

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Laurens County
Clifton B. Newman, Circuit Court Judge

RECEIVED

MAY 29 2014

Appellate Case No. 2013-001781

S.C. Supreme Court

IAN RICE,

Respondent,

vs.

STATE OF SOUTH CAROLINA,

Petitioner.

APPENDIX

ALAN WILSON
Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General
S.C. Bar No. 78871

P.O. Box 11549
Columbia, S.C. 29211
(803) 734-3737

ATTORNEYS FOR PETITIONER

CARMEN V. GANJEHSANI
SC Commission of Indigent
Defense
Appellate Defense

1330 Lady Street, Suite 401
P.O. Box 11589
Columbia, SC 29211
(803)-734-1343

ATTORNEY FOR RESPONDENT

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2006-GS-30-1587

COUNTY OF LAURENS

2006-GS-30-0588

STATE OF SOUTH CAROLINA,)

-vs-)

IAN RICE,)

Defendant.)

November 13-14, 2007

B E F O R E:

HONORABLE D. GARRISON HILL

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

MINDY W. ZIMMERMAN, Esquire
RONALD N. FLEMING, Esquire
Attorneys for the State

CLYDE L. PENNINGTON, JR., Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

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1 P-R-O-C-E-E-D-I-N-G-S

2 (Jury Qualification).

3 THE COURT: All right, ladies and gentlemen,
4 I find the panel is qualified, and are we ready to
5 proceed with the jury selection in the first case?

6 MS. ZIMMERMAN: If I may approach?

7 THE COURT: Yes, ma'am.

8 MR. PENNINGTON: Yes, sir.

9 (Unrecorded bench conference).

10 THE COURT: All right, ladies and gentlemen,
11 we're going to select a jury in the first case that
12 the State has chosen to call this week. That case
13 is the State of South Carolina versus Ian Rice.

14 Mr. Rice, if you would, stand up and turn
15 around so everybody could see you, sir.

16 Thank you, Mr. Rice.

17 Mr. Rice is here for trial and the State has
18 chosen to call his cases and there are two
19 indictments that I'm going to read to you. And
20 before I read these indictments let me caution you
21 and tell you that an indictment is simply a piece
22 of paper. It's not evidence of anything, it's not
23 proof of anything, it doesn't even carry a
24 suspicion of guilt. An indictment is simply the
25 formal way the State begins its case against

1 someone and lets a citizen know what they are
2 charged with, and Mr. Rice has pled not guilty to
3 these charges and therefore the burden of proof is
4 on the State and Mr. Rice may only be convicted if
5 all twelve jurors determine the State has met its
6 burden of proving each and every element of the
7 crime beyond a reasonable doubt. At this stage Mr.
8 Rice is presumed innocent, he doesn't have to prove
9 anything to you, he doesn't have to explain himself
10 during the trial or offer any explanation
11 whatsoever.

12 The burden of proof is on the State, as I
13 have said, and Mr. Rice is presumed innocent at
14 this point and that presumption of innocence
15 remains with him throughout the trial. It can only
16 be removed if you the jury determine the State has
17 met its burden of proof in each and every element
18 of the crime beyond a reasonable doubt, and if you
19 are seated as a juror that will be your job, to
20 determine whether the State has done that.

21 Now, we need to ensure that we can find a
22 jury that is fair and impartial and can decide this
23 case without any kind of preconceived ideas, and
24 therefore I'm going to ask you some questions
25 related to that, and the first thing I need to

1 know, if any of you are related by blood or
2 marriage or have any social or business or personal
3 relationship with Mr. Ian Rice? If so, please
4 stand.

5 I'm going to read to you a list of people who
6 may testify in this case and those people include
7 Amanda Marie Sanford, Tyrone Goggins and Kukila N.
8 Stanley. I may be mispronouncing that first name,
9 if so I apologize. But if any of you know any of
10 those people I listed or have any personal, social
11 or business relationship with them or are kin to
12 them in any way or related to them by blood or
13 marriage please stand at this time..

14 Does anyone know anything about this case
15 other than what you have heard here this morning in
16 this courtroom in the past five minutes? If so,
17 please stand.

18 Do any of you know of any reason why you
19 could not give Mr. Rice or the State a fair and
20 impartial trial? If so, please stand.

21 I'm going to ask the attorneys at this time
22 to introduce themselves and the people at their
23 table.

24 Yes, ma'am?

25 MS. ZIMMERMAN: My name is Mindy Zimmerman,

1 I'm Assistant Solicitor of the Eighth Circuit
2 Solicitor's office. I have here at my table Ron
3 Fleming who is also Assistant Solicitor, and Holly
4 Hardin who is court administrator for the
5 Solicitor's office.

6 THE COURT: All right, thank you, Miss
7 Zimmerman.

8 And, yes, sir, Mr. Pennington?

9 MR. PENNINGTON: My name is Clyde Pennington,
10 Jr., I'm standing here with Ian Rice, my client,
11 and Robin Parker, my legal assistant.

12 THE COURT: Thank you, sir. Does anyone have
13 any social, business or personal relationship with
14 the attorneys who introduced themselves or were
15 introduced? If so, please stand.

16 All right, yes, ma'am, tell us your name.

17 JUROR: Elizabeth Jones.

18 THE COURT: Miss Jones, okay.

19 JUROR: My best friend is Clyde's wife.

20 THE COURT: Okay. I'm going to excuse you
21 from this case, then. Thank you very much.

22 Is anyone kin to any of the attorneys or any
23 of the people who were introduced by them or does
24 anyone have any personal, social or business
25 relationship with them? If so, please stand.

1 Has anyone ever been represented by the
2 attorneys in this case in any matter or been
3 involved in a dispute or lawsuit where the other
4 side was represented by one of these attorneys? If
5 so, please stand.

6 Has anyone been employed by or had a member
7 of their immediate family be employed by the
8 Solicitor's office or any law enforcement agency?
9 If so, please stand.

10 All right. Ladies and gentlemen, do any of
11 you contribute, whether it's your time or your
12 money, to any group whose primary focus is the
13 promotion of victims' rights or more aggressive law
14 enforcement? If so, please stand.

15 All right. Ladies and gentlemen, let me read
16 to you the indictments in the case. As I mentioned
17 to you already, these are simply allegations and
18 don't shed any suspicion or any proof or evidence
19 of anything, and again Mr. Rice has pled not guilty
20 to them and the burden of proof is on the State and
21 he is presumed innocent.

22 But the first case alleges that Ian Rice did
23 in Laurens County on or about the 30th day of
24 March, 2006, willfully, unlawfully and knowingly
25 distribute, sell, purchase, manufacture or possess

1 with intent to distribute a quantity of crack
2 cocaine, a schedule two controlled substance, while
3 in, on or within a one-half mile radius of the
4 grounds of a public or private school, a public
5 playground or park, a public vocational or trade
6 school or technical educational center or a public
7 or private college or university, in violation of
8 Section 42-53-445 of the South Carolina Code.

9 Case number 1588 alleges that Mr. Rice did in
10 this county on or about the 30th day of March,
11 2006, willfully, unlawfully and knowingly
12 manufacture, distribute, dispense, deliver,
13 purchase or otherwise aid, abet, attempt or
14 conspire to manufacture, distribute, dispense,
15 deliver or purchase a quantity of crack cocaine, a
16 schedule two controlled substance, in violation of
17 the provisions of the South Carolina Code of Laws.

18 Now, those are the allegations and again I
19 will ask if anyone knows anything about the events
20 that are alleged in this indictment or indictment
21 or if you have any knowledge about this case? If
22 so, please stand.

23 Now, the case does involve allegations of
24 distribution of crack cocaine and we need to know
25 if any of you have ever been charged or arrested

1 for a drug offense or whether you or any member of
2 your immediate family has been charged or arrested
3 or convicted of a drug offense and whether any
4 member of your family or you feel that -- let me
5 back up just a second.

6 I need to know if any of you have such strong
7 feelings regarding the use of drugs or the issue of
8 illegal drugs that you could not give either the
9 State or Mr. Rice a fair and impartial trial? I
10 will be glad to talk with you down here in a little
11 more private setting if you need to respond to that
12 question. If you do, please come forward.

13 All right, is there any further voir dire
14 from the State or from the defense?

15 MS. ZIMMERMAN: There is, Your Honor, if Mr.
16 Pennington and I may approach?

17 THE COURT: Okay.

18 (Unrecorded bench conference).

19 THE COURT: All right, we're ready to proceed
20 with the jury selection, and the strikes are five
21 and five.

22 Yes, ma'am.

23 And when your name is called you can simply
24 stand up where you are and if you're seated as a
25 juror they will ask you to come forward with all

1 your belongings and take a seat in the jury box.

2 Okay?

3 Yes, ma'am.

4 THE CLERK: Juror 104, Linda K Sullivan.

5 THE COURT: Just stand up, stay right where
6 you are until they tell you to come forward.

7 THE CLERK: What says the State?

8 MS. ZIMMERMAN: Please excuse this juror from
9 the trial of this case.

10 THE CLERK: You can sit back down.

11 Juror number 88, Evelyn M. Reeder.

12 What says the State?

13 MS. ZIMMERMAN: Your Honor, may we have the
14 jurors come forward, if it's all right?

15 THE COURT: They can stand up where they are,
16 you can turn around and look at them. Thank you.

17 MS. ZIMMERMAN: Please excuse this juror from
18 the trial of this case.

19 THE CLERK: Juror number 70, Chritopher J.
20 Miles.

21 What says the State?

22 MS. ZIMMERMAN: Please present the juror.

23 THE CLERK: What says the defense?

24 MR. PENNINGTON: Please swear the juror.

25 THE CLERK: Juror number 136, Marisa L.

1 O'Neal.

2 What says the State?

3 MS. ZIMMERMAN: Please present the juror.

4 THE CLERK: What says the defense?

5 MR. PENNINGTON: Please swear the juror.

6 THE CLERK: Juror number one, Janet B.

7 Abercrombie.

8 What says the State?

9 MS. ZIMMERMAN: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. PENNINGTON: Please excuse the juror.

12 THE CLERK: Juror number 138, Stanley W.

13 Turner.

14 What says the State?

15 MS. ZIMMERMAN: Please present the juror.

16 THE CLERK: What says the defense?

17 MR. PENNINGTON: Please swear the juror.

18 THE CLERK: Juror number 15, Patricia A.

19 Conway.

20 What says the State?

21 MS. ZIMMERMAN: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. PENNINGTON: Please swear the juror.

24 THE CLERK: Juror number 17, Judith B. Cox.

25 What says the State?

1 MS. ZIMMERMAN: Please present the juror.
2 THE CLERK: What says the defense?
3 MR. PENNINGTON: Please excuse the juror.
4 THE CLERK: Juror number 122, Linda A.
5 Woodall.
6 What says the State?
7 MS. ZIMMERMAN: Please excuse the juror.
8 THE CLERK: Juror number 59, Cheryl D.
9 Knight.
10 What says the State?
11 MS. ZIMMERMAN: Please present the juror.
12 THE CLERK: What says the defense?
13 MR. PENNINGTON: Please swear the juror.
14 THE CLERK: Juror number 72, Renee S.
15 Millwood.
16 What says the State?
17 MS. ZIMMERMAN: Please swear this juror.
18 THE CLERK: What says the defense?
19 MR. PENNINGTON: Please excuse the juror.
20 THE CLERK: Juror number 33, India B. Fowler.
21 What says the State?
22 MS. ZIMMERMAN: Please present the juror.
23 THE CLERK: What says the defense?
24 MR. PENNINGTON: I'm sorry, Madam Clerk, what
25 was the number?

1 THE CLERK: 33.
2 MR. PENNINGTON: Please swear the juror.
3 THE CLERK: Juror number 95, Larry D. Smith.
4 What says the State?
5 MS. ZIMMERMAN: Please present the juror.
6 THE CLERK: What says the defense?
7 MR. PENNINGTON: Please swear the juror.
8 THE CLERK: Juror number 124, Ashley S.
9 Woods.
10 What says the State?
11 MS. ZIMMERMAN: Please present the juror.
12 THE CLERK: What says the defense?
13 MR. PENNINGTON: Please excuse the juror.
14 THE CLERK: Juror number 100, James G.
15 Steadman, Jr.
16 What says the State?
17 MS. ZIMMERMAN: Please present the juror.
18 THE CLERK: What says the defense?
19 MR. PENNINGTON: Please swear the juror.
20 THE CLERK: Juror number 92, Laura W. Shealy.
21 What says the State?
22 MS. ZIMMERMAN: Please present the juror.
23 THE CLERK: What says the defense?
24 MR. PENNINGTON: Please excuse the juror.
25 THE CLERK: Juror number 133, Laura A. Lenz.

1 What says the State?

2 MS. ZIMMERMAN: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. PENNINGTON: Please swear the juror.

5 THE CLERK: Juror number 116, Thomas L.

6 White.

7 What says the State?

8 MS. ZIMMERMAN: Please present the juror.

9 THE CLERK: What says the defense?

10 MR. PENNINGTON: Please swear the juror.

11 THE CLERK: Juror number 119, Travis J.

12 Williams.

13 What says the State?

14 MS. ZIMMERMAN: Please excuse this juror.

15 THE CLERK: Juror number 106, Nancee S.

16 Switzer.

17 What says the State -- I mean will the State

18 challenge for cause?

19 MS. ZIMMERMAN: No.

20 THE COURT: What says the defense?

21 MR. PENNINGTON: Please swear the juror.

22 THE CLERK: Juror number 68, James L.

23 McJunkin, II.

24 MR. FLEMING: What number?

25 THE CLERK: 68.

1 Will the State challenge for cause?

2 MS. ZIMMERMAN: No.

3 THE CLERK: What says the defense?

4 MR. PENNINGTON: Please swear the juror.

5 THE COURT: Okay, we'll have one alternate.

6 THE CLERK: David W. Campbell, number 10.

7 What says the State?

8 MS. ZIMMERMAN: Please present the juror.

9 THE CLERK: What says the defense?

10 MR. PENNINGTON: Please swear the juror.

11 THE COURT: Okay, is there any matter or

12 motion related to the selection process or

13 composition of the jury, from the State?

14 MS. ZIMMERMAN: None from the State..

15 THE COURT: The defense?

16 MR. PENNINGTON: None from the defense.

17 THE COURT: All right. I find the process

18 follows statutory mandates in Batson versus

19 Kentucky and J.E.B. versus Alabama.

20 You have been selected to be the jury in the

21 case of State versus Ian Rice. We're going to

22 start the trial approximately 2:00 o'clock this

23 afternoon. This gentleman right here is going to

24 show you where the jury room is. Be back in that

25 jury room at 2:00 o'clock. Have a nice lunch and

1 don't talk about the case or anything related to it
2 during the break and we'll see you back at 2:00.
3 Thank you very much.

4 (The jury was excused from the courtroom).

5 THE COURT: Those of you who were not chosen
6 on this particular case just call back after 6:00
7 o'clock tonight and they'll give you further
8 information about your jury service, and thank you
9 for your patience and cooperation, and call back
10 after 6:00 p.m. using the number you have been
11 given. Thank you.

12 (Jury panel was excused from the courtroom).

13 THE COURT: All right. I understand they are
14 going to do some probation violations after we take
15 a short recess, so we'll be in recess until that is
16 ready to go. Anything else related to the Rice
17 case?

18 MS. ZIMMERMAN: No, sir, not from the State.

19 MR. PENNINGTON: Nothing, Your Honor.

20 THE COURT: Okay, see you back at 2:00
21 o'clock. Thank you.

22 MS. ZIMMERMAN: Thank you, Your Honor.

23 (Recessed at 11:38 a.m.).

24 (Reconvened at 2:25 p.m.).

25 THE COURT: Okay, ready for the jury?

1 MS. ZIMMERMAN: The State's ready.

2 MR. PENNINGTON: We're ready, Your Honor.

3 THE COURT: Okay, bring them on out.

4 (The jury returned to the courtroom).

5 MS. ZIMMERMAN: May we approach?

6 (Unrecorded bench conference).

7 BAILIFF: All the jurors are present, Your
8 Honor.

9 THE COURT: Thank you, sir. All right,
10 ladies and gentlemen, good afternoon. We're going
11 to begin the case of the State versus Ian Rice at
12 this time. First I want to thank you for your
13 service and for being here today and making sure
14 these parties can exercise their right to a jury
15 trial. And we appreciate your contribution to your
16 community and as I said earlier, we're going to try
17 to do our best to respect your time and move things
18 along as quickly as we can.

19 They were adjusting, I think, some of their
20 technical devices earlier, that is what caused the
21 delay getting you out here this afternoon. But we
22 are here and you know that you were called down to
23 the courthouse today because you either have a
24 driver's license or you have a voter's registration
25 card or you have an identification card issued by

1 the Highway Department and that is why you got that
2 summons in the mail to come to the courthouse. You
3 may be wondering why you were chosen to sit on this
4 particular jury, and the reason you were chosen to
5 sit on this particular jury is because both the
6 State and Mr. Rice believe you can be fair and
7 impartial and can decide this case without any bias
8 or prejudice of any kind, without any preconceived
9 ideas.

10 Now, ladies and gentlemen, this case, I'm not
11 sure how long it is going to take, I have been told
12 it will go into tomorrow, but it is an important
13 case for both the State and for Mr. Rice. This is
14 their day in court. And you have already met the
15 lawyers in this case and I have introduced myself
16 to you and I'm going to tell you what my job is
17 here in just a moment. And some of the other
18 people you may not have met, I want to let you know
19 who they are and what their jobs are. Mr. Henry
20 Young is the fine court reporter we have in this
21 case. Circuit Court is a court of record and every
22 word said is taken down and he does an excellent
23 job, I'm glad to be working with him this week.
24 And then Miss Butts is with the Clerk of Court's
25 office, she keeps track of the paperwork related to

1 the case, and as you saw the Clerk Miss Lancaster
2 helped with the jury selection and the roll call
3 and qualification process this morning.

4 Then you have met the fine bailiffs we have
5 here helping you be comfortable while you're
6 serving on the jury.

7 Now, all those people that I just introduced
8 to you took an oath to do their job and you are
9 going to take an oath to do your job as well. You
10 have already taken one oath this morning but this
11 oath concerns your obligations and what you promise
12 to do in this case, so listen carefully to the
13 words because they are critically important and
14 they have been around a long time, they tell you in
15 a nutshell what you need to know to be a juror.

16 Yes, ma'am, swear the jury in.

17 THE CLERK: Please stand. If you accept the
18 oath I'm about to administer please respond by
19 saying I will.

20 Raise your right hand, please. You shall
21 well and truly try the case of State versus Ian
22 Rice on case numbers 2006-GS-30-1587 and 1588, and
23 a true verdict render according to the evidence and
24 the law, so help you God.

25 JURORS: I will.

1 THE CLERK: Thank you. You may be seated.

2 THE COURT: All right, thank you very much.

3 Now, ladies and gentlemen, as I said, my job
4 is fairly straightforward and fairly simple. I
5 have three main duties. The first duty I have is
6 to try to run things efficiently. The second duty
7 I have is to rule on the admissibility of evidence.
8 During the course of this trial the parties may
9 object to evidence and I have to decide whether
10 it's admitted or not and whether you can consider
11 it. If I sustain the objection that means the
12 evidence was improper and you may not consider it.
13 If I overrule the objection that means you can
14 consider the evidence and it is proper for you to
15 take it into account.

16 Now, the third and final job I have is to
17 determine and tell you what the law is that applies
18 in this case, and at the end of the case I'm going
19 to instruct you on the law you must apply to this
20 matter.

21 So, that is my job. Compared to yours, it's
22 fairly easy. You have a much more difficult job
23 because your job under our Constitution and our
24 laws is to determine the facts of this case. There
25 is a dispute about what the facts are and that is

1 why the parties need a jury to resolve that
2 dispute, and you have been called upon to do it.

3 Under our Constitution, when we have a
4 factual dispute the jury and the jury alone
5 determines what the facts are. I can't tell you
6 what I think the facts are or what I think your
7 verdict should be because our Constitution gives
8 you that role and not me. I have told you what my
9 role is and it is very limited but your role is to
10 determine the facts and determine whether the State
11 has met its burden of proof.

