A. Yes, sir, it is.

17 Q. And after you placed it inside that, where did you take
18 it?

19 A. I sealed it and put an evidence sheet and it goes
20 straight to the evidence locker.

21 Q. And at that point have you had any other contact with
22 this exhibit?

23 A. No, sir, I haven't.

24 Q. Until today?

25 A. No, sir.

1 Q. And you turned it over to the Anderson County evidence
2 department?

3 A. Yes, sir.

4 Q. And in your -- you have been involved in narcotics for
5 the last six years. Is that what you stated earlier?

6 A. Yes, sir.

7 Q. In your opinion is this a large amount for an Anderson
8 County dope dealer?

9 A. Yes, sir.

10 Q. And what opinion -- do you have an opinion to what the
11 approximate value of this would be?

12 MR. BRYHOLDT: Object, Your Honor, on relevancy.
13 Value has nothing to do with this case.

14 THE COURT: What's your relevance?

15 MR. CAMPBELL: The relevance goes to show how
16 much, you know, he can sell this stuff for, that the reason
17 why he got rid of it --

18 THE COURT: I believe he's testified to that
19 already.

20 MR. CAMPBELL: Okay.

21 THE COURT: I'll allow it.

22 MR. CAMPBELL: What was the last one? I couldn't
23 hear you.

24 THE COURT: I said I will allow the question.

25 MR. CAMPBELL: Okay.

1 THE COURT: And the answer.

2 BY MR. CAMPBELL:

3 Q. Go ahead and answer.

4 A. I guesstimating anywhere around 10,000, or a little bit
5 more.

6 Q. Is that the low end or the high end?

7 A. Yes, that's the low end.

8 Q. I have no further questions. Please answer any
9 questions that Mr. Griffin or Mr. Bryholdt may have.

10 MR. GRIFFIN: If it please the court?

11 THE COURT: Mr. Griffin.

12 CROSS EXAMINATION BY MR. GRIFFIN:

13 Q. Mr. Jordan, what model was this Buick? Year?

14 A. I wasn't sure. I just knew it was a gold tannish
15 colored Buick.

16 Q. Did you ever look inside the car?

17 A. Once I got back to where the pursuit had ended, I
18 glanced in it. I didn't search or anything, but I saw the
19 inside.

20 Q. Would it have electric windows?

21 A. I don't recall.

22 Q. But you only -- your only role in this was to secure
23 the contraband on the side of the road?

24 A. Yes, sir. You know, I was going to be involved in the
25 pursuit. But once I was advised on my radio that a package

1 had come out, once they got by the intersection, like I
2 said, I went back to where they said the item was thrown out
3 of the vehicle.

4 Q. And the bag landed in a puddle of water?

5 A. No, sir, it was a few feet from a puddle, like where
6 the entrance is to this business. You can see where people
7 had run off the side of it, I guess, and it had caused a
8 puddle there. It was approximately five feet, maybe, from a
9 puddle. It wasn't in a puddle.

10 Q. Was the bag sealed or open, broken open?

11 A. The bag was sealed.

12 Q. Sealed?

13 A. Yes, sir.

14 Q. In one of those freezer bags?

15 A. Yes, sir. It's a ziplock-type bag at the top.

16 MR. GRIFFIN: That's all I have.

17 MR. BRYHOLDT: Mr. Bryholdt.

18 MR. BRYHOLDT: If it please the court.

19 CROSS EXAMINATION BY MR. BRYHOLDT:

20 Q. Officer Jordan, when you turn evidence over, you are
21 supposed to fill out a little sheet for it, right, chain of
22 custody log?

23 A. Evidence sheet.

24 Q. Evidence sheet?

25 A. Yes, sir.

.1 Q. Did you do that in this case?

2 A. Yes, sir.

3 Q. And it's supposed to be witnessed so you make sure that
4 all the drugs get where they are supposed to get, is that
5 correct?

6 A. The evidence sheet?

7 Q. Well, let me show you. Is that your signature on the
8 bottom of that evidence sheet?

9 A. Yes, sir. That's not an evidence sheet but --

10 Q. Well, it's a chain of custody, right?

11 A. Chain of custody on it, yes, sir.

12 Q. And on the bottom left-hand side what is on that sheet?
13 Isn't there a place for a witness to sign and a notary
14 public to sign?

15 A. There as place for a notary public, yes, sir.

16 Q. And a witness, correct?

17 A. I don't see where it says --

18 Q. Or date, place, and notary?

19 A. Yes, sir.

20 Q. And that's to make sure everything gets turned in,
21 correct?

22 A. Correct.

23 Q. And is that filled in on your sheet?

24 A. No, sir.

25 Q. Why not?

1 A. I'm not a notary.

2 Q. Well, you weighed it at 263 grams, is that correct?

3 A. Yes.

4 Q. And it comes back from SLED at 253 grams. Can you tell
5 us what happened to the other ten grams of cocaine?

6 A. What I weigh is I weigh the entire package. I don't
7 take it out of the package because you can lose some or --
8 cocaine is a very messy product.

9 Q. Did you check for fingerprints?

10 A. No, sir, I did not.

11 Q. Did you actually see it come out of the car, or did you
12 get the radio call?

13 A. No, sir, I heard it over the radio.

14 Q. That's all I needed. Thank you, sir.

15 A. All right.

16 THE COURT: Yes, sir, any redirect?

17 MR. CAMPBELL: Yes, sir.

18 REDIRECT EXAMINATION BY MR. CAMPBELL:

19 Q. Investigator Jordan, did you in any way, shape or form
20 alter what's been marked for identification as State's
21 Exhibit No. 1, this cocaine?

22 A. No, sir.

23 Q. And when you weighed it, you weighed the bag plus the
24 cocaine in it, is that right?

25 A. Yes, sir.

1 Q. And after that, you turned -- you sealed it in that
2 bag, is that correct?

3 A. Yes.

4 Q. Evidence bag?

5 A. Yes.

6 Q. And once that bag is sealed, is there any way that you
7 can get back into it?

8 A. No, sir, not without it being obvious.

9 Q. Not without cutting it open?

10 A. Yeah, basically you have to cut it open.

11 Q. And at that point you give it over to Anderson
12 County -- the evidence, you turn it into the evidence
13 locker, is that right?

14 A. Yes, sir, I did.

15 MR. CAMPBELL: I have no further questions.

16 THE COURT: Thank you, sir. You may step down.
17 You may call your next witness.

18 MR. CAMPBELL: Your Honor, the State calls Ken
19 Brock.

20 OFFICER KEN BROCK, having been first duly sworn,
21 testified as follows:

22 THE CLERK: If you will please state your full
23 name and spell your last name for the record.

24 THE WITNESS: Kenneth Franklin Brock, B-R-O-C-K.

25

1 DIRECT EXAMINATION BY MR. CAMPBELL:

2 Q. Deputy Brock, I see that you are employed with the
3 Anderson County sheriff's department?

4 A. Yes.

5 Q. How long have you been employed with law enforcement?

6 A. 15 and a half years.

7 Q. 13 and a half?

8 A. 15 and a half.

9 Q. And you are part of the team that went down to help
10 execute the search warrant?

11 A. That's correct.

12 Q. And on November 21st, 2005, did you have an occasion to
13 come into contact with Mr. Antran Hall?

14 A. Yes, sir, I did.

15 Q. And where was that location?

16 A. We were still at the incident location on ADDRESS
17 I saw a tan colored Buick at the top of the hill start to
18 turn in and then they accelerated off.

19 Q. Were y'all obvious were law enforcement was at the --

20 A. Yes. I was in a uniform, and I believe there was a
21 marked car there, one of our canines.

22 Q. There was a number of individuals in cars parked in the
23 yard?

24 A. Yes, sir.

25 Q. And what happened after that?

1 A. When the car accelerated away, I heard Investigator
2 Brown say that that was the target vehicle that belonged to
3 the location. I ran to Sergeant Baxter's vehicle, along
4 with Rusty Scoggins, and we got into the Avalanche and
5 turned right onto Camden. Went down to the South McDuffie
6 and hung a right. And about the time we came around the
7 final curve on South McDuffie, we saw the vehicle coming
8 onto Abbeville Highway. It blew past the stop sign. And
9 once we turned onto Abbeville Highway, Sergeant Baxter
10 turned on the lights and siren.

11 Q. And y'all fill in basically on the chase?

12 A. Yes, sir.

13 Q. How far did y'all have to chase him?

14 A. From the intersection of South McDuffie extension to
15 where the vehicle crashed, it's probably a couple miles.
16 Two, two and a half miles.

17 Q. And during this time Sergeant Baxter had his blue
18 lights on and siren going?

19 A. Yes.

20 Q. And what was the car, the suspect car that you were
21 after, what was its response or how did it act?

22 A. It drove past several other vehicles that was in the
23 same lane. It passed them on the double yellow line. And
24 it also passed a stopped school bus that had the lights
25 going when we got up there.

1 Q. Did you see it pass the school bus?

2 A. Yes.

3 Q. At any point did you see him hit his brakes or try to
4 stop for the school bus?

5 A. I don't recall seeing the brake lights, but he didn't
6 stop.

7 Q. At any point did he attempt to slow down before he lost
8 control of the car?

9 A. He only attempted to slow down trying to make the turn
10 onto Drake Circle. Once he tried to turned onto Drake
11 Circle, he couldn't make the turn and crashed into some
12 bushes.

13 Q. Now, you were part of the vehicle that was right behind
14 him, is that right?

15 A. Yes, I was in the rear seat.

16 Q. And did you have a chance to observe anything come out
17 of the car?

18 A. When we got up to the trucking place, which I -- I
19 later called was EBF Trucking, there was a bag that came out
20 of the passenger's side window.

21 Q. Did you personally witness this?

22 A. I saw the bag, yes.

23 Q. And did you tell who threw it or not?

24 A. Could not see who threw it. I could just see that it
25 came out of the passenger's side of the vehicle and landed

1 beside the road.

2 Q. The next time that you had contact is after this
3 vehicle lost control on Drake Circle, is that right?

4 A. Yes, sir, once it tried to make the turn onto Drake
5 Circle and crashed, Mr. Rice got out of the passenger's
6 side. Deputy Scoggins was closer to him and he pursued him.

7 Mr. Hall got out of the driver's side and started
8 running up -- he ran across Abbeville Highway onto Key
9 Street. Sergeant Baxter and I pursued him down Key Street.
10 He ran into a little mobile home park and Sergeant Baxter
11 went one way around the trailer and I went the other way and
12 attempted to cut him off.

13 Q. How were you dressed?

14 A. I was dressed in our utility uniform, which is a --
15 it's a green uniform. It has a gold sheriff's star
16 embroidered here and it has sheriff across the back in big
17 black letters.

18 Q. Did you have your gun belt on?

19 A. Yes.

20 Q. All the items to indicate that you are law enforcement?

21 A. Yes, sir.

22 Q. At any point did you tell him to stop?

23 A. I told him to stop, police, once we were on Abbeville
24 -- I'm sorry, Key Street, and I didn't identified myself
25 again as an officer. I thought this was sufficient.

1 Q. You did?

2 A. I did not identify myself as an officer again after
3 that initial time.

4 Q. And did you indicate to him that he was under arrest?

5 A. Yes.

6 Q. And did you tell him that, or how did you --

7 A. When -- when I went around one way of the trailer and
8 Sergeant Baxter went around the other way, Mr. Hall was
9 coming back toward me. I told him stop, he was under
10 arrest, and he pushed me trying to get past me. I grabbed
11 out and grabbed onto his jacket, which caused him to go off
12 balance and he fell down. And I tried to get on top of him
13 to put his hands behind his back and he kept pushing me off.
14 And Sergeant Baxter had then caught up and we were able to
15 hold him down and get him in the handcuffing position.

16 Q. Did he willingly allow y'all to handcuff him?

17 A. No, sir.

18 Q. I have no further questions. Please answer any
19 questions that defense counsel may have.

20 THE COURT: Mr. Griffin.

21 MR. GRIFFIN: I have no questions of this witness.

22 THE COURT: Mr. Bryholdt.

23 CROSS EXAMINATION BY MR. BRYHOLDT:

24 Q. Officer Brock, did you have your weapon out?

25 A. No, sir.

1 Q. Didn't need to?

2 A. No, sir.

3 Q. And the bag came out of the passenger's side window?

4 A. Yes, sir.

5 Q. Did you ever see Mr. Antran Hall ever have control of
6 that bag?

7 A. No, sir, I did not.

8 Q. Thank you, sir.

9 THE COURT: All right. Thank you, sir. You may
10 step down.

11 Call your next witness.

12 MR. CAMPBELL: The State calls Rusty Scoggins.

13 MR. BRYHOLDT: Your Honor, can we approach?

14 THE COURT: Yes.

15 (Whereupon, the lawyers approached the bench for
16 an off-the-record discussion)

17 OFFICER RUSTY SCOGGINS, having been first duly
18 sworn, testified as follows:

19 THE CLERK: Would you please state your full name
20 and spell your last name for the record, please.

21 THE WITNESS: Yes, ma'am, it's Roger Kelly
22 Scoggin, S-C-O-G-G-I-N-S.

23 DIRECT EXAMINATION BY MR. CAMPBELL:

24 Q. Deputy Scoggins, how long have you been employed with
25 the sheriff's department?

1 A. Six years.

2 Q. And you are currently -- on November 21st, 2005, when
3 you were involved, you were -- you worked in the narcotics
4 unit of the sheriff's department, is that correct?

5 A. Yes, sir.

6 Q. And you have heard all the testimony of the other
7 officers, is that correct?

8 A. That's correct.

9 Q. And did you witness or observe the exact same thing
10 that you saw these officers do?

11 A. I did.

12 Q. Or said on the stand?

13 A. Yes, sir.

14 Q. Now, I don't want to rehash testimony since we have
15 already gone over that. After he crashed on --

16 Well, let me step back. You were part of the chase of
17 the truck that was chasing Mr. Hall, is that right, the
18 suspect vehicle?

19 A. Yes, I was handling radio trafficking in the vehicle.

20 Q. And you were calling the --

21 A. Chase into dispatch.

22 Q. Chase into dispatch?

23 A. Yes, sir.

24 Q. Did you observe the narcotics come out the window?

25 A. Yes, sir, I did.

1 Q. When you saw that, what did you do?

2 A. I radioed as well as to dispatch that if they could, to
3 have somebody respond to that location to pick the bag up.

4 Q. And when the vehicle came to a stop, what role did you
5 play at that point in time?

6 A. I was on the passenger's side of the vehicle in the
7 front seat. I observed Mr. Rice, which later determined to
8 be Mr. Rice, exit the passenger's side. He started to run
9 across Drake Circle. I apprehended him within 20 yards or
10 so of the vehicle. He didn't really cause me any trouble,
11 but I had to chase him about 20 yards, like I said. We went
12 onto the cement and I handcuffed him.

13 Q. And after you called him, he didn't fight you or resist
14 you in any way?

15 A. No, sir.

16 Q. So he didn't get charged with any of that, is that
17 correct?

18 A. That's correct.

19 Q. Now, when that vehicle came to a stop there at Drake
20 Circle, did Mr. Rice at any point attempt to stay put in the
21 vehicle?

22 A. No, sir, he did not.

23 Q. And how were you dressed on that day?

24 A. I was in a green fatigue uniform, as well Mr. Brock,
25 with a outer vest with a sheriff's star and sheriff on the

1 back.

2 Q. And you identified yourself to Mr. Rice that you were
3 law enforcement?

4 A. That's correct.

5 Q. And did you indicate -- did you tell him that he was
6 under arrest?

7 A. Yes, sir.

8 Q. And so he did not stay put in the car once it came to
9 rest, is that right?

10 A. No, sir, he got out of the vehicle before we were able
11 to get out of our vehicle. Both of them did.

12 Q. And in your opinion was he trying to stick around?

13 A. Both of them were trying to get away from us.

14 Q. And after you arrested him, did he say anything to you?

15 A. No, sir.

16 Q. And you didn't ask him any questions, did you?

17 A. That's correct.

18 Q. I have no further questions. Please answer the
19 questions defense counsel may have.

20 CROSS EXAMINATION BY MR. GRIFFIN:

21 Q. Officer, you never did see the drugs in question here
22 in the possession of Mr. Rice, did you?

23 A. Not in the possession of either one particular.

24 Q. Okay. And Mr. Rice did not offer up any resistance
25 once he realized who you were?

1 A. No, sir, once I caught him, then he gave up with it.

2 Q. Okay. Thank you.

3 MR. BRYHOLDT: May it please the court.

4 THE COURT: Yes, sir.

5 CROSS EXAMINATION BY MR. BRYHOLDT:

6 Q. He took off running?

7 A. Yes.

8 Q. And drugs came out or a bag came out the window where
9 he was sitting?

10 A. That's correct.

11 Q. Had you ever seen the drugs in Mr. Antran Hall's
12 possession?

13 A. No, sir.

14 Q. Thank you, sir.

15 THE COURT: All right. Thank you, officer. You
16 may step down.

17 MR. CAMPBELL: I have no further questions.

18 THE COURT: You may call your next witness,
19 solicitor.

20 MR. CAMPBELL: Your Honor, my next witness is
21 Margaret Vecchio and she is basically a chain on the drugs
22 to show that it went from -- she picked it out of the
23 evidence locker and took it into possession at the sheriff's
24 department, where they kept it until they dropped it off at
25 the Anderson County forensics lab.

1 MR. BRYHOLDT: Your Honor, on behalf of Mr. Hall,
2 we would stipulate that was proper, Mr. Vecchio.

3 MR. GRIFFIN: Yes, Your Honor.

4 THE COURT: Stipulate to the chain by the defense.
5 There's no need to call that witness.

6 MR. CAMPBELL: The witness after that is Tommy
7 Clamp. That's the exact same thing. It was proved that we
8 had the right chain and it went through the proper
9 procedures.

10 MR. BRYHOLDT: On behalf of Mr. Hall, we would so
11 stipulate, Your Honor.

12 MR. GRIFFIN: Concur.

13 THE COURT: All right. Concurrence by both.

14 Both chain of custody witnesses would not be
15 called by way of stipulation.

16 MR. CAMPBELL: Your Honor, the State's last
17 witness is Michael Miller.

18 MICHAEL MILLER, having been first duly sworn,
19 testified as follows:

20 THE CLERK: Would you please state your full name
21 and spell your last name for the record?

22 THE WITNESS: Michael Alan Miller, M-I-L-L-E-R.

23 MR. CAMPBELL: Court's indulgence, please.

24 (Off the record)

25 (Back on the record)

1 MR. BRYHOLDT: Your Honor, We will stipulate that
2 he's a qualified chemist and qualified to do the drug
3 analysis here with the State Law Enforcement Division, Your
4 Honor, on behalf of Defendant Hall.

5 MR. GRIFFIN: Yes, sir, I would stipulate.

6 THE COURT: Ladies and gentlemen, let me just
7 explain to you. Normally in the course of a trial witnesses
8 aren't allowed to give opinions. They are allowed to
9 testify to what they see, or hear, or taste, or smell, or
10 things of that nature. There are witnesses, however,
11 because of their training and background and learning, that
12 they are allowed to give opinions. They are stated as
13 expert witnesses. In this particular case, this witness,
14 officer Miller, has been stipulated to be an expert in the
15 field of chemical analysis. He will offer opinion as to
16 that.

17 Again, let me explain to you just because a person
18 is an expert witness doesn't mean that you have to accept
19 his opinion. If you believe that the opinion is not based
20 on sound education or background, or the basis of his
21 opinion isn't sound, certainly you can treat that testimony
22 as you would any other testimony. Give it credibility and
23 believability that you think is important.