12 This is a criminal case and as I mentioned to
13 you earlier Mr. Rice is alleged to have committed
14 two crimes. First, distribution of crack cocaine,
15 and second, distribution of crack cocaine in
16 proximity of a school, playground, park or a public
17 vocational or trade school or technical educational
18 center, public or private college or university.
19 And that is that he allegedly distributed, sold,
20 purchased, manufactured or possessed with intent to
21 distribute a quantity of crack cocaine within
22 one-half mile radius of the grounds of those
23 institutions that I mentioned to you.

24 And in the second indictment it's alleged
25 that he willfully, unlawfully and knowingly

1 manufactured, distributed, dispensed, delivered,
2 purchased or otherwise aided, abetted or attempted
3 to, conspired to manufacture, distribute, dispense,
4 or deliver a quantity of crack cocaine.

5 Both of these offenses are alleged to have
6 occurred in Laurens County on or about March 30th
7 of 2006. As I said to you earlier, these
8 indictments, they are not proof of anything, they
9 are not evidence of anything. They are simply the
10 way the case begins and they are, in other words,
11 the ticket that lets the prosecution come in this
12 courtroom door and start its case and let Mr. Rice
13 know what he's charged with.

14 Mr. Rice has pled not guilty to the charge
15 and that puts the burden of proof on the State and
16 he can only be convicted if all twelve of you
17 agree, agree the State has met its burden of proof
18 in each and every element of the crime beyond a
19 reasonable doubt. Bear in mind there were two
20 crimes. You will have to determine whether the
21 State has met its burden of proof as to each crime
22 without being influenced by your decision on the
23 other crime in making your decision as to both of
24 them.

25 So, in addition, I will tell you as I have

1 already told you that Mr. Rice is presumed
2 innocent. He doesn't have to prove anything in
3 this case. He doesn't have a burden of proof, he
4 doesn't have to talk or give any explanation or any
5 evidence whatsoever.

6 Now, as I said, you must decide what the
7 facts are and you are the judges of facts. When it
8 comes to determining what the facts are your badge
9 that you are wearing may as well say judge instead
10 of juror because that's what you are. And how do
11 you determine what the facts are? You do that by
12 considering and weighing the evidence you're going
13 to hear during the trial. Now, you must confine
14 your decision as to what the facts are to the
15 evidence, and evidence consists of two sources.
16 The first is the one you're probably the most
17 familiar with, that is the sworn testimony of a
18 witness. I anticipate we will have people who will
19 come into this courtroom, who are sworn in and who
20 will tell you about the things they know about this
21 case. And that is a form of evidence. Something
22 you can base your decision on as to what the facts
23 are.

24 The second form or source of evidence is by
25 way of an exhibit. I don't know much about this

1 case, no more than you do at this point, but it is
2 typical that there are often exhibits in cases.
3 And exhibits are simply pieces of paper, maybe a
4 map, a photograph or something like that, it might
5 be something else you can feel or touch, some other
6 object, tangible object, and you will know it's an
7 exhibit, you will know it's evidence you can use to
8 determine what the facts are because it will be
9 back in the jury room with you at the end of the
10 case and have a little sticker on it that says
11 exhibit number so and so.

12 Those are the only things that you can use to
13 determine what the facts are. Certain things are
14 not evidence and you cannot consider them in
15 determining what the facts are. What the lawyers
16 state is not evidence because they are not
17 witnesses, just as this indictment is not a witness
18 and it's not an exhibit. Likewise, anything you
19 may see or hear outside court is not evidence and
20 you may not consider that in reaching your verdict.

21 Now, as I told you, you have an important and
22 difficult job and let me tell you just how
23 important it is. In our system of justice, as I
24 said, I am considered the judge of the law, I tell
25 you what the law is at the end of the case. If I

1 make a mistake about the law it can easily be
2 corrected on appeal, and you may often see in the
3 paper from time to time or on the news hear about
4 cases that are reversed on appeal, and that means
5 the judge made a mistake. Our system of justice
6 does not allow for mistakes of facts to be
7 corrected on appeal. So, when you issue your
8 decision as to what the facts are it is almost
9 always final and conclusive. So, I know you will
10 do your job conscientiously and diligently, knowing
11 the gravity of it. And I know it's hard to sit
12 there for a long period of time and listen to
13 evidence in the courtroom but please try to keep
14 attention throughout this trial because it's often
15 when we let our mind start wandering when something
16 important happens. So, please try to keep
17 attention.

18 And let me tell you a little bit about the
19 structure of a criminal trial. How many of you
20 have served on a jury in criminal court before? If
21 you would, just raise your hand.

22 Okay, none of you have but some of you may be
23 familiar with how a criminal case works but if
24 you're not, it works something like this. In just
25 a moment the State through the Solicitor Miss

1 Zimmerman is going to give an opening statement.
2 An opening statement is simply a way for the lawyer
3 to give you a road map as to what the evidence is
4 going to be and what the proof will be in the case.
5 And after that the defense through Mr. Pennington,
6 Mr. Rice's lawyer, will have the opportunity but
7 not the obligation to give an opening statement as
8 well.

9 Because the State bears the burden of proof,
10 Mr. Rice doesn't have to say anything, neither does
11 his lawyer throughout this trial, they have the
12 opportunity but no obligation to do so. And after
13 you have heard the opening statement or statements
14 we will then move into the evidence portion of the
15 trial and the State, because it bears the burden of
16 proof, will go first and they will present their
17 evidence and Mr. Rice will have the opportunity to
18 challenge that evidence. And then after you have
19 heard all the State's evidence and the State rests
20 their case, then Mr. Rice has the opportunity but
21 not the obligation to present any evidence he
22 wishes to, and then we will have the closing
23 arguments of the lawyers and then I will give you
24 the instructions on the law and then the case will
25 be in your hands for a decision and for a verdict.

1 Now, it is essential that until that time you
2 are not to discuss this case, that you not talk
3 about it among yourselves or with anyone else,
4 because we went to a good deal of trouble this
5 morning and so did you to try to find a jury that
6 could be fair and impartial and have an open mind
7 about this matter, so we want to keep it that way.
8 So, don't discuss the case, don't do any kind of
9 outside investigation, and remember we have lawyers
10 in this case and they are advocates for their
11 clients. You and I, ladies and gentlemen, are not
12 advocates. We don't have any friends to reward or
13 enemies to punish in this process. Your job is to
14 remain neutral, determine what the facts are and
15 determine whether the State has met its burden of
16 proof.

17 I thank you for your attention to me and let
18 me tell you furthermore when you consider and try
19 to determine what the facts are you are going to
20 have to by necessity determine the credibility of
21 all the evidence, and that means for every witness
22 who steps forward and sits down in this chair,
23 excuse me, you are going to have to determine
24 whether they're telling you the truth. In doing
25 that you can use many tools. You can determine and

1 consider whether the witness has an interest in the
2 outcome of the case, whether they have some bias or
3 prejudice for one side or against the other, or
4 whether their testimony is straightforward or
5 hesitant, or whether they have a demenaor on the
6 stand that leads you to question their
7 believability. You and you alone determine whether
8 a witness is credible or believable or whether an
9 exhibit is worthy of belief, because again as
10 judges of the facts that is your call and your call
11 alone.

12 So, I know you will not do that arbitrarily
13 because this is an important matter for both Mr.
14 Rice and the State and I thank you for your
15 attention to me, and now we will have the opening
16 statements.

17 Yes, ma'am, Miss Zimmerman.

18 MS. ZIMMERMAN: Thank you, Your Honor. On
19 March 30th, 2006, Amanda Sanford went to Walden
20 Street in Clinton, South Carolina and she met with
21 the defendant Ian Rice, gave him \$20 and received
22 .20 grams of crack cocaine from him, and now the
23 defendant is here before you charged with
24 distribution of crack cocaine and distribution
25 within proximity.

1 Now, at the end of the trial and as the judge
2 has already explained to you he's going to go into
3 the law, he will explain to you the law you must
4 apply to the case. I'm not going to go into all
5 the details now but I will explain to you the
6 elements of these crimes that the State has the
7 burden of proving to you.

8 The first is the distribution. And to prove
9 distribution the State must show that this
10 defendant sold, distributed a quantity of an
11 illegal controlled substance, and crack cocaine is
12 an illegal controlled substance.

13 To prove the proximity the State must prove
14 to you that this transaction occurred within
15 one-half mile of a school, park, playground.
16 Walden Street is within one-half mile of both
17 Martha Denny Sixth Grade School in Clinton and the
18 Bell Street Middle School in Clinton. And the
19 State intends to show you this evidence through the
20 testimony of several different witnesses.

21 First you're going to hear from Miss Sanford.
22 She's going to tell you about getting in the car on
23 March 30th, driving to Walden Street, meeting the
24 defendant and making that exchange. She's going to
25 explain to you what happened that day, the events

1 of that day. And she's also going to tell you that
2 although she's been in trouble in the past, on
3 March 30th she was working with Clinton city law
4 enforcement to help try to catch individuals
5 selling illegal controlled substances.

6 Now, mind you, she is not a police officer,
7 she is not employed by Clinton city police
8 department but she was being paid \$20 per buy to go
9 out and buy illegal controlled substances wearing
10 an audio wire and with a video recorder in her
11 vehicle recording the transaction, to try to help
12 law enforcement catch people selling crack cocaine
13 on the street.

14 During her testimony you will see the video
15 that was in her car from that day. You will see
16 the defendant on the video selling crack cocaine.
17 And then after Miss Sanford testifies and she
18 explains to you what happened and after you see
19 that video you are going to hear from Investigator
20 Tyrone Goggins who is employed in the capacity as a
21 narcotics investigator with the Clinton city police
22 department. He will tell you about some of the
23 things law enforcement does to secure proper
24 surveillance and accuracy on these type of
25 transactions. He will tell you that before they

1 send any kind of informant out to make these kind
2 of buys they always search the informant to make
3 sure they don't have any drugs already on them. He
4 will tell you about searching the informant's
5 vehicle to make sure that he knows where these
6 drugs came from, to make sure she didn't have them
7 before the transaction started.

8 Then he will tell you about wiring the
9 equipment up in her vehicle so that the transaction
10 could be recorded, and he will tell you about
11 providing her with the \$20 that she used. That was
12 Clinton city's \$20 that she used to purchase this
13 crack cocaine. He will tell you, after all this,
14 they sent her out to Walden Street and she came
15 back and met back with him. He searched her again
16 to make sure he knew he was getting all the
17 controlled substance back and he took that quantity
18 of crack cocaine into his possession and then he
19 maintained it in his possession until it was
20 delivered to the South Carolina Law Enforcement
21 Division, commonly referred to as SLED. Mr.
22 Goggins drove it down to SLED and turned it over to
23 them for it to be analyzed.

24 And finally you are going to hear from the
25 chemical analyst employed by SLED, Miss Kukila

1 Stanley, who for her occupation at SLED is to
2 analyze substances and determine what they are made
3 out of. She analyzed this substance Miss Sanford
4 purchased from the defendant and she determined it
5 to be .20 grams of crack cocaine.

6 Once you hear all this evidence from all of
7 these witnesses it's the State position that you
8 will believe that the defendant did in fact sell
9 .20 grams for \$20 to Miss Sanford on March 30, and
10 Mr. Goggins, who has been in law enforcement in
11 Clinton for quite some time, he will tell you he's
12 familiar with the area, will show you on a map
13 where this transaction occurred and he will show
14 you where the Martha Denny Sixth Grade School and
15 Bell Middle School is located within one-half mile
16 of this.

17 Once the State has proved those facts to you
18 the State contends that you will believe that this
19 defendant is guilty of distributing this crack
20 cocaine within proximity of those schools.

21 Ladies and gentlemen, I ask that you listen
22 to all the evidence, look at the exhibits that you
23 are going to see and at the end of the day I ask
24 you to render a verdict based on your belief, based
25 on the facts that are before you, and I believe

1 that you will see the defendant is guilty of these
2 crimes.

3 Thank you.

4 THE COURT: Thank you, Miss Zimmerman.

5 Yes, sir, Mr. Pennington?

6 MR. PENNINGTON: If it please the Court?

7 THE COURT: Yes, sir.

8 MR. PENNINGTON: Ladies and gentlemen of the
9 jury, as I told you earlier, my name is Clyde
10 Pennington, Jr., and I represent Mr. Rice who is
11 seated there at the table with me.

12 As the Court has instructed you, there will
13 be a great amount of disparity in what the
14 witnesses tell you today. You will hear a number
15 of witnesses and you will see some things that you
16 will be asked to view. I ask that you view them
17 with a skeptical eye, with a common sense eye.
18 Look at them as you would any other things in your
19 life and bring it forth to that common sense that
20 you are bringing forth every day.

21 What Miss Zimmerman told you was that my
22 client sold crack to Amanda Sanford. I will get to
23 Miss Sanford, and as she said, she hasn't lived a
24 stellar life. You will also hear from Miss Sanford
25 that she was not working for law enforcement but

1 she was paid by law enforcement. Now, maybe we all
2 think of things differently but I think somebody
3 who gets paid by somebody is working for them. But
4 that's something we're going to disagree about and
5 we're going to disagree about a lot of other
6 things.

7 You are going to see a video, I'm sure today.
8 What you are going to see on this screen, you are
9 going to see a transaction where Amanda Sanford
10 goes to a neighborhood and buys what appears to be
11 crack from an individual and I ask that you look at
12 that video very carefully and I ask that you
13 consider this as well.

14 There is going to be a second video, what
15 we're calling the re-look. The re-look comes about
16 an hour and a half to two hours later when Miss
17 Sanford allegedly rides back by to this same house
18 and because they don't feel you could see who sold
19 the first time, she talks to another individual,
20 and that is the bootstrap for it being Mr. Rice the
21 first time. If it's him the second time, it has to
22 be him the first time.

23 I'm not going to tell you everything that I'm
24 going to bring up here in this trial but I'm going
25 to ask that you look very skeptical at that video.

1 I'm going to ask that you look at my client very
2 carefully during this trial as well because
3 identity is going to be very, very important and
4 believability is going to be very, very important
5 and credibility is going to be very, very
6 important. And I will ask that you consider during
7 this trial not only what you hear but what you may
8 not hear, and the Court will instruct you that you
9 can consider that.

10 I'm not going to take a long time to tell you
11 all about the case today, my client trusts every
12 one of you, that's why we allowed you to be on the
13 jury, that is why we didn't strike you. You all
14 look like you have good common sense and we believe
15 you will be fair not only to my client but to the
16 State. And as Miss Zimmerman says, my client comes
17 to this court innocent, he steps into that chair as
18 innocent as you and I and only if after all of the
19 witnesses and all the evidence is presented you
20 believe that he is guilty of these charges beyond a
21 reasonable doubt should you find him guilty, and if
22 you do we join you in that, we trust you, we
23 believe you, as the judge said, we trust that you
24 will render a true verdict but we only ask that you
25 look at the evidence, don't simply give it one look

1 because when you look at it just once you might not
2 notice what we're going to point out to you. But
3 if you look at it skeptically you will see, you
4 will see the inconsistencies and you will see why
5 you cannot come back later and say this man had to
6 be this man, and I will ask that you wonder to
7 yourself why, if that was him the first time, why
8 would she have to come back later? Think about
9 that.

10 Thank you.

11 THE COURT: Thank you. Yes, ma'am, you may
12 call your first witness.

13 MS. ZIMMERMAN: Your Honor, the first witness
14 is the witness that we have discussed previously
15 that we would request the courtroom be cleared
16 prior to her taking the stand. It is Miss Amanda
17 Sanford.

18 THE COURT: Okay. Let me see the lawyers up
19 here real quick.

20 (Unrecorded bench conference).

21 THE COURT: All right, ladies and gentlemen,
22 we're going to take just a short recess. Don't
23 talk about the case, continue to keep an open mind.
24 We'll take about a ten minute break. Thank you.

25 (The jury was excused from the courtroom).

1 THE COURT: We'll start back at 3:00 o'clock.

2 (Recessed at 2:50 p.m.).

3 (Reconvened at 3:02 p.m.).

4 THE COURT: Okay, bring the jury on back in.

5 (The jury returned to the courtroom).

6 THE COURT: Okay, you may call your first

7 witness.

8 MS. ZIMMERMAN: The State calls Amanda

9 Sanford.

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1 AMANDA MARIE SANFORD,
2 after being first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MS. ZIMMERMAN:

5 Q Miss Sanford, if you could, state your full
6 name to the jury.

7 A Amanda Marie Sanford.

8 Q Could you tell me when you first became
9 involved in the investigation of this case?

10 A March 30, 2006.

11 Q And how did you become involved in this case?

12 A I came involved by, I had been on crack for
13 like three months and it just took hold of my life,
14 so I wanted to get help and get off it and so I
15 went to Mr. Goggins and Mr. Campbell and told them
16 that I wanted to help them because it ruined my
17 life, it took my kids from me and it took a lot
18 away from my life and my family, it did a lot to
19 me.

20 Q During that time that you mentioned you were
21 using these drugs were you convicted of defrauding
22 a hotel or a boarding house?

23 A Defrauding a restaurant.

24 Q Defrauding a restaurant, I'm sorry. In 2006?

25 A Yes.

1 Q Okay.

2 A That was just because I was on crack and
3 didn't have money and I couldn't eat.

4 Q Okay. When you went to Mr. Goggins did you
5 receive any consideration on that charge for what
6 you did?

7 A No, I did not. I did my time in jail for
8 that.

9 Q And then once you went to Mr. Goggins did he
10 promise you anything to get you to work with him?

11 A No promises were made at all. I did it of my
12 own free will.

13 Q Okay. Did you receive anything?

14 A Afterwards, after my service he did offer
15 \$20, you know, just for my time.

16 Q All right.

17 MS. ZIMMERMAN: Permission to approach, Your
18 Honor?

19 THE COURT: Yes, ma'am.

20 BY MS. ZIMMERMAN:

21 Q Miss Sanford, I'm going to show you what has
22 previously been marked State's Exhibit 3. Would
23 you look at that? Do you recognize that?

24 A Yes, ma'am.

25 Q Can you tell me what, where you last saw

1 that?

2 A The last time I bought from him in March, I
3 believe it was, might have been March 30th, I got
4 the big piece and then the little piece.

5 Q And you said you bought from him. Can you
6 tell me who him is?

7 A Ian Rice.

8 Q Okay. Can you tell me where this item came
9 into your possession, where you were when you got
10 it?

11 A Walden Street, Clinton.

12 Q Clinton, okay. And when you said you bought
13 it, did you give him something in return?

14 A I gave him \$20.

15 Q Okay. And what date was that on?

16 A The 30th.

17 Q And what did you do with that substance after
18 you received it from him?

19 A Every time I would buy I would put it in the
20 console in the car and lay it down and I would talk
21 on the speaker phone and let them know where I was
22 putting it. I put it in the console every time, I
23 never would touch it.

24 Q And what did you do from that point?

25 A I would meet them at a special meeting place

1 and give it to them.

2 Q You say them. Can you tell me who?

3 A Mr. Goggins and Mr. Lynch and Mr. Bridges.

4 Q Once you met with Mr. Goggins and the other
5 individuals, and who are these other individuals
6 you just referenced?

7 A Tony Lynch and Ryan Bridges and Mr. Goggins.

8 Q What are they, Tony Lynch --

9 A They are in narcotics, too.

10 Q When you met back with Mr. Goggins and the
11 other narcotics officers what did you do at that
12 time?

13 A When I met them?

14 Q Uh-huh (Affirmative).

15 A When I got back to the meeting place?

16 Q Yes.

17 A I handed it straight to them.

18 Q Okay.

19 A And I signed a form.

20 Q You signed a form? Did anything else happen
21 when you met back with them?

22 A Huh-uh, no, ma'am.

23 Q All right. This substance I have just showed
24 you, did the same thing happen there, you went back
25 and met with Mr. Goggins?

1 A What do you mean?

2 Q State's Exhibit 3, you said every time you
3 went back and met with him when you received this
4 item?

5 A Uh-huh (Affirmative).

6 Q And you gave that directly to Mr. Goggins?

7 MR. PENNINGTON: Judge, I object, she's
8 leading the witness.

9 THE COURT: All right.

10 THE WITNESS: I didn't understand your
11 question.

12 MS. ZIMMERMAN: I apologize, I will rephrase.

13 BY MS. ZIMMERMAN:

14 Q What did you do with State's Exhibit 3?

15 A I gave it to Mr. Goggins.

16 Q Okay. From the time that you received it
17 from the defendant and the time you gave it to Mr.
18 Goggins was it continuously in your care and
19 custody?