24 All right. You may examine the witness.

25 MR. CAMPBELL: Thank you, Your Honor.

1 DIRECT EXAMINATION BY MR. CAMPBELL:

2 Q. Mr. Miller, you are employed with the Anderson County
3 forensic lab?

4 A. Yes, sir, I'm the director of the Anderson-Oconee
5 Regional forensics lab, which is under the administration of
6 the Anderson County sheriff's department.

7 Q. And how long have you been employed in that capacity?

8 A. Since August of 2000.

9 Q. And you are a licensed chemist, of course, is that
10 correct?

11 A. I am.

12 Q. And as part of your job description, do you analyze
13 controlled substances that are submitted to your office?

14 A. I do that as our primary job function at the
15 laboratory.

16 Q. Now, did you have an occasion on or about May 18th,
17 2006, to analyze some narcotics that were submitted to you
18 under case number 2005-40416?

19 A. Yes, I did.

20 Q. I want to show you what's been marked for
21 identification as State's Exhibit No. 1. Can you please
22 identify this, sir?

23 A. I can. This is a case that was submitted to our
24 laboratory by the Anderson County sheriff's department for
25 analysis of suspected controlled substances.

1 Q. And when you received this package, I believe it was on
2 May 18th, you first look the package over to determine if
3 it's been tampered or altered or messed with in any shape,
4 way, or form?

5 A. I did. This package came to us on December 7th, 2005.

6 Q. And when you received it, did y'all look at it?

7 A. We do.

8 Q. Or do you look at it when you go to analyze it?

9 A. We look at it initially. There are certain acceptance
10 criteria for all evidence that comes into our laboratory.

11 The primary reason for doing that is making sure that it as
12 first and properly documented by the submitting agency and
13 also that it's coming to us in a sealed and secured fashion.

14 Q. Along with this item, do you receive any type of
15 paperwork or documentation that has been submitted to you
16 from the sheriff's department?

17 A. We do. We provide each agency that utilizes our
18 laboratory services with evidence submission kits. And as
19 parts of those kits is a secure envelope for them to submit
20 the evidence in, as well as chain of custody documentation
21 that they must fill out that details each specific point
22 that this evidence has been in someone's custody.

23 Q. And in this case did you receive a Form B Rule 6 form
24 that had been signed by investigator Toby Jordan?

25 A. Yes, I did.

1 Q. And does the fact that there is no notary signature
2 behind him, does that interfere with your ability to analyze
3 this, or does that come into play that it had been messed
4 with?

5 A. No. You have heard an officer testify earlier to
6 what's known as a best evidence kit. The best evidence
7 sample testing system was developed by the South Carolina
8 State Law Enforcement Division. These kids are put together
9 provide the envelope and those chain of custodies.

10 Congruent with developing this best evidence system,
11 they also had entered in state statute those forms. Those
12 forms need to be notarized only when they are going to be
13 submitted in lieu of actual officer testimony. So if the
14 officer is going to be testifying to it, then there is
15 really no reason to have it notarized.

16 Q. So if you get a form and it doesn't have the
17 officer's -- hasn't been notarized, the officer's signature,
18 it's not going to prohibit you or you are not going to shy
19 away from testing it, is that correct?

20 A. No, sir, that's correct.

21 Q. Now, when you received this package, did you observe it
22 had been messed with, tampered, altered in any way, shape or
23 form?

24 A. No, when we receive evidence in after the initial
25 inspection, we will write the lab number that's assigned to

1 this specific case on it. We will also write our initials
2 and a checkmark indicating that we have looked at the
3 evidence and it is actually in a sealed and secured fashion
4 before we will receive it.

5 Q. Was that done in this case?

6 A. Yes, it was.

7 Q. Now, if it had been opened or -- if it had been opened
8 or not sealed when you received it, what, if anything, would
9 you have done with it?

10 A. It would not have been received by our agency. We do
11 not take in evidence that's not properly documented and is
12 not properly sealed.

13 Q. Now, after you got this and everything checks out,
14 what's your next process?

15 A. This evidence is stored in a secured location in one of
16 our drug vaults prior to analysis. It remains there until
17 it's removed by an analyst to actually be worked.

18 Q. And what day did y'all analyze this?

19 A. I removed this for analysis on May 16th of 2006.

20 Q. And did you perform an analysis upon this?

21 A. I did.

22 Q. And what, if anything -- let me ask you this. When you
23 go to perform an analysis, do you first weigh the product
24 first --

25 A. Yes, we do.

1 Q. -- before you test it.

2 And when you weigh this product, do you weigh it with
3 the bag or without the bag? . . .

4 A. No. Plastic baggies aren't considered controlled
5 substances under state or federal law. We are only
6 concerned with the actual controlled substance, so the only
7 thing that we would have weighed would have been actual
8 controlled substance or suspected controlled substance. In
9 this case it would have been the powder.

10 Q. So all the white powder inside that ziplock bag is what
11 you weighed prior to testing?

12 A. Yes.

13 Q. And what weight did you come up with?

14 A. The weight that was determined in this case was 253.50
15 grams. ;

16 Q. So the difference between -- your opinion the
17 difference between what Officer Jordan testified to, the
18 263.5, and your 253.5 grams, would that be the weight of the
19 bag?

20 A. Certainly could be, yes.

21 Q. Now, after you weigh it, what procedures do you have go
22 through next?

23 A. We do several types of testing on the substances that
24 are submitted to our laboratory. We perform initial
25 screening exams to give us an indication of the types of

1 substances or drugs that we may be dealing with. And then
2 we perform two separate confirmatory analysis by chemical
3 instrumentation that will tell us exactly what compounds are
4 in these submitted items.

5 Q. And was that done in this case?

6 A. It was.

7 Q. And what did you determine this substance was?

8 A. The white powdered substance submitted in this evidence
9 kit was cocaine.

10 Q. And would that be commonly called powdered cocaine?

11 A. It's referred to as powdered cocaine, cocaine
12 hydrochloride. It's known as various slang names on the
13 street.

14 Q. Is this a controlled substance or is this a legal
15 substance to obtain or to possess?

16 A. This is an illegal Schedule II substance in the State
17 of South Carolina.

18 Q. Does it have any medical reason that any individual
19 should have this amount of drugs?

20 A. There are medical uses for cocaine. That's why it's a
21 Schedule II drug. However, in this form, no.

22 Q. And you submitted a document dated report based on your
23 findings, is that right?

24 A. That's correct.

25 Q. And the weight that you have is 253.5 grams?

1 A. That's correct.

2 MR. CAMPBELL: At this point, Your Honor, I move
3 the State's Exhibit No. 1 into evidence.

4 THE COURT: Any objection to Exhibit 1?

5 MR. BRYHOLDT: No objection from Hall.

6 MR. GRIFFIN: No objection, Your Honor.

7 THE COURT: Without objection, Exhibit 1 is into
8 evidence.

9 MR. CAMPBELL: I have no further questions of this
10 witness. Please answer any questions that the defense
11 counsel may have.

12 THE COURT: Mr. Griffin.

13 CROSS EXAMINATION BY MR. GRIFFIN:

14 Q. If it please the court, you said this was a white
15 powdered substance?

16 A. Yes, sir.

17 Q. What part is powder and what part is chunks? There
18 seems to be a lot of big rocks in here.

19 A. It's -- it's all the same substance.

20 Q. Did you test all these big rocks?

21 A. There were multiple samples taken from that to
22 determine uniformity so that all the substance was
23 determined to be cocaine.

24 Q. Okay. Is your lab certified every year?

25 A. I'm not sure what you mean by certified.

1 Q. Does SLED inspect your lab every year?

2 A. We are inspected by numerous outside agencies, yes.

3 Q. How often?

4 A. We are inspected by DHEC at least once a year. We have
5 a controlled substance license that we have to keep up with
6 both the Department of Health & Environmental Control in
7 South Carolina and the United States Drug Enforcement
8 Administration. We are subject to inspections by the fire
9 marshalls; and we do our own inspections of our instruments
10 on a weekly basis.

11 Q. I believe you said you got the drugs in December?

12 A. That's correct.

13 Q. And you didn't check it until May 16th, 2006?

14 A. That's correct.

15 MR. GRIFFIN: That's all I have, Your Honor.

16 THE COURT: Mr. Bryholdt.

17 MR. BRYHOLDT: May it please the court.

18 CROSS EXAMINATION BY MR. BRYHOLDT:

19 Q. Mr. Miller, can you tell this jury whether Antran Hall
20 ever had possession of those drugs?

21 A. No, sir.

22 MR. BRYHOLDT: Thank you, sir.

23 THE COURT: Anything in redirect?

24 MR. CAMPBELL: Yes, Your Honor.

25

1 REDIRECT EXAMINATION BY MR. CAMPBELL:

2 Q. Now, Mr. Miller, besides powdered cocaine, is there any
3 other type of cocaine that you commonly deal with?

4 A. There are -- cocaine is the base drug, but there are
5 different physical forms of it, yes.

6 Q. What other forms do you commonly deal with?

7 A. We see another form commonly in Anderson and Oconee
8 Counties. It's known as rock form or crack cocaine, which
9 is a smokeable form of cocaine.

10 Q. And typically when you receive that type of cocaine,
11 you indicate it on your report?

12 A. Yes, we do.

13 Q. So it's going to be a difference between the two
14 cocaines indicated on your report?

15 A. Yes, there are different physical and chemical
16 properties that we can easily determine and it's clearly
17 indicated on any report that we would issue.

18 Q. And in this case right here there was no crack cocaine
19 found?

20 A. No.

21 Q. It was all what you considered powdered cocaine?

22 A. That's correct.

23 MR. CAMPBELL: I have no further questions.

24 THE COURT: Thank you, sir.

25 Do you have a followup question?

1 RECROSS EXAMINATION BY MR. GRIFFIN:

2 Q. And you had no evidence that Mr. Rice had anything to
3 do with that?

4 A. No, sir.

5 Q. Okay.

6 MR. GRIFFIN: That's all I have.

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

8 You may call your next witness.

9 MR. CAMPBELL: Your Honor, that's the State's
10 case.

11 THE COURT: Ladies and gentlemen, I'm going to ask
12 that you go back to the jury room just briefly. We have got
13 some matters we need to take care of. In a few moments we
14 will have you back and we will be ready to proceed with the
15 trial of the case.

16 Let me remind you again don't discuss the case at
17 this time. You will have an opportunity to do that when
18 everything is accomplished with the evidence and with the
19 charge on the law.

20 Take a short break and we will call you back just
21 as soon as we can. You can go back in your jury room at
22 this time.

23 (The following takes place outside the presence of
24 the jury panel)

25 THE COURT: All right. Anything we need to take

1 care of as far as charges or other matters?

2 MR. GRIFFIN: I would move for a directed verdict
3 of not guilty on the grounds that no evidence has been
4 submitted in this matter -- not sufficient evidence to
5 submit the matter to the jury. There was no evidence that
6 Mr. Rice had anything to do with the cocaine. Everything
7 pointed toward Mr. Hall. The officers said that Mr. Rice
8 stopped as soon as he identified himself without offering
9 any resistance. Mere presence is insufficient to submit the
10 matter to the jury. We would request a directed verdict be
11 granted against Mr. Rice.

12 MR. BRYHOLDT: Your Honor, do you want my
13 argument?

14 THE COURT: Yes, sir, I'll be glad to hear from
15 you now.

16 MR. BRYHOLDT: May it please the court, on behalf
17 of Antran Hall, first I would move for a directed verdict on
18 the indictment number 2006-GS-04-594 for possession of --
19 receiving or possession of stolen goods, Your Honor. I
20 think -- what the State has to prove, one of their elements,
21 is that the defendant, Mr. Antran Hall, knowingly received
22 or possessed these goods.

23 Now, no question there apparently was a stolen
24 motorcycle somewhere on his property. We asked the officer.
25 They never saw Mr. Hall around it or anything else. And I

1 think the mere fact of just possession there in and of
2 itself is insufficient. I would draw the court's attention
3 to the knowledge requirement is not met, however, when the
4 receiver only has notice of facts to put a reasonable person
5 on notice. That's State v. Daniels, 61 S.E. 1073, a 1908
6 case. And that's still law of this land, and we have got no
7 evidence whatsoever of any knowledge on the part of Mr.
8 Antran Hall on that. I would ask the court to direct a
9 verdict of not guilty on that count.

10 I would have no motions as it goes to the failure
11 to stop.

12 I would have no motions as to the resisting
13 arrest, based on the evidence. I think there is sufficient
14 evidence to go forward to the jury.

15 On the charge of trafficking in cocaine, Your
16 Honor, I would move for a directed verdict on behalf of Mr.
17 Antran Hall. This is the State v. Tabory, T-A-B-O-R-Y, 196
18 S.E. 2d 111, 1973. Our Supreme Court held that fruits of
19 possession requires more than mere presence.

20 Even looking at the circumstantial evidence, every
21 officer testified that the contraband came out of the
22 passenger's side of the window where Mr. Rice was seated.
23 There is -- I asked them if anyone had ever saw Mr. Hall in
24 actual possession of it. So we have no evidence of
25 constructive possession -- I mean of actual possession in.

1 the record in this case.

2 And then based on circumstantial evidence, when it
3 come out of the passenger's side where Mr. Rice was seated,
4 the only evidence would be that that's where it was. To
5 have constructive possession, you must have dominion and
6 control over the items. And there is no evidence in the
7 record at this point, and the State has rested, that Mr.
8 Antran Hall has any such dominion or control over the drugs
9 that were admitted into evidence, Your Honor. I would ask
10 for a directed verdict of acquittal on those two
11 indictments.

12 THE COURT: All right, sir. Thank you.

13 Mr. Campbell, what about the motion on the
14 receiving stolen goods? Where is your proof of the
15 knowledge about?

16 MR. CAMPBELL: Your Honor, in the case this
17 bike -- as the testimony has stated by Detective Brown, that
18 this bike had been in that vicinity -- had been at the house
19 during his surveillance.

20 Furthermore, the ignition had been punched out, as
21 he testified, which indicates that this bike didn't get
22 there legally. Somehow, some way it got removed from North
23 Carolina, Buncombe County, North Carolina, to Camden
24 Drive. The knowledge is of the fact that it's not his. He
25 lives at the residence. As indicated by the power bill,

1 that's his place. He knows he's supposed to be responsible
2 for everything that's in the house or in the curtilage of
3 the house. To deny that he doesn't know that this bike is
4 there, you know, doesn't make sense, because, as they
5 stated, the car is there at the house all the time. He's
6 living there. He knows what the items come through. As
7 Detective Brown testified, that it's common for drug dealers
8 to exchange items such as this for dope, and that's what we
9 have here. It's in 2005 bike, a Kawasaki. It's value was
10 definitely greater than \$1,000. And in this case, of
11 course, when he showed up he took off. And flight of itself
12 I think indicates he knew besides having illegal narcotics
13 upon him, he also had illegal stuff in the area.

14 MR. BRYHOLDT: Just briefly in response?

15 THE COURT: Yes, sir.

16 MR. BRYHOLDT: As I recall Officer Brown's
17 testimony, I asked him if he ever saw Antran Hall around the
18 bike and he said no.

19 Had he said he saw him out there sitting on it or
20 playing with it, it might be a different story, but we don't
21 have in this case, Your Honor.

22 THE COURT: Well, as I remember the testimony, the
23 officer didn't indicate he seen it there on other occasions
24 just one time earlier.

25 As you know, I must take all the evidence in the

1 light most favorable to the nonmoving party. It's not my
2 job to weigh the evidence, but I don't find there is a
3 failure of competent evidence to tend to prove the charges.
4 I believe it's a jury issue.

5 Also, as far as trafficking as well is denied on
6 both your motions on the evidence. I believe there is
7 sufficient direct evidence for the defendant to leave that
8 issue to the jury and I'll do that.

9 Any other motions?

10 MR. CAMPBELL: Nothing from the State.

11 MR. GRIFFIN: None, Your Honor.

12 THE COURT: Any requests to charge?

13 MR. BRYHOLDT: I don't know if Mr. -- I don't know
14 if -- Mr. Hall is not going to offer any evidence, Your
15 Honor. He will rest when the jury comes back in.

16 MR. GRIFFIN: Also we would rest.

17 THE COURT: I assume that there would be no
18 evidence offered.

19 Do you have any evidence that you want to present?

20 MR. GRIFFIN: No, sir, I have no evidence.

21 MR. BRYHOLDT: If you will note my motion renewed
22 at the end of my case.

23 THE COURT: All right.

24 MR. GRIFFIN: I would renew mine.

25 THE COURT: All right. Are you ready to argue to

1 the jury?

2 MR. CAMPBELL: The State is ready.

3 THE COURT: Let's take a short break. I'll see if
4 I can get that verdict form. I will do the verdict form on
5 each charge and let y'all look at that.

6 Let the jury have -- take about a ten minute
7 break.

8 MR. BRYHOLDT: Thank you, judge.

9 (Whereupon, proceedings were recessed)

10 (Whereupon, proceedings were reconvened)

11 THE COURT: All right. I understand that you have
12 had a chance to look over the verdict forms. Are they in
13 order, everybody?

14 MR. GRIFFIN: Yes.

15 MR. BRYHOLDT: No objection.

16 MR. GRIFFIN: No objection.

17 MR. BRYHOLDT: No objection from Defendant Hall.

18 MR. CAMPBELL: No objection.

19 THE COURT: I think I also forgot to put on the
20 record the foreperson of the jury elected by the jury during
21 the break was Mr. Drayton, juror number 46, selected as
22 foreperson.

23 Let's bring the jury back.

24 (The following takes place in the presence of the
25 jury panel)

1 THE COURT: Mr. Foreman, I understand that we now
2 have all the testimony in the case, so at this time we are
3 ready to move into the closing statements of the attorneys.

4 Ladies and gentlemen, as I stated to you earlier,
5 this is not evidence for you to consider. You have all the
6 evidence before you now for your consideration, but I urge
7 you to listen carefully as each of the attorneys address you
8 about what they feel is important aspects of the evidence.
9 Listen carefully to what they have to present to you, after
10 which I will instruct you on the law, and it will be time
11 for you to begin your deliberations.

12 At this time the attorneys can address the jury.
13 Solicitor.

14 MR. CAMPBELL: Thank you, Your Honor. Mr.
15 Griffin. Mr. Bryholdt, ladies and gentlemen of the jury.

16 This right here is reality. This isn't a TV show.
17 This isn't an episode of Cops. This is what many people
18 face on a daily basis, real life. 253 and a half grams of
19 powdered cocaine. That is a lot of stuff. This ain't for
20 personal use. This isn't for someone who says well, I got a
21 drug addiction, I'm just going to take a hit. This right
22 here is to make money, to sell.

23 He's charged with trafficking -- both of them are
24 charged with trafficking because of the weight, between 200
25 and 400 grams. You read about it. You hear about it. You

1 see it on TV. This is what the stuff looks like, and what
2 we are dealing with is a drug dealer, both of them. I'm
3 going to get into all of that.

4 You know, drug dealing, one thing about being a
5 drug dealer is that basically it's an equal opportunity
6. business. Drug dealers don't discriminate on age, gender,
7 race. The only thing they are interested in is money. That
8 gets to the fact of why they ran.

9 First of all, you got the sheriff's department
10 going down there doing the search warrant on Mr. Antran
11 Hall's house. Besides the surveillance and what the
12 cooperating individual said, how do we know it's his place?
13 Well, they take evidence from him in the house showing that
14 he lives there. The power bill. It's in his name, Antran
15 Hall, ADDRESS Anderson, South Carolina, 29624.
16 So right there you know that he is staying there. He's
17 living there.

18 The other things that you had that come out of
19 this house, based on the warrant, before you even get to the
20 chase is digital scales. Five of them. They are down to
21 small minute amounts. How many of y'all have five scales of
22 this size hanging around your house to weigh out small
23 grams, half grams, quarter grams? This right here is tools
24 of the trade. This is what people that sell dope for a
25 living have. Whether it was tested, you know, for

1 fingerprints or analyzed. Why else would someone in their
2 house have five small little micro scales? This isn't
3 because you are doing, you know, your little Betty Crocker
4 and you are weighing out flour and sugar to bake a cake.
5 The only thing they are weighing out on this is ruined
6 lives.

7 MR. BRYHOLDT: Object, Your Honor. It's appealing
8 to the sympathies of the jury, Your Honor. Improper
9 argument.

10 THE COURT: I'll overrule the objection. Keep it
11 within the facts of the case.

12 MR. CAMPBELL: Thank you, Your Honor.

13 Now, on that day when they were out there
14 executing the search warrant and they were -- they would go
15 into the house, they are going through everything and they
16 were recovering these things, y'all heard the officers
17 testify we have found a bike. We ran it through the proper
18 police network, the NCIC. It came back stolen out of
19 Buncombe County, North Carolina. Ask yourself this, well
20 how Mr. Hall, he who lives at this ADDRESS know
21 that this bike is stolen? Well, the officer testified, you
22 know, it was right there in his front yard. They watched
23 them. It's been there for several weeks during their
24 surveillance. The ignition is busted out on a 2005
25 Kawasaki. As the officer testified, this is common in the

1 dope trade to trade out stolen property. If it had been a
2 legitimate, he knew this bike was his, don't you think
3 everything would have came back to his name when they ran it
4 through the DMV or they ran the VIN number and it came back
5 to Antran Hall, ADD Anderson, South Carolina,
6 instead of Buncombe County, North Carolina, reported stolen.
7 He knew it was stolen. The fact this had the busted
8 ignition, the fact he didn't take it down to the courthouse,
9 like everybody else does, and register it says something.

10 Now, you got to look at actions speak louder than
11 words. If you went home and your yard was filled with
12 police officers and you were pulling up, don't you think
13 that you would want to know what is going on in your house?
14 Wouldn't you want to find out why they are all there? It
15 makes common sense that you would have asked hey, what are
16 you doing, but that didn't happen in this case. Mr. Hall
17 was driving his car, who has been under surveillance for a
18 couple of weeks, and they seen his car matching, this
19 goldish tan Buick, in this car and they have seen driving it
20 before, you know, he doesn't do that. What is his first
21 response? I got to get out of here. And so him and his
22 friend, Mr. Rice, they take off. And the only thing that
23 they are concerned with is getting away. As the officer
24 testified on the stand, you know, it's common for drug
25 dealers to try to get rid of their product, stuff that they

1 have on them. They don't want to be caught with it actually
2 on them, and he made that attempt. Both of them did. And
3 there could be the argument -- I know Mr. Griffin is going
4 to come up here and argue well, my guy didn't know it. He
5 was just along for the ride. That doesn't hold water, just
6 along for the ride. As I said, actions speak louder than
7 words. Mr. Rice is on the passenger's seat. Mr. Hall is
8 the one that is driving. He, himself, is the one that made
9 the conscious decision to get out of there, to leave in a
10 hurry.

11 And did he have any concerns for anybody else but
12 him and Mr. Rice trying to escape? No. Blew a stop sign.
13 He passed cars on double solid yellow line. And the main
14 thing that really gets to me is he passed a school bus that
15 was stopped with its lights on and the little stop sign out.
16 Does that sound like a person who is concerned for anybody
17 but themselves, or does that sound like a person who is
18 doing everything that he can to get away from law
19 enforcement? He knew that that law enforcement was behind
20 him. He saw the cops there. He took off. He ran. The
21 blue lights were behind him. As Officer Jordan has
22 testified, he came by me at a high rate of speed, here comes
23 Sergeant Baxter right behind him with his blue lights and
24 siren flashing. Yet at no point did he make any attempt to
25 slow down or stop, which is why he was charged with failure

1 to stop for a blue light.

2 Your Honor is going to charge you with the
3 facts -- the law of the case that y'all are to apply the
4 facts to. Failure to stop for a blue light, you got to know
5 that the police were behind you and they attempted in some
6 shape, way, or form to signal or blue light to stop that
7 vehicle. And in this case he didn't. He went over two
8 miles. And he wasn't going to stop until he lost control of
9 that car. And if he had nothing else to hide at that point
10 in time, why didn't he just sit there, both of them, Mr.
11 Hall and Mr. Rice, in the car? Heck, they are like a covey
12 of quail busting from cover. One goes to the right, one
13 goes to the left. Officers are baling out, going out. They
14 are saying stop, slow down, you are under arrest. Did they
15 stay there? No.

16 Let's talk about Mr. Rice first on trafficking.
17 Is he just an innocent bystander along for the ride? No.
18 His actions speak louder than words. Did he know the stuff
19 was there? Yes, he did. He's in the passenger's seat. As
20 the officers testified, the dope came out of the passenger's
21 side window. He is sitting there. It's not like he didn't
22 know it was there. If he didn't know or wasn't involved in
23 part of this, why didn't he just sit there in the seat when
24 the officers came there? No, he took off running. What
25 does flight or running from something mean? He knew it was

1 up. He doesn't want to get caught, because you know why?
2 He's going to go to jail if he gets caught. He has
3 knowledge that this item, this dope, this right here came
4 out his window could put him in jail. If he's innocent, Mr.
5 Griffin is going to claim, then why didn't he just sit there
6 and say man, I didn't know have nothing to do with this.
7 You heard me ask Officer Scoggins well, did he say anything
8 after you handcuffed him or he stopped and arrested him?
9 The answer was no. He said absolutely nothing. If you had
10 been with someone and this much dope just came out the
11 window, don't you think that you would have been hollering
12 man, it wasn't me, I didn't do it. I'll tell y'all you need
13 to know about him, but I'm innocent. His actions speak
14 louder than words. He's trying to run and get away just as
15 much. He is a dope dealer just a much as Mr. Hall.

16 And Mr. Hall, besides not stopping for stop signs,
17 passing cars, passing a stopped school bus, not concerned
18 about children, wrecking the car, he's still trying to get
19 away, and they have to chase him down and he still does not
20 give up. Well, they identified themselves, you are under
21 arrest as law enforcement. He fights them. He won't give
22 up, to the point that it takes two of them to handcuff him.
23 That's where you get the resisting arrest from. You got law
24 enforcement. They identified themselves. They told him he
25 was under arrest, and he voluntarily didn't do it. He

1 fought them tooth and nail. What he's trying to do, both of
2 them, are trying to do is get rid of this, hoping they won't
3 find it. Don't have any evidence, you don't have any case
4 against me. They did their best to get rid of it.

5 And as it's weighed, the officer told you they
6 just weighed it back at the sheriff's department. It came
7 out to 263 and a half grams with the ziplock bag. But then
8 when they weighed it, Mr. Miller officially weighed it 253.5
9 grams.

10 As the officers testified, this right here is sold
11 on the street for a low end of \$10,000. A lot of money to
12 think someone would throw out the window, don't you think?
13 People just don't get rid of this for no reason. And just
14 because no dope was found in the house doesn't mean that
15 he's not -- that he's innocent of it. He's a dope dealer.
16 As the officer testified, this is common. Your dope dealer
17 to going to keep the dope on him because people and other
18 people in the house, what are they going to do? They are
19 going to try to break into it and use it. That's his
20 living. That right there is a man's living.

21 As I stated, actions speak louder than words. Mr.
22 Hall has been charged with trafficking in powdered cocaine
23 between 200 and 400 grams. He's charged with resisting
24 arrest, failure to stop for a blue light and also for
25 possessing stolen property.

1 Mr. Rice, on the other hand, was only charged with
2 trafficking with cocaine in this case. They are working it
3 together. He wasn't charged with anything else, because it
4 wasn't his residence and he didn't resist arrest.

5 Then it comes down to -- you know, a lot of
6 questions came down why didn't you fingerprint it. Well,
7 this bag right here, as the officer testified, it's raining.
8 The bag came out the window. Three officers directly
9 observed it. 20 to 30, 45 seconds later Officer Jordan went
10 right over there right where they said it was and picked it
11 up. They observed directly with their own eyes coming out.

12 It's our burden of proof to prove all this to you,
13 ladies and gentlemen. That's why we put all the witnesses
14 up. We have got to prove, you know, actual or constructive
15 possession in this case. Actual is actually on them. And I
16 think you can infer from their own actions that they knew it
17 was there.

18 Ladies and gentlemen of the jury, at the end of
19 this case y'all will have an opportunity to speak. This is
20 last time I get a chance to speak to you. Mr. Griffin and
21 Mr. Bryholdt hold have their opportunities to say what they
22 want to say on behalf of their clients, but y'all in this
23 case have the last word. And the State asks you -- because
24 this is an important case for the State too. Mr. Bryholdt
25 wants a day for his client and this is an important day for

1 him. It's also important for the State. After you look at
2 the evidence and view the testimony that you heard from that
3 stand, that you come up with a verdict that truth dictates
4 and justice demands. In that case, it's guilty on all
5 counts against all parties in this matter, and I thank you
6 for your time and your patience.

7 THE COURT: Mr. Griffin?

8 MR. GRIFFIN: If it please the court. All right
9 ladies and gentlemen, I represent Mr. Rice, as I stated
10 earlier.

11 The State wants you to believe that Mr. Rice is a
12 drug trafficker. Here we have Mr. Rice in the vehicle, but
13 a search is going on at this other gentleman's house, Mr.
14 Hall. They find all this other stuff at Mr. Hall's house.
15 Apparently Mr. Hall is a drug dealer. They don't find any
16 drugs on Mr. Rice when he's arrested.

17 The solicitor in his argument contradicted
18 himself. He says that Hall wanted to get everything off of
19 him, who had got rid of it. They are going down the road.
20 There is no testimony that, Mr. Baxter, Officer Baxter saw
21 my client's arm come out of the window with this stuff.
22 They said it flew out the window. Logically someone sitting
23 in the driver's side lowered the window and shoots it out.

24 They want you to convict Mr. Rice on the
25 possibility that it might have been his, but all the

1 evidence points that this belonged to Mr. Hall - the scales,
2 the -- more scales. The address here was Mr. Hall's
3 address. Mr. Rice was simply in the vehicle.

4 If Mr. Rice had this dope on him, why did he take
5 off? Why did Mr. Hall take off when they pulled in? That's
6 because he had it on him at the time he pulled in the
7 driveway and he saw the police officers.

8 MR. BRYHOLDT: Objection, Your Honor, that's
9 arguing facts not in evidence.

10 THE COURT: Keep to the facts in evidence. I'll
11 allow him leeway. Overruled.

12 MR. GRIFFIN: Why did Mr. Hall take off when he
13 pulled into the driveway when he saw the officers, if he
14 didn't have this?

15 Mr. Rice, he did not offer any opposition when the
16 officer identified himself as a police officer. He didn't
17 offer any resisting. Mr. Hall was the one who fought,
18 ducked and dodged.

19 Mr. Rice, they said he didn't say anything. I
20 mean, they didn't say they asked him any questions either.
21 He's got a right to remain silent. I mean, the police cars
22 are coming after him everywhere. There was cars coming
23 everywhere. Mr. Hall had just taken him on the ride of a
24 lifetime, around stopped school busses and everything else.
25 When he gets out of the car he didn't have anything on him.

1 This was found on the side of the road, probably a
2 half mile from South McDuffie Street Extension, if any of
3 you know where that is. Mr. Hall was the one who was
4 operating the vehicle.

5 The solicitor got into constructive possession.
6 We have what -- in South Carolina we have what is called
7 actual possession and constructive possession.

8 Actual possession is like I have the cocaine in my
9 hand. That's actual possession.

10 Constructive possession would be in a house where
11 I rent, that I exercise dominion and control over the house;
12 therefore, I'm in constructive possession of the drugs; or,
13 if I owned the vehicle, that's in my vehicle, and I
14 exercised dominion and control over the vehicle. I have the
15 keys of the car. I'm behind the steering wheel. I had
16 constructive possession. I am in constructive possession of
17 the drugs.

18 Mr. Rice did not have constructive -- he did not
19 have actual possession of that vehicle. He did not have the
20 keys. He was not exercising dominion and control over the
21 vehicle. Therefore, there has been no evidence to show that
22 Mr. Rice was in constructive possession of these drugs.

23 The only inference that's been shown is that Mr.
24 Hall is the one who was in actual -- had control and
25 exercised dominion and control over the vehicle where the

1 drugs came from. That's the only evidence that's been shown
2 here:

3 The State has to prove beyond a reasonable doubt
4 that my client had either actual or constructive possession
5 of this bag of drugs, which they have not. They have only
6 shown that they were -- that they were ejected from the
7 vehicle and it came out of the side of the car where Mr.
8 Hall was -- where Mr. Rice was supposedly seated. They
9 didn't see Mr. Rice's arm come out with it. All they saw
10 was a bag fly out.

11 Officer Baxter, he testified on direct examination
12 that Mr. Hall had done a good job of getting rid of what he
13 had on him.

14 Everything in this case points to Mr. Hall as
15 being the owner of these drugs, everything in this case.
16 Nothing points to Mr. Rice. Now, I would ask you to come
17 back with a verdict of not guilty for Mr. Rice. Thank you.

18 MR. BRYHOLDT: May it please the court?

19 THE COURT: Yes, sir, Mr. Bryholdt.

20 MR. BRYHOLDT: I think what hasn't been talked
21 about today was burden of proof, reasonable doubt. The
22 State has to prove each and every element. The judge is
23 going to charge you the elements that they have to prove.

24 Let's start with receiving stolen goods and
25 possessing stolen goods. The State has to provide you

1 evidence from that witness stand or an exhibit that shows
2 that Mr. Antran Hall possessed the motorcycle knowing it to
3 be stolen. I asked Officer Brown, who was out there
4 executing a search warrant, whether he ever saw Mr. Antran
5 Hall around that motorcycle, and his answer was no. So have
6 they proven to you beyond a reasonable doubt that he knew
7 that bike was stolen? Well, they never saw him around the
8 bike. Said there was another female that was there when
9 they executed the search warrant. We don't know who brought
10 that bike there or what that bike had to do with anything.
11 My statement is, though, have they proven to you beyond a
12 reasonable doubt that he knew it was there stolen, because
13 that's what they have to prove.

14 Did he stop for a blue light? I'm not going to
15 insult your intelligence. He didn't. He took off.

16 Did he stop for them right after -- if you run
17 from them with blue lights flashing, you are going to get
18 out of your car, you are not going to stopped for them
19 immediately, you are going to try to get away. I'm not
20 going to insult your memory or your common sense on that.

21 But the State has to prove that Antran Hall
22 possessed this bag of dope. The judge is going to charge
23 you that there is two types of possession under the law in
24 South Carolina.

25 One is actual. I hold this bag in my hand, I

1 possess it. .

2 The other is constructive possession. It's not
3 dominion and control over your house, or dominion and
4 control over your vehicle. Do you have dominion and control
5 over the contraband? And I asked every witness for the
6 State did they ever see this in Mr. Antran Hall's possession
7 and each one of them was honest enough to say no. So there
8 is no actual possession.

9 That leaves you constructive possession. Ask
10 yourself did it come out of the passenger's side window, the
11 driver's side window, or where? And every officer that saw
12 the bag come out said it came out of the passenger's side
13 window where Mr. Rice was sitting.

14 You have to ask yourself has the State proven
15 their case beyond a reasonable doubt that Mr. Antran Hall
16 had possession of these drugs. As I asked you under the
17 oath that you took to start with, you can't base your
18 decision on what you think happened. You can't base it on
19 suspicion or speculation. You base it on the evidence
20 that's been presented. And when the twelve of you go back
21 to deliberate, you hold onto your convictions. If you
22 believe the State has proven their case, you hold onto your
23 conviction that they are guilty.

24 Likewise, if the State has not convinced any of
25 you that they have proven their case beyond a reasonable

1 doubt, you hold onto those convictions. Don't go back there
2 and look at your watch and say, boy, it's four o'clock, I
3 would sure like to go home and let's get this case over with
4 in a hurry, when we are talking about somebody's life right
5 here. It's Mr. Hall who has been charged with these
6 offense. No one else. Mr. Rice was one charged and Mr.
7 Hall was the other. I'm going to ask you to live up to the
8 oath that you took, because that's the most important thing
9 that you can do. You swore that you would base it on the
10 law and the evidence.

11 The first question that you should ask yourself
12 when you go back there, individually first, and talk
13 collectively, is did the State prove their case beyond a
14 reasonable doubt, because the judge is going to charge you
15 if they have failed to do that, under the oath you took your
16 duty is to return a verdict of not guilty. It's not what
17 you think happened. It's what they have proven to you day
18 today.

19 I would tell you that the State has not proved
20 that he knowingly possessed the stolen vehicle. I don't
21 think they have proven to you actual possession of any
22 drugs.

23 And the circumstantial evidence on where that came
24 out, the drugs, would only leave you that it came from the
25 passenger.

1 And I'm kind of throwing up my hands and say on
2 the blue light and resisting, I can't give you much argument
3 on those two.

4 I would ask you to go back there and live up to
5 your oath and hold the State to that high burden, and it's
6 the most important function that you can serve, other than
7 serving your country in the time of war in the Armed Forces,
8 is our duty, civic duty, as a juror.

9 On behalf of Mr. Hall and his family we appreciate
10 the close attention that you have paid during this trial. I
11 appreciate the opportunity that I have had to work with you
12 today. Thank you very much.

13 (Whereupon, at 3:53 p.m., the Court gave the jury
14 panel the jury instructions)

15 THE COURT: Mr. Foreman, ladies and gentlemen,
16 it's now my responsibility to charge you on the law. And
17 let me again remind you that there are indictments in this
18 case. There is four indictments against Hall and one
19 indictment against his co-defendant Mr. Rice, but let me
20 remind you that the fact that these individuals have been
21 arrested and they have been charged and indicted is not
22 evidence in the case. It cannot be considered by you as
23 evidence of guilt, nor does it create any kind of
24 presumption or inference of guilt. These documents or these
25 indictments that were presented were merely the written

1 instruments by which these cases are brought before this
2 court for you to make a decision.

3 Likewise, in this particular case, there are
4 several indictments, as I said, against Defendant Hall.
5 Each indictment charges a separate and distinct offense, and
6 you must consider and decide each indictment separately on
7 the evidence and the law applicable to that, uninfluenced by
8 your decision on any of the other indictments. A defendant
9 can be convicted or acquitted on any or all of the offenses
10 charged. And at the conclusion of your deliberations you
11 will be asked to write a separate verdict of guilty or not
12 guilty on each of the indictments.

13 Now, as to one of the charges I charge you that
14 there are two defendants in the case, each of whom have been
15 charged with trafficking in cocaine. The case of each
16 defendant and the evidence and law concerning that defendant
17 should be considered separately and individually. Your
18 verdict does not have to be the same for both defendants,
19 The fact that you find one defendant guilty or not guilty
20 should not control your verdict as to the other defendant.
21 Where more than one person is charged with a crime, if the
22 evidence warrants it, you may convict one and acquit the
23 other, or you may acquit both, or you may convict both. It
24 would depend upon your view of the testimony and the
25 evidence. You must take each defendant and consider the

1 evidence as to that defendant in my instructions to you on
2 the law. You will then write separate verdicts of guilty or
3 not guilty on each of these two defendants.

4 Now, the defendants have pled not guilty to the
5 indictment, and that plea puts the burden on the State to
6 prove the defendant guilty beyond a reasonable doubt.

7 A person charged in South Carolina with committing
8 a criminal offense is never required to prove himself
9 innocent. I charge you that that's an important rule of law
10 that a defendant in a criminal case, no matter what the
11 seriousness of the charge may be, will always be presumed
12 innocent of the crime for which the indictment was issued,
13 unless guilt has been proven by evidence satisfying you of
14 that guilt is beyond a reasonable doubt.