20 A Yes, it was, until I got to the police
21 station, and then it was in their custody. I put
22 it in the ashtray.

23 Q I'm going to show you State's Exhibit 1 for
24 identification. Do you recognize that?

25 A I've watched it.

1 Q What is that?

2 A This is the video of me purchasing it, the
3 crack cocaine.

4 Q How do you recognize that as that video?

5 A Because I watched it, and it's got the date
6 on it, 3/30/06, and my initials.

7 Q Okay. Who placed those initials there?

8 A I did.

9 Q All right. I'm showing you State's Exhibit
10 2. Do you recognize that?

11 A This is one, that is my initials and I
12 watched it this morning also and that is where I
13 drove back by Mr. Rice and it's got the full
14 footage of his, you know, profile on there.

15 Q Are those two items a fair and accurate
16 depiction of what happened on 3/30?

17 A Yes, ma'am, they are.

18 MS. ZIMMERMAN: Your Honor, the State moves
19 State's Exhibit 1 and 2 into evidence.

20 MR. PENNINGTON: No objection.

21 THE COURT: Okay. They're in evidence.

22 (Videotape marked and received in evidence
23 as State's Exhibit Number 1).

24 (Videotape marked and received in evidence
25 as State's Exhibit Number 2).

1 MS. ZIMMERMAN: Request permission to show
2 them to the jury.

3 THE COURT: Yes, ma'am.

4 (State's Exhibits 1 and 2 were played to the
5 jury).

6 MR. PENNINGTON: Judge, I would ask that they
7 be allowed to hear the whole tape.

8 MS. ZIMMERMAN: Could we approach?

9 MR. PENNINGTON: Sure.

10 MS. ZIMMERMAN: May we approach, Your Honor?

11 THE COURT: Sure.

12 (Unrecorded bench conference).

13 BY MS. ZIMMERMAN:

14 Q Miss Sanford --

15 A Ma'am?

16 Q We just played two different disks. Can you
17 explain to me why there are two disks here?

18 A The first disk is one where I bought it and
19 the second disk, the first time, the first disk
20 didn't have a good profile of him and so I turned
21 back around to make sure he was on the camera the
22 second time.

23 Q The individual in the first disk, is he the
24 same individual as the second disk?

25 A That's why I turned around, we couldn't get

1 him on the first disk, the camera didn't get it.

2 MS. ZIMMERMAN: No further questions, Your
3 Honor.

4 THE COURT: Cross-examination.

5 MR. PENNINGTON: If it please the Court.

6 THE COURT: Yes, sir.

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CROSS EXAMINATION

QUESTIONS BY MR. PENNINGTON:

Q Miss Sanford, you indicated, you told the jury under oath you had had no involvement with Mr. Goggins prior to March the 30th, 2006. That is what you told the jury under oath?

A Uh-huh (Affirmative).

Q Is that true?

A Yes, it is, that is the first time I have ever met him, when I got clean from crack.

Q All right. Miss Sanford, why is it if you had only met him that day, why is it that you were talking on the phone about another individual that you were allegedly going to go buy from?

A I didn't just meet him March the 30th. When I started coming clean off crack I met him and I offered my services on March 30, and March 30 was one of the days I did my service.

Q One of the days, correct?

A Huh-uh.

Q Is that right, Miss Sanford?

A Yes.

Q All right. You told us earlier that the first time you had any dealings with Mr. Goggins was on the 30th. That wasn't true, was it, Miss

1 Sanford?

2 A No, that's true. I'm talking about as for as
3 my -- okay, I'm going to get confused. I met him
4 when I was getting clean off crack, I offered my
5 services to him. That is the first dealing I have
6 ever done but, yes, I did talk to him prior before
7 March 30th and discussed things.

8 Q All right. So, when we understood you
9 earlier to say you had had no dealings before March
10 30th with Mr. Goggins that wasn't exactly accurate?

11 A Yes, it was.

12 Q Okay. All right. Miss Sanford, you said
13 earlier that you weren't employed by the police
14 department. Is that correct?

15 A No, sir, I wasn't.

16 Q You got paid, didn't you?

17 A I offered my services for free and later on
18 they offered me \$20.

19 Q You got paid every time you went out for
20 them, didn't you, Miss Sanford?

21 A No, I did not.

22 Q Wasn't the going rate twenty bucks, Miss
23 Sanford?

24 A I get \$20, yes.

25 Q Right. Twenty bucks if you would come and

1 say you bought crack, correct?

2 A Twenty bucks, what?

3 Q Twenty bucks to say you had purchased crack
4 cocaine.

5 A They gave me money to buy the crack, yes.

6 Q But they gave you money for buying it as
7 well?

8 A Yes, they did.

9 Q All right. Now, you said that at that time
10 you were getting off of drugs?

11 A I was clean, I have been clean for a year and
12 eight months.

13 Q All right. You testified earlier that you
14 lost your children for using drugs?

15 A That's why I got, that's why I don't have my
16 kids, because I got on crack with their father.

17 Q You lost the children after that date, didn't
18 you, Miss Sanford?

19 A No, I didn't. Can I say something, Your
20 Honor, please?

21 THE COURT: You just need to respond to the
22 questions.

23 A Okay.

24 Q Is that not true?

25 A Do what?

1 Q You said earlier that you lost your children
2 because you were using drugs. When did you lose
3 them?

4 A My daughter was living with me --

5 MS. ZIMMERMAN: Objection, Your Honor. The
6 State argues that this is not relevant to her
7 testimony here, any indication about what happened
8 with her children bears no interest on her ability
9 to testify at this trial.

10 MR. PENNINGTON: Your Honor, it goes to
11 credibility as to when it happened.

12 THE COURT: Okay. I overrule the objection.
13 Go ahead.

14 BY MR. PENNINGTON:

15 Q All right, Miss Sanford, isn't it true that
16 actually you lost your children and your final
17 hearing was sometime after that? Isn't that true,
18 Miss Sanford?

19 A No, it's not true.

20 Q When did you have your final hearing in
21 Family Court where you lost your children?

22 A A few months ago but I'm saying when I lived
23 on 308 I had my daughter, I had my kids, and then
24 my family found out I was on crack and that is when
25 they took her from me. Crack caused it. I was

1 doing fine until I got on crack.

2 Q I understand that. You were still on crack
3 after this date, you were getting help, correct?

4 A No, I'm not.

5 Q Do you have your children back?

6 A I get visitation.

7 Q All right. Now, you said earlier that about
8 the same time that this happened that you had
9 defrauded a restaurant?

10 A When I was on crack, yes, I did.

11 Q All right. Now, you were charged with that
12 just some twenty days before you made this alleged
13 buy, weren't you, Miss Sanford?

14 A When I made the alleged what?

15 Q Twenty days, March 20th, you were charged
16 with defrauding of the restaurant March the 20th?

17 A And I did my time.

18 Q And you told the jury earlier that you had
19 talked to Mr. Goggins sometime before that the
20 second time I asked you and you had gotten off of
21 drugs and were getting your life straight?

22 A After I did my time I talked to Mr. Goggins.

23 Q All right.

24 A When I got out of jail I went and spoke with
25 him.

1 Q Were you arrested?

2 A Yes, I was.

3 Q Were you arrested on March the 20th, 2006?

4 A I'm not sure what date I was arrested for the
5 defrauding, it has been over a year but I know I
6 did my time.

7 Q All right. I'm going to show you just
8 something here so it may refresh your memory. If
9 you will look there, you were arrested on March
10 20th, correct? Isn't that what the document shows,
11 Miss Sanford?

12 A There is several things on here. Show me
13 which one you're talking about.

14 Q It's this charge of yours right here, the one
15 you were convicted of.

16 A Okay.

17 Q Does that show you were charged on March
18 20th?

19 A Yes.

20 Q 2006?

21 A Yes.

22 Q All right. And that was for defrauding a
23 restaurant?

24 A Yes.

25 Q And that was during the period when you told

1 the jury that you had gotten your life straight?

2 A No, I got my life straight sooner. A few
3 days after that, after I did my time, I got out of
4 jail and then I went to my mom's and I recovered.

5 Q All on your own?

6 A All on my own. I had, it was hard to recover
7 but I did it on my own, rehab.

8 Q Did you go to rehab?

9 A No, I didn't. I didn't have to. I did it by
10 myself with my family and my friends.

11 Q All right. Now, tell us about this
12 defrauding the restaurant. What did you do, just
13 run out?

14 A I was --

15 MS. ZIMMERMAN: Objection, Your Honor. I
16 believe the rules just state he can reference the
17 conviction, not the details of the charge.

18 THE COURT: I sustain the objection.

19 Q All right. Miss Sanford, when did you make
20 your first buy for Clinton city?

21 A March the 30th.

22 Q And how many times have you been paid since
23 then?

24 A None. I don't do anything for anybody
25 anymore. I got my life on track and I don't have

1 to. I don't associate with people that sells
2 crack, I don't --

3 Q I thought, Miss Sanford, you were helping
4 Clinton city police department out trying to get
5 drugs for them?

6 A In the past, when I first got, when I was
7 first getting clean, then I did, yes.

8 Q So --

9 A No longer have I since.

10 Q So, by doing this community service that you
11 were going to do for the Clinton CPD, Clinton
12 Police Department, you allegedly went out one time?

13 A Uh-huh (Affirmative).

14 Q How about Big Mike on there you talked about,
15 did you buy from him?

16 A Never did.

17 Q Never did?

18 A Never got him on the phone.

19 Q He was on the phone with you that day, wasn't
20 he, Miss Sanford?

21 A I mean he never did call back.

22 Q After you saved the community from Mr. Rice
23 you felt you had done all you had to. Is that
24 right?

25 A (No response).

1 Q Have you every slept with Mr. Rice?

2 A No, I have not.

3 Q Had you ever had a relationship with Mr. Rice
4 before?

5 A No, I have not.

6 Q Did you know Mr. Rice before?

7 A Through my baby's daddy, yes, used to come to
8 my house quite frequently or I would go to his
9 house.

10 Q All right. How long were you a crack user,
11 Miss Sanford?

12 A For three months.

13 Q Three months?

14 A Three months.

15 Q All right.

16 A I started January and I stopped in March.

17 Q All right. Now, if I can have this item.
18 Miss Sanford, you told the jury earlier that you
19 recognized this piece of crack cocaine?

20 A I do.

21 Q Really? Out of all the crack cocaine that
22 you bought in your life you recognize that crack
23 cocaine?

24 A Yes, because it was specifically handed to
25 me, he handed me the big piece, then he gave me the

1 little piece and told me I was his soldier, that is
2 why I remember that distinctly.

3 Q How many crack rocks do you think you have
4 bought while you were using crack?

5 A While I was using crack?

6 Q Yes, ma'am.

7 A Are you talking about dollars or --

8 Q Crack, rocks, those items there.

9 A A lot.

10 Q A lot? And yet out of -- would you say
11 hundreds?

12 A Yes.

13 Q Would you say thousands?

14 A Probably close to it.

15 Q Are you telling the jury that out of a
16 thousand crack rocks you recognize these two?

17 A Yes, I do.

18 Q All right.

19 A Because I remember that day, I always looked
20 at it when he handed it to me.

21 Q You used to smoke it, didn't you?

22 A I just said I smoked it for three months.

23 Q All right. Now, that day that you allegedly
24 made this purchase from Mr. Rice, you said that you
25 put it in the ashtray?

1 A Uh-huh (Affirmative).

2 Q And you didn't come back for about two hours,
3 did you?

4 A I wasn't gone two hours.

5 Q Did you see the time stamps on the video?

6 A I got it and went straight to the meeting
7 place.

8 Q Okay. And who all was there?

9 A At the meeting place?

10 Q Yes, ma'am.

11 A Mr. Goggins, Tony Lynch and Bryan Bridges.

12 Q All right. And why did you say earlier that
13 you had to come back because it was clearly not Mr.
14 Rice on the video? You couldn't tell it was him?

15 A I knew it was him. It was hard to tell it
16 was him, that is why I circled back around to get a
17 good view because on the video they would have a
18 good picture of him.

19 Q Right. You weren't going to get paid unless
20 you could prove a buy, would you?

21 A I wasn't worried about the money, there was
22 no one involved about whether or not he was on the
23 video or not. \$20 ain't going to make me or break
24 me. I did it because --

25 Q You were stealing things from restaurants?

1 A Well, I had no money, I had no food, I had to
2 eat.

3 Q You bought crack?

4 A Well --

5 Q You had money for that, didn't you?

6 A It was a disease.

7 Q All right. But you didn't need the \$20. Is
8 that what you're telling me?

9 A I mean, yes, probably. I was just getting
10 clean off crack.

11 Q And --

12 A I had a new job, trying to get on my feet.

13 Q You said there was a purchase and if you
14 could make it good you would get paid?

15 A I was trying to get it off the street.

16 Q Now, in the meantime, while you were going
17 over there, whose hand did you put the crack into?

18 A When I take it back to the office?

19 Q Yes.

20 A They would search me.

21 Q Okay. I'm not asking you that. Answer the
22 question.

23 A I handled it to Mr. Goggins.

24 Q All right. Are you sure you didn't hand it
25 to anybody else?

1 A I'm sure. It was either Goggins or Bryan
2 Bridges. It was usually him.

3 Q Usually him? Now, Miss Sanford, that sounds
4 unusual, usually.

5 A There was three police officers there, Mr.
6 Pennington, that I handled it to.

7 Q If there is one --

8 A I would lay it out on the table.

9 Q Miss Sanford, if there is one time how do you
10 get to usually? That sounds like a pattern.

11 A Okay.

12 Q Is that right, Miss Sanford, a pattern?

13 A What kind of pattern?

14 Q Usually. Now, if I just met you and I walked
15 up and I limped like I always do would you say that
16 I usually limped?

17 A Huh?

18 Q Or would you say I limped that one time? You
19 wouldn't know whether I usually limped or not,
20 would you, I had only seen you one time. Right?

21 A Right.

22 Q Good enough. Now, Miss Sanford, let's be
23 straight. When you went back by, and we looked at
24 this disk, the second time there is no dope, is
25 there, not a single piece of crack on that second

1 tape, is there?

2 A Not the second one, just the first one.

3 Q All right. You had to make it right, you had
4 to, you had to earn your twenty bucks?

5 A I wasn't worried about the money.

6 Q All right.

7 MR. PENNINGTON: I have nothing further of
8 this witness.

9 THE COURT: Any redirect, Miss Zimmerman?

10 MS. ZIMMERMAN: Just briefly, Your Honor.
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REDIRECT EXAMINATION

QUESTIONS BY MS. ZIMMERMAN:

Q Miss Sanford, just to clarify a few things. Not talking about this defendant, just talking about your involvement with Clinton P.D., how many times did you buy crack cocaine for Mr. Goggins?

A About five.

Q About five times?

A About five or six, no more.

Q Was that several different individuals that you bought from?

A Yes, ma'am.

Q So, when you talk about what happened on March 30th being the time or the only time --

A March 30th with him.

Q -- was with the defendant?

A Uh-huh (Affirmative).

Q Okay. And we talked about the \$20 that you received?

A Yes, ma'am.

Q What exactly did Mr. Goggins want you to do in order for him to give you \$20?

A To help him bring down the crack dealers.

Q So, take me through the process. You met with Mr. Goggins?

1 A I met --

2 MR. PENNINGTON: Judge, she's leading her.

3 THE COURT: Sustained.

4 Q Take me through the process of what happened.

5 A I came to Mr. Goggins after I got out of jail
6 for eating and not paying and I broke down in his
7 office crying and I told him everything that had
8 happened to me, I had never done drugs in my life
9 until that three months that I got on crack, and I
10 told him that I would help him. There is too much
11 out there on the street, it ruined people's life,
12 I'm still trying to get over what I did a year and
13 a half ago, I'm still fighting, and I offered my
14 services to him and I offered to help him bring
15 down whoever he wanted me to bring down and --

16 Q And the names of the individuals that you
17 bought from, where did those names come from?

18 A Me. They came from me because I knew who all
19 the dope men were and I gave him the names.

20 Q And then what did you do once you gave him
21 those names?

22 A He wrote them down, we talked and eventually
23 I bought from him.

24 Q And on this incident in question, March 30th,
25 take me through what happened on March 30th.

1 A On March 30th I met with Mr. Goggins, Bryan
2 Bridges and Tony Lynch at the office. I was wired
3 up, I had, you know, what they give you, and I made
4 phone calls to several different people and Ian
5 happened to answer the phone, so I called Ian, as
6 you saw on that video, told him I had \$20, I bought
7 it, went straight back to the office and I always
8 laid it on the table and Mr. Goggins or either
9 Bryan Bridges or either Mr. Lynch would come look,
10 they would all look at it but one of them would put
11 it in the evidence bag and they would search me
12 from head to toe, took my shoes, my socks off,
13 shook out my shirt, they checked my pants pocket,
14 everything, and I signed forms, you know, and I
15 received \$20, but it wasn't about the money.

16 Q Now, the second video we watched, State's
17 Exhibit 2, did that video occur before or after you
18 met back with Mr. Goggins?

19 A What do you mean before or after? That was
20 before.

21 Q We saw the first video.

22 A Yes.

23 Q And then after the first video what happened?

24 A Later on I was going to try to buy more and I
25 rode back by Ian's to get him on video.

1 Q And then what happened after the second
2 video?

3 A I went straight back to the office.

4 MS. ZIMMERMAN: No further questions.

5 THE COURT: Recross?
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1 RECROSS EXAMINATION

2 QUESTIONS BY MR. PENNINGTON:

3 Q While the jury just heard that, Miss Sanford,
4 you testified this time when Miss Zimmerman asked
5 you some questions, that you were going back the
6 second time to buy some more crack but earlier you
7 testified that you were going back by because you
8 couldn't recognize that it was him selling the
9 crack?

10 A I could recognize it was him.

11 Q Miss Sanford, which is it? Did you go back
12 to buy more crack or did you go back to prove Mr.
13 Rice was the one that got your \$20?

14 A I rode back by to make sure he was on the
15 video.

16 Q Okay. Now, Miss Sanford, when we first heard
17 from you when Miss Zimmerman had you on direct you
18 told us that you were a great upstanding member of
19 the community and you were helping us out?

20 A I didn't say I was a great upstanding
21 community.

22 Q You were doing some community service to try
23 to get drugs off the street and you told us that
24 you had no contact with Mr. Goggins before this.
25 Then you said this was just one time, then you said

1 usually, and now Miss Zimmerman gets back up and we
2 hear from you it might have been five times.

3 A I thought we were only, I thought we were
4 only here to talk about Ian and not everything
5 else. I think this case just has to do with Ian.

6 Q Miss Sanford, I asked if you had ever made
7 any other buys in front of these twelve people with
8 common sense and you said no?

9 A I didn't know I supposed to say that in
10 public and give names. I didn't know. That is why
11 they cleared the courtroom.

12 Q Right. Didn't you feel you could be truthful
13 with the jury, is that right, Miss Sanford?

14 A No, that's not right.

15 Q We don't know whether you went back for drugs
16 or to get your money, we don't know whether, one,
17 two, ten? What are we supposed to believe that you
18 say, Miss Sanford?

19 A I think the video says it all, myself.

20 Q Really?

21 A Uh-huh (Affirmative).

22 Q You made it, didn't you?

23 A I didn't make the video.

24 Q You were driving the car?

25 A Yes.

1 Q All right. When you were not working for the
2 police?

3 A No, I was working for them.

4 Q You were working for them?

5 A Well, not working. Like, I mean, they gave
6 me \$20 to go purchase.

7 Q Okay. So, you were working.

8 MR. PENNINGTON: Nothing further.

9 THE COURT: All right, thank you, ma'am, you
10 you may step down.

11 (Witness excused).