15 This presumption of innocence does not end when
16 you begin your deliberations, but it accompanied the
17 defendant throughout the trial, until you reach a verdict of
18 guilt, based upon the evidence satisfying you of that guilt
19 beyond a reasonable doubt.

20 The presumption of innocence is like a robe of
21 righteousness that's placed about the shoulders of a
22 defendant, which remains with the defendant until it's been
23 stripped from him by evidence satisfying you of that
24 defendant's guilt beyond a reasonable doubt. The
25 presumption of innocence is not a mere legal theory. It's

1 not a legal phrase that we use. It's a substantial right to
2 which every defendant is entitled, unless you, the jury, are
3 satisfied from the evidence of the defendant's guilt beyond
4 a reasonable doubt.

5 Now, what is a reasonable doubt in the law? A
6 reasonable doubt is the kind of doubt that would cause a
7 reasonable person to hesitate to act. The State has the
8 burden of proving the defendant guilty beyond a reasonable
9 doubt.

10 Some of you in the past may have served as jurors
11 in civil cases where you were told it was only necessary to
12 prove that a fact was more likely true than not true, such
13 as by the greater weight or the preponderance of the
14 evidence. In criminal cases the State's proof must be more
15 powerful than that. It's proof beyond a reasonable doubt.
16 Proof beyond a reasonable doubt is proof that leaves you
17 have firmly convinced that the defendant is guilty.

18 Now, there are very few things in this world that
19 we know with absolute certainty, and in criminal cases the
20 law does not require proof that overcomes every possible
21 duty.

22 If, based upon your consideration of the evidence,
23 you are firmly convinced that each of the defendants is
24 guilty of the crime charged, then you must find the
25 defendants guilty.

1 If, on the other hand, you think there is a real
2 possibility that the defendant is not guilty, you must give
3 the defendant the benefit of the doubt and find him not
4 guilty.

5 Now, Mr. Foreman, ladies and gentlemen, let me
6 remind you that you and I have had certain duties to perform
7 during the course of this trial. As the trial judge it's
8 been my responsibility to preside over the trial in this
9 case, and I have also had the duty to rule on the
10 admissibility of evidence offered during the trial.

11 You are to consider only the competent evidence
12 that's before you. You are to consider the testimony which
13 has been presented from the witness stand and any exhibits
14 that have been made a part of the record and any
15 stipulations of counsel.

16 My job also is to charge you the law applicable to
17 the case. As the presiding judge, I'm the sole judge of the
18 law. It's your duty as jurors to accept the law and apply
19 the law as I now state it to you. You already may have an
20 idea of what the law is in a case like this, or even an idea
21 of what the law ought to be in a case like this. If you
22 have such ideas and it doesn't agree with what I now tell
23 you the law is, then you must abandon those ideas and
24 notions, because you are sworn to accept the law and apply
25 the law exactly as I state it to you.

1 In every case that's tried in this courtroom
2 before a jury you become the sole and exclusive judges of
3 the facts in a case. A trial judge is not allowed to state,
4 or intimate, or comment on, or make any statement whatsoever
5 in a trial about the facts of a case. Since you, the jury,
6 are the sole and exclusive judges of the facts, you are not
7 to infer from anything that's taken place during the course
8 of the trial, any rulings that I have made on objections, as
9 to the admissibility of evidence, or anything that I say to
10 you now in the course of this instruction that I have an
11 opinion about the facts of the case. I don't have an
12 opinion, and the law doesn't allow me to have an opinion.
13 That's a matter that's solely for you, and you alone, to
14 determine. And as jurors, it's your duty to determine the
15 value, the effect, the weight, and the truth of the evidence
16 presented to you during the course of the trial.

17 Now, there are two types of evidence which are
18 generally presented in a trial. There is direct evidence
19 and circumstantial evidence.

20 Direct evidence is the testimony of a person who
21 claims to have actual knowledge of a fact, such as an
22 eyewitness. It's evidence which immediately establishes the
23 main fact to be proved.

24 Circumstantial evidence is proof of a chain of
25 facts and circumstances that would indicate the existence of

1 a fact. It's evidence which immediately establishes
2 collateral facts from which the main fact may be inferred.
3 Circumstantial evidence is based on inference and not on
4 personal knowledge or observation.

5 Now, the law makes absolutely no distinction
6 between the weight or value to be given either to direct
7 evidence or circumstantial evidence, nor is a greater degree
8 of certainty required of circumstantial evidence than for
9 direct evidence.

10 You should weigh all the evidence in the case,
11 ladies and gentlemen. And after weighing the evidence, if
12 you are not convinced of the guilt of each of the defendants
13 beyond a reasonable doubt, then you must, of course, find
14 the defendants not guilty.

15 In order to establish criminal liability in every
16 case criminal intent to required. Criminal intent must be
17 proven by the State beyond a reasonable doubt. Criminal
18 intent is always a matter that must be determined by the
19 jury from the circumstances surrounding the situation.
20 There is no way to prove intent to a mathematical certainty.
21 There is no way that medical science can dissect a person's
22 brain and determine what the person had in mind, so the law
23 says criminal intent may be inferred from the circumstances
24 that are shown to have existed.

25 It's not necessary to establish by direct and

1 positive evidence, but intent may be established by
2 inference, in the same way as other facts, by taking into
3 consideration the acts of the parties and all the facts and
4 circumstances of the case. Criminal intent is a mental
5 state. It's a conscious wrongdoing. It's up to you to
6 determine what the defendant intended to do, based upon the
7 circumstances shown to have existed.

8 Necessarily, Mr. Foreman and ladies and gentlemen,
9 you must determine the credibility of witnesses who have
10 testified in the case, and credibility simply means
11 believability. It's your duty as jurors to analyze and
12 evaluate the evidence and determine which evidence convinces
13 you of its truth. You have a right to believe one witness,
14 part of the testimony of a witness, reject the testimony of
15 a witness, believe part of the testimony and reject the
16 other part. You can believe one witness over other
17 witnesses. It's totally and exclusively in your
18 prerogative, and yours alone, to consider the credibility of
19 the witnesses who have testified in the case.

20 As I stated to you earlier, generally a witness
21 cannot give an opinion. However, there is an exception when
22 a person is qualified because of experience or training,
23 they are permitted to give their opinion in certain areas in
24 which the court qualifies them. A witness qualified as an
25 expert is allowed to give an opinion in that area. And that

1 doesn't mean, as I stated earlier, that you must accept the
2 opinion, but it's evidence for you to use in any way that
3 you see fit.

4 At the beginning of the case I explained to you
5 that under the laws of our state a defendant may be tried
6 even if he's not present in the courtroom and doesn't attend
7 his trial. The fact that a defendant is not present may not
8 be considered against that person in any manner whatsoever.

9 Likewise, the fact that a defendant is not here to
10 testify in his own behalf is not a factor to be considered
11 by you in any way in your deliberation. In your
12 consideration of the guilt or the innocence of the
13 defendant, you should not in any way consider the fact that
14 neither defendant testified in this case, or either one of
15 them. A person has the Constitutional Right to remain
16 silent.

17 I again remind you that you are to draw no
18 conclusions from the fact that the defendants did not appear
19 or testify and offer any testimony in this case. The fact
20 that they were absent or did not testify should have not
21 even be discussed by you in the jury room. As I stated, the
22 burden of proof is on the State, and the defendants aren't
23 required to prove their innocence, but the burden is on the
24 State throughout the course of the trial to prove guilt
25 beyond a reasonable doubt.

1 Now, ladies and gentlemen, if a crime is committed
2 by two or more persons who are acting together in committing
3 a crime, the act of one is the act of all. A person who
4 joins with another to accomplish an illegal purpose is
5 criminally responsible for everything done by the other
6 person which occurs as a natural and probable consequence of
7 the acts done in carrying out the common plan and purpose.

8 An example that often is given is that two people
9 can be guilty of killing another individual, even though
10 only one person actually has the gun or pulls the trigger.
11 There is only one bullet, and only one of the two fired the
12 shot that caused the death. But if two, or more, people are
13 together, acting together, and assisting each other in
14 committing the offense, then the act of one is the act of
15 all. And it's sometimes said is the hand of one is the hand
16 of all.

17 Prior knowledge that a crime is going to be
18 committed, without more, is not sufficient to make a person
19 guilty of the crime. Mere knowledge that another person is
20 going to commit a crime, even if the defendant is present
21 when the crime is committed, is not sufficient to convict a
22 defendant as a principal. Guilt of a principal as shown by
23 actual and constructive presence at the scene or as a result
24 of prior arrangement. The State must prove beyond a
25 reasonable doubt by competent evidence the theory of the

1 hand of one is the hand of all.

2 Now, in this case each of the defendants have been
3 charged with trafficking in cocaine.

4 Now, the State must prove beyond a reasonable
5 doubt that the defendant knowingly sold, manufactured,
6 cultivated, delivered, purchased, or brought into the state;
7 or, provided financial assistance, or, otherwise aided,
8 abetted, attempted or conspired to sell, manufacture,
9 cultivate, deliver, purchase, or bring into this state; or,
10 was knowingly in actual or constructive possession,
11 knowingly attempting to become in actual or constructive
12 possession of cocaine.

13 The State must also prove by beyond a reasonable
14 doubt that the amount of the cocaine in the possession of
15 the defendant, or any mixture of containing cocaine, was 200
16 grams, or more, but less than 400 grams.

17 Now, to prove possession, the State must prove
18 beyond a reasonable doubt that the defendant had both the
19 power and the intent to control the disposition or use of
20 the cocaine. Possession can either be actual or
21 constructive.

22 Actual possession means that the cocaine was in
23 the actual physical control of the defendant.

24 Constructive possession means that the defendant
25 had dominion and control, or the right to exercise dominion

1 or control over either the cocaine itself or the property on
2 which the cocaine was found.

3 Mere presence at the scene where drugs were found
4 is not enough to prove possession. Actual knowledge of the
5 presence of cocaine is strong evidence of the defendant's
6 intent to control its disposition or use. The defendant's
7 knowledge and possession may be inferred when a substance is
8 found on the property under a defendant's control. However,
9 this inference is simply an evidentiary fact to be taken
10 into consideration by you, along with the other evidence in
11 the case, and to be given the weight that you think it
12 should have.

13 Now, I used the word manufacture. Manufacture
14 means to produce, prepare, convert, process, plant,
15 cultivate, grow or harvest a drug, naturally or chemically.

16 Manufacturing includes any packaging or
17 repackaging of the drug, or labeling, relabeling of the drug
18 containers.

19 To deliver would mean to actually, constructively,
20 or attempt to transfer the drug.

21 And to distribute means to deliver other than by
22 administering or dispensing of a drug.

23 Now, the defendant, Mr. Hall, has also been
24 charged with receiving stolen goods in this case.

25 The State must prove beyond a reasonable doubt

1 that the defendant bought, received, or possessed goods or
2 other property that the defendant knew or had reason to
3 believe that the property was stolen.

4 Now, whether the defendant knew or had reason to
5 believe the property was stolen may be shown by direct or
6 circumstantial evidence. The State may prove the defendant
7 knew or had reason to believe that the property was stolen
8 by showing that the defendant knew the facts that would make
9 a reasonable person believe the property was stolen.

10 Defendant Hall has also been charged with
11 resisting arrest. The State must prove beyond a reasonable
12 doubt that he resisted a lawful arrest being made by a
13 person the defendant knew or reasonably should have known
14 what a law enforcement officer.

15 Resist means to oppose, to strive against, or
16 obstruct.

17 And obstruct means to impede, hinder, interfere
18 with.

19 Even peaceful nonviolent indirect obstruction of
20 an arrest is considered resisting arrest. If the means used
21 are sufficient to prevent the officer from making an arrest,
22 then the defendant is guilty of resisting arrest.

23 Defendant Hall is also charged with failing to
24 stop for a blue light. In order to prove this crime, the
25 State must prove beyond a reasonable doubt that the

1 defendant was driving a motor vehicle; that the defendant
2 was driving a motor vehicle on a road, street, or highway in
3 this state; that the defendant was signaled to stop by a law
4 enforcement vehicle by means of a siren or a flashing light
5 and that the defendant did not stop.

6 Now, in determining whether or not there were
7 mitigating circumstances which would justify a defendant's
8 failure to stop for a blue light, you can consider the road
9 conditions, the actual roadside conditions; other
10 conditions, such as the weather or lighting; also the
11 driver's or passenger's safety; any other circumstance that
12 you believe to reasonably mitigate the alleged violation.

13 And official signal requiring a motorist to stop
14 may be a siren or a flashing light, but both are not
15 required.

16 An attempt to increase the speed of the vehicle or
17 in some manner avoid the pursuing law enforcement vehicle
18 when signaled by the siren or flashing light may be
19 considered as evidence of a failure to stop for a blue
20 light. However, it merely is an evidentiary fact to be
21 taken into consideration by you, along with other evidence
22 in the case, and to be given the weight that you think it
23 deserves.

24 Now, Mr. Foreman, ladies and gentlemen, there is a
25 verdict form that I have prepared on each of the charges on

1 each of these defendants. The possible verdicts, of course,
2 are either guilty or not guilty, depending on whether or not
3 that you find the State has met its burden of proof beyond a
4 reasonable doubt as to each of the charges.

5 All twelve of you must agree on the verdict.

6 Your verdict can't be based on sympathy or
7 passion, prejudice, emotion, or any other consideration
8 that's not in evidence in the case.

9 Mr. Foreman, when the members of the panel have
10 reached a unanimous verdict on each of the charges, then you
11 would sign your name as foreperson on behalf of your fellow
12 jurors. Date the form. And then as each of the verdict
13 forms are processed and you have completed your
14 deliberations on each one, please let the bailiff know that
15 you have reached a verdict on each of the cases and we will
16 then accept the verdicts back here in the courtroom.

17 I'll remind you again your verdicts must be
18 unanimous. All you must agree on each of the charges as to
19 each of the defendants.

20 And let me remind you that you are the sole fact
21 finders in this case. I can't comment in any manner on the
22 facts. I can answer any questions regarding the law that I
23 have charged you.

24 I'm going to ask you, if you would, at this time
25 to return back to your jury room. Don't begin your

1 deliberations just yet. There is one final matter of law
2 that I need to take care of with the attorneys. In just a
3 few moments I will have the bailiff bring the exhibits back
4 with instructions that you can begin your deliberations at
5 that time.

6 I'll ask you to retire to your jury room right
7 now.

8 (Whereupon, at 4:15 p.m., the jury panel went to
9 the jury room, awaiting instructions to begin deliberations)

10 THE COURT: Any exceptions to the charge, from the
11 State?

12 MR. CAMPBELL: None, Your Honor.

13 THE COURT: From the defense?

14 MR. GRIFFIN: None, Your Honor.

15 MR. BRYHOLDT: Yes, Your Honor.

16 THE COURT: Yes, sir. All right, I'll be glad to
17 hear from you.

18 MR. BRYHOLDT: First of all, on behalf of
19 defendant Antran Hall, I would object to the judge's charge,
20 first charge, the hand of one is the hand of all, and the
21 other aspects of the cocaine statute.

22 The indictments specifically in this case charged
23 Mr. Hall with actual possession or unlawfully did have in
24 his possession 200 grams, or more, of cocaine. There was --
25 they could have pled aiding, abetting, or anything. The

1 hand of one is the hand of all, there is no evidence of that
2 presented. I think that was outside the scope.

3 The same with the manufacturing, distributing,
4 altering. Again, we are outside the scope of the indictment
5 as we tried today.

6 On the receiving stolen goods charge, the court's
7 charged part of the State v. Daniels on the knowledge
8 requirement, but State v. Daniels also says knowledge
9 requirement is not met when the receiver only has notice of
10 the fact that puts a reasonable person on inquiry as to the
11 status of goods received. I think that should have been
12 charged.

13 And, likewise, the final element of receiving
14 stolen goods, there must be a fraudulent intent, an intent
15 to retain possession of those goods, and that was not
16 charged, Your Honor. That would be my exception to the
17 court's charge.

18 THE COURT: All right. Thank you, sir.

19 Solicitor, I'll be glad to hear from you on those.

20 MR. CAMPBELL: Your Honor, the State feels that
21 the judge's initial jury charge was sufficient and met the
22 criteria of whatever the cases that have been presented in
23 this matter.

24 THE COURT: All right. I'll overrule your
25 objection, Mr. Bryholdt?

1 MR. BRYHOLDT: Thank you, Your Honor.

2 THE COURT: All right. Let's get all the evidence
3 together and send the verdict forms back.

4 MR. BRYHOLDT: Your Honor, Defendant Hall has
5 reviewed the evidence and it is proper and the verdict forms
6 are proper.

7 (Whereupon, at 4:18 p.m., the jury panel was
8 instructed to begin deliberations)

9 THE COURT: We will be at ease until we hear from
10 the jury.

11 (Whereupon, the alternate juror was discharged)

12 (Whereupon, at 4:20 p.m., proceedings were
13 recessed, pending the verdict of the jury panel)

14 (Whereupon, at 4:47 p.m., proceedings were
15 reconvened)

16 THE COURT: I understand we have a verdict in the
17 case.

18 Is there anything we need to take up before the
19 jury comes back?

20 MR. CAMPBELL: Nothing from the State.

21 MR. GRIFFIN: Nothing, Your Honor, on behalf of
22 Mr. Rice.

23 MR. BRYHOLDT: Nothing on behalf of Defendant
24 Hall.

25 THE COURT: Let's bring the jury in.

1 (Whereupon, at 4:43 p.m., the jury panel returned
2 to open court to report its verdict)

3 THE COURT: Mr. Foreman, I understand the jury has
4 reached a verdict on each of the charges, is that correct?

5 JURY FOREMAN: Yes, we have.

6 THE COURT: Is it a unanimous verdict?

7 JURY FOREMAN: Yes, sir, it is.

8 THE COURT: All right. If you would, please, hand
9 the verdict forms to the bailiff.

10 All right. Madam Clerk, you may publish the
11 verdicts.

12 THE CLERK: Thank you, Your Honor.

13 Case 2006-GS-04-704, State of South Carolina
14 versus Douglas Lamont Rice, the verdict of the jury, we, the
15 jury, by unanimous consent find the defendant Douglas Lamont
16 Rice as to the charge of trafficking cocaine, guilty.

17 That's signed Leroy Drayton, Foreperson.

18 2006-GS-04-597, the State of South Carolina versus
19 Antran Ledriqueko Hall, the verdict, we, the jury, by
20 unanimous consent find the defendant Antran Ledriqueko Hall
21 as to the charge of trafficking cocaine, guilty.

22 Signed Leroy Drayton, Foreperson.

23 Case 2006-GS-04-594, State of South Carolina
24 versus Antran Ledriqueko Hall, the verdict, we, the jury, by
25 unanimous consent find the defendant Antran Ledriqueko Hall

1 as to the charge of receiving possession of stolen goods,
2 guilty.

3 Signed Leroy Drayton, Foreperson.

4 Case 2006-GS-04-595, State of South Carolina
5 versus Antran Ledriqueko Hall, the verdict, we, the jury, by
6 unanimous consent find the defendant Antran Ledriqueko Hall,
7 as to the charge of failure to stop for a blue light,
8 guilty.

9 Signed Leroy Drayton, foreperson.

10 Case 2006-GS-04-596, State of South Carolina
11 versus Antran Ledriqueko Hall, the verdict, we, the jury, by
12 unanimous consent find the defendant Antran Ledriqueko Hall
13 as to the charge of resisting arrest, guilty.

14 Signed Leroy Drayton, Foreperson.

15 Mr. Foreman, ladies and gentlemen of the jury, if
16 these are your verdicts, would you please indicate by using
17 your right hand?