12 THE COURT: Okay, you can call your next
13 witness.

14 MS. ZIMMERMAN: The State requests permission
15 for Miss Sanford to be dismissed from the trial.

16 MR. PENNINGTON: Judge, we would ask she stay
17 just in case we have to call her on redirect.

18 THE COURT: All right.

19 MR. PENNINGTON: Not redirect, but in
20 rebuttal.

21 THE COURT: Okay, ma'am, you are still under
22 subpoena.

23 MS. ZIMMERMAN: The State calls Detective
24 Tyrone Goggins.

25

1 TYRONE GOGGINS,
2 after being first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MS. ZIMMERMAN:

5 Q Detective Goggins, would you introduce
6 yourself to the jury, please?

7 A Yes. My name is Tyrone Goggins, I work for
8 the Clinton city police department for
9 approximately, July will be ten years.

10 Q During that ten years have you specialized in
11 any particular area?

12 A Yes, I have. Actually now I'm commander of
13 the narcotics and criminal investigations. During
14 the period of time I have worked, I specialized in
15 narcotics for probably seven of my years with
16 Clinton city.

17 Q During those seven years that you were
18 working with the narcotics did you receive any kind
19 of specialized training in narcotics investigation?

20 A Yes. I attended several trainings, training
21 dealing with confidential informants, undercover
22 drug purchases and actually did a lot of undercover
23 work myself.

24 Q Prior to today have you ever had any contact
25 with the defendant in this case?

1 MR. PENNINGTON: Judge, I object.

2 THE COURT: All right, let me see the lawyers
3 up here real quick.

4 (Unrecorded bench conference).

5 THE COURT: Okay, ladies and gentlemen, we're
6 going to go ahead and just take a short recess. Go
7 back to the jury room. Continue to keep an open
8 mind, all right? Thank you very much. Don't talk
9 about the case.

10 (The jury was excused from the courtroom).

11 THE COURT: Why don't you go ahead and
12 proffer your testimony and see what the responses
13 are.

14 MS. ZIMMERMAN: Okay.

15 BY MS. ZIMMERMAN:

16 Q Detective Goggins, can you tell me how you
17 first became involved in the investigation of this
18 case?

19 A I was the lead narcotics officer, Jerry
20 Campbell come to me and told me that he had spoken
21 with Amanda Sanford and she was willing and was
22 wanting to do some work for the community as for as
23 getting illegal drugs off the street.

24 Q And did you in fact meet with Miss Sanford?

25 A I did. Myself and Jerry Campbell talked with

1 her.

2 Q What came of that meeting?

3 A She give us, she told us her life story about
4 her involvement using drugs, stated it ruined her
5 life, it ruined her family life and she was willing
6 to participate in whatever she needed to do to get
7 narcotics off the street in Clinton. She give us a
8 list of names of people who she normally purchased
9 crack cocaine from and that her boyfriend or
10 children's father usually purchased crack cocaine
11 from.

12 Q And at that point what did you do next to
13 further this investigation?

14 A We actually agreed to work with Amanda. She
15 had some names who she could purchase from that we
16 had information that was selling crack cocaine, so
17 we corroborated with what she had stated to us and
18 we agreed to let her work undercover under our
19 supervision to purchase crack cocaine for us.

20 Q Was the defendant one of the individuals that
21 you had agreed she would purchase from?

22 A Agreed she would attempt to purchase from,
23 yes.

24 Q Did you work with Miss Sanford on March 30th
25 of 2006?

1 A I did.

2 MS. ZIMMERMAN: Your Honor, we can continue
3 this but I'm going to basically at this point go
4 into the process that he wired her up and those
5 kind of things.

6 MR. PENNINGTON: Your Honor, I think that his
7 testimony in this proffer was fairly clear. One,
8 it's hearsay, and two, he talks consistently about
9 her saying that he had previously sold to her and
10 to other family members, so that's going to
11 basically be bringing in other alleged sales of
12 crack that the jury would hear about and I think
13 that that is highly prejudicial and wouldn't be
14 acceptable under our law. I think that it is
15 certainly reasonable he would talk about what
16 happened that day or even to say that they
17 discussed her going and making a buy from Mr. Rice,
18 but to say to the jury that she told Mr. Campbell,
19 who is not here, that she had bought from Mr. Rice
20 and her other family had bought from him, I think
21 that is so prejudicial and he's not on trial for
22 those, that would just be improper.

23 MS. ZIMMERMAN: Your Honor, I believe there
24 is a hearsay exception to the effect on the
25 listener. He is not stating what she told Mr.

1 Campbell, he's stating she told him. And in
2 addition, I believe this information is admissible
3 because Mr. Pennington impeached her directly on
4 her credibility, her reliability as for as the
5 action that she took in meeting with Mr. Goggins,
6 and therefore I believe that we are allowed to
7 question Mr. Goggins on whether those statements
8 that she made are correct, since Mr. Pennington
9 challenged the validity of those statements, those
10 actions that she stated.

11 MR. PENNINGTON: Your Honor, I never asked
12 her anything about Mr. Rice, about any previous
13 involvement she had had other than sleeping with
14 him or having a relationship with him. I never
15 asked her, to be clear not to open the door, I
16 never asked her if she had bought from him before,
17 although she did say that, and I think that it
18 would be improper for Detective Goggins to say now
19 that that was the whole basis for why she wanted to
20 buy from him. I think that basically would
21 insinuate to the jury he was a routine drug sales
22 individual. We're here about one day, March 30.

23 Now, I asked specifically about her
24 relationship with him and she contradicted the
25 fact, she argued with the fact they had been

1 involved in a sexual relationship but said yes, in
2 fact she did have a prior relationship of buying
3 crack from him. She stated that earlier.

4 THE COURT: All right. Well, I think you
5 just need to omit any statements that she made
6 about her history with Mr. Rice and begin the
7 direct examination of Mr. Goggins just with the
8 fact that he met with Miss Sanford and they
9 arranged to have her wired, don't go into the
10 details of who they were targeting.

11 MS. ZIMMERMAN: Okay, thank you.

12 THE COURT: All right, you can bring the jury
13 on back.

14 (The jury returned to the courtroom).

15 THE COURT: Okay? Yes, ma'am.

16 MS. ZIMMERMAN: Thank you, Your Honor.

17 BY MS. ZIMMERMAN:

18 Q Mr. Goggins, can you tell me on March 30,
19 2006, were you working in your capacity as a
20 narcotics investigator?

21 A Yes, I was.

22 Q And were you involved, were you involved with
23 investigating this case on March 30th?

24 A Yes, I was.

25 Q Can you tell me what happened on that day?

1 A On that day, March 30, myself, Detective
2 Bryan Bridges, Detective Tony Lynch, we met at a
3 predetermined location which was Clinton city
4 police department where my office was. On that day
5 we met with Amanda Sanford there also and we were
6 going to use Amanda to purchase drugs within the
7 city limits of Clinton that day. She was wired,
8 she was searched, she was provided with the money
9 to purchase the drugs with. She was also provided
10 the vehicle that we -- we provided the vehicle that
11 she drove that day to purchase the drugs in. In
12 that vehicle we put a camera inside the vehicle, it
13 was also an audio, which was a cell phone that went
14 inside that vehicle also.

15 Q And you mentioned that you searched her. Why
16 did you search her?

17 A It's just the rule of thumb. We don't want,
18 just like this date, court may come up and someone
19 may say well, she probably had the drugs on her
20 prior to her going to see this individual. They
21 usually search pockets. In her case she pulled her
22 shirt just without exposing herself, to see if
23 anything falls out, check her pockets, shoes, that
24 type of thing to make sure, her pocketbook, to make
25 sure there is not anything.

1 Q Do you always search informants before you
2 send them to buy?

3 A Yes, always.

4 Q And you stated that you provided the vehicle?

5 A Yes.

6 Q Who does that vehicle belong to?

7 A That vehicle was probably a loaner from
8 Cooper's, Cooper's in Clinton.

9 Q Was the vehicle searched?

10 A Yes, the vehicle was searched also.

11 Q And why do you search the vehicle?

12 A Just so there wouldn't be anything previously
13 inside the vehicle, maybe confused with already
14 being there, being purchased from the suspect.

15 Q Now, on both of these searches did you find
16 anything?

17 A No, we didn't.

18 Q Okay. You stated that there was some
19 electronic equipment?

20 A Yes. We have our surveillance equipment,
21 which is a camera. Actually it's in a car seat, a
22 baby's car seat that was placed in the front, that
23 would capture video from the driver's side of the
24 vehicle as well as audio so we can hear what was
25 going on. It's a transformer that was inside the

1 vehicle where myself and the other two officers
2 were doing surveillance, we can also hear the
3 conversation what's going on but we can't actually
4 see the picture but we can hear everything that was
5 being spoken.

6 Q Do you have any control over the actual
7 filming of that video?

8 A No.

9 Q So, the camera is a stationary camera?

10 A It's a stationary camera. It is installed
11 into a car seat inside the vehicle.

12 Q Now, from your location could you see what
13 was happening?

14 A No, we couldn't see anything.

15 Q But could you hear?

16 A We can hear what is going on.

17 Q Were you still at the Clinton Police
18 Department when this was going on?

19 A No. We was near the incident location where
20 Amanda was purchasing the crack cocaine at.

21 Q And you were with who?

22 A Detective Bryan Bridges and Detective Tony
23 Lynch. Bryan is with Laurens County Sheriff's
24 Department and Tony Lynch is with the Laurens city
25 police department. We have a drug task force

1 together, therefore if we're purchasing drugs
2 actually we can purchase anywhere in Laurens
3 County, in all three jurisdictions.

4 Q And once the transaction takes place, from
5 your vantage point what happens?

6 A Once the transaction takes place the
7 informant, which was Amanda Sanford at this time,
8 we have a predetermined location where she will
9 meet us back at, and that basically was my office
10 in Clinton city police department. She would
11 arrive, she will come inside, she will turn over
12 the drugs, she turned the drugs over to me. Amanda
13 will be searched again and we will debrief her
14 about what happened and view the video on it.

15 Q Okay. And in this case did you do those
16 things that you stated?

17 A Yes.

18 Q And what happened once that meeting occurred?

19 A We went in. Amanda, she brought the drugs to
20 me, I put it inside an evidence bag, I marked it
21 with Ian Rice, I marked the date on the evidence
22 bag also and the bag was sealed. From that point
23 on we retrieved the video from the vehicle and
24 viewed the video. The video, I could tell that it
25 was Ian Rice on that video and the informant,

1 Amanda, she knew it was Ian Rice on the video but
2 it is important, I have been in court several
3 times, and it is important for the jury to be able
4 to see the face of the person on there. I can tell
5 his voice on there and glance and tell that is his
6 body build, so therefore we wanted Amanda to go
7 back to that location later just to get a better
8 image of him because it showed his clothing which
9 has North Carolina State on there, it had the body
10 image, and we wanted her to drive back by that same
11 individual just so you can get a better profile of
12 his whole face on there.

13 Q Did you ask her to purchase anything else
14 when she went back the second time?

15 A No, we didn't actually purchase anything. As
16 a matter of fact, on this case it was some other
17 individuals that was close by the first time that
18 she didn't want to be around so we just asked her
19 if she could just ride back by and just get his
20 picture on there, which I told her when she rode
21 through his yard, to turn back around. She did
22 turn back around but she just pulled off because we
23 didn't want to purchase again but we just wanted to
24 get his picture on there, on the video.

25 MS. ZIMMERMAN: Permission to approach?

1 THE COURT: Yes.

2 Q I show you what is marked State's Exhibit 3
3 for identification. Do you recognize this?

4 A Yes, I recognize the package here. It's my
5 handwriting and it's, it shows item number one,
6 it's got my case number on it, which is 200603308,
7 and it's got Ian Rice's name on it and the date of
8 March 30th of 2006. This would be the package that
9 I put the crack cocaine in as of that date, March
10 30, that was pertaining to Ian Rice.

11 Q Just for clarification, before you put it in
12 that package can you tell me where you got that
13 from?

14 A From Amanda Sanford. She had purchased it
15 from Ian.

16 Q Once you sealed it in that package what did
17 you do with it?

18 A This package was put inside actually a drop
19 box inside, it is actually two doors to get to this
20 drop box, one is my front office and a second door
21 to like a storage area where there is a drop box
22 that's similar, the same as like a mail drop box
23 where you go by and drop your mail in. I'm the
24 only one that has a key to that drop box. It was
25 placed inside of there until I took it to SLED, and

1 I took it to SLED, which is dated here -- I can't
2 actually see the date on here because it's sealed.

3 MS. ZIMMERMAN: Permission to approach?

4 Q I show you State's Exhibit 5 for
5 identification. If you would look at that would
6 that help you determine the date you delivered it
7 to SLED?

8 A Yes, it does.

9 Q Can you tell me what date you delivered it to
10 SLED?

11 A The date is October 3rd, 2006, it was
12 delivered to SLED.

13 Q Thank you. And can you tell me why you took
14 it to SLED?

15 A SLED is State Law Enforcement Division, they
16 have analysts there that actually test the
17 substance to make sure it's actually crack cocaine,
18 which it was sold for. I can't test it to tell
19 exactly what it is other than what the subject was
20 selling it for and what the informant was told it
21 was. So, SLED actually tested the substance and
22 they determined whether it is crack cocaine or not.

23 Q Now, from the time you received this from
24 Miss Sanford, to the time that you turned it over
25 to SLED was this item continuously in your care and

1 custody?

2 A Yes. It was locked up inside the drop box in
3 my office, which is two doors to actually get to
4 it, I'm the only one with a key to that drop box.

5 Q Okay. Detective Goggins, do you know where
6 Miss Sanford went to meet with the defendant on
7 March 30th?

8 A He was staying on Walden Street, Number 9
9 Walden Street, the intersection of Bonds Street and
10 Walden, the house on the corner.

11 Q Can you tell me what kind of area that is
12 around there, residential, commercial?

13 A It's a residential area, you have a school
14 less than a half mile from that location, you
15 actually have two schools, and maybe a park less
16 than half mile from Walden Street.

17 Q Okay. I'm going to show you State's Exhibit
18 4. Is this a fair and accurate description of the
19 layout of the streets around Walden Street?

20 A Yes, it is.

21 MS. ZIMMERMAN: Your Honor, I ask permission
22 to use State's Exhibit 4 for demonstrative purposes
23 to show the jury the layout of the roads around
24 Walden Street.

25 MR. PENNINGTON: Your Honor, I have no

1 objection.

2 THE COURT: Okay. Yes, ma'am.

3 BY MS. ZIMMERMAN:

4 Q Detective Goggins, I'm going to give you this
5 laser pointer. If you would, please, just point to
6 the location of Number 9 Walden Street where we're
7 talking about this occurring.

8 A This street here, this is Walden Street, it
9 runs this way. This is Bonds Street, where the
10 location is right in the corner of Bonds and Walden
11 Street.

12 Q And you mentioned something about a school
13 near there?

14 A Yes. From here you have a school from here,
15 which is North Bell Street, a school that is right
16 here on the corner right here of North Bell Street.
17 You also have another school right here on Walden
18 Street, down Peachtree Street, right in here.

19 Q And do you know the approximate distance to
20 those schools?

21 A Yes. From this location here it's less than
22 a fourth of a mile to the school here.

23 Q Which school is that?

24 A That's Martha Denny Sixth Grade School. From
25 Bell Street School it's about the same distance.

1 That is the middle school.

2 Q Thank you. Mr. Goggins, I'm showing you
3 State's Exhibit 6. Tell me what that is.

4 A That's three pictures, a picture of the
5 informant Amanda Sanford and a picture of the
6 defendant Ian Rice.

7 Q Can you tell me where those pictures came
8 from?

9 A That was on the corner, that was actually
10 from the purchase on March 30, 2006, on the corner
11 of Walden and Bonds Street.

12 Q And how were those pictures made?

13 A They were still pictures that were actually
14 copied off the video that we actually have and just
15 froze the image and copied the pictures off it at
16 Laurens County.

17 MS. ZIMMERMAN: Request permission to admit
18 State's Exhibit 6.

19 MR. PENNINGTON: No objection, Your Honor.

20 THE COURT: Six?

21 MS. ZIMMERMAN: Yes, sir.

22 THE COURT: Okay, it's in evidence, thank
23 you.

24 (Three photographs marked and received in
25 evidence as State's Exhibit Number 6).

1 BY MS. ZIMMERMAN:

2 Q These pictures, how did the State obtain
3 these pictures?

4 A On the video where Amanda Sanford purchased
5 crack cocaine from Ian Rice, this is actually the
6 first video, you could see Ian Rice in a North
7 Carolina State shirt here on all three of those
8 images, and then these were retrieved off the
9 second video when we sent Amanda back around to
10 actually get a second look at him, or better
11 profile picture.

12 Q Who made this picture here?

13 A I did.

14 Q And you printed them?

15 A At Laurens County Sheriff's office.

16 Q After March 30th did there come an occasion
17 when you arrested the defendant?

18 A Yes, it was. We did actually obtain warrants
19 for Ian Rice for districuting crack cocaine and
20 distributing crack cocaine within half a mile of a
21 school.

22 Q Okay.

23 MS. ZIMMERMAN: No further questions, Your
24 Honor.

25

CROSS EXAMINATION

QUESTIONS BY MR. PENNINGTON:

Q Mr. Goggins, when Mrs. Zimmerman first asked you about those pictures you said they were from the purchase, then you said they were from the second video. Which one is it?

A It was from the second video. We wanted a better profile of Ian Rice, which he still had the same clothing on.

Q That was when Miss Sanford went back to get a picture of Mr. Rice. Is that right?

A That's when we sent Miss Sanford back to get a better picture of Mr. Rice, that's right.

Q Get a picture of Mr. Rice, right?

A To get a better picture of Mr. Rice with the same clothing on.

Q All right. Mr. Goggins, Miss Sanford testified earlier that you sent her back to make a buy. Is that true?

A He may have expected it to be a buy if she came back around.

Q That is not what I asked, Mr. Goggins. Did you send her back to make a buy?

A We sent her back to get a better picture of Mr. Ian Rice.

1 Q You didn't send her back to get a buy, did
2 you?

3 A All we wanted was a better picture of who we
4 just purchased from.

5 Q You paid her for her services, as she said?

6 A Yes, we did pay.

7 Q And she said that she had had no contact with
8 you before the 30th. Was that true? Had she made
9 buys before that?

10 A I think she testified that she had contact
11 with me when she was arrested for the problem at
12 the restaurant, and after she served her time she
13 talked to me.

14 Q She served one day, right?

15 A No, I'm not sure how long she served.

16 MS. ZIMMERMAN: Objection, Your Honor, her
17 sentence is irrelevant here.

18 THE COURT: Sustained.

19 BY MR. PENNINGTON:

20 Q All right. Mr. Goggins, you gave her \$20 for
21 making this sale, correct?

22 A No. She would have got paid even if she
23 attempted to purchase, if she couldn't have
24 purchased, \$20 for her time.

25 Q She got paid to go out --

1 A Yes, she would have got paid regardless, \$20,
2 whether she purchased or not.

3 Q How many times did you pay her \$20?

4 A Several times. She made several buys for us.

5 Q So, when she told the jury that she only got
6 paid once was that true or not?

7 A I think she was referring to purchasing from
8 Ian Rice, getting paid once for purchasing from Ian
9 Rice on March 30th.

10 Q Now, did you hear me ask her if she had ever
11 been paid \$20 by you for any other time?

12 A Yes, I did.

13 Q And she said no, didn't she?

14 A I think she did probably say no and then she
15 answered she thought we was just talking in
16 particular about this particular date of March 30
17 from Ian Rice.

18 Q Right. She said basically she was telling
19 the jury what she thought they needed to know?

20 A Actually --

21 MS. ZIMMERMAN: Your Honor, I believe Miss
22 Sanford has testified and Mr. Pennington is trying
23 to go back through all of her prior testimony.

24 MR. PENNINGTON: I will withdraw, Your Honor.

25 THE COURT: Okay.

1 BY MR. PENNINGTON:

2 Q Mr. Goggins, are you sure you received the
3 crack that day?

4 A Yes.

5 Q All right. Let me ask you something. You
6 testified earlier when you talked with Mrs.
7 Zimmerman, you said that this is the same crack,
8 let me find it, and you testified that this crack
9 was sent to SLED on October 6th, correct?

10 A It may have been October 3rd or October 6th.
11 October 6th.

12 Q All right. I was just thinking about that,
13 Mr. Goggins. You allegedly got this crack from
14 Miss Sanford on March the 30th, correct?

15 A That's right.

16 Q You left it in the box with all the other
17 alleged drugs in March?

18 A That's right.

19 Q You left it in the box with all the other
20 alleged drugs in April?

21 A Yes.

22 Q You left it in the box with all the other
23 drugs in May?

24 A That's right.

25 Q You left it in the box with all the other

1 drugs in June?

2 A Until October.

3 Q Every month until you sent it, it was in the
4 same box --

5 A That's right.

6 Q -- with all the other drugs you have, right?

7 A Yes.

8 Q How many drug buys did you make between March
9 and October, do you think?

10 A I couldn't even begin to tell you right here.

11 Q A lot of them, right?

12 A Made several.

13 Q All right. Why would you wait eight months
14 to send this so sure crack rock right here to SLED
15 if it was so sure to be the crack rock that you
16 supposedly got from Mr. Rice, why did it sit in
17 your box with all the other crack for eight months?

18 A For one thing, we don't have a particular
19 date that we have to take the drugs to SLED. The
20 only reason we needed the drugs analyzed is for a
21 date you had once, if the case actually is coming
22 to trial. I wish we could take them earlier but we
23 don't have the manpower to do that.

24 Q Well, now, you're the one who got the drugs,
25 according to you, that day. Correct?

1 A That's right.

2 Q Did you take any other drugs to SLED for any
3 other case between March the 30th and October the
4 6th?

5 A I could not answer that question.

6 Q You did, didn't you, Mr. Goggins?

7 A I may have. I couldn't answer, I can't
8 answer without looking at the paperwork.

9 Q Why didn't you take, if it was a time issue,
10 why didn't you take these with you that day?

11 A I don't have a certain date. Unless you are
12 coming to trial we don't need it analyzed.

13 Q You just left it in the box with all the
14 other dope?

15 A Yes, sir.

16 Q All right. Now, Miss Sanford said earlier,
17 if we, if we can believe her, that she put her
18 initials on this on March 30th. She put her
19 initials on the disk today, didn't she?

20 A I don't think Miss Sanford said she put her
21 initials on it March 30th. She said she put her
22 initials on it when she viewed them.

23 Q All right. She viewed them that day, didn't
24 she?

25 A We actually viewed them, she may have had a

1 look at them standing behind us, yes.

2 Q All right. And isn't it true that she didn't
3 initial them that day?

4 A No, she initialed them today.

5 Q Today, the day of the trial?

6 A Yes.

7 Q These two disks that our jury is going to
8 rely on were marked with her initials today, not on
9 March the 30th. Correct?

10 A No.

11 Q Now, Mr. Goggins, you said you searched Miss
12 Sanford. Is that correct?

13 A Yes.

14 Q Isn't it policy that a female officer has to
15 do the search of a person?

16 A No, there is no such policy anywhere.

17 Q Can you as a male person completely search a
18 female, according to policy?

19 A Not conclusively but it's not positive a man
20 cannot search a female. That is why you have
21 witnesses in front of you. As I explained, the
22 shirt, she shook her shirt without exposing herself
23 also, yes.

24 Q So, if she had it in her bra you wouldn't
25 have known?

1 A If she would have had it in there?

2 Q Right.

3 A I wouldn't have went inside her bra, no, sir.

4 Q All right. It takes a female officer to do
5 it?

6 A Not in particular. She wasn't being arrested
7 for anything. A female, if they was put inside a
8 cell they would have searched everything, but she
9 wasn't being arrested for that, no.

10 Q There were no females there, were there, Mr.
11 Goggins?

12 A No.

13 Q Just men and Miss Sanford?

14 A That's right.

15 MR. PENNINGTON: I have nothing further of
16 this witness.

17 THE COURT: Redirect?
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REDIRECT EXAMINATION

QUESTIONS BY MS. ZIMMERMAN:

Q Mr. Goggins, the initials that Mr. Pennington is referencing on these disks Miss Sanford put on there, that as he clarified she put on there today, why was she asked to put those initials on there today?

A Because she had viewed the tape and to confirm that that is what she actually did on that date March 30th.

Q Okay. And just to talk about the substances that he's referenced here. You left this substance in the box with other drugs that you had received?

A Yes.

Q And the box can be accessed by how many people?

A Just myself.

Q Okay. Was this substance the actual substance that she received from the defendant touching any other substances in that box?

A No, sir. All the substances is sealed inside an evidence bag and it's also placed inside of a vanilla envelope that went to SLED. It is actually two sealed bags that the evidence is in.

Q Okay. I'm going to show you State's Exhibit

1 3 again. Is that the sealed bag you're talking
2 about inside of State's Exhibit 3?

3 A Yes.

4 Q Okay. Is it -- can you tell me, can you
5 describe that bag?

6 A This bag is, is an evidence bag that it's
7 logged with the date that it was placed in, it is
8 logged with a case number that is assigned to that
9 bag, it is also logged with a suspect name, it is
10 logged by me as being the one that recovered the
11 drugs, and it's logged by me as being the one that
12 sealed the evidence bag and it's a tamper proof bag
13 that if anyone tries to unseal it you get, it will
14 be detected that it has been unsealed.

15 Q Detective Goggins, during that time between
16 March 30th and October whatever the date was, the
17 6th, did you take in any controlled substances that
18 did not result in criminal charges, not talking
19 about the defendant here, just talking about some
20 of the substances in that box?

21 A That I took to SLED in October?

22 Q No, sir. This box, you stated with Mr.
23 Pennington this substance was in the box with the
24 other drugs?

25 A Yes.

1 Q Do you ever take in drugs and then for
2 whatever reason nobody gets charged?

3 A Do I ever -- possibly. It depends if the
4 drugs is taken to SLED and it comes back and say
5 it's negative.

6 Q Do you ever take in substances that don't go
7 to SLED?

8 A No. We send all substances to SLED.

9 MS. ZIMMERMAN: No further questions.

10 THE COURT: Recross?

11 MR. PENNINGTON: Just one question.

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1 RECROSS EXAMINATION

2 QUESTIONS BY MR. PENNINGTON:

3 Q Mr. Goggins, you're the one that sealed the
4 bag when you decide to seal it, aren't you?

5 A That's right.

6 MR. PENNINGTON: I have nothing further.

7 THE COURT: All right. Thank you, sir. You
8 may step down, Mr. Goggins.

9 (Witness excused).

10 THE COURT: Okay.

11 MS. ZIMMERMAN: The State would ask to recess
12 until in the morning.

13 THE COURT: All right. Ladies and gentlemen,
14 we're going to break for today. Just be back in
15 your jury room at 9:15 and we're going to start the
16 case back at that time. Don't talk about the case
17 overnight. Continue to keep an open mind and have
18 a good earning. Thank you very much. See you back
19 at 9:15.

20 (The jury was excused from the courtroom).

21 THE COURT: Okay, anything further for the
22 record at this time?

23 MS. ZIMMERMAN: We have just reached an
24 agreement that Miss Sanford does not actually have
25 to be present here tomorrow but she will be

1 available by phone, we can get her here if Mr.
2 Pennington wishes to talk to her.

3 MR. PENNINGTON: That will be fine, I just
4 wanted her to be available if we needed her. I
5 don't think we will but I just wanted her to remain
6 under the subpoena.

7 THE COURT: Okay. Is Mr. Rice planning on
8 testifying or not testifying?

9 MR. PENNINGTON: Your Honor, it is my belief
10 that he will not testify. However, I believe they
11 have one more witness and we're not at that
12 juncture at this point. We would ask that he be
13 allowed to remain on his current bond. He is on
14 GPS monitoring. He showed up for the trial, I
15 don't see any reason why he wouldn't show up now.

16 MS. ZIMMERMAN: The State has no objection to
17 him remaining on the GPS monitoring.

18 THE COURT: Okay, he's to remain on that.
19 Mr. Rice, I'm going to ask you tomorrow if you wish
20 to testify or not testify and I'm going to ask this
21 Clerk to put you under oath right now so I can go
22 over some of your rights with you.

23 MR. PENNINGTON: I'm sorry, Your Honor, I'm
24 going to explain a little bit of that. I don't
25 think he heard you. He's a little bit hard of

1 hearing.

2 THE COURT: Okay.

3 MR. PENNINGTON: Tomorrow he's going to be
4 inquiring of you of your right to testify or not
5 testify. He will be asking you under oath about
6 that. The decision is yours.

7 THE DEFENDANT: All right.

8 MR. PENNINGTON: I don't want to speak for
9 the Court.

10 THE COURT: I'm going to put him under oath
11 and ask him some questions now.

12 MR. PENNINGTON: That's fine.

13 IAN RICE,
14 after being first duly sworn, stated as follows:

15 THE COURT: You can stay where you are.
16 Okay, Mr. Rice, if I say anything that you don't
17 understand or you want me to repeat something just
18 let me know, or if I don't make any sense for some
19 reason just tell me that and let me know and I will
20 be glad to rephrase it so you do understand it.
21 Okay, sir?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You have the right to present
24 evidence of your own, including your own testimony,
25 after the State concludes its evidence, and

1 tomorrow morning when we get to that point in the
2 trial you'll have the opportunity to decide whether
3 you want to testify or whether you want to remain
4 silent. And you certainly have the right to
5 testify and to get up and be sworn in and tell your
6 side of the story and present evidence that's
7 relevant to the case, but if you do that, sir, you
8 understand that you will be subject to the same
9 rules of cross-examination as the State's witnesses
10 have been. That means that Miss Zimmerman can ask
11 you anything that might bear on your credibility or
12 believability, and I don't know if he has any kind
13 of record. Does he?

14 MR. PENNINGTON: He does.

15 MS. ZIMMERMAN: Yes, Your Honor. I can go
16 over his record if you would like now.

17 THE COURT: Well, I'm sure he knows what it
18 is as well. I'm just going to tell him if you do
19 testify, sir, the jury would learn about your
20 record. I don't know if there is any dispute about
21 whether some of the convictions would come in or
22 not. Is there?

23 MR. PENNINGTON: Your Honor, I believe that
24 they would all be relevant and would be admissible
25 and I have advised him likewise.

1 THE COURT: All right. So, the jury would
2 learn of your prior record, sir, whereas if you
3 chose to remain silent they would not know of your
4 record. And as I have told them, you would be
5 presumed innocent and that presumption of innocence
6 would remain with you even to the jury's
7 deliberations and you don't have any burden of
8 proof whatsoever and you can remain silent, the
9 Constitution gives you that absolute right.

10 Do you understand that right, sir?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And if you chose to remain silent
13 I would tell the jury that you have that right,
14 everyone is guaranteed that right under the law and
15 that they cannot hold it against you or take into
16 account the fact that you did not testify in
17 determining whether you're guilty or not guilty.

18 Do you understand that, sir?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now, if you choose to testify or
21 present evidence you would at that point give up
22 your right to have your lawyer make final argument
23 or have the last word, so to speak, in front of the
24 jury.

25 Do you understand that, sir?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: If you choose to not present any
3 evidence your lawyer does get that final argument
4 but you have to decide whether you want to testify
5 or not. It's a personal choice that you have to
6 make, Mr. Rice, after talking with Mr. Pennington
7 and any family member or anybody else you rely on
8 for advice or for assistance, and I'm just going to
9 ask you tomorrow whether you wish to testify or not
10 testify. I want to make sure you understand the
11 rights I have gone over with you here today.

12 And have you understood all my questions and
13 all my statements, sir?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Do you have any
16 questions of me at this time about your right to
17 testify or not testify?

18 THE DEFENDANT: No, sir.

19 THE COURT: Okay. Well, we will visit that
20 tomorrow and you all have a good evening. Thank
21 you.

22 MS. ZIMMERMAN: We're in recess until what
23 time?

24 THE COURT: 9:15.

25 MS. ZIMMERMAN: Thank you, Your Honor.

1 (Recessed at 4:26, November 13, 2007).

2 (Reconvened at 9:24 a.m., November 14, 2007).

3 THE COURT: Okay, are you all ready for the
4 jury?

5 MR. PENNINGTON: We're ready, Your Honor.

6 THE COURT: Yes, sir, you can bring them on
7 in.

8 (The jury returned to the courtroom).

9 THE COURT: Yes, ma'am, Miss Zimmerman, you
10 may call your next witness.

11 MS. ZIMMERMAN: The State calls Kukila
12 Stanley.

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1 KUKILA NICOLE STANLEY,
2 after being first duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 QUESTIONS BY MS. ZIMMERMAN:

5 Q Miss Stanley, could you please state your
6 full name for the jury?

7 A Kukila Nicole Stanley.

8 Q What is your occupation?

9 A I'm a drug analyst with SLED.

10 Q How long have you been employed by SLED?

11 A Two years and four months.

12 Q Did you receive any specialized training in
13 order to get a job as a drug analyst?

14 A Yes.

15 Q If you would, please explain to me what kind
16 of training you have undergone.

17 A I received a Bachelor's Degree in chemistry
18 from the University of South Carolina in Columbia.
19 Upon being hired with SLED I took training to
20 identify controlled substances.

21 Q And is there a certification process that's
22 required in order to do this job?

23 A Yes. I have been certified, competency and
24 proficiency tests to analyze controlled substances.

25 Q While you have been employed with SLED have

1 you had the opportunity to analyze substances that
2 have been determined to be crack cocaine?

3 A Yes.

4 Q And have you ever testified in a trial as to
5 the chemical components of a controlled substance?

6 A Yes.

7 Q Have you ever been determined to be an expert
8 as such?

9 A Yes.

10 MS. ZIMMERMAN: Your Honor, the State would
11 present Miss Kukila Stanley as an expert in
12 analyzing controlled substances.

13 MR. PENNINGTON: No objection.

14 THE COURT: Okay, I find she's qualified.
15 Ladies and gentlemen, typically witnesses can only
16 testify about things they have personal knowledge
17 about, things they observed directly. There is an
18 exception under our law for people who are
19 qualified as expert witnesses, who by their
20 training, education or experience have some
21 expertise in a particular field and the law allows
22 them to give their opinion in matters related to
23 that field. However, expert witnesses like all
24 other witnesses still must have their credibility
25 judged by you, and you don't have to accept an

1 expert witness' opinion. Instead, you must weigh
2 its admissibility and accept it or reject it, give
3 it whatever weight it deserve.

4 Yes, ma'am.

5 MS. ZIMMERMAN: Permission to approach, Your
6 Honor?

7 THE COURT: Sure.

8 MS. ZIMMERMAN: Thank you.

9 BY MS. ZIMMERMAN:

10 Q I'm showing you what has been marked State's
11 Exhibit 3 for identification. Do you recognize
12 that?

13 A Yes.

14 Q Can you tell me what that is?

15 A This is a seal pack that pertained to
16 evidence received for this case.

17 Q And how do you recognize that?

18 A I recognize it by the lab number written here
19 with my initials and date. I also recognize it by
20 this lab number matching the lab number written
21 here and also my initials and date of where I
22 sealed the evidence once the analysis was
23 completed.

24 Q I'll show you what has been marked State's
25 Exhibit 5 for identification. Do you recognize

1 that?

2 A Yes.

3 Q Can you tell me what that is?

4 A This item is the report that I have done
5 concerning the evidence for this case.

6 Q And is that your signature on that report?

7 A Yes, it is.

8 Q Does that report correspond with the State's
9 Exhibit 3 that I showed you?

10 A Yes.

11 Q Can you tell me where you first obtained
12 State's Exhibit 3, the seal pack that you
13 mentioned?

14 A I obtained the seal pack downstairs at SLED,
15 from the evidence intake room.

16 Q Can you tell me who it was submitted to or by
17 whom it was submitted to the evidence intake?

18 A I don't know who submitted the evidence to
19 SLED.

20 Q Okay. Does State's Exhibit 5 include any
21 information that would help you with that?

22 A According to this form which is part of the
23 chain of custody, on the report it shows that
24 Tyrone Goggins was the person that brought the
25 evidence to SLED.

1 Q And once you received State's Exhibit 3 from
2 the evidence intake what did you do with it?

3 A I then put it, received it into my custody,
4 took it upstairs to the drug lab and proceeded to
5 do the analysis on the substances that were
6 submitted.

7 Q After you did your tests did you determine
8 what that evidence is?

9 A Yes.

10 MS. ZIMMERMAN: Your Honor, at this time we
11 would move State's Exhibit 3 into evidence, which
12 is the --

13 MR. PENNINGTON: No objection, Your Honor.

14 MS. ZIMMERMAN: -- the seal pack.

15 THE COURT: All right, it's in evidence.

16 (Evidence bag marked and received in evidence
17 as State's Exhibit Number 3).

18 MS. ZIMMERMAN: And we would move State's
19 Exhibit 5, which is her report analyzing that
20 substance.

21 MR. PENNINGTON: No objection.

22 THE COURT: All right, both exhibits are in
23 evidence.

24 (Lab report marked and received in evidence
25 as State's Exhibit Number 5).

1 BY MS. ZIMMERMAN:

2 Q Based on your tests can you tell me what
3 State's Exhibit 3 contained?

4 A It contained cocaine base, crack, 0.20 grams,
5 3.08 grains and it's a schedule two drug.

6 Q And you said cocaine base and then crack. Is
7 that the same thing as cocaine or is there a
8 difference?

9 A There is a difference in that this one is in
10 the solid form.

11 Q Now, yesterday when Mr. Goggins testified he
12 had explained about leaving this substance sitting
13 in a sealed box. Can you tell me if a substance is
14 left locked in a box does that in any way affect
15 the chemical components?

16 A No, it doesn't.

17 Q Can you explain to me what procedures are
18 taken in order to secure the chemical components of
19 that substance?

20 A Well, when we receive it at SLED it's
21 packaged in this packaging right here, where you
22 see this green strip, and it is also packaged in an
23 envelope. This package is inside a brown envelope.
24 When I receive it I check to make sure this seal is
25 intact. If the seal is not intact I won't do an

1 analysis and I will call the agency and they would
2 have to come back and pick the drugs up and
3 resubmit the ones to be analyzed.

4 Q So, once you receive it in that seal pack who
5 opens that pack?

6 A I'm the person that opens it because I'm the
7 one that's doing the analysis on it, and to keep
8 from the tag being tampered with I will cut it at
9 the bottom here when I'm doing the analysis.

10 Q How far in advance of the analysis do you cut
11 the seal pack open?

12 A When I'm about to do the analysis.

13 Q And once you conduct your analysis what then
14 happens to that substance?

15 A I then package it, I would repack it, which
16 is what I have done here, this is the initial
17 packaging of it, the sealed evidence bag. So, I
18 repack in in this seal lock bag, I put the lab
19 number, my initials and the date and then I would
20 put all the evidence that was received into this
21 big bag. I would then seal it and initial and date
22 when I closed the package.

23 MS. ZIMMERMAN: No further questions.

24 THE COURT: Cross-examination?

25 MR. PENNINGTON: If it please the Court.

1 CROSS EXAMINATION

2 QUESTIONS BY MR. PENNINGTON:

3 Q Miss Stanley, you're not actually the person
4 who receives the bag when it comes to SLED, are
5 you?

6 A No.

7 Q So, isn't it true that you actually didn't
8 receive this bag when it was delivered to SLED?

9 A No.

10 Q Does that mean you did not?

11 A When it was delivered to SLED, no.

12 Q All right. That would have been another
13 person?

14 A Correct.

15 Q All right. Now, Miss Stanley, when you do
16 the analysis on drugs does it change their
17 character, quantity or other aspects?

18 A Yes.

19 Q All right. So that when someone would say
20 these pieces of crack, after you have analyzed them
21 they look differently?22 A They would still look the same but the amount
23 would possibly be different because I have used
24 some of it to do the analysis.

25 Q Would you actually take some of the sample

1 away, thus the rocks would be differently shaped,
2 et cetera?

3 A It could be.

4 Q All right. And you testified that according
5 to your report you received this crack on October
6 the 3rd, not the 6th?

7 A I don't have on my report when I actually
8 received the evidence.

9 Q Did you see your report earlier?

10 MR. PENNINGTON: Do you have that?

11 MS. ZIMMERMAN: She has it.

12 Q If I could direct your attention, could you
13 read on and then the date is?

14 A "On October 3rd, 2006, items were received
15 in B182807 from Tyrone Goggins of the Clinton
16 Public Safety."

17 Q All right. And I think it goes without
18 saying that October 3rd is three days before
19 October 6th?

20 A Correct.

21 Q All right. And when you receive a packet,
22 Miss Stanley, you only receive it as the officer
23 brings it. You don't put anything in it?