18 All hands raised verdict of the jury, Your Honor.

19 THE COURT: Thank you.

20 Is there anything we need to take care of with
21 this jury before they are discharged in the case?

22 MR. CAMPBELL: Nothing from the State, Your Honor.

23 MR. GRIFFIN: Nothing from the defense.

24 MR. BRYHOLDT: No, Your Honor.

25 THE COURT: Mr. Foreman, ladies and gentlemen,

1 thank you very much for participating in this trial. It's
2 been an honor for me to work with you. I appreciate your
3 conscientious effort that you have fulfilled in meeting this
4 duty that you have.

5 As you have probably heard me state to the other
6 jurors, your services for this week are now concluded. We
7 don't have anymore trials. We have some matters we need to
8 take care of the next two days that won't involve the
9 necessity of the jury being here. Thank you very much for
10 serving with us in this matter. If you need any
11 documentation from the clerk's office for your employer,
12 they have that ready for you now. The funds that you
13 receive for your services as jurors this week will in no way
14 be reflective of the value that you have been to the court,
15 because it's a duty that we have as citizens. I trust that
16 one day, if you ever are faced with going to court, if
17 someone has sued you or someone has charged you with
18 something, that you will have good conscientious jurors to
19 decide the issues involved in your case, as you have been in
20 this particular case. I appreciate your willingness to
21 serve and the efforts that you have set forth.

22 You are dismissed at this time. Thank you very
23 much for being with us this week.

24 (Whereupon, at 5:00 p.m., the jury panel was
25 discharged)

1 THE COURT: All right. Any matters we need to
2 take care of before sentencing is imposed?

3 MR. CAMPBELL: Nothing further from the State.
4 I'll hand up the sentencing sheets and the rap sheets.

5 THE COURT: Anything anybody wants to present, as
6 far as sentencing as far as mitigation, or anything the
7 State wishes to present, as far as the charges?

8 Mr. Bryholdt, anything that you want to tell me?

9 MR. BRYHOLDT: No, Your Honor.

10 THE COURT: All right.

11 As you know, these will be sealed sentences. I'll
12 have these filed with the clerk's office.

13 Anything else we need to take care of at this
14 time?

15 MR. GRIFFIN: Nothing from the defense, Your
16 Honor.

17 MR. BRYHOLDT: Nothing from Defendant Hall, Your
18 Honor.

19 THE COURT: Thank you very much for your
20 participation. I'll get these sealed with the clerk and
21 adjourn for the day. We'll be back in the morning at 9:30.
22 Okay.

23 MR. BRYHOLDT: Thank you, judge.

24 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for ANDERSON County, South Carolina, on the 13th day of December, 2006.

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

APRIL 12, 2007

Michael R. Watts

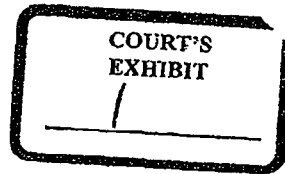
Michael R. Watts
Circuit Court Reporter

1. When was the ~~accuser~~ accuser arrested?
2. ~~Where~~ What date was he arrested?
3. Where is the other person that was running with him? Why ~~wasn't~~ didn't he testify? Anthony Sanders

ATM

You have all of the evidence that you need to make a decision. Please construe your deliberations.

Judge Goh



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Date

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Elaine Sabb

ELAINE SABB
CLERK OF COURT
ALLENDALE, SC

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 DOUGLAS LAMONT RICE,)
)
 DEFENDANT.)
 _____)

2006-GS-04-704

JANUARY 16, 2007

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE J. CORDELL MADDOX, JR., JUDGE

APPEARANCES:

RAME CAMPBELL, ESQUIRE
ASSISTANT SOLICITOR FOR 10TH JUDICIAL CIRCUIT

ATTORNEY FOR THE STATE

CHARLES GRIFFIN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

RENEE H. TOLLISON
CIRCUIT COURT REPORTER

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No	DESCRIPTION	ID	EV
	NO EXHIBITS WERE PRESENTED DURING THE HEARING		

STATE v. DOUGLAS L. RICE 2006-GS-04-704
SENTENCING HEARING (1/16/07)

3

1 THE COURT: Yes, sir?

2 MR. CAMPBELL: May it please the Court.

3 Your Honor, before you stands Douglas Rice. He was
4 tried in his absence on December 13th, 2006, in indictment
5 number 2006-GS-04-704. Mr. Griffin represented him at
6 trial, Judge Wellmaker presided and he was found guilty.
7 The sentence has been sealed.

8 THE COURT: All right. Mr. Rice, do you
9 understand what's going on here today?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: What I'm going to do is open the
12 sentence which was sealed by Judge Wellmaker. Do you
13 understand that? Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. I've opened the sentence. It
16 looks like on December 13th, 2006 -- is that right?

17 MR. CAMPBELL: Yes, sir.

18 THE COURT: Looks like there was a jury trial.
19 The jury found Mr. Rice guilty of trafficking in cocaine.
20 Judge Wellmaker, on that date, signed the sentencing sheet
21 wherein he found that inasmuch as the jury found you guilty,
22 the sentence was 25 years.

23 So that's the sentence of the Court.

24 THE DEFENDANT: Twenty-five?

25 THE COURT: Twenty-five. Anything you need to

1

CERTIFICATE OF REPORTER

2

I, THE UNDERSIGNED RENEE H. TOLLISON, OFFICIAL COURT

3

REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF

4

SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A

5

TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE

6

PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL/HEARING

7

OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT

8

COURT FOR ANDERSON COUNTY, SOUTH CAROLINA, ON THE 16TH DAY OF

9

JANUARY 2007.

10

THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH

11

MATERIAL IS REPRODUCED AS READ BY THE SPEAKER.

12

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL,

13

NOR INTEREST TO ANY PARTY HERETO.

14

FEBRUARY 20, 2007

15

16



17

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

J. Cordell Maddox, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DOUGLAS LAMONT RICE,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1. Did the trial judge err in proceeding with a trial *in absentia* when the State failed to produce evidence that the defendant had been given notice of his trial date?

2. Did the trial judge err in failing to declare a mistrial when the prosecutor in closing argument of a trial *in absentia* improperly commented on the defendant's right to remain silent?

STATEMENT OF THE CASE

In February 2006, the Anderson County Grand Jury indicted Rice for trafficking in cocaine, indictment #2006-GS-04-704. A co-defendant, Antran Hall was also indicted for trafficking in cocaine, resisting arrest, failure to stop for a blue light and possession of stolen goods. On December 13, 2006, the State called the cases for trial before the Honorable G. Edward Welmaker. Neither Rice nor his co-defendant appeared for trial. The State advised the judge that Rice had posted a \$25,000 surety bond on November 23, 2005. (R. p. 26, lines 13-16). The State advised the judge that on December 11, 2006, Rice had not appeared for roll call and a bench warrant had been issued. (R. p. 26, lines 17-22).

On or about June of 2006, the court appointed attorney Charles Griffin, Jr. to represent Rice. (R. p. 27, lines 22-23). Attorney Griffin advised the judge that he had never met with his client. (R. p. 29, lines 16 – 25). The attorney did not object to the trial proceeding in his client's absence and did not move to sever the case from the case of the co-defendant. The jury returned a verdict of guilty as charged. Judge Welmaker sealed the sentence.

On January 16, 2007, Rice appeared before the Honorable J. Cordell Maddox, Jr. for the unsealing of Judge Welmaker's sentence. Judge Welmaker sentenced Rice to 25 years. A timely notice of intent to appeal was filed on January 26, 2007. This appeal follows.

ARGUMENT

1. The trial judge erred in proceeding with a trial *in absentia* when the State failed to produce evidence that the defendant had been given notice of his trial date.

A conviction in absentia cannot stand if the record does not support a finding that the defendant was afforded notice of trial and knowingly and intelligently waived his right to be present. State v. Jackson, 290 S.C. 435, 351 S.E.2d 167 (1986). Before a defendant may be tried in absentia, the trial court must determine if the defendant voluntarily waived his right to be present at trial, making findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned that the trial would proceed in his absence. City of Aiken v. Koontz, 368 S.C. 542, 547, 629 S.E.2d 686, 689 (2006). The trial court failed to make the requisite findings of fact. The record does not support a finding that Rice received notice of his trial date.

The State informed the judge that the bond form provides notice that should the defendant fail to appear for trial, he would be tried in his absence. (R. p. 26, lines 13-16). The State also informed the judge that Rice was “bond carded in.” When Rice did not appear for roll call, a bench warrant was issued. (R. p. 26, lines 17-22). The State, however, failed to produce any evidence that Rice was provided with notice of his trial date or of the term of court for which the trial was set. “Notice of the term of court for which the trial is set constitutes sufficient notice to enable a criminal defendant to make an effective waiver of his right to be present.” City of Aiken v. Koontz, 368 S.C. 542, 547, 629 S.E.2d 686, 689 (2006).

Counsel did not object to the trial in absence. If the Court of Appeals finds that this issue is procedurally barred because of defense counsel’s omission, Rice should file an

application for post-conviction relief alleging that he did not receive effective assistance of counsel for this reason. Rice, however, urges this Court to reverse the conviction *in absentia* based on the trial judge's failure to make the requisite findings of fact.

2. The trial judge erred in failing to declare a mistrial when the prosecutor in closing argument of a trial *in absentia* improperly commented on the defendant's right to remain silent.

The State made the following comment in closing argument:

If he's [Rice] innocent, Mr. Griffin is going to claim, then why didn't he just sit there and say man, I didn't know have nothing to do with this. You heard me ask Officer Scoggins well, did he say anything after you arrested him or he stopped and arrested him? The answer was no. He said absolutely nothing. If you had been with someone with this much dope just came out the window, don't you think you would have been hollering man, it wasn't me, I didn't do it.

(R. p. 124, lines 4-12). Counsel did not object to the comments made by the State.

Rice was arrested after police initiated a search warrant of his co-defendant's home. As the search was taking place, the co-defendant, and Rice as a passenger, drove up to the house. When the co-defendant saw the police, he sped away. The police chased him. Officers testified that during the chase a bag was thrown out of the passenger side of the car. (R. p. 66, lines 12-21). Another officer picked up the bag. The substance in the bag field tested positive for cocaine. (R. pp. 80-83).

It is improper for the State to refer to a defendant's exercise of a constitutional right. State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987); Doyle v. Ohio, 426 U.S. 610, 96 S.Ct. 2240, 49 L.Ed 2d 91 (1976). The solicitor's reference to Rice's post arrest silence in closing argument was an improper comment on Rice's right to remain silent. While the State may reference a defendant's silence prior to arrest, or after arrest but prior to the giving

of Miranda warnings, in order to impeach the defendant's testimony at trial, it is improper to make such reference when the defendant exercises his right to remain silent at trial. See Brown v. State, 375 S.C 464, 652 S.E.2d 765 (S.C. Ct.App. 2007). Rice was tried in absentia. The solicitor did not reference Rice's post arrest silence in order to impeach his testimony at trial because Rice did not testify at trial. The reference was an improper comment on Rice's right to remain silent. Additionally the comment improperly shifted the burden of proof. The trial judge erred in failing to declare a mistrial when the prosecutor in closing argument of a trial *in absentia* improperly commented on the defendant's right to remain silent.

Counsel did not object to the improper comments. If the Court of Appeals finds that this issue is procedurally barred because of defense counsel's omission, Rice should file an application for post-conviction relief alleging that he did not receive effective assistance of counsel for this reason.

CONCLUSION

Based on the above arguments, Rice's conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of June, 2008.

STATE OF SOUTH CAROLINA
 IN THE COURT OF APPEALS

Appeal from Anderson County

J. Cordell Maddox, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DOUGLAS LAMONT RICE,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Douglas Lamont Rice states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge J. Cordell Maddox, Jr., which was held on January 16, 2007, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Douglas Lamont Rice.

Respectfully submitted,

Kathrine H. Hudgins
 Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of June, 2008.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

June 23, 2008

Kathrine H. Hudgins
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County

J. Cordell Maddox, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DOUGLAS LAMONT RICE,

APPELLANT

AMENDED CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, Columbia, SC; and a copy of the Final Anders Brief of Appellant and Record on Appeal have been served on Douglas Lamont Rice, # 319577 at McCormick Correctional Institution, 386 Redemption Way, McCormick, South Carolina 29899 this 23rd day of June, 2008.

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of June, 2008.

(L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014 .

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Douglas Lamont Rice, Appellant.

Appeal From Anderson County
J. Cordell Maddox, Jr., Circuit Court Judge

Unpublished Opinion No. 2009-UP-454
Submitted October 1, 2009 – Filed October 8, 2009

APPEAL DISMISSED

Appellate Defender Kathrine H.
Hudgins, of Columbia, for Appellant.

Attorney General Henry Dargan
McMaster, Chief Deputy Attorney
General John W. McIntosh, Assistant
Deputy Attorney General Salley W.
Elliott, all of Columbia; Solicitor
Christina Theos Adams, of Anderson,
for Respondent.

PER CURIAM: Douglas Lamont Rice appeals his conviction for trafficking in cocaine, arguing the trial judge erred in (1) proceeding in absentia when the State failed to produce evidence Rice had been given notice of his trial date, and (2) failing to declare a mistrial after the prosecutor improperly commented on Rice's right to remain silent. After a thorough review of the record and counsel's brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State

v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.[1]

APPEAL DISMISSED.

Hearn, C.J., Konduros, and Lockemy, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Anderson)

Douglas L. Rice, 319577)

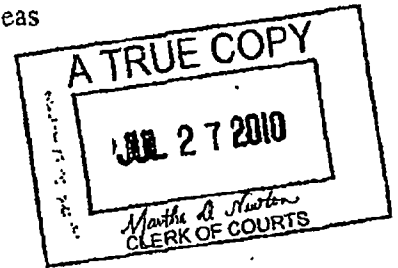
Full name and prison number, if any, of applicant.)

DOUGLAS L. RICE, 319577)

v.)

State of South Carolina)

Name of Respondent)



APPLICATION FOR

POST-CONVICTION RELIEF

2010 - CP - 04 - 2640

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Institution
386 Redemption Way, McCormick, SC 29899

2. Name and location of Court which imposed sentence Court of General
Sessions, Anderson, SC

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 2006-65-04-704 Trafficking Cocaine

(b) _____

(c) _____

4. The date upon which sentence was imposed and the terms of the sentence:

(a) Sentencing date December 11, 2006

(b) Opening of sealed sentence January 16, 2007 - Twenty-Five y

(c) _____

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty X _____

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? Yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. S.C. Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed.

i. Appeal Denied

ii. _____

iii. _____

(c) the date of each such result:

i. October 8, 2009

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. 2009-UP-454

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of counsel

(b) _____

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) grounds set for (9) is Attached along with
p.c.r. Application

(b) _____

(c) _____

11. 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 petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) No

(d) any other petitions, motions or applications in this or any other Court?

No

12. If you answered "yes" to any part of (11), 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. _____

iv. _____

10: State concisely and in the same order the facts which support each of the grounds set out in (9)

- (A) Ineffective Assistance of counsel for failing to object to the possession jury instruction to be preserved for appellate review in which the state failed to prove proof beyond reasonable doubt of knowingly and unlawfully have in his possession 200 grams or more but less than 400 grams of cocaine in which the applicant was indicted on
- (B) Ineffective Assistance of counsel for failing to object to an trial in absentia when the courts fail to produce evidence that the applicant had been give notice of his trial dates or notice of term of court in which he must appear. Applicant never waived his rights not to attend his trial
- (C) Ineffective Assistance of counsel for failing to object to prosecutor misconduct in closing arguments prosecutor improperly commented on applicant's post-arrest silence.
- (D) Ineffective Assistance of counsel for failing to object to the HAND of one hands of all jury charge which was outside the scope of the indictment

(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. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No

14. If you answered "yes" to (13), 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. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) This is the first court procedure that this issues
- (b) can be presented to
- (c) _____

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
Yes
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? No

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Charles Griffin, Jr., Anderson, S.C. public defender office
- ii. Katherine H. Hudgins, S.C. Division of Appellate Defense, Columbia, S.C.
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Trial, sentencing
- ii. Appeal
- iii. _____

18. State clearly the relief you seek in filing this application.

VACATION of CONVICTION AND sentence

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

No

STATE OF SOUTH CAROLINA)
)
COUNTY OF McCormick) VERIFICATION

I, Douglas L. Rice, 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.

Douglas L. Rice

Sworn to and subscribed before me

This 22 day of July, 2010

Joyce L. Young, S.
Notary Public for South Carolina

My Commission Expires 8 28 2011

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Douglas L. Rice, 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 or 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 proceeding or give security therefor.

✓
Douglas L. Rice
Applicant

Sworn to and subscribed before me

This 22 day of July, 2010

Joyce L. Young, S.
Notary Public for South Carolina

My Commission Expires: 8 28 2011

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON)	
)	
)	2010-CP-04-2640
)	
Douglas L. Rice. #314577.)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina.)	
Respondent.)	
_____)		

The Respondent, making its Return to the application for post conviction relief (PCR) filed July 27, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. The Applicant was indicted at the June 2006 term of the Anderson County Grand Jury for Trafficking Cocaine (2006-GS-04-0704). He was represented by Charles Griffin, Esquire. On or about December 13, 2006, the Applicant underwent trial in absentia pursuant to which he was found guilty as charged. He was sentenced on January 16, 2007 by the Honorable J. Cordell Maddox, Jr., to confinement for a period of twenty-five (25) years.

A timely notice of appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals subsequent denied the Applicant's appeal by unpublished opinion dated October 9, 2009. (2009-UP-454).

Attached herewith and incorporated herein are the records of the Anderson County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend and/or supplement this Return upon receipt with any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
 - a. "For failing to object to the possession jury instruction to be preserved for appellate review in which the state failed to prove proof beyond reasonable doubt of knowingly and unlawfully have in his possession 200 grams or more but less than 400 grams of cocaine in which the Applicant was indicted on."
 - b. "For failing to object to a trial in absentia when the court's fail to produce evidence that the Applicant had been given notice of his trial dates or not of term of court in which he must appear. Applicant never waived his rights not to attend his trial."
 - c. "For failing to object to prosecutor misconduct in closing arguments prosecutor improperly commented on Applicant's post-arrest silence."
 - d. "For failing to object to the hand of one hand of all jury charge which was outside the scope of the indictment."

. III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E 2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial

cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. Nevertheless, the allegation of ineffective assistance of counsel probably raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

IV.

Respondent further submits that Applicant's allegation that he did not waive his right to counsel raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b)

(2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

v.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

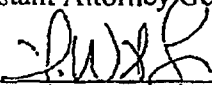
Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

A. WEST LEE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

October 27, 2010 .

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WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
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Opening Statements				PAGE 5
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EXHIBITS

No	DESCRIPTION	ID	EV
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Note - no exhibits were presented during the hearing

1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had commencing at
3 approximately 10:43 a.m.)

4 THE COURT: Okay. Which one we got?

5 MS. MAY: Your Honor, this is Douglas Rice v.
6 State. It's case number 2010-CP-04-2640. I believe Mr.
7 Welborn has a few preliminary matters.

8 THE COURT: Okay.

9 Yes, sir?

10 MR. WELBORN: May it please the Court. Your
11 Honor, I represent Mr. Rice. And I took over this case
12 -- I was trying to find the date of my substitution of
13 counsel. In any event, I was substituted in to take over
14 this case several months ago, back in March of 2011, I
15 believe. Somewhere around that date was when I was
16 substituted in.

17 THE COURT: Okay.

18 MR. WELBORN: We came before the Court sometime
19 after that. The Court granted a continuance. My client
20 felt like I was not ready to go. I was ready to go. But
21 sometime after that, he filed a motion asking that I be
22 relieved as his counsel. He filed that May 6th of 2011.
23 And at his request, I filed first, April 14 of 2011. So
24 we have both filed motions for me to be relieved as his
25 attorney. And Your Honor, in the event the Court should

Douglas Rice v. State of South Carolina 2010-CP-04-2640
PCR Hearing (10/05/11)

5

1 deny that motion, I'm prepared and I'm ready to go
2 forward. But I think the motion needs to be dealt with
3 obviously.

4 THE COURT: Well, I just looked at the return.
5 It looks like I sentenced Mr. Rice.

6 MR. WELBORN: You did. It was a sealed
7 sentence. You didn't actually sentence him, Your Honor.
8 It was a sealed sentence from Judge Welmaker. And you
9 opened that sealed sentence January, I believe, of 2007.
10 So you did not sentence him.

11 THE COURT: So Welmaker actually sentenced him;
12 I just ---

13 MR. WELBORN: Judge Welmaker heard this case,
14 and Mr. Rice was not present for his trial. Judge
15 Welmaker had a sealed sentence, and you read the sealed
16 sentence.

17 THE COURT: Okay.

18 All right. Mr. Rice, Anything you want to tell me?
19 Why do you want a new lawyer?

20 THE APPLICANT: Yes, sir. I think it's a
21 conflict between Mr. Welborn due to my issues and stuff.
22 And I'm not willing to go forth with him.

23 THE COURT: What's y'all's position?

24 MS. MAY: Your Honor, we'd just leave it up to
25 your discretion.

1 THE COURT: Anything else, Mr. Welborn? Is it
2 just y'all haven't been able to discuss it or ...

3 MR. WELBORN: Well, Judge, I think that we have
4 a disagreement about certain aspects of this case and
5 what I can do and what I can't do. I don't think he
6 likes what I've had to say about it. I'm very candid
7 with my clients, and sometimes they don't like that.

8 THE COURT: And there was a continuance granted
9 once before; is that right?

10 MR. WELBORN: Well, there's been at least one,
11 Your Honor, and there's a -- there was one granted
12 because I had a higher level court matter. But there was
13 an original continuance granted back about -- I believe
14 about May. And then in June I had a trial up in another
15 court that took precedence over this. So there was
16 another one granted. So the actual motion has not, to my
17 knowledge, been heard.

18 THE COURT: How many more do we have?

19 MS. MAY: Just one more.

20 THE COURT: One more?

21 I just -- I mean, Mr. Rice, you've got to give me
22 more -- you've got to tell me more than just you don't
23 get along. I mean, I'm inclined to go forward with it --
24 it's been continued one time -- unless you've got a good
25 reason.

Douglas Rice v. State of South Carolina 2010-CP-04-2640
PCR Hearing (10/05/11)

7

1 THE APPLICANT: At the time that he was
2 appointed counsel for me, he just came with a -- had a
3 bad vibe just like I didn't have nothing in my case
4 that's going to help me get my case overturned or nothing
5 like that. And I know for a fact from my studies, what
6 I've been doing, it's pretty much legit. And he's just
7 like there's nothing that will help me. That's how he
8 came at me. And I'm not willing to go forth with
9 somebody with a bad -- just come at me like that and not
10 willing to go forth or even try to help me out a little
11 bit.

12 THE COURT: Okay. All right. I'm going to --
13 we've got to go forward. It's already been granted once.
14 I'm going to allow him to stay on. But I need to take a
15 quick break. And I know everybody's anxious to get out
16 of here. I understand y'all have got schedules. But if
17 y'all will give me about four minutes, we'll get started.

18 (WHEREUPON, court stood at recess for a short
19 break.)

20 THE COURT: Okay. Are you ready?

21 MS. MAY: Yes, Your Honor. May it please the
22 Court. This case comes from a P.C.R. application filed
23 July 27th, 2010 by Mr. Rice. He was charged with
24 trafficking cocaine. And on December 13, 2006, he was
25 tried in his absence before Judge Welmaker and a jury and

1 found guilty as charged.

2 He was sentenced -- the sentence was unsealed on
3 January 16, 2007, by Your Honor. He was sentenced to
4 twenty-five years. There was an appeal filed on the
5 Applicant's behalf. The Court of Appeals dismissed the
6 appeal on October 8, 2009.

7 And before -- at the appropriate time, I'd like to
8 be heard. We have a motion to dismiss one of the
9 allegations in our return.

10 THE COURT: Okay. Now would be fine.

11 MS. MAY: It's in regards to the allegation
12 that the State -- or there was a method presented to show
13 that the Defendant had notice of his trial and that he
14 didn't waive his right to a trial. We were just going to
15 dismiss -- that claim is not permissible for P.C.R. It's
16 more of a direct appeal issue. And it actually was
17 brought up on his direct appeal. The Court of Appeals
18 did an *Anders* review which they did review the entire
19 record to see whether the claim was viable and they
20 dismissed the appeal. So we -- I would submit that this
21 -- that claim has already been tried and decided upon,
22 and we should not be trying it again.

23 THE COURT: Okay.

24 Yes, sir, what about that motion?

25 MR. WELBORN: Your Honor, we would object to

Douglas Rice v. State of South Carolina 2010-CP-04-2640
Douglas Lamont Rice - Direct Examination by Mr. Welborn

9

1 it. My client feels that that issue is appropriate on a
2 post-conviction relief matter, that it goes to the
3 ineffective assistance of counsel that Mr. Griffin didn't
4 make appropriate efforts to notify my client of the
5 hearing dates and therefore was ineffective in that
6 regard.

7 THE COURT: Okay. I'll allow him to present
8 testimony, and then I'll deal with it.

9 All right. Yes, sir?

10 MR. WELBORN: May it please the Court. We call
11 Douglas Rice.

12 (WHEREUPON, the witness was duly sworn.)

13 THE COURT: If you would, give us your full
14 name for the record and spell your last name.

15 THE APPLICANT: Douglas Lamont Rice, R-I-C-E.

16 THE COURT: All right. Yes, sir?

17 MR. WELBORN: May it please the Court.

18 **DOUGLAS LAMONT RICE,**

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MR. WELBORN:

22 Q. You're Douglas Rice?

23 A. Yes, sir.

24 Q. Mr. Rice, you filed a post-conviction relief
25 regarding your conviction in absence of trafficking in

1 cocaine. I'm going to ask you a few questions about
2 that. The first thing I'm going to ask you is how old
3 are you?

4 A. Thirty-seven.

5 Q. And how far did you go in school?

6 A. To the ninth.

7 Q. Ninth grade?

8 A. Yes.

9 Q. And I believe when you filed this that you were
10 living in Anderson County; is that correct?

11 A. Yes.

12 Q. Now, tell me, first of all, how did you find out
13 that you had been tried in your absence?

14 A. After I was picked up by bounty hunters.

15 Q. You're got to speak up.

16 A. Yes. After I was picked up by the bounty hunters.

17 Q. By bounty hunters?

18 A. I guess they hired bounty hunters to look for me.

19 And they ran up on me. After I was arrested and brought
20 to the County and brought back in front of Judge Maddox,
21 then I was there ever since.

22 Q. Now, when you say you were picked up by bounty
23 hunters, I assume what you're trying to say is that there
24 was a bond set in your case. And that was some type of
25 surety bond; is that correct?

Douglas Rice v. State of South Carolina 2010-CP-04-2640
Douglas Lamont Rice - Direct Examination by Mr. Welborn

11

1 A. Yes, sir.

2 Q. Now, when you signed that surety bond, did they
3 require you to keep up with your court dates and know
4 when you're supposed to go to court?

5 A. Yes. Yes.

6 Q. Now, at some point you got appointed representation
7 by Mr. Griffin; is that correct?

8 A. Yes.

9 Q. When did you find out that Mr. Griffin was
10 representing you?

11 A. After the sealed sentence.

12 Q. After you had been tried?

13 A. Yes.

14 Q. Now, between the time that you were charged and
15 arrested in this and tried, how long a period of time was
16 that?

17 A. It was like maybe a six-month period maybe.

18 Q. Now, during that six-month period, after you had
19 signed this particular bond, were you able to read and
20 write due to your ninth-grade education?

21 A. Yes, sir.

22 Q. I want you to tell the Court then what efforts you
23 went through to keep up with your court date and to find
24 out if you had a lawyer and who was representing you.
25 That sort of thing. Tell the Court the effort you went

1 through.

2 A. Well, I did come up one day. I had to come in and
3 sign in for court. This was my first time I had to go
4 through the procedures before, so I never been in trouble
5 before. And I know that like I remember one time I came
6 to call -- whatever you call it -- to come in and check
7 in with the lawyers and solicitors and stuff. And the
8 time that I did come, I didn't talk to them about it. I
9 didn't have an attorney then.

10 Q. Well, so you're telling the Court then you showed up
11 for probably what's called a roll call. Was that what
12 they call it?

13 A. Yeah, roll call. Yeah.

14 Q. Okay. Now, how many times did you show up for a
15 roll call before your case was tried?

16 A. Only once.

17 Q. Now, did you -- tell me the efforts you went through
18 then, so the Court can understand this, to keep up with
19 your court dates at this point. Tell the Court what you
20 did.

21 A. At the time I didn't do nothing. But like I said, I
22 had never been in trouble before except some little minor
23 traffic tickets. And I never had to go through a felony
24 charge before. I never had to go through roll calls and
25 all that stuff. This was my first time.

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1 Q. Well, you're telling the Court, I believe, that you
2 didn't understand the process. Is that what you're
3 saying?

4 A. Yes.

5 Q. Tell the efforts that you went through then to find
6 out what those procedures were so you could understand
7 this process.

8 A. Actually I didn't go through the procedures to try
9 to find out.

10 Q. You did?

11 A. I didn't.

12 Q. Did not? Well, why did you not do that?

13 A. At the time, not knowing the law and just having to
14 schedule minor traffic tickets over the times, I was
15 thinking that if I didn't I would catch a bench warrant,
16 and once I get caught that they would try me then.

17 Q. So you thought you'd catch a bench warrant at some
18 point and they'd bring you into court? Is that what
19 you're saying?

20 A. And then I would come in front of a judge, yeah.

21 Q. So that's your understanding of how you go to court?

22 A. That was my understanding of how the procedures
23 work. But now that I've kind of studied it a little bit,
24 I see it doesn't work like that.

25 Q. Okay. Well, I want you to tell the Court then what

1 should have happened so that you would have known about
2 your court date. Tell how your lawyer, Mr. Griffin, was
3 ineffective in helping you know about your court date.

4 A. Excuse me?

5 Q. Tell the Court how Mr. Griffin, your court-appointed
6 attorney, was ineffective by not knowing and telling you
7 when to come to court. What did he do wrong?

8 A. At the time, he sent out letters. It's in the
9 transcript that he sent out letters to my address. But I
10 never received them. They was like plenty of them sent
11 out, and I never did receive those letters.

12 Q. Well, did it go to your address?

13 A. Yes.

14 Q. That was your correct address?

15 A. Yes.

16 Q. So the Court can understand this, how is that Mr.
17 Griffin's fault? If it went to your correct address, I
18 want you to tell the Court what fault Mr. Griffin has in
19 notifying you of a hearing since the letters notifying
20 you went to your correct address.

21 A. It was all sent back to him, but I never received
22 those letters.

23 Q. You never received those letters?

24 A. No.

25 Q. Well, now, you just stated a moment ago that it was

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1 the correct address. Was it the correct address?

2 A. It was the correct address, and he stated in my
3 transcript that he sent the letters out and they was all
4 returned back to him. The reason they was returned back
5 to him, I don't have the slightest idea.

6 Q. Now, this is your day in court, Mr. Rice. I want
7 you to tell the Court how is that Mr. Griffin's problem
8 that you -- that the letters got sent back? How was he
9 ineffective?

10 A. How he was ineffective?

11 Q. Yes.

12 A. He should -- first of all, he should have -- I don't
13 know. He should have objected to me being tried in my
14 absence. As a proper attorney, he should have never
15 allowed the Court to necessarily even let it happen.

16 Q. He should have objected that ---

17 A. Me being ---

18 Q. --- that the mail went to the correct address?

19 A. No. About me being tried in my absence. That's
20 what I'm ...

21 Q. Well, if the letters went to your correct address,
22 what objection should he have made?

23 A. Just about as far as me being tried in my absence.

24 He should have objected to the Court's allowing me to be
25 tried in my absence. Not to the letters, but to me being

1 tried in my absence. I was prejudiced due to the fact
2 that I was tried in my absence.

3 Q. All right. You also allege in your application that
4 there was ineffective assistance of your lawyer for
5 failing to object to the possession charge to the jury in
6 that they could not prove beyond a reasonable doubt that
7 you knowingly had in your possession, and unlawfully, two
8 hundred grams to four hundred grams of cocaine. I want
9 you to tell the Court how your lawyer was ineffective,
10 what he should have done that he didn't do.

11 A. Well, I stated in my application my lawyer was
12 ineffective for failing to object to possession, the
13 possession jury instruction, to preserve for appellate
14 review to show the State failed to prove proof beyond a
15 reasonable doubt of the knowing and unlawful possession
16 which I was charged. And in my indictment -- if you see
17 my indictment, I was charged with unlawfully possessing.

18 Q. Well, let's look in the transcript.

19 THE COURT: Hold on a second. Let's get this
20 right so we can -- I can hear you. Try that again.

21 THE APPLICANT: Start over?

22 THE COURT: No. You can just speak into that
23 mike. I heard you. I just -- it went up and down.

24 THE APPLICANT: Okay.

25 THE COURT: Did you have trouble?

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1 MADAM COURT REPORTER: Well, it blasted me for
2 a second, and now it's gone away.

3 THE COURT: All right.

4 Just talk a little slower just so -- make sure she
5 gets everything.

6 A. Okay. During the trial in absence, I was speaking
7 about the Sixteenth and Fourteenth Amendment to the
8 United States Constitution was violated due to the fact
9 that my counsel should have objected to the possession
10 jury instruction to preserve for appellate review to show
11 the State failed to prove proof beyond a reasonable doubt
12 knowing and unlawful possession in which I was indicted
13 on. But the prosecution must determine to return a
14 verdict of guilty as described by the due process clause
15 of the Fourteenth Amendment to the United States
16 Constitution. The prosecution bears the burden of
17 proving all of the elements of the offense to which I was
18 charged and persuade the fact-finder necessary to
19 establish each of those elements.

20 Q. Now, let's look in the transcript. You've alleged
21 here that this was an improper charge to the jury. And I
22 believe that's referenced on page 145 of the transcript,
23 line 7. It says, the defendant's knowledge and
24 possession may be inferred when a substance is found on
25 the property under a defendant's control. Do you object

1 to that particular charge?

2 A. To the -- yes, because there was never no drugs
3 found on me. They charged me with possession. In order
4 to prove possession, you have to prove -- ask for
5 constructive possession. You can see -- I have cases --
6 you can see South Carolina Court of Law 44-53-370. It
7 explains -- shows you that of the evidence of possession.

8 Q. All right. Well, let me help the Court kind of
9 understand what happened. I'm going to ask you a few
10 questions about that. You were in a car with someone
11 that was pulled over by law enforcement. And you were a
12 passenger in the front seat, and it's alleged that
13 someone in that car threw out a packet of substance that
14 was later found to be between two hundred and four
15 hundred grams of cocaine. And I believe your position is
16 that you had nothing to do with this, you were simply --
17 had mere presence in that car; is that correct?

18 A. Yes, sir.

19 Q. Now, having said that, what are you objecting to on
20 the charge where it says the defendant's knowledge and
21 possession may be inferred when a substance is found on
22 the property under a defendant's control? Is your
23 position that that wasn't your property and it wasn't
24 found on you? Is that what you're trying to tell the
25 Court?

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1 A. Yes, sir. If you see on page, trial page 8, line 17
2 through 25.

3 Q. Page 8 of the transcript?

4 A. Page 80 of the trial transcript. The dope was found
5 on the side of the road at A.V.S. Trucking business.

6 Q. All right. So you're saying it wasn't found on you?

7 A. No, sir.

8 Q. And someone else in that car could have thrown that
9 out, and it wasn't you and it was just the jury guessing?
10 Is that what you're trying to say?

11 A. Like I said, in order to -- proof beyond a reasonable
12 doubt, you have to prove every element of the crime.

13 Q. Okay.

14 A. And if they was trying to infer as far as the
15 property goes, that would be considered upon constructive
16 possession. And like I say, up under *Jackson versus*
17 *Virginia* and *In Re Grisham* (phonic), you have to prove
18 proof beyond a reasonable doubt of every element.

19 Q. Okay.

20 A. And due to the fact that I have no interest in the
21 business of where it was found that I'm not in
22 constructive possession. That's one of the elements of
23 possession which I was charged.

24 Q. All right. The next thing that you object to -- and
25 you say your lawyer was ineffective because he didn't

1 object to it -- you said he was ineffective for failing
2 to object to prosecutor misconduct in closing arguments
3 because the prosecutor improperly commented on your post-
4 arrest silence. Now, I believe that's found on pages 123
5 of the transcript and goes into page 124 in closing
6 arguments. And for the Court's edification, this is the
7 prosecutor stating that you're in the passenger seat --
8 and I'm quoting on page -- on line -- well, I'm starting
9 on 16. Let's talk about Mr. Rice's first on trafficking.
10 Is he just an innocent bystander along for the ride? No.
11 His actions speak louder than words. Did he know the
12 stuff was there? Yes, he did. He's in the passenger
13 seat. As the officers testified, the dope came out of
14 the passenger side window. He's just sitting there.
15 It's not like he didn't know it was there. If he didn't
16 know or wasn't involved in part of this, why didn't he
17 just sit there in the seat when the officers came? No.
18 He took off running. And then I go into page 124 and
19 line 4, if he's innocent, Mr. Griffin's going to claim
20 why didn't he just sit there and say, man, I didn't have
21 anything to do with this? Go down to line 9. He said
22 absolutely nothing. So is that what you're trying to
23 tell the Court and point out to the Court, that he
24 commented on your post-arrest silence in those lines?
25 A. Upon your Fifth Amendment, you have a right to

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1 remain silent once your *Miranda* warning is given. You
2 can't -- you don't have to say anything that would
3 incriminate you during the trial, your testimony or
4 whatever during trial.

5 Q. Well, let's talk about that a moment. When you were
6 pulled over, did these things -- did they comment on
7 stuff you said after you were *Mirandized*? Is that what
8 you're saying?

9 A. No. I'm saying during trial. I mean, once you've
10 been read your *Miranda* rights, up under *Doyle versus*
11 *Ohio*, 96 Supreme Court 2241, once your *Miranda* rights are
12 read to you, you have a right to remain silent. You
13 don't have to say anything that's going to incriminate
14 you.

15 Q. Well, here's my question so the Judge can understand
16 this. When you were pulled over and you were a
17 passenger, you didn't say anything, were you under --
18 were you *Mirandized* at that point in time?

19 A. Yes.

20 Q. You were?

21 A. Yes. It doesn't say it in the transcript?

22 Q. It doesn't say it in the transcript. I'm asking
23 you. Can you tell the Court where it says that?

24 A. No, I can't show where it says that.

25 Q. Okay. Now, you also allege that your lawyer failed

1 to object -- he was ineffective because he failed to
2 object to the hand of one being the hand of all that was
3 outside the scope of the indictment. And I've looked on
4 page 143 of the trial transcript. And at the top of that
5 page, line 1, now, ladies and gentlemen, if a crime is
6 committed by two or more persons who are acting together
7 in committing a crime, the act of one is the act of all.
8 A person who joins with another to accomplish an illegal
9 purpose is criminally responsible for everything done by
10 the other person which occurs as a natural and probable
11 consequence of the acts done in carrying out a common
12 plan or purpose. And again, that's page 143, lines 1
13 through 7. So you're saying that that's an improper jury
14 charge. Tell the Court why that's an improper jury
15 charge.