24 A Correct.

25 Q You rely totally on what is brought to you?

1 A Correct.

2 Q Is that correct?

3 A Yes.

4 Q All right. And from the time that the
5 matter, whatever it is, is collected, to the time
6 that your office receives it, do you have any
7 control over it?

8 A No, I don't.

9 Q Who has control over it from that time, from
10 the time it's taken, to the time it's received by
11 you?

12 A It's downstairs in the evidence intake bin,
13 it's a locked, secure area where all the drugs are
14 stored.

15 Q All right. So, it's put back in another bin,
16 that is when your office gets it?

17 A That's when it's received at SLED.

18 Q All right. But you agree that it wasn't
19 received by you?

20 A Correct.

21 Q All right. And as for as the time from the
22 date when the alleged drugs are taken, until they
23 get to you or your facility, you don't have any
24 control over that, do you?

25 A No.

1 Q So, you can only analyze what you get?

2 A Correct.

3 Q All right. Is it typically the practice of
4 law enforcement to wait eight months to send you
5 things to be tested?

6 A I don't know what typically the practice of
7 law enforcement is but I do know that there are
8 times, due to the manpower of the agency or they
9 may not receive a lot of evidence at one time, they
10 will just wait a while before they would bring all
11 of the evidence to SLED.

12 Q Are you the analyst that does most of the
13 analysis for Laurens County?

14 A No, I'm not.

15 Q All right. And who actually, do you know who
16 actually received this evidence before you, between
17 you and Mr. Goggins?

18 A No.

19 MR. PENNINGTON: All right, I have nothing
20 further.

21 THE COURT: Redirect?

22 MS. ZIMMERMAN: None, Your Honor.

23 THE COURT: Okay, Miss Stanley, thank you
24 very much, ma'am. You may step down.

25 (Witness excused).

1 MS. ZIMMERMAN: Your Honor, we request
2 permission she be released.

3 MR. PENNINGTON: No objection.

4 THE COURT: Okay, she's released from the
5 subpoena.

6 Yes, ma'am, you can call your next witness.

7 MS. ZIMMERMAN: At this time the State rests.

8 THE COURT: All right, ladies and gentlemen,
9 the State has rested and as I mentioned to you
10 yesterday, they have concluded their presentation
11 of evidence and at this time there is a legal
12 matter I have to take up with the parties and I ask
13 you go back to the jury room and if you would do
14 three things for me when you're back there. First
15 of all don't talk about the case. Second, keep an
16 open mind. And the third thing is if you would
17 select someone to be the foreperson of the jury.
18 It can't be the alternate but any of the rest of
19 you could be the foreperson, and when you have
20 selected someone write their name down on a piece
21 of paper and give it to one of the bailiffs.

22 Thank you very much. We'll be back with you
23 as soon as we can, probably about ten minutes.

24 (The jury was excused from the courtroom).

25 THE COURT: Okay, any matters or motions at

1 this time?

2 MR. PENNINGTON: Yes, sir, Your Honor.

3 THE COURT: Yes, sir, Mr. Pennington.

4 MR. PENNINGTON: Your Honor, I would move for
5 a directed verdict of not guilty. I think the most
6 noticeable thing that has failed to be shown is the
7 chain of custody. We spoke of earlier that Mr.
8 Goggins may have taken it off of her, he says he
9 took it off of her. The CI says that he may have.
10 Then it was with Mr. Goggins in the lock box at the
11 Clinton P.D. However, after that the last witness
12 simply said that she didn't actually receive it,
13 they were received by another individual at SLED,
14 and it would be my position that clearly that link
15 in the chain has been broken. We have to show that
16 everybody that it goes through has shown that they
17 are there, they would need to testify, and I would
18 submit that that is a break in the chain which
19 negates that evidence.

20 Also, Your Honor, I would submit that as a
21 matter of law and reason that the testimony of Miss
22 Sanford, being all over the board, just basically
23 clearly shows reasonable doubt as a matter of law.
24 I think it is that off the wall, I guess for lack
25 of a better term. It is just everywhere. I

1 couldn't tell from cross, the direct or recross,
2 there were three or four different stories, and I
3 think that as a matter of law that there is
4 reasonable doubt and I would ask that Your Honor
5 direct a verdict in favor of my client based on
6 failure to complete the chain and the witness'
7 testimony.

8 THE COURT: Thank you, sir. Yes, ma'am, Miss
9 Zimmerman.

10 MR. PENNINGTON: Your Honor, as to the chain,
11 I believe the appropriate time for Mr. Pennington
12 to object to that was before the evidence was
13 admitted into evidence. And secondly, the State is
14 only required to follow the chain as far as
15 practicable. It was in a sealed evidence bag from
16 the time that it left Mr. Goggins' hand until it
17 was received by the analyst. Anybody that touched
18 the outside of that pack could not affect what was
19 inside the pack. That seems to very clearly follow
20 the chain as far as practicable.

21 In addition, the testimony of Miss Sanford,
22 it is to the, it should be in the jury's hand to
23 decide the credibility of that witness. Even if
24 they failed to believe her there is still physical
25 evidence of the videotape that would leave the jury

1 the opportunity to find the defendant guilty.

2 THE COURT: Okay. Well, as to the weight of
3 Miss Sanford's testimony, that's purely a question
4 for the jury. I have to view it in a light most
5 favorable to the State, therefore I decline to
6 grant the motion for directed verdict on that
7 basis.

8 So, the State's contention about the chain of
9 custody is that the drugs were received from Miss
10 Sanford by Mr. Goggins, from that point on you can
11 set forth what the chain consists of?

12 MS. ZIMMERMAN: Yes, sir. During Mr.
13 Goggins' testimony he testified that immediately
14 upon receiving it from Miss Sanford he sealed it in
15 a tamper proof seal pack. He then locked it in a
16 secure box in his office that only he has a key to,
17 sealed in that pack, and Miss Stanley testified
18 that when she received it at SLED it was still
19 sealed in that pack, that the seal had not been
20 tampered with or broken in any way, if it had of
21 been she would have returned it. In addition, her
22 cut is at a different location than the seal, so
23 you can still see in the pack that that seal is
24 intact. Anyone at SLED in the evidence department
25 that would have touched the pack would have only

1 touched the exterior of the package and not the
2 actual controlled substance.

3 THE COURT: Thank you. Mr. Pennington, your
4 argument as to the chain as for as it being broken
5 at some point?

6 MR. PENNINGTON: Yes, Your Honor. I could
7 not have objected to the chain as for as when the
8 evidence first came in because everything I have
9 received in discovery shows she was the direct next
10 link in the chain, that there was no intervening
11 individual that received it. It was only after I
12 asked her if someone else received it that I know
13 that, and the evidence was already in, so I
14 couldn't very well object beforehand. I didn't
15 know and the evidence that I was presented did not
16 show that some other individual would have signed
17 it in at SLED, which is the typical practice. If
18 she didn't sign it in there would have been
19 somebody else at SLED who would have actually
20 signed it in when they received it from Mr.
21 Goggins, and none of my discovery shows that and
22 that is a critical element that I believe I have
23 the right to cross-examine on, and that person
24 wasn't here and I think that anything other than a
25 finding that the chain is broken is an unfair

1 prejudice to my client because the jury can't know
2 and we can't know where those alleged pieces of
3 crack cocaine were for that intervening period.

4 THE COURT: All right. I'm still not
5 understanding where you say the chain was broken.

6 MR. PENNINGTON: When Mr. Goggins delivered
7 it to SLED --

8 THE COURT: Right.

9 MR. PENNINGTON: -- there would have been
10 some individual who actually signed for it and
11 received it.

12 THE COURT: Right.

13 MR. PENNINGTON: And that is not in any of my
14 discovery material. I have received nothing to put
15 me on notice that anyone else other than Miss
16 Stanley received it, and in fact her report says
17 that she directly received it but she testified
18 that she didn't, because it says received from
19 Tyrone Goggins and I think the natural inference
20 from that would be that she received it and I think
21 in my discovery it should have included in it a
22 copy of where SLED received it, if that was the
23 case, and then some days later whenever she
24 retrieved it to do her testing that she retrieved
25 it from that person because she indicated she

1 didn't get it for some time later, so basically we
2 have what could be as many as four or five days
3 that someone else held it, not her, and that person
4 hasn't been here and it seems unusual that my
5 discovery doesn't even show that.

6 THE COURT: There is no evidence that the
7 seal on the cocaine that was placed on it by Mr.
8 Goggins was ever tampered with or that the
9 envelope, if you will, was opened by anyone after
10 Mr. Goggins sealed it, except when Miss Stanley
11 opened it up to do the testing. Isn't that right?

12 MR. PENNINGTON: I would have to agree with
13 Your Honor on that.

14 THE COURT: Correct. All right. Well, I
15 understand your argument, Mr. Pennington. It
16 appears to me based on case law and the rules, that
17 the substance here passed through several hands but
18 there is no guesswork as to what was done with it
19 between the time Mr. Goggins received it and the
20 time it was analyzed by Miss Stanley, and that
21 means that the proof presented by the State
22 actually negates any possibility it was tampered
23 with, and that establishes a complete chain of
24 evidence by all that is required by the case law.
25 I don't believe case law requires every person who

1 ever touched the item testify or be accounted for,
2 but merely that the nearest, I think the fact the
3 seal by Mr. Goggins and no evidence it has been
4 tampered with from the time he received it and
5 sealed it and sent it to SLED and the time Miss
6 Stanley opened and analyzed it fullfills the
7 requirement of the law and policies underlined in
8 the rules of law. So, I respectfully deny your
9 motion.

10 MR. PENNINGTON: Thank you, Your Honor. It
11 would be acceptable for me to argue that issue,
12 though, to the jury?

13 THE COURT: Yes, sir. That would go to the
14 weight of it and you certainly could argue that.

15 MR. PENNINGTON: Thank you, Your Honor.

16 THE COURT: Anything further at this
17 juncture?

18 MS. ZIMMERMAN: Nothing from the State.

19 MR. PENNINGTON: Your Honor, I think my
20 client does not desire to testify and it may be
21 that time when we have the Court question him
22 again.

23 THE COURT: All right. Do you plan on having
24 any other evidence?

25 MR. PENNINGTON: No.

1 THE COURT: Okay. All right, Mr. Rice,
2 you're still under oath, sir, from yesterday, okay?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. And have you thought
5 about your right to testify or not testify and made
6 a decision as to what you would like to do, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: What is it?

9 THE DEFENDANT: I'm not going to testify.

10 THE COURT: Okay. And you fully understand
11 the constitutional right you have to remain silent
12 and not incriminate yourself? As I told you,
13 nobody can force you to testify and as I have
14 already told the jury they are to presume you
15 innocent and the burden of proof is totally on the
16 State. Do you have any questions of me about your
17 right to remain silent, sir, your right to testify?

18 THE DEFENDANT: No, sir.

19 THE COURT: All right, thank you very much,
20 sir.

21 Okay, I'm going to, we're going to take a
22 short break just so I can get the verdict form
23 prepared and the jury instruction ready to go.
24 Does anybody have any requests to charge?

25 MS. ZIMMERMAN: Standard requests.

1 MR. PENNINGTON: Same here, Your Honor.

2 THE COURT: And it will just be on
3 distribution and distribution within proximity?

4 MS. ZIMMERMAN: Yes.

5 MR. PENNINGTON: Yes, Your Honor. I would, I
6 don't know if this is part of your standard charge,
7 but to maybe let the jury know that if they don't
8 find that there was a distribution, then they could
9 not find that there was a distribution within
10 proximity. While I would like to assume they
11 understand that, I don't know that they do.

12 THE COURT: Okay. Well, I'll explain that to
13 them when I explain the verdict form.

14 MR. PENNINGTON: Thank you, Your Honor.

15 THE COURT: All right, thank you. Okay, it's
16 going to take me a little while to get that
17 collected and when I get that done we'll be ready
18 to go.

19 Okay. Mr. Turner has been elected foreperson
20 of the jury and we'll be in recess and ready for
21 closing arguments and the instruction on the law.
22 It will probably be about fifteen minutes. Thank
23 you very much.

24 (Recessed at 10:10 a.m.).

25 (Reconvened at 10:18 a.m.).

1 THE COURT: Okay, are you all ready for the
2 jury?

3 MS. ZIMMERMAN: The State's ready.

4 THE COURT: Okay, you can bring them on in.
5 (Jury returned to the courtroom).

6 THE COURT: All right, Mr. Turner, you have
7 been selected to be the foreperson?

8 JUROR: Yes, sir.

9 THE COURT: I'm sure it is based on merit and
10 not the fact you have already been sitting in that
11 seat before.

12 JUROR: I think it was just I was in the seat
13 before.

14 THE COURT: You will be the liason between
15 the Court and jury. If there is any communication
16 needs to be made please do so in writing. I can
17 only communicate with you either on the record or
18 by way of a note that is made a part of the record.

19 And we have reached the stage of the trial
20 now where the State has rested and concluded their
21 presentation of the evidence and the defense now
22 has the opportunity but, as I said, not the
23 obligation to present any evidence because they
24 don't have any burden of proof.

25 So, yes, sir, Mr. Pennington?

1 MR. PENNINGTON: Your Honor, as for as
2 closing, I believe, as we're not presenting
3 evidence, we would go last?

4 THE COURT: Okay. You're resting as well, is
5 that right?

6 MR. PENNINGTON: Yes, sir, Your Honor, we're
7 resting.

8 THE COURT: All right. So, at this stage you
9 have heard all the evidence and now it's time for
10 the closing arguments of the attorneys. And for
11 the State, yes, ma'am, Miss Pennington -- Miss
12 Zimmerman, I'm sorry.

13 MS. ZIMMERMAN: Ladies and gentlemen, at the
14 beginning of this trial Mr. Pennington asked you to
15 use your common sense. He stated that there is a
16 lot of things that he and I don't agree about with
17 regard to this trial and he is probably right.
18 After all, that is the nature of the adversarial
19 process. But one thing we do agree on is the
20 importance of your common sense. It's the best
21 tool that you have to decide this case, and you're
22 all here because you're reasonable people who we
23 have trusted to make a good decision using your
24 common sense in this case.

25 I'm going to go over the elements again as I

1 did earlier, and I'm going to talk to you about
2 coming to a logical conclusion that your common
3 sense will help you reach in this case.

4 As stated earlier and as the Judge will
5 explain to you in great detail there are two very
6 distinct crimes charged here. The first is the
7 distribution of crack cocaine and the second is
8 what we refer to as the proximity. Now, although
9 they share the same first three elements, they are
10 two very separate crimes. The first three elements
11 that they share is first that it be this defendant,
12 this individual that committed this crime.
13 Secondly, that there was a distribution or sale,
14 some kind of exchange. And third, that the item
15 sold was in fact crack cocaine, an illegal
16 controlled substance. Once the State has proven
17 that it's proven the distribution.

18 The second crime is the proximity, which has
19 the additional element that the transaction
20 occurred within one-half mile of a school, park or
21 playground.

22 Now, the first thing we need to talk about is
23 whether or not it was the defendant. And the best
24 piece of evidence of that is the video. So, we're
25 going to take just a moment and look back at these

1 tapes so that you get a chance to look to see if
2 you think it's the defendant on these tapes.

3 Well, the equipment is not doing what it
4 should.

5 (Video tape marked as Exhibit 1 was played
6 to the jury).

7 MS. ZIMMERMAN: Now, after this video
8 occurred, as was testified by Miss Sanford and by
9 Detective Goggins, they met back at the meeting
10 location, they watched the video, they debriefed
11 Miss Sanford, took the crack in their possession
12 and they said, "We got his face walking by the
13 window real quick but let's see if we can get a
14 better shot because we know one day there could be
15 twelve people sitting in a jury box and even though
16 I know it's him and you know it's him, we need
17 those twelve people to know it's him." So, she
18 rides back by and gets a second look.

19 (Video tape marked as State's Exhibit 2
20 was played to the jury).

21 In addition, on that re-look there has been
22 admitted in evidence the photos, still shots from
23 that re-look that you will have to take in the jury
24 room, you can look at up close.

25 Now, I said something about your common

1 sense. Looking at these two videos, let's think
2 about what common sense would lead you to conclude.
3 Is it a logical conclusion that Miss Sanford went
4 to this location, purchased crack cocaine from
5 somebody that she referred to as Ian, left there,
6 met with Mr. Goggins and then went back to the same
7 house, found this defendant wearing the same shirt
8 as the guy that she just bought crack from and he's
9 also known to her, or is it a more logical
10 conclusion it was this guy on both those tapes, the
11 first time selling her the crack and the second
12 time when she rode back by and talked to him,
13 wearing the same North Carolina State tee-shirt,
14 going by the same name? Ladies and gentlemen, it
15 was this guy on both of those videos, so that first
16 element there has been met.

17 The second element is the distribution, and
18 you see that on the video, too. On that first
19 video when she's waiting on him to walk out she's
20 rolling the twenty dollar bill in her hand, waiting
21 on him to get there, fidgeting with the money. He
22 then walks out, she hands him the money, he hands
23 her the crack rock that she bounces between one
24 palm and the other and then sticks it in the
25 ashtray.

1 In addition to what is on the video, she
2 testified to that, she testified that she met this
3 guy who she knew, who she had known from way back
4 when she used to smoke crack herself, and it was
5 him who handed it over to her. And then Detective
6 Goggins testified that when she left he gave her
7 Clinton Police Department's \$20.00, she left with
8 Clinton P.D.'s \$20.00 and she came back with Ian
9 Rice's crack. She didn't have the \$20.00 when she
10 got back but she had that crack. So, the
11 distribution has been met.

12 The next element is that it must in fact be
13 crack cocaine, which is an illegal controlled
14 substance. That is where Miss Stanley came in this
15 morning. She testified as to her education and
16 background and then she testified that she received
17 this in this seal pack with all the labeling on it
18 that Detective Goggins talked about he had sealed
19 it, he marked it with his case number, the
20 defendant's name and the date, sealed it in a pack,
21 locked it in a box locked away where only he had a
22 key to it. Then he took it out, he took it to SLED
23 and when Miss Stanley got it she opened that pack
24 and it had already been sealed, she weighed it and
25 she chemically analyzed it. You are going to have

1 her report to look at that she prepared. There is
2 a copy of the report. You will have the actual
3 document back there, this is just the front page.
4 This is where the vital information comes from and
5 if we zoom in on that middle section you will see
6 where she records her findings this was .20 grams
7 of cocaine base, also known as crack cocaine. So,
8 that third element has been met.

9 Now, the last requirement is the one-half
10 mile. Detective Goggins has been in law
11 enforcement in the city of Clinton for ten years.
12 He's familiar with the streets of Clinton, he's
13 patrolled there, he knows the area, he knows where
14 the schools are, for ten years he's patrolled this
15 area and he took this map, using this print-out,
16 you will see a copy of it up there on the screen,
17 he pointed to you where this event occurred and
18 then he showed you where Martha Denny Sixth Grade
19 School is and he told you where Bell Street Middle
20 School is. I have these three marked here. He
21 also testified that they were well within the half
22 mile requirement of the statute. In fact he said
23 that both of those schools are less than a quarter
24 of a mile from this incident. That meets the last
25 requirement.

1 Ladies and gentlemen, when you go back and
2 you evaluate this case and you evaluate the
3 evidence it is very important that you think about
4 what the witnesses said, what came from right here.
5 Don't consider the way that the attorneys phrase
6 questions because that's not evidence. The way we
7 word a question or the way we repeat what we
8 thought the witness said is not evidence. It's
9 what came from that witness stand. Think about
10 what those witnesses stated they were sure of.

11 Miss Sanford testified that she was sure that
12 on March 30th she went to Walden Street, she went
13 to the defendant's house, she gave him \$20.00 and
14 she received that crack rock. She was certain who
15 she bought that rock from, she knew it was him.
16 She had known him for a long time and she knew that
17 was him. She was certain when she got back to the
18 Clinton Police Department she gave that substance
19 to Detective Goggins. Detective Goggins was
20 certain he received it, he was sure he put it in
21 that tamper proof bag, sealed it up, locked it away
22 in his office where he was the only one that had
23 access and he was certain that he delivered it to
24 SLED.