16 A. Okay. Like I say, I was specific -- I was
17 specifically charged with knowing and unlawfully
18 possession. And in order to give a hands of one hands of
19 all charge, you have to show that me and my co-defendant
20 conspired to do something or came together to a common
21 design to do something together. There's no way my
22 transcript shows where we did anything together because
23 we both were tried in our absence. There was no
24 statements or nothing made from me or any of the law
25 enforcement that said that me and Mr. Hall came together

1 to commit a crime.

2 Q. Can I ---

3 A. You have to show it in order to give such a jury
4 charge like that. And also, I was never indicted on no
5 such charge as aiding and abetting or a conspiracy charge
6 for them to even give such a charge like that.

7 Q. Now, I believe Mr. Byrholdt, another attorney with
8 the co-defendant, I believe he did make that objection,
9 but the Court overruled it; is that correct?

10 A. Yes.

11 Q. Okay. But your lawyer didn't make that objection?

12 A. No, sir.

13 Q. And even though the Court overruled it with the
14 other lawyer, you think Mr. Griffin should have made that
15 objection?

16 A. He should have made that objection along with Mr.
17 Byrholdt.

18 Q. Is there anything else that I've not asked you, Mr.
19 Rice, that you want to tell the Court about your lawyer,
20 Mr. Griffin, being ineffective as your attorney?

21 A. Yeah. Well, I want to go back to my first issue
22 dealing with possession. As the Court knows that in
23 order to -- up under *Jackson versus Virginia* and *In Re*
24 *Grisham* which is a root case from way back, you have to
25 prove every element of the crime. And I was charged with

1 possession. And during trial and testimony of State's
2 witnesses, Mr. Baxter, which would have been during
3 trial, and the arresting officer, I was never found with
4 anything in my possession. And that would knock out the
5 actual possessing charge which is one of the elements of
6 possession.

7 Also, to prove constructive possession, you have to
8 have dominion and control over either the property which
9 you've asked me about where I said where the contraband
10 that was found at which was on the side of the road.
11 That would knock out that. And as far as circumstantial
12 evidence, they never -- one of the officers, during the
13 high-speed chase, that was seen -- they never seen me --
14 they didn't never see me throw anything. And ---

15 THE COURT: Mr. Rice, let me stop you. Didn't
16 they testify that they saw the bag come out the passenger
17 window of the car?

18 THE APPLICANT: Yes, sir.

19 THE COURT: Okay.

20 THE APPLICANT: They said, yeah. But that
21 could have been anybody. There was two of us. I was on
22 the passenger side.

23 THE COURT: Okay.

24 Q. Mr. Rice, let me help the Court for its knowledge
25 know that on page 145, it talks about -- the transcript

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1 talks about mere presence as a charge, and it talks about
2 knowledge and possession may be inferred when a subject
3 in the -- substance is found on the property under a
4 defendant's control. But you're saying that was an
5 improper charge; is that correct?

6 A. I'm not saying it was an improper charge. It was --
7 the possession charge -- the mere presence charge, yes,
8 that's a correct charge.

9 Q. Okay.

10 A. But I was just a passenger in a car.

11 THE COURT: You're saying there's no evidence
12 of constructive possession?

13 THE APPLICANT: There's no evidence of actual
14 or constructive possession that would show that what I
15 was indicted on was proved with proof beyond a reasonable
16 doubt of every element of the crime of possession which I
17 was indicted on. If you see the indictment and if you
18 all know law, actual -- the elements of possession
19 requires actual or constructive possession or
20 circumstantial or direct evidence. There's nothing in
21 the transcript showing circumstantial or direct evidence
22 to show possession period. My lawyer should have
23 objected to that to preserve it for the State -- for the
24 appellate courts to look at.

25 Q. Now, do you think if your lawyer had made those

1 proper objections, that but for those errors that you've
2 alleged, there would have been a different outcome on
3 this case ---

4 A. Most definitely.

5 Q. --- from the jury?

6 A. Most definitely.

7 Q. Okay. Is there anything else you want to tell the
8 Court I've not asked that you say your lawyer was
9 ineffective?

10 A. No. At this moment I pretty much got everything on
11 the record. Also, I'd like to go back through the hands
12 of one hands of all charge. Like I say, in order to give
13 that charge, you have to show where me and my co-
14 defendant came to a common design to commit a crime
15 together as we all know as you read the charge out.
16 Neither one of us was in court to testify or to give any
17 kind of incriminating statements or say that we did
18 something together to come up to show this charge that
19 we're charged with. Like Mr. Byrholdt -- Mr. Byrholdt
20 objected to the hands of one hands of all charge. I was
21 not charged with a conspiracy charge or aiding and
22 abetting charge. I was charged with possession and
23 possession only as an element of the trafficking.

24 Q. And your lawyer did not object to that?

25 A. He should have objected to it.

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1 Q. All right. Thank you, sir. Answer anything that
2 opposing counsel or the Court may have.

3 MS. MAY: May it please the Court.

4 THE COURT: Yes, ma'am?

5 CROSS-EXAMINATION

6 BY MS. MAY:

7 Q. Mr. Rice, going back to the letters that your
8 attorney sent you, I believe there was one letter that
9 was sent to your address that wasn't returned; is that
10 correct?

11 A. I think so. But it wasn't -- it wasn't alleging --
12 I don't think it was alleging a court date or nothing.

13 Q. It was to notify you that he was your attorney and
14 to contact him, right?

15 A. Yes.

16 Q. And you didn't contact him after receiving that?

17 A. No, sir. No, ma'am.

18 Q. And just to -- I just want to clear up. The surety
19 bond that you signed ...

20 A. Uh-huh (affirmative).

21 Q. ... it advised you to keep up with your court dates
22 and show up for roll call?

23 A. Well, the surety bond, it states that I will be
24 tried in my absence if I didn't appear, but the surety
25 bond doesn't state no terms of court or no dates in which

1 I should be -- that I would appear in court.

2 Q. How did you know what your first roll call was?

3 A. Roll call? I did receive a card, I think, on that.

4 That's why I appeared. Or it was either my co-defendant
5 told me about it, and that's why I happened to make it up
6 here.

7 Q. And then after your first roll call, you just --
8 because you didn't know the procedure, you just ---

9 A. Yeah, 'due to the fact that I'm not familiar with the
10 felony procedures because I've never been in trouble
11 before. This is my first felony charge on my record.

12 And I never had to go through with no roll calls or have
13 to come to appear and all this. Yeah, pretty much.

14 Q. Were you told at that first roll call that you
15 needed to come back at another time?

16 A. Actually, no, I wasn't.

17 Q. And then ---

18 A. But at the time, Mr. Griffin, I don't even think was
19 my lawyer then. I didn't even have a lawyer then. It
20 was due to a conflict of interest or something due to the
21 first attorney that came to the County to see us.

22 Q. Okay. The car you were riding in, you were riding
23 in it with your co-defendant; is that correct?

24 A. Yes.

25 Q. And you were in the passenger seat?

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1 A. Yes.

2 Q. And from that -- the drugs were thrown out of that
3 car, correct?

4 A. Yes.

5 Q. That you were riding in?

6 A. Yes.

7 Q. Okay. No further questions.

8 THE COURT: Okay. Anything else?

9 MR. WELBORN: Nothing further.

10 THE COURT: You can step down, Mr. Rice.

11 MR. WELBORN: That's our case, Your Honor.

12 THE COURT: Okay.

13 Yes, ma'am. You can call your first witness.

14 MS. MAY: May it please the Court. I'd like to
15 call Mr. Griffin.

16 (WHEREUPON, the witness was duly sworn.)

17 MADAM CLERK: Please state your full name for
18 the record and spell your last.

19 THE WITNESS: Charles Robert Griffin, Jr., G--
20 R-I-F-F-I-N.

21 **CHARLES ROBERT GRIFFIN, JR.,**

22 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

23 **DIRECT EXAMINATION**

24 BY MS. MAY:

25 Q. Mr. Griffin, were you appointed to represent the

1 Applicant?

2 A. Yes, ma'am.

3 Q. Once you were appointed, did you try to contact him?

4 A. Yes, ma'am. We wrote him numerous letters. I
5 believe all but one of them came back. I sent -- I asked
6 Carl Anderson who is now -- I believe he's the chief of
7 detectives for the Anderson County Sheriff's Office -- to
8 see if we could go to the address we had and personally
9 hand-deliver a letter, and that was unsuccessful. I
10 believe all our correspondence was sent to ADDRESS g
11 (phonic) Drive.

12 Q. I believe that Mr. Rice testified earlier that he
13 did receive that first letter in which you asked him to
14 contact you. Did he ever contact you?

15 A. No, I never heard from him.

16 Q. And did you hire a private investigator to locate
17 Mr. Rice?

18 A. Yeah. That was Carl Anderson.

19 Q. Okay. And when you were notified that the case was
20 going to be called for trial, did you again attempt to
21 contact Mr. Rice?

22 A. Yes. I sent him a letter on November 20th, 2006,
23 stating, please be advised that your case is scheduled to
24 go to court the week of December 11th, 2006. Please
25 contact me as soon as possible. Let's see. I sent one

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1 on November 21st, 2006, saying, enclosed please find
2 notice of hearing. Your case is scheduled for trial on
3 Monday, December 11th, 2006, at 8:30 a.m. in the fourth
4 floor courtroom of Anderson County Courthouse. Please
5 contact this office to make an appointment to come in and
6 speak with the attorney prior to trial date. That was
7 sent by my secretary at the time, Beverly Larkin
8 (phonic), who sent the card we got from the Solicitor's
9 office. We sent a copy of the card with it. I sent five
10 or six letters to that address, and I believe all of them
11 came back but one. And after I spoke with him after he
12 was picked up and brought back, I asked him where he had
13 been. He said he'd been homeless.

14 Q. Did you file a discovery motion in this case, or you
15 were provided with discovery?

16 A. I was provided with all the discovery.

17 Q. And prior to this trial, had you had experience with
18 trials in absentia before?

19 A. It's been very rare. When I worked for the
20 Solicitor's office, I think I tried a few. Normally we'd
21 call the person who was responsible for sending out
22 notices for trial. And he testified that they sent the
23 cards out to the last address he had, and the case would
24 proceed.

25 Q. So did you see any reason to object to Mr. Rice

1 being tried in his absence?

2 A. He was notified to be here. We tried to contact him
3 on numerous occasions. No results. I thought a request
4 for a continuance would have been futile. A request to
5 delay the proceedings because he was absent I think would
6 have been futile given the exhaustive attempts I made to
7 contact him.

8 Q. Okay. And prior to this trial, had you handled drug
9 cases before?

10 A. We'd had a number of drug cases.

11 Q. So you're familiar with all the legal issues
12 surrounding -- involved with drug cases?

13 A. Oh, yeah.

14 Q. And with regard to the Court's charge to the jury on
15 possession, did you see anything to base an objection on?
16 I believe it's page 144.

17 A. Not really. The contraband came out of the
18 passenger side, and that's where he was sitting. So
19 that's circumstantial evidence that he had actual
20 possession of the drugs. There was no evidence to
21 justify.

22 Q. And I believe part of that claim is that he -- it
23 was outside the indictment or wasn't contained in the
24 indictment?

25 A. I think the statute provides for all that, actual

1 and constructive and all that.

2 Q. Right. I believe the Court did read the elements of
3 the statute on page 144?

4 A. That's correct.

5 Q. And they do -- and that statute does include actual
6 or constructive possession, correct?

7 A. That's correct. The statute is pretty broad itself.

8 Q. So you saw no reason to object to that jury charge?

9 A. Not really, no.

10 Q. Do you see any reason looking back on it today?

11 A. No. We got mere presence in, so they kind of offset
12 each other.

13 Q. With regard to the Court's charge to the jury on the
14 hand of one hand of all, did you find that charge
15 objectionable?

16 A. Not really. Like I said, the contraband came out of
17 the passenger side window, and the other driver was
18 operating the vehicle. And also, basically I think the
19 law in South Carolina is if it's a large quantity of
20 contraband, then basically the inference is both have
21 possession of it. He didn't charge that.

22 Q. Did you think the hand of one hand of all charge was
23 outside the scope of the indictment?

24 A. Not really, no.

25 Q. And looking back now, do you still maintain that

1 position?

2 A. Sure, yeah.

3 Q. And I'll refer you to page 124 where the solicitor
4 made his alleged comments in closing about the post-
5 arrest silence.

6 A. Yes.

7 Q. Did you see anything, any reason to object to that
8 statement made by the solicitor?

9 A. No. The law is unless there's evidence in the
10 record that the defendant had been Mirandized, then it is
11 not improper to comment on post-arrest silence. I argued
12 that in my closing. I mean, there was no evidence that
13 he had been Mirandized. And he never met with me to tell
14 he had been. I mean, I was kind of hamstrung throughout
15 the whole trial. I really -- I didn't have his help in
16 guiding me along as to what occurred during the -- prior
17 to that. If he had been here, maybe I would have known a
18 little bit more to raise certain issues. But I didn't
19 know that. He said he had been Mirandized, but that
20 wasn't in the record.

21 Q. So that based on your review of the evidence and the
22 record, there was no reason to believe that he had been
23 Mirandized?

24 A. No. I can't presume he had been Mirandized. I
25 think the law is you can't presume they're Mirandized

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1 either. He's entitled to a fair trial, not a perfect
2 trial.

3 Q. Do you believe that -- do you feel that you did
4 everything within your power to try to contact him?

5 A. I did more than -- I think we did more than -- I
6 think we went above and beyond the call of duty in this
7 one to try to get a hold of him.

8 Q. Thank you. I have no further questions.

9 THE COURT: All right. Yes, sir?

10 CROSS-EXAMINATION

11 BY MR. WELBORN:

12 Q. Mr. Griffin, you only hired one private
13 investigator. Any reason why you didn't hire another
14 one?

15 A. Well, we're only limited to so much money. I didn't
16 really charge the State for this. I think I paid for it
17 out of my pocket.

18 Q. Did you get in your vehicle and go try to track him
19 down?

20 A. I didn't. I sent somebody else to do it. That way
21 -- I mean, I directed a lot of letters and caused mail to
22 be sent to the residence that we were given. We were
23 never given a different residence, so ...

24 Q. Any reason why you didn't object to the comments on
25 Mr. Rice's silence? Even though you didn't know if he'd

1 been Mirandized or not, wouldn't it have been beneficial
2 to object anyway?

3 A. Well, I argued that he could remain silent, he
4 didn't have to speak. If had of objected to it, my
5 objection would have fallen on deaf ears because that was
6 not the law in South Carolina. That's not the law in the
7 United States. I mean, they could comment on post-arrest
8 silence if it was not in the record. If there was no
9 evidence in the record that he'd been Mirandized, then
10 the prosecution can comment on post-arrest silence. So
11 any objection would have been futile.

12 Q. And why did you not object to the hands of one is
13 the hands of all charge?

14 A. I really didn't think it was improper at the time.
15 I mean, the driver, he was obviously in constructive
16 possession. And there was direct evidence -- I mean,
17 there was circumstantial evidence Mr. Rice had the
18 contraband because it came out the passenger window. So
19 given the totality of the circumstances, I didn't think
20 that was improper either.

21 Q. Thank you. That's all I have.

22 THE COURT: Anything else?

23 MS. MAY: No, Your Honor.

24 THE COURT: All right. Thank you, sir.

25 MS. MAY: Nothing else from the State.

Douglas Rice v. State of South Carolina 2010-CP-04-2640
Charles Robert Griffin, Jr. - Cross-examination by Mr. Welborn

37

1 THE COURT: All right. Anything else from the
2 Petitioner?

3 MR. WELBORN: No, sir.

4 THE COURT: Okay. All right. I've read the
5 transcripts and the petition, but I'll take it under
6 advisement and let you know.

7 MR. WELBORN: Thank you, Your Honor.

8 (WHEREUPON, the hearing ended at approximately 11:38
9 a.m.)

10 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Anderson County, South Carolina,
9 on the 5th day of October 2011.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

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

14 January 26, 2012

15 *Renee H. Tollison*
16

17 Circuit Court Reporter

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-04-2640



Douglas L. Rice, # 314577,

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Kaelon I May

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

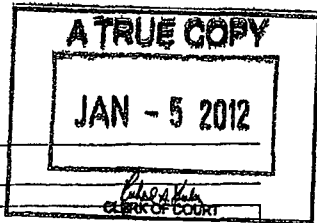
- JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON)**. Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON)**. Rule 40(j), SCRPC Bankruptcy; Binding arbitration, subject to right to restore or confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**.
 Affirmed. Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk



INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge *[Signature]*

2131
Judge Code

01/04/12
Date

For Clerk of Court Office Use Only

This judgment was entered on the 5th day of Jan. 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 9th day of Jan. 2012 to attorneys of record or to parties (when appearing pro se) as follows



Hugh W. Welborn, Esquire
PO Box 173
Anderson, SC 29622
ATTORNEY(S) FOR THE PLAINTIFF(S)

Kaelon F. May
Attorney General's Office
PO Box 11710 Columbia, SC 29211
ATTORNEY(S) FOR THE DEFENDANT(S)
CLERK OF COURT *[Signature]*

Court Reporter:

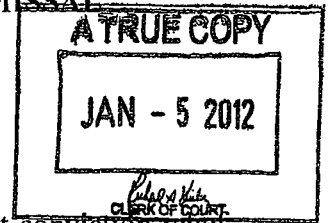
STATE OF SOUTH CAROLINA CLERK'S OFFICE IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON 2010-5 JAN 10 2b TENTH JUDICIAL CIRCUIT

2010-CP-04-2640



Douglas L. Rice. #314577.)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

ORDER OF DISMISSAL



This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed July 27, 2010. Respondent made its Return on October 27, 2010. An evidentiary hearing into the matter was convened on October 5, 2011, at the Anderson County Courthouse. The Applicant was present at the hearing and was represented by Hugh W. Welborn, Esquire. The Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. The State offered the testimony of Charles Griffin, Jr., Esquire (Mr. Griffin) Applicant's trial counsel. This Court also had before it the records of the Anderson County Clerk of Court, the transcript of the proceedings against the Applicant, records of the Applicant's prior appeal proceedings, and the Applicant's records from the South Carolina Department of Corrections.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. The Applicant was indicted at the June 2006 term of the Anderson County Grand Jury for Trafficking Cocaine (2006-

GS-04-0704) He was represented by Charles Griffin, Esquire. On or about December 13, 2006, the Applicant underwent trial in absentia pursuant to which he was found guilty as charged. He was sentenced on January 16, 2007 by the Honorable J. Cordell Maddox, Jr., to confinement for a period of twenty-five (25) years.

A timely notice of appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals subsequent denied the Applicant's appeal by unpublished opinion dated October 9, 2009. (2009-UP-454).