25 Miss Stanley was certain that it was crack

1 cocaine. Detective Goggins was also certain about
2 the area, he was certain about the location of
3 those two schools. All of those witnesses told you
4 those facts.

5 In addition to those facts, I would like for
6 you to look at the physical evidence that you have,
7 consider the video, and understand that if we were
8 on CSI right at the moment of that transaction the
9 video would have zoomed in and got a perfect shot
10 of his face, with good lighting, he probably would
11 have had makeup on to make sure he had no shine.
12 Of course if we were on TV I would weigh 100 pounds
13 and look like Jennifer Anderson. That is not the
14 way it works.

15 Detective Coggins explained to you the camera
16 is sitting in a car seat with a blanket thrown over
17 it so the defendant won't see it there, but your
18 common sense doesn't require that perfect shot. It
19 doesn't require the best possible view that we can
20 get because, you see, even though the State has the
21 burden of proving this case beyond a reasonable
22 doubt it doesn't have to prove it beyond all doubt.
23 A reasonable doubt is that doubt that would cause a
24 reasonable person to hesitate to act and you're all
25 reasonable people. That is why you're on this

1 jury. So, the real question is do you hesitate, do
2 you hesitate to say that this defendant sold crack
3 cocaine to Miss Sanford on March 30th, do you
4 hesitate to say that he sold it to her within
5 one-half mile of a school?

6 Ladies and gentlemen, do you hesitate?

7 Thank you.

8 THE COURT: Thank you, Mrs. Zimmerman.

9 Yes, sir, Mr. Pennington.

10 MR. PENNINGTON: If it please the Court, Mr.
11 Foreperson, ladies gentlemen of the jury, Miss
12 Zimmerman is absolutely correct, I told you when I
13 started this trial I would like for you to use your
14 common sense and, as she said, that's right, look
15 at the witnesses, the people that sat right here,
16 and she kept saying that they were sure about so
17 many things. I was here, you were here. I didn't
18 think they were sure about anything. Miss Sanford
19 wasn't sure about when she met Mr. Goggins, she
20 wasn't sure about how many times she had sold, she
21 wasn't sure about when she knew Mr. Rice, she
22 wasn't sure about how many times she got paid. She
23 wasn't sure about anything. Every time somebody
24 asked her a question they got a different answer.
25 What she was sure of is that she didn't have

1 any money and if she didn't show this guy selling
2 her dope she didn't get paid. I think we can
3 clearly, logically say she didn't have any money.
4 Just ten days before this while she was being a
5 good citizen out helping the community, as she told
6 you, she was stealing from a restaurant. She
7 didn't have any money to buy from the restaurant,
8 the good people that owned it, but she told you she
9 had plenty of money to buy crack. And every time
10 she went out and did what needed to be done she got
11 paid. If she came back empty handed, nothing.

12 She talked about how, "I'm such a good
13 person, I'm getting off drugs, I'm making my life
14 better." Did you see her on the witness stand?
15 Did she look like she was off drugs? We all got to
16 see her. Did she look to you like she's off drugs?
17 She didn't to me.

18 Did she look nervous, did she look afraid and
19 did she look that way because she was being
20 untruthful? She started off telling you this
21 because that sounded good and that is what they
22 need to hear and she doesn't want to make them mad.
23 This is how she made money. She doesn't want to
24 make them mad so she tells you, "Okay, I never had
25 anything to do with Mr. Goggins before the 30th, I

1 never met him before, nothing happened." And yet
2 we see on the video that she's already setting up
3 other people as she goes and then we come to find
4 out she has done it before and did it after.

5 I wasn't sure about anything she said. I'm
6 still not sure. I wasn't sure about the video
7 because she told you one time she went back to buy
8 drugs, that is what Mr. Goggins wanted her to do,
9 go back and buy drugs again. Then she said no.
10 Then Mr. Goggins said no.

11 Mr. Goggins told you that he held the
12 evidence for eight months, eight months. While he
13 first told you he didn't have time to get it down
14 to SLED but then he said maybe he had taken some
15 other drugs there. It makes me wonder about why
16 they were there eight months.

17 Also the analyst said that when she does her
18 testing that that changes the look of the drugs
19 possibly. But Miss Sanford, without a shadow of a
20 doubt, being an honest, good person for the
21 community, she recognized that as two crack rocks
22 out of a thousand she had ever bought. Common
23 sense? She didn't recognize those crack rocks.
24 She's probably smoked 5,000 crack rocks, and from
25 the looks of her, things haven't changed.

1 I told you that it was going to be important
2 as much what you saw today as what you didn't see
3 today. You heard Miss Sanford and Mr. Goggins
4 talking about how all these other law enforcement
5 officers were involved in this case. We heard
6 about Tony Lynch, a detective with Laurens city.
7 And you would think this is the day for the trial,
8 this is the day they have to convince you that this
9 really happened. I don't remember seeing Mr.
10 Lynch. You didn't ever hear from him. I wonder
11 why he wasn't here to testify that he believed this
12 was the same person. You would think if the State
13 could bring that to bear they would have, they
14 would have brought him here to say, "Oh, yes, I was
15 there, I know it was the same person." He wasn't
16 here, he didn't tell you that.

17 They also mentioned that Bryan Bridges who
18 works for Laurens County Sheriff's Department and
19 an investigator was there but I didn't see him
20 either. He didn't testify, he didn't come and say,
21 "That's right, what they're saying is true, it
22 happened that way." He didn't come. That makes me
23 wonder what he might have said. It seems to me
24 that you can logically reason if that was going to
25 be proof for them he could be here but he wasn't.

1 And let's talk about who else wasn't here.
2 When the analyst got up here she said that
3 initially she was the person who received it from
4 Mr. Goggins and, as Miss Zimmerman told you, you
5 you will see her report in your jury room and you
6 will see on her report that she put that she
7 received it from Mr. Goggins in the report that you
8 are to rely upon, and then she took the stand and
9 said, "No, no, wait a minute, no, I didn't actually
10 take it from him." And he told you that he gave it
11 to her.

12 So, credibility, what do we believe? I heard
13 so many different things when these witnesses were
14 up on the stand, I don't know what to believe and I
15 don't think you do either, and that is reasonable
16 doubt. This is a very confusing case. You look at
17 it the first time, you are going to slam dunk it,
18 he did it, they said he did it, right, it's good.

19 But you saw all this. Why, why doesn't she
20 know anything, why does she try to tell you one
21 thing and then try to couch it another way and make
22 it sound better that way, and then we hear about
23 how she was searched but not searched by a female
24 officer, can't really search her.

25 And you also heard about Jerry Campbell. I

1 forgot that. You heard about Jerry Campbell was
2 there. He's actually an employee of Clinton P.D.
3 I didn't see him. It makes me wonder what he would
4 have said. Would he have come forward and said
5 that's exactly what happened? I would have to
6 think that if I was the State and I had five police
7 officers who would come and say that's true, how it
8 happened here, I would call them, because they have
9 the burden of proof.

10 My client, as the judge told you, doesn't
11 have to prove anything. This is still America, our
12 founding fathers said that it is better that 100
13 guilty men go free than one innocent man be
14 convicted, and that is basically the crux of what
15 is meant by hesitation to act in the law that has
16 been passed down by our Supreme Court. And that is
17 what Mrs. Zimmerman told you. If you hesitate to
18 believe any one of these elements that she told
19 you, if you hesitate, then you must find in favor,
20 on that element, for Mr. Rice.

21 Now, I want to put this in a way that is
22 understandable, about hesitation. If I hand you
23 one hundred pieces of candy, one hundred nice mints
24 for the jury and I lean over to give you one and
25 you start to take one and as you start to take it I

1 tell you, oh, one of these has cyanide in it, would
2 you pull it out? That's hesitation. That's the
3 way the Supreme Court defines it, if you hesitate
4 to act. That's how strong the burden is on the
5 State. So, if I hand you that cup and you don't
6 keep reaching that's hesitation. If Mrs. Zimmerman
7 hands you this evidence, Miss Sanford, the great
8 credible witness that she is, and none of the other
9 witnesses, and then Mr. Goggins, and while I'm
10 thinking about Mr. Goggins, let's think about what
11 he told you. He said that he took the drugs down
12 on the 6th of October. The analyst says the 3rd.
13 Her report says the 3rd. Do we know what happened
14 anywhere? No. I know no more now than I did when
15 I first reviewed this case. I'm actually more
16 confused because of new stuff said five or six
17 different ways. And Miss Sanford is the crux of
18 this whole case. If you can't believe her you
19 can't believe anything because she's the person out
20 there doing this for them while she's not employed
21 by them. She says later she renders services for
22 them.

23 Ladies and gentlemen, I don't know about you
24 but when I get paid by somebody I'm working for
25 them, I'm beholding to that person. That person

1 becomes my boss and if I don't make them happy I'm
2 soon out of a job, and if I need crack and I need
3 money I'm going to say what I have to say and do
4 what I have to do, and that is what you saw here.
5 Miss Sanford started off telling you what looked
6 like it made sense, and then she forgot and then
7 she started telling another story. Then she told
8 another story. She's never met him before, but
9 then, "Usually they searched me this way," and that
10 was the light bulb that went off. Usually. What
11 do you mean, usually? You usually do this but you
12 have never met him before? Totally impossible.

13 Clearly she told you that there was no proof
14 that it was Mr. Rice the first time. She told you
15 that. They couldn't prove it with what they had
16 but they went back, met. Crack sitting in an
17 envelope eight months, supposedly sealed, and we're
18 trusting these people who told you these different
19 stories, we're trusting them, their word on that,
20 and if they are not honest about one thing how do
21 we know about the others? Does it make you wonder
22 about the videotape that seemed to click off at
23 certain times? It was initialed by Miss Sanford
24 the day of the trial. It certainly makes me
25 wonder. I thought that unusual and I would have

1 probably never known that if I just hadn't seen the
2 day she signed it.

3 Look at this evidence with a skeptical eye.
4 That's what our forefathers require, that is what
5 this judge is going to tell you to do, that's your
6 duty. You may believe for the most part that Mr.
7 Rice is guilty but that's not good enough.
8 Remember it's a piece of candy when you think about
9 whether you would hesitate on any of these
10 elements, would you hesitate if I say do you
11 believe that's true? If you hesitate you must find
12 in favor of Mr. Rice.

13 So, go back in that jury room and do what the
14 judge will tell you. We trust you, that's why we
15 selected you. Every one of you folks look
16 reasonable, rational and I believe that you will
17 treat this case with the fairness it deserves,
18 because we each could be standing here today and
19 there could be people saying these things happened,
20 and our forefathers didn't want that.

21 Everybody deserves the truth, deserves proof,
22 and the proof comes from here and it has to be
23 believed beyond a reasonable doubt, not just sort
24 of believed, like I kind of believe what Miss
25 Sanford said, maybe, I don't know which time, I

1 kind of believe what Mr. Goggins said, maybe it was
2 the 3rd, maybe it was the 6th, I kind of believe
3 what Miss Stanley said, she got it first and maybe
4 not. I don't know what to believe and I think
5 common sense tells you you don't know what to
6 believe either and if you don't you don't convict.

7 I would ask, based upon what you have been
8 shown here today by the State, that you render a
9 true verdict, which is what verdict means, to speak
10 the truth, speak the truth about whether you
11 hesitate or not, speak your mind when you're in the
12 jury room, that's your right, let the evidence be
13 your guide, let the witnesses be your guide.

14 Mrs. Zimmerman is correct, what I tell you is
15 not evidence, I can't tell you, Miss Zimmerman
16 can't tell you. This whole case rings around Miss
17 Sanford and Mr. Goggins, the various different
18 stories, starting off with the one that sounded the
19 best. Should we question her for another hour? I
20 don't know. That's something else. I ask that you
21 give this the consideration that I know you will,
22 that we knew you would when we selected each and
23 every one of you and we will trust your verdict.

24 Thank you.

25 THE COURT: All right, ladies and gentlemen,

1 you have heard all the evidence you're going to
2 hear in this case, it is now my duty to instruct
3 you on what the law is you apply to this case, it
4 is your duty to find the facts from the evidence in
5 the case. To those facts you must apply the law as
6 I give it to you and you must follow the law as I
7 give it to you. You should not be concerned with
8 what the law should be but what it is. You must
9 not be influenced in this case by any personal
10 likes or dislikes or any undue sympathy. That
11 means you must decide this case solely on the
12 evidence before you and according to the law. You
13 took an oath to do that yesterday when we began
14 this trial.

15 Now, ladies and gentlemen, please do not read
16 into these instructions or into anything I may have
17 said or done as indicating to you what I think the
18 facts are, what I think your verdict should be,
19 because that's entirely up to you. And you decide
20 what the facts are by evaluating or weighing the
21 evidence you have heard during this trial and you
22 weigh the evidence simply by doing that in a mental
23 way, you don't do it in a physical way, simply
24 weigh the evidence by evaluating it and use your
25 good common sense and sound judgment.

1 I told you at the beginning of the trial that
2 evidence consists of two sources. That is sworn
3 testimony of witnesses based on direct and
4 cross-examination, and second, the exhibits that
5 have been introduced into the trial.

6 There are certain things not evidence, you
7 may not consider them in deciding what the facts
8 are. As I told you at the beginning what the
9 lawyers say is not evidence because they are not
10 witnesses, what they said is designed to help you
11 interpret the evidence but it's not evidence
12 itself. Likewise, anything you have heard while
13 court is not in session is not evidence.

14 There are also two types of evidence. The
15 first is direct evidence, the second is
16 circumstantial evidence. Direct evidence is simply
17 direct proof of a fact such as the testimony of an
18 eyewitness. Circumstantial evidence, on the other
19 hand, is indirect evidence. That is proof of a
20 chain of facts from which you could find that
21 another fact exists even though it has not been
22 proven to you directly.

23 You can consider both direct and
24 circumstantial evidence and give them both equal
25 weight. It's for you to decide, though, whether a

1 fact has been proven by direct or circumstantial
2 evidence and in making that decision you must
3 consider all the facts and all the evidence in a
4 light of reason and common sense and experience.

5 Ladies and gentlemen, at the beginning of the
6 case I told you you would have to be the judges of
7 the facts and you would have to determine and judge
8 the credibility of the witnesses and I have told
9 you some things you could use in making that
10 decision as to credibility. I'm not going to
11 repeat them now because I know you heard me the
12 first time. I will tell you further you can use
13 your common sense, you certainly didn't surrender
14 that when you came to the courthouse for jury duty,
15 and you can use the things you use in your day to
16 day life when you decide whether someone is telling
17 you the truth or not.

18 You also can believe all or part or none of a
19 witness' testimony, you can believe parts of
20 something a witness says and disbelieve other parts
21 or you can believe everything a witness says or you
22 can believe nothing a witness says, and you
23 certainly can believe one witness over several or
24 several over one. Your sole job, ladies and
25 gentlemen, is to determine the true facts of this

1 case and determine whether the State has met its
2 burden of proof. It doesn't matter from where that
3 truth comes, from which witness.

4 Now, you have heard testimony from an expert
5 witness in the case and I told you at the time that
6 testimony was presented an expert witness can give
7 their opinions but you have to judge their
8 credibility and gauge their believability just as
9 you do all other witnesses.

10 Now, ladies and gentlemen, this is a criminal
11 case and I told you at the outset that the mere
12 fact that Mr. Rice has been indicted doesn't mean
13 anything. It is simply the formal way the case
14 begins. He has pled not guilty and the indictment
15 is not evidence. It's not a witness, it's not an
16 exhibit. The indictment is simply the way the case
17 begins and the ticket, so to speak, that allows the
18 State to begin its case.

19 Mr. Rice has pled not guilty and that puts
20 the burden of proof on the State. He can only be
21 convicted if you find that the State has proven
22 each and every element of these crimes beyond a
23 reasonable doubt.

24 There are two crimes alleged. The first is
25 distribution of crack cocaine, the second is

1 distribution of crack cocaine within the vicinity
2 of a school, playground or park. You will have to
3 determine whether the State has met it's burden of
4 proof as to each element of each crime. I'm going
5 to go over those elements with you momentarily but
6 you are to consider each count separately and
7 individually and not be influenced in deciding one
8 count by your decision in the other.

9 Now, ladies and gentlemen, by pleading not
10 guilty, as I said, that puts the burden of proof on
11 the State and at this stage Mr. Rice is presumed
12 innocent, as I told you at the beginning of the
13 trial, and that presumption of innocence remains
14 with him and even into your deliberations and it
15 can only be removed if and only if you find the
16 State has met its burden of proving guilt beyond a
17 reasonable doubt.

18 A person, a citizen charged with a criminal
19 offense in South Carolina or in this country is
20 never required to prove himself innocent. It is an
21 important and fundamental rule of law that a
22 defendant in a criminal trial, no matter what that
23 charge may be and no matter what the seriousness of
24 it may be, will always be presumed to be innocent
25 for the crime for which the indictment was issued

1 unless and until guilt has been proven by evidence
2 satisfying you of that guilt beyond a reasonable
3 doubt.

4 The presumption of innocence has been likened
5 to a robe of righteousness that is placed around the
6 shoulders of a defendant and remains with him until
7 it is removed by the State by presenting evidence
8 satisfying you of guilt beyond a reasonable doubt.

9 Now, ladies and gentlemen, the presumption of
10 innocence is not a mere legal theory or some
11 technicality. It is the cornerstone of our
12 criminal justice system and it is a substantial
13 right to which every defendant is entitled unless
14 you the jury are satisfied from the evidence that
15 the presumption should be removed by the State's
16 proof beyond a reasonable doubt.

17 Now, ladies and gentlemen, what is a
18 reasonable doubt? You have heard that term in the
19 case, and a reasonable doubt is defined as the kind
20 of doubt that would cause a reasonable, sincere,
21 honest and conscientious person to hesitate to act
22 on an important matter in their own affairs. Proof
23 beyond a reasonable doubt is proof that leaves you
24 firmly convinced of the defendant's guilt.

25 Now, of course there are very few things in

1 life that we know with absolute certainty and in
2 criminal cases the law does not require proof that
3 overcomes every possible doubt. If you, after
4 considering the evidence, are firmly convinced Mr.
5 Rice is guilty of the crime charged you must find
6 him guilty. On the other hand, if you think there
7 is a possibility that he is not guilty you must give
8 him the benefit of that doubt and find him not
9 guilty.

10 A reasonable doubt may arise from the
11 evidence or from a lack of evidence and I further
12 tell you that a defendant is entitled to every
13 reasonable doubt that may arise in a case, and what
14 that means is simply this. If as to any issue of
15 fact essential to a conviction and a verdict of
16 guilty on an offense you have a reasonable doubt as
17 to how that issue should be resolved you should
18 resolve that doubt in favor of Mr. Rice.

19 I will tell you further, as I told you at the
20 beginning, that a criminal defendant, no matter
21 what kind of case it is, is never required to take
22 on the burden of proof or offer any explanation or
23 evidence whatsoever. And the fact Mr. Rice did not
24 testify in this case is not something you may
25 consider in determining whether he is guilty of the

1 crime charged. The mere fact that a defendant does
2 not testify does not mean anything and it cannot
3 even be discussed by you in the jury room. You
4 took an oath to decide this case based on the
5 evidence and the law as I have been instructing you
6 on the law, and part of that law is anyone charged
7 with a crime has the right to remain silent. That
8 is an absolute right that everyone enjoys and
9 simply because Mr. Rice chose to claim that right
10 and exercise it during this trial does not mean
11 anything and cannot be taken into account by you or
12 even discussed when you are deliberating.

13 Ladies and gentlemen, the burden of proof, as
14 I have told you, is on the State and Mr. Rice has
15 no burden whatsoever and is not required to prove
16 he is innocent or not guilty. The burden, as I
17 said, is on the State to prove guilt beyond a
18 reasonable doubt.

19 Now, what are the elements of the crimes that
20 the State must prove beyond a reasonable doubt?
21 Well, there are two crimes charged and the verdict
22 form sets them out and I'm going to go over them in
23 the order they are set out on the verdict form.
24 The first charge is distribution of crack cocaine.
25 In order to convict Mr. Rice of that the State must

1 prove beyond a reasonable doubt that Mr. Rice had
2 actual control or the right to exercise control
3 over crack cocaine. And second, that he knowingly
4 distributed or delivered the crack cocaine. And
5 third, that the substance upon analysis was in fact
6 crack cocaine. And finally, that the offense
7 occurred in Laurens County.