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

- I. Ineffective assistance of counsel,
 - a. "For failing to object to the possession jury instruction to be preserved for appellate review in which the state failed to prove proof beyond reasonable doubt of knowingly and unlawfully have in his possession 200 grams or more but less than 400 grams of cocaine in which the Applicant was indicted on "
 - b. "For failing to object to a trial in absentia when the court's fail to produce evidence that the Applicant had been given notice of his trial dates or not of term of court in which he must appear. Applicant never waived his rights not to attend his trial."
 - c. "For failing to object to prosecutor misconduct in closing arguments prosecutor improperly commented on Applicant's post-arrest silence."
 - d. "For failing to object to the hand of one hand of all jury charge which was outside the scope of the indictment "

II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR

EVIDENTIARY HEARING

Applicant's Testimony

At the PCR hearing Applicant testified that he found out that he had been tried in absentia when Applicant was picked up by a bondsman. Applicant testified that he appeared before Judge Maddox for Applicant's sentence to be unsealed. Applicant testified that prior to his trial he signed a surety bond, that the bond put Applicant on notice that Applicant must keep up with his court dates, and that Applicant found out that he was appointed an attorney after the trial in absentia. Applicant testified that the trial in absentia took place six (6) months after Applicant was arrested, that Applicant came to court for roll call but that Applicant did not speak to anyone and Applicant did not have an attorney. Applicant testified that Applicant appeared for one roll call, that Applicant did not do anything to keep up with his court dates, and that Applicant had never been in trouble prior to this incident. Applicant testified that he did not make an effort to inform himself of the procedures followed by the courts for appearance and roll call, and that Applicant thought if he did not go to court then a bench warrant would be issued for Applicant's arrest and Applicant would be arrested, and brought to trial

Applicant testified that an attorney sent letters to Applicant's address notifying Applicant of the attorney's representation, but that Applicant never received the letters because the letters were returned to sender. Applicant testified that one letter however was not returned to the attorney and that Applicant received at least one letter. Applicant testified that trial counsel should have objected to Applicant being tried in his absence and that Applicant was prejudiced because he was tried in his absence. Applicant testified that counsel failed to object to the possession charge and that the state

failed to prove Applicant's guilt beyond a reasonable doubt. Applicant testified that the drugs were not found on him, that the state did not prove every element of the offense, and that the state did not prove constructive possession. Applicant testified that counsel failed to object to the solicitor's comments in closing argument on Applicant's post-arrest silence at pages 123-124 of the trial transcript. Applicant testified that he was mirandized. Applicant testified that counsel failed to object to the 'hand of one hand of all' charge, that Applicant was charged with 'knowingly unlawful possession,' but that the transcript did not show Applicant and his co-defendant did anything together, and that Applicant's co-defendant's attorney objected but that the objection was overruled. Applicant testified that he was riding in the car with his co-defendant when the drugs were thrown out of the window of the vehicle

Applicant testified that during the trial the arresting officer testified that he never found Applicant in possession, that there was no proof of actual possession. Applicant testified that with regard to the 'mere presence' charge that there was no evidence of constructive possession. Applicant testified that if counsel had made objections the outcome of the trial would have been different. Applicant testified that neither he nor his co-defendant was present in court during the trial to testify and that Applicant was not charged with conspiracy.

Mr. Griffin's Testimony

At the PCR hearing counsel testified that he was appointed to represent the Applicant, that once counsel was appointed he sent letters to Applicant's address informing Applicant of his representation. Counsel testified that when he was notified the case would be called for trial counsel sent Applicant a letter, dated November 21, 2006, informing Applicant of the trial date. Counsel testified that he filed a discovery motion and received the discovery materials from the state. Counsel

testified that prior to Applicant's trial, counsel had experience with trials in absentia. Counsel testified that he did not find any reason to object to the Applicant being tried in his absence and that such an objection would have been futile. Counsel testified that prior to Applicant's case counsel had experience trying drug cases and that counsel was familiar with the legal issues that are involved with drug cases. Counsel testified that with regard to the court's charge on 'possession,' counsel did not find any grounds on which to base an objection, and that after reviewing the charge at the PCR hearing counsel's opinion remained the same.

Counsel testified that he did not find any grounds on which to base an objection to the court's charge on 'hand of one hand of all.' Counsel testified that he did not believe the charge against Applicant was outside the scope of the indictment and that in reviewing the indictment counsel maintained that the charge was adequate. Counsel testified that based upon his review of the case and the evidence presented that Applicant had not been mirandized at the point in time the solicitor referenced in his closing argument and that counsel did not have any grounds on which to object to the comments based upon a 'post-arrest silence' claim. Counsel testified that he recalled addressing ~~the solicitor's comment in his closing argument.~~ Counsel testified that he hired a private investigator and paid for the investigator out of his own pocket. Counsel testified that he did not personally go look for the Applicant, but that this was counsel's reason for hiring a private investigator in order to locate the Applicant. Counsel testified that he was never given a different residence or address to which to send notices to Applicant.

Counsel testified that if he had objected to the solicitor's comments on Applicant's alleged post-arrest silence the objection would have been overruled because the law requires that there be evidence in the record demonstrating a defendant was mirandized and that there was no evidence in

the record that Applicant had been mirandized. Counsel testified that he did not object to the 'hands of one hands of all' charge because the Applicant and his co-defendant were riding in the car together when the drugs were thrown out of the window of the vehicle, and that under the totality of the circumstances the charge was proper.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984), Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989)

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been

different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, the exhibits introduced into evidence at the hearing, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

1. Ineffective Assistance of Counsel

a. Failure to Object

Applicant asserts that trial counsel was ineffective for failing to object to the 'possession' jury instruction, failing to object to a trial in absentia; failing to object to the solicitor's comments on Applicant's post-arrest silence in closing arguments; and for failing to object to the 'hand of one hand of all' jury charge. As to Applicant's allegation that trial counsel was ineffective for failing to object to the 'possession' jury instruction to be preserved for appellate review in which the state failed to prove beyond a reasonable doubt of knowingly and unlawfully have in his possession 200 grams or more but less than 400 grams of cocaine on which the Applicant was indicted, this Court finds this allegation is without merit. Counsel testified that he had experience trying drug cases prior to Applicant's case and that counsel was familiar with legal issues involved with drug cases. Counsel testified that he did not find any grounds on which to base an objection to the court's 'possession'

charge. This Court finds that the Applicant has failed to provide a basis on which counsel should have made an objection to the possession charge. This Court further finds that Applicant's allegation that counsel was ineffective for failing to object to the 'hand of one hand of all' jury charge because the charge was outside the scope of the indictment is without merit. Counsel testified that based on his review of the charge and his experience with drug cases there were not any grounds on which to base an objection to the 'hand of one hand of all' charge. The record reflects that Applicant's co-defendant's attorney objected to the charge, however this objection was overruled. Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). *See also* Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). This Court finds that counsel articulated valid strategic reasons for not objecting to the court's charge on 'possession' and 'hand of one hand of all.' The Applicant has not shown that counsel was deficient in that choice of tactics and any resulting prejudice. Therefore, this Court finds ~~that these allegations are denied and dismissed.~~

As to Applicant's allegation that counsel was ineffective for failing to object to a trial in absentia when the court failed to produce evidence that the Applicant had been given notice of his trial dates and term of court at which he must appear, and that Applicant never waived his rights to attend his trial, this Court finds this allegation is without merit. Counsel testified that he sent several notices to Applicant, one of which was not returned to counsel, and hired a private investigator to locate the Applicant. Applicant admitted that the surety bond he signed provided information about when Applicant must appear in court. Applicant admitted that he only appeared at one roll call and

did nothing to inform himself of subsequent court dates. Applicant admitted to receiving at least one letter from counsel. Although the Sixth Amendment of the Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived. State v. Bell, 293 S.C. 391, 360 S.E.2d 706 (1987). Rule 16 of the South Carolina Rules of Criminal Procedure provides:

[A] person indicted for misdemeanors and/or felonies may voluntarily waive his right to be present and may be tried in his absence upon a finding by the court that such person has received notice of his right to be present and that a warning was given that trial would proceed in his absence upon a failure to attend the court. Rule 16, SCRCrP.

However, a waiver of such an important right is permitted only in limited circumstances. City of Aiken v. Koontz, 368 S.C. 542, 629 S.E.2d 686 (2006). Therefore, before a defendant may be tried *in absentia*, the trial court must determine a defendant voluntarily waived his right to be present at trial, making findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned that trial would proceed in his absence. Id. This Court finds and the record reflects that Applicant was afforded notice of his trial. The trial court made the adequate findings of fact that Applicant received notice of his right to be present and was warned that trial would proceed in his absence. Applicant admitted that the surety bond he signed indicated such. A bond form that provides notice that defendant can be tried *in absentia* may serve as the requisite notice. Id. See also, State v. Fairey, 374 S.C. 92, 646 S.E.2d 445 (Ct. App. 2007). Additionally, counsel provided a rational explanation as to why he did not object to the Applicant being tried in his absence and this Court accepts Mr. Griffin's reasoning as to why he did not object. This Court finds that Applicant has failed to show that counsel's performance was deficient and any resulting prejudice. Therefore, this allegation is denied and dismissed.

As to Applicant's allegation that trial counsel was ineffective for failing to object to

prosecutor misconduct in closing argument where prosecutor improperly commented on Applicant's post-arrest silence, this Court finds that Applicant has failed to meet his burden of proof. Applicant directs this Court's attention to the following comment made by the solicitor in closing arguments:

If he's [Applicant] innocent, Mr. Griffin is going to claim, then why didn't he just sit there and say man, I didn't [] have anything to do with this. You heard me ask Officer Scoggins well, did he say anything after you handcuffed him or he stopped and arrested him [sic]? The answer was no. He [Applicant] said absolutely nothing. If you had been with someone and this much dope just came out of the window, don't you think that you would have been hollering man, it wasn't me, I didn't do it." (Tr. p.124, lines4-12).

In Doyle v. Ohio, 426 U.S. 610 (1976), the Supreme Court ruled the prosecution could not attempt to impeach a defendant's exculpatory story, told for the first time at trial, by cross-examining him about his failure to tell the story after receiving Miranda warnings. However, the Court also reasoned that this prohibition did not apply in situations where the defendant's post-arrest silence was not the result of Miranda warnings. Id. The Constitution does not prohibit the use for impeachment purposes a defendant's silence prior to arrest, or after arrest if no Miranda warnings were given. Such silence is probative and does not rest on any implied assurance by law enforcement authorities that it will carry no penalty. ~~Brecht v. Abrahamson, 507 U.S. 619 (1993). Counsel testified that he did not~~ object because there was no evidence in the record demonstrating that the Applicant had been mirandized and that counsel did not have grounds on which to base an objection. This Court finds that the solicitor's closing arguments must be viewed in the context of the entire record. McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). While the State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence, State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996); to be entitled to a new trial for improper closing arguments Applicant must show "the Solicitor's comments so infected the trial with unfairness as to

make the resulting conviction a denial of due process.” State v. Hamilton, 344 S.C. 344, 362, 543 S.E.2d 586, 596 (2001)

After reviewing the entire record, this Court does not find that any comments by the solicitor so infected the trial that a new trial is warranted. This Court is not convinced that the solicitor’s comments even reach the level of being improper, but certainly there is no evidence that Applicant was prejudiced. Additionally, this Court does not find that Mr. Griffin was ineffective for failing to object. He provided rational explanation as to why he did not object and this Court accepts Mr. Griffin’s reasoning as to why he did not object. Therefore, this allegation is denied and dismissed.



V. CONCLUSION


Based on all the forgoing, 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 for post conviction relief. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR, Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice, and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 04 day of January, ²⁰¹²2011.



J. Cordell Maddox, Jr.
Presiding Judge
Tenth Judicial Circuit

Anderson _____, South Carolina

CLERK'S OFFICE
- 2 -
M-5 A 10:26
GENERAL SESSIONS

ENTERED
Me

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON)	TENTH JUDICIAL CIRCUIT
DOUGLAS RICE, #319577,)	
)	
PLAINTIFF,)	ORDER SUBSTITUTING COUNSEL
)	
vs)	
)	
THE STATE OF SOUTH CAROLINA,)	CASE NO. 2010-CP-04-2640
)	
DEFENDANT.)	

It appears that Robert Allen Bugos was appointed as the attorney for Plaintiff, Douglas Rice, in the above-entitled matter.

It appears that Hugh W. Welborn has consented to substitute as attorney for Plaintiff, Douglas Rice, for Robert Allen Bugos in the above-entitled matter

NOW THEREFORE IT IS ORDERED, AJUDGED AND DECREED:

1. That Robert Allen Bugos be relieved as attorney for Plaintiff, Douglas Rice;
2. That Hugh W. Welborn is appointed as substitute attorney for Robert Allen Bugos for the Plaintiff, Douglas Rice.
3. Counsel shall immediately notify all parties.

IT IS SO ORDERED.

Anderson, South Carolina
March 2, 2010

[Signature]
 PRESIDING CIRCUIT COURT JUDGE
 TENTH JUDICIAL CIRCUIT

I CONSENT:

[Signature]
 Robert Allen Bugos

I CONSENT:

[Signature]
 Hugh W. Welborn

FILED
 CLERK'S OFFICE
 ANDERSON
 GENERAL SESSIONS
 MAR 14 2011
 5:50

ARREST WARRANT

I-855988

STATE OF SOUTH CAROLINA
[X] County/ [] Municipality of
ANDERSON

THE STATE
against

RICE, DOUGLAS L
Address: ADDRESS R
ANDERSON, SC 00000-0000
Phone: SSN.
Sex: M Race: B Height: 6 Weight: 180
DL State: OL#:
DOB: Agency ORI#: 0400
Prosecuting Agency: SHERIFF DEPT.
Prosecuting Officer: BAXTER, B K
Offense: TRAFFICKING CRACK COCAINE
Code/Ordinance Sec. Offense Code: 0278
44-53-370

This warrant is CERTIFIED FOR SERVICE in the
[] County/ [] Municipality of
The accused
is to be arrested and brought before me to be
dealt with according to law.

(L.S.)
Signature of Judge
Date:

RETURN

A copy of this arrest warrant was delivered to
defendant RICE, DOUGLAS L
on
Cpl - Cooper
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA
[X] County/ [] Municipality of
ANDERSON

AFFIDAVIT

Form Approved by
S.C. Attorney General
July 26, 1990
SCCA 518

Personally appeared before me the affiant B BAXTER/ACSO
who
being duly sworn deposes and says that defendant RICE, DOUGLAS L
did within this county and state on 11/21/2005 violate the criminal laws of the
State of South Carolina (or ordinance of [] County/ [] Municipality of)
in the following particulars:

DESCRIPTION OF OFFENSE: TRAFFICKING CRACK COCAINE

I further state that there is probable cause to believe that the defendant named above did commit the crime
set forth and that probable cause is based on the following facts:
WHILE ATTEMPTING TO CONDUCT A LAWFUL TRAFFIC STOP DURING, A HIGH
SPEED CHASE. THE DEFENDANT DID THROW A PLASTIC BAG WITH BLUE
MARKINGS ON IT FROM THE DEFENDANTS VEHICLE. THE PLASTIC BAG
CONTAINED 263.5 GRAMS OF WHITE POWDER SUBSTANCE THAT FIELD
TESTED POSITIVE AS COCAINE. THIS DID OCCUR IN ANDERSON COUNTY.

Sworn to and subscribed before me)
on 11/22/2005)
(L.S.))
Signature of Issuing Judge

Signature of Affiant
Affiant's Address
Affiant's telephone

STATE OF SOUTH CAROLINA
[X] County/ [] Municipality of
ANDERSON

** CASE NUMBER 2005-40416 **

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on 11/21/2005 defendant RICE, DOUGLAS L
did violate the criminal laws of the State of South Carolina (or ordinance of
[] County/ [] Municipality of) as set forth below:
DESCRIPTION OF OFFENSE: TRAFFICKING CRACK COCAINE

Now, therefore, you are empowered and directed to arrest the said defendant and bring him/her
before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
defendant at the time of its execution, or as soon thereafter as is practicable.

(L.S.)
Signature of Issuing Judge
Judge Code: 733

) Judge's Address POB 8002, 107 S. MAIN ST.
ANDERSON SC 29622-0000
) Judge's Telephone 260-4156
Issuing Court: [X] Magistrate [] Municipal [] Circuit

3109
LED-CLERK'S OFFICE
ANDERSON SC
NOV 30 A
GENERAL SESSIONS
JUL 27 2005
CLERK OF COURT

WITNESSES

AGSO, B. BAXTER

ARREST WARRANT NO. 1-855988

ACTION OF GRAND JURY **TRUE BILL**

FEB 28 2006

[Signature]

Foreman of Grand Jury Foreperson

VERDICT

Foreman of Petit Jury

Date:

DOCKET NO. 2006-GS-04-704

The State of South Carolina,

County of ANDERSON

COURT OF GENERAL SESSIONS

FEB 28 2006

TERM

THE STATE

RAM

vs.

DOUGLAS LAMONT RICE

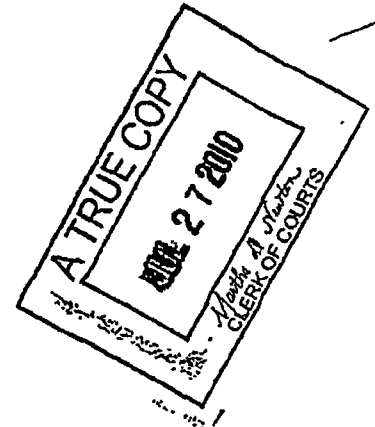
Blw issued: 12/1/06/cmp
Blw recalled 1-22-07/cmp

Indictment for

TRAFFICKING COCAINE
44-53-0370(e)(2)(d) [0288]

COMMITMENT

1-16-07/cmp



STATE OF SOUTH CAROLINA)
ANDERSON)
COUNTY OF _____)

INDICTMENT FOR
TRAFFICKING COCAINE
44-53-0370(e)(2)(d) [0288]

FEB 28 2006

At a Court of General Sessions, convened on _____
ANDERSON
the Grand Jurors of _____ County present upon their oath:

TRAFFICKING COCAINE

That Douglas Lamont Rice did in Anderson County, South Carolina, on or about
November 21, 2005, knowingly and unlawfully have in his possession 200 grams or
more but less than 400 grams of cocaine.

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

Sam L. Campbell

ASST. SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

) IN THE COURT OF GENERAL SESSIONS
) INDICTMENT/CASE #

STATE OF DOUGLAS LAMONT RICE

2006-GS-04-704

AKA:

Race/Sex: B M Age: 31

) AWW#: 1855988

) Date of Offense: 11/21/05

DOB: [REDACTED] SSN: [REDACTED]

) S C Code: 44-53-0375 CDR Code #: 0369

Address: ADDRESS

) CASE RESTORED

City, State, Zip ANDERSON SC 29624

DL# 7616723 SID: SC00847020

SENTENCE PLEA TRIAL



In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO:

Trafficking Cocaine

in violation of 44-53-370 of the S C Code of Laws, bearing CDR Code #: 01218181

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

Charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

Plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

(C. Griffin)

Rame Campbell

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections,
 County Detention Center, for a determinate term of 25 days/month/years or
 under the Youthful Offender Act not to exceed years and/or 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 of South Carolina Department of Probation.
Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

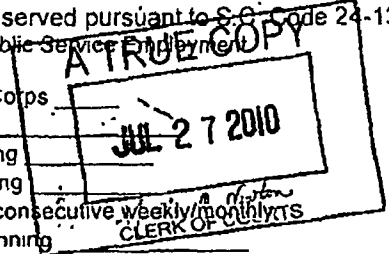
CONCURRENT or CONSECUTIVE to sentences on:
 The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied
by the State Department of Corrections

SPECIAL CONDITIONS:

RESTITUTION Heard, Waived, Ordered
Total: \$ plus 20% fee \$
Payment Terms:
 set by SCDPPPS

PTUP time served pursuant to S.C. Code 24-13-40 to
days/hours Public Service and Payment

Obtain GED
Attend Voc Rehab, or Job Corps
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be paid in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund.
Other:



Recipient:

*Fine.....	\$
14-1-206 - Assessments (107.5%)	\$
14-1-21 1 (A)(1) Conv. Surcharge	\$100 \$ 100.00
14-1-21 1 (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% County(if paid in installments)	\$
TOTAL ..	\$ 225.00

Appointed PD or other counsel, 35.13 TP
Requires \$500 be paid to Clerk during probation.

Presiding Judge [Signature] Judge Code: 211317

Sentence Date 12/13/06

Court Reporter M. Watts Code #: 1111

Cathy M. Phillips
Clerk of Court/Deputy Clerk
SCCA/2 17(7/2003)

opened + read 01-16-07 before:
Judge Cordell Maddox; Ct. Rep: R. Tollison