8 Now, distribute, ladies and gentlemen, means
9 to deliver or to actually constructively or attempt
10 to deliver or transfer a drug other than by
11 administering or dispensing it. Deliver means to
12 actually constructively or attempt to transfer a
13 drug. A transfer can involve an exchange for
14 money, a barter or a gift. There does not have to
15 be anything given in exchange for the drugs for it
16 to constitute transfer under the definition of the
17 law.

18 The second count, you must consider whether
19 the State has met its burden of proof as to
20 distribution of a controlled substance within the
21 proximity of a school, playground or park. This
22 offense contains the same elements as the
23 distribution charge except there is an additional
24 element and that is the State must prove beyond a
25 reasonable doubt that Mr. Rice knowingly

1 distributed, sold, purchased, manufactured or
2 unlawfully possessed with intent to distribute or
3 distributed crack cocaine while in or within
4 one-half mile of the grounds of a public or private
5 elementary, middle or secondary school, a public
6 playground or park, a public vocational or trade
7 school or technical educational center or public or
8 private college or university.

9 Now, ladies and gentlemen, the word knowingly
10 is defined under the law as intentionally or
11 willfully or deliberately and not involuntarily or
12 by mistake or accident.

13 Please bear in mind you cannot return a
14 verdict of guilty as to the second count, the
15 distribution within proximity of a school,
16 playground or park unless you have found the State
17 has met its burden of proving the distribution
18 charge beyond a reasonable doubt as to each
19 element.

20 Now, ladies and gentlemen, in any criminal
21 case criminal intent is something the State must
22 prove as well. Criminal intent must be proven
23 beyond a reasonable doubt and it is always a matter
24 that must be determined by you the jury from the
25 circumstances of the case. There is no way to

1 prove intent to a mathematical certainty and
2 certainly science cannot dissect a person's brain
3 and determine what that person intended at a
4 particular point in time, so the law says criminal
5 intent may be inferred from the circumstances.

6 Now, it is not necessarily, not necessary to
7 establish intent by direct and positive evidence
8 but intent may be established by inference in the
9 same way as any other fact, by taking into
10 consideration the acts of the parties and all the
11 facts and circumstances.

12 Criminal intent is a mental state, a
13 conscious wrongdoing and it is up to you to
14 determine, up to you to determine what the
15 defendant intended to do based on the
16 circumstances.

17 Now, ladies and gentlemen, that covers the
18 elements of distribution and distribution within
19 proximity of a playground or park and I want to
20 tell you further that mere presence where drugs are
21 shown to have been found is not enough to prove
22 someone guilty.

23 I have set forth the elements and you must
24 determine whether the State has met its burden of
25 proof as to the elements as to each crime, and let

1 me just tell you you don't serve as jurors in this
2 case or in any case to be partisan or advocates for
3 either side. You were chosen because both sides,
4 that is the State and Mr. Rice, believed you could
5 be fair and impartial and that you could decide
6 this case without any bias or prejudice or any kind
7 of preconceived idea. And that means you are to
8 use your experiences in life and your good common
9 sense and sense of logic and reason. You bring
10 those things to bear on the evidence and the things
11 you have heard during this trial and then you take
12 the law I have just given to you and you apply it
13 to the facts as you have found them and once you do
14 that you will be able to return a verdict.

15 And let me say something about your
16 deliberations. If you went in the dictionary and
17 looked up the word deliberation you would see it
18 defined as a careful consideration, a weighing up
19 with a view to a decision. And I have already
20 talked to you about this idea of weighing evidence.
21 Now, we call it deliberations for a reason. You
22 are to discuss the evidence and consider it
23 carefully and deliberately and discuss it in a
24 calm, thorough and courteous manner. Remember you
25 are not partisans or advocates for either the State

1 or Mr. Rice, you are judges, judges of the facts
2 and your sole interest is to determine the facts of
3 this case and determine whether the State has met
4 its burden of proof.

5 Now, ladies and gentlemen, you each have a
6 vote and don't be afraid to change your vote if
7 discussion persuades you you should, but don't
8 surrender an honestly held or conscientious belief
9 simply to get this case over with or to reach a
10 unanimous verdict, because this case is important,
11 it's important to the State, it's important to Mr.
12 Rice, and this is their day in court and remember
13 if you are doing something deliberately you are in
14 no great hurry, and you shouldn't be in a hurry
15 here. But remember also that in the end your vote
16 is just that, it's your vote and no one else's.

17 Now, I'm going at this time to ask the
18 bailiff to give Mr. Turner the verdict form, sir.

19 Thank you.

20 And as you can see, it's straightforward and
21 it asks two questions. The first is the
22 distribution of crack cocaine, where the second
23 question is distribution of crack cocaine within
24 proximity of a school, playground or park. Please
25 don't attach any significance as to which option I

1 put first. I just have to put one of them first.
2 It doesn't mean anything, don't read anything into
3 that.

4 And remember also that you cannot find Mr.
5 Rice guilty of the distribution within proximity of
6 a playground or park unless you have also found him
7 guilty of distribution of crack cocaine. And of
8 course your verdict must be based on the evidence
9 and whether the State has met its burden of proof,
10 and you may decide that Mr. Rice is guilty or not
11 guilty, that is your decision. Again don't read
12 anything into which option I put first. I don't
13 even know which one I put first, it doesn't mean
14 anything.

15 Now, the record is closed in this case and
16 there are not going to be any more witnesses and
17 there is not going to be any more exhibits and that
18 means you must decide the case on what you have
19 back there with you in the jury room. If something
20 has been referred to during the course of this
21 trial and it's not back there I can't give it to
22 you, so please understand that.

23 And I'm going to ask you to go back to your
24 jury room now. Don't discuss the case. You will
25 know you can begin deliberating when you get the

1 exhibits. That will be your signal you can start
2 talking about the case at long last.

3 And I thank you for your attention. Just go
4 back to the jury room at this time and we will get
5 the exhibits back to you as soon as we can. Thank
6 you very much.

7 (The jury was excused from the courtroom at
8 11:00 a.m.).

9 THE COURT: We need to get Mr. Campbell, make
10 sure he's not back there in the jury room.

11 BAILIFF: The alternate?

12 THE COURT: Yes. All right, any objection or
13 exception to the charge from the State?

14 MS. ZIMMERMAN: Your Honor, the only thing I
15 would ask, if Mr. Pennington is not opposed to
16 this, I'm fine with the bailiff relaying this, you
17 did say if it's not back in the jury room they
18 can't get it, and I believe if they requested to
19 see the video again they would be able to do that.

20 THE COURT: Oh, yes, ma'am, that's a good
21 point. I didn't know what kind of equipment you
22 had back there in the jury room. Certainly just
23 tell them when they bring the evidence in, if they
24 want to see the video, just to let us know, we'll
25 arrange that for them.

1 BAIALIFF: Do you want the alternate now?

2 THE COURT: Just hold him right out there one
3 second. I'm sorry, Mr. Campbell.

4 Any objection from the defense?

5 MR. PENNINGTON: No, Your Honor, I think that
6 is very reasonable, I would certainly agree with
7 that.

8 THE COURT: Okay. All right, you all confer
9 and make sure all the evidence is in order and
10 there is nothing in there that is not supposed to
11 be, everything is in there that is supposed to be.

12 You can bring Mr. Campbell out now. Thank
13 you, sir.

14 All right. Sir, the law doesn't allow you to
15 be in the jury room during the deliberations, Mr.
16 Campbell, but if you would, sir, if you would just
17 stick around until about 11:30 in case, in the
18 unlikely event something did happen, somebody
19 couldn't continue to deliberate we could plug you
20 in there, but I hope that doesn't happen but you
21 have given us the peace of mind to know we could
22 finish the case in case something did happen. So,
23 if you could put him in a separate room, sir, and
24 make sure about 11:30 that he can be on his way.

25 Thank you for your service and you just need

1 to call back after 6:00 tonight, sir.

2 All right, we'll be at ease until we hear
3 something else. Thank you very much.

4 (Recessed at 11:14 a.m.).

5 (Reconvened at 11:31 a.m.).

6 THE COURT: Okay, I understand we have a
7 verdict. Anything before we bring the jury in?

8 MS. ZIMMERMAN: Not from the State.

9 MR. PENNINGTON: Nothing from the defense.

10 THE COURT: All right. We need to wait for
11 the Clerk, I understand.

12 Okay, bring the jury on in. Thank you, sir.

13 (The jury returned to the courtroom at
14 11:33 a.m.).

15 THE COURT: Okay, Mr. Turner, has the jury
16 reached a unanimous verdict, sir?

17 JUROR: We have, sir.

18 THE COURT: All right, if you would hand the
19 verdict to the bailiff we'll receive it and publish
20 it.

21 Thank you.

22 Okay, yes, ma'am., Madam Clerk, publish the
23 verdict.

24 THE CLERK: Case number 2006-GS-30-1587 and
25 1588, the State versus Ian Rice. "As to the charge

1 distribution of crack cocaine we the jury
2 unanimously find the defendant Ian Rice guilty. As
3 to the charge of distribution of crack cocaine
4 within one-half mile radius of a park or playground
5 or a school we the jury unanimously find the
6 defendant Ian Rice guilty." Signed by the
7 foreperson Mr. Turner, dated November 14, 2007.

8 Ladies and gentlemen, if that be your verdict
9 will you indicate by your upraised right hand.

10 Thank you.

11 THE COURT: Okay. Thank you, Madam Clerk.
12 Any matters or motions before the jury is
13 discharged?

14 MR. PENNINGTON: Ask to poll the jury, Your
15 Honor.

16 THE COURT: Yes, ma'am, if you would, poll
17 the jury.

18 THE CLERK: Ladies and gentlemen, if the
19 verdict I just published is the verdict reached in
20 the jury room I ask you was it your verdict then
21 and is it your verdict now. As I call your name
22 please indicate your answer as yes or no.

23 Mr. Stanley W. Turner.

24 JUROR: Yes.

25 THE CLERK: Christopher J. Miles?

1 JUROR: Yes.

2 THE CLERK: Marisa L. O'Neal?

3 JUROR: Yes.

4 THE CLERK: Patricia A. Conway?

5 JUROR: Yes.

6 THE CLERK: Cheryl D. Knight?

7 JUROR: Yes.

8 THE CLERK: India B. Fowler?

9 JUROR: Yes.

10 THE CLERK: Larry D. Smith?

11 JUROR: Yes.

12 THE CLERK: James G. Steadman, Jr.?

13 JUROR: Yes.

14 THE CLERK: Laura A. Lenz?

15 JUROR: Yes.

16 THE CLERK: Thomas L. White?

17 JUROR: Yes.

18 THE CLERK: Nancee S. Switzer?

19 JUROR: Yes.

20 THE CLERK: James L. McJunkin, II?

21 JUROR: Yes.

22 THE COURT: All right. Anything further

23 before the jury is discharged, from the State?

24 MS. ZIMMERMAN: Nothing from the State.

25 THE COURT: The defense?

1 MR. PENNINGTON: Nothing from the defense.

2 THE COURT: All right. Do they need to call
3 back after 6:00?

4 THE CLERK: Yes.

5 THE COURT: Okay, ladies and gentlemen, I
6 thank you again for your service and I'm going to
7 ask that you call back after 6:00 tonight and
8 they'll give you further instructions, and I'm not
9 sure what the status of the docket is. The
10 Solicitor keeps track of that and if there are more
11 cases they'll let you know after 6:00 what time to
12 be back up here, and if you wish to see the
13 sentencing you certainly can do that, just come
14 around the back door there, all right?

15 Thank you very much.

16 (The jury was excused from the courtroom).

17 THE COURT: Okay, ready to proceed with
18 sentencing?

19 MS. ZIMMERMAN: The State's ready Your Honor.

20 MR. PENNINGTON: We're ready, Your Honor.

21 THE COURT: Okay.

22 MS. ZIMMERMAN: If I may approach?

23 THE COURT: Yes, ma'am.

24 Okay.

25 MS. ZIMMERMAN: Your Honor, the State would

1 just reiterate the defendant's criminal history.
2 He has a conviction of distribution of crack in
3 1998, and I have a certified copy of that
4 conviction if you need it to establish that this is
5 a third offense.

6 In addition he has in 2000 a person who
7 places a child at risk conviction, a carrying a
8 pistol unlawfully conviction.

9 In 2001 a criminal domestic violence
10 conviction.

11 And then in 2003 a possession of marijuana
12 and a possession of a gram of crack. In addition I
13 have that conviction if Your Honor would like it to
14 establish this is a third offense.

15 THE COURT: Okay. Anything further from the
16 State?

17 MS. ZIMMERMAN: Nothing from the State, Your
18 Honor.

19 THE COURT: All right.

20 Yes, sir, Mr. Pennington?

21 MR. PENNINGTON: Your Honor, my client from
22 the very beginning has asserted his innocence.
23 From day one. Every day that I have dealt with him
24 he has asserted that he did not do this. He never
25 wavered. No matter what was offered, no matter

1 what was done, he asserted that this was not him
2 and he didn't do it and I would ask that the Court
3 not hold that against him. He has done what he has
4 the right to do, the jury has rendered their
5 verdict, we don't agree with it but that is how the
6 system works. We are asking that Your Honor
7 sentence him to the minimum. I believe that the
8 guidelines require a fifteen to thirty year
9 sentence, if I'm correct?

10 MS. ZIMMERMAN: That's correct and it cannot
11 be suspended.

12 MR. PENNINGTON: Right. Your Honor, we are
13 asking that the Court, based on what the Court has
14 seen here today, that the Court sentence him to the
15 minimum fifteen years. While we would not like to
16 see him get any sentence, we would ask that the
17 Court sentence him to the mandatory minimum.

18 THE COURT: All right, thank you, Mr.
19 Pennington.

20 MR. PENNINGTON: Your Honor, if I could,
21 since I have been dealing with him he has got a
22 job, he's actually moved up in management, done so
23 well that he actually is on first shift. He is
24 intelligent, able and I would ask that Your Honor
25 consider that.

1 THE COURT: All right. It certainly makes no
2 difference to me whether someone has a jury trial
3 or not. I certainly wouldn't hold that against
4 anyone and I'm not considering that.

5 Mr. Rice, anything you would like to tell me,
6 sir?

7 THE DEFENDANT: Yes, sir. I got three kids.
8 You know, obviously, you know, the jury felt like I
9 was guilty and I'm not guilty, you know. I don't
10 see how they got a conviction. I'm just shocked at
11 it because, you know, a shirt, you know, when they
12 made one they didn't just stop making one, and that
13 is obviously how they got the conviction, because
14 my face is not on camera during the transaction.
15 And I just don't understand it, man, it just hurt
16 me inside to see my life go down the drain on
17 something like that, and I'm going to fight, Your
18 Honor. That's all I have to say. I got three kids
19 and being what I'm looking at, when I get out, you
20 know, if I can't get it overturned, nothing like
21 that, my kids will be grown, you know.

22 MR. PENNINGTON: Your Honor, we have
23 explained to him his right to appeal within ten
24 days as well as his right to file a PCR within one
25 year.

1 THE COURT: All right. Well, your lawyer did
2 an outstanding job for you, Mr. Rice, and had your
3 best interests throughout this matter as for as I
4 can tell, in the aggressive way he represented you.
5 And it is tragic to see someone's life, as you say,
6 go down the drain through drugs and I'm sure that
7 during the amount of time we had in this trial
8 drugs probably took the lives of several people in
9 this country, and the sentence of the Court is on
10 the distribution of crack third you be committed to
11 the Department of Corrections for a period of
12 seventeen years. On the proximity charge, case
13 1587, you be committed to the Department of
14 Corrections for a period of ten years concurrent,
15 and good luck to you, sir.

16 THE DEFENDANT: Thank you.

17 THE COURT: Thank you very much.

18 MR. PENNINGTON: Thank you, Your Honor.

19 MS. ZIMMERMAN: Thank you, Your Honor?

20 (Concluded at 11:44 a.m.).

21
22
23
24
25

1
2
3
4 I, the undersigned Henry P. Young, Official
5 Court Reporter for the Eighth Judicial Circuit of
6 the State of South Carolina, do hereby certify that
7 the foregoing is a true, accurate, and complete
8 transcript of record of all the proceedings had and
9 evidence introduced in the trial of the captioned
10 case in the Circuit Court for Laurens County, South
11 Carolina, on the 13th and 14th days of November,
12 2007.

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

15 October 16, 2008

16
17
18
19 Henry P. Young
20 Court Reporter
21
22
23
24
25

FORM 5

STATE OF SOUTH CAROLINA

LYNN W. LANCASTER

IN THE COURT OF COMMON PLEAS

County of Laurens

2008 JUN -9 P 4:48

2008-CP-30-477

IAN Rice #274002

Full name and prison number (if any) of Applicant

v.

LAURENS COUNTY
CLERK OF COURT

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

Attorney General

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Perry Correction Institution
430 Oakland Rd. Pelzer S.C. 29669
2. Name and location of Court which imposed sentence Laurens County
Courthouse
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 06-GS-530-1587
 - (b) 06-GS-530-1588

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Nov 15, 2007
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty YES
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes but my lawyer didn't do it in a timely manner
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ineffective of trial counsel
- (b) ineffective counsel to amend
- (c) violation of 14th amend
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see attachment
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. NO
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. NO
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. NO
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. NO
- ii. _____
- iii. _____
- iv. _____

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

- i. NO
- ii. _____
- iii. _____
- iv. _____

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

NO

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

(a) which grounds have been presented:

- i. NO
- ii. _____
- iii. _____

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

- i. NO
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) NO
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Clyde L. Pennington, Jr 221
Church St Laurens, SC 29360
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial
- ii. _____
- iii. _____

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

Granted A Newtrial, And Vacate
Conviction and Sentence

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

NO

STATE OF SOUTH CAROLINA)

County of Greenville)

VERIFICATION

I, JAN 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.

x [Signature]

SWORN to and subscribed before me this 5th
day of June 2008

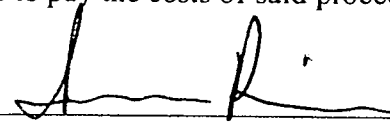
[Signature] (L.S.)
Notary Public

My Commission Expires: May 12th 2014

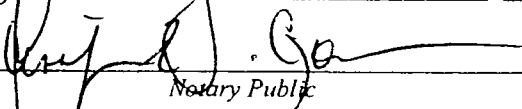
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Ian Rice # 274002, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

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

X 
Applicant

SWORN or affirmed to and subscribed before me this
5th day of June, 2008.


Notary Public

My Commission Expires: May 12th 2014

LAURENS COUNTY
CLERK OF COURT

2008 JUN -9 P 4:48

LYNN W. LANCASTER

STATE of South Carolina
County of Laurens

IN THE COURT of Comm
Pleas

2008-CP-30-477

IAN Rice #274002 LYNN W. LANCASTER

Applicant 2008 JUN -9 P 4:48

Memorandum of

Law in Support

Post Conviction

Relief Application

V.S

LAURENS COUNTY
CLERK OF COURT

STATE of South Carolina

Attorney General

Petitioner IAN Rice #274002 Now comes before
this Court for Post Conviction Relief in Support
of memorandum of Law.

I Statement of Case

The Petitioner was indicted for wilfully,
unlawfully and knowingly distribute, sell, purchase,
manufacture, or possess with intent to
distribute, a quantity of CRACK COCAINE, A
schedule II controlled, while in, on, or within
A half mile radius of the grounds of a
Public or private college or university, in
violation of section 44-53-445 of South
Carolina code of LAWS 1976, AS 2mend. ind-
ictment 06GS-30-1587, And Distribution
of CRACK COCAINE indictment 06GS-30-1588.

Arguments

- A. Ineffective of trial counsel
- B. Ineffective counsel of 6th Amend.
- C. Violation of 14th Amend.
- D. Lawyer didn't Challenge the Chain of Custody
- E. Indictments are wrong
- F. False Indictments
- G. Confidential Informant not creditable
- H. Kukali false statement
- I. Confidential Informant not searched properly
- J. Missing Link

Facts that support my Arguments.

- A. Lawyer fail to object to the Judge comment to the Jury that its my third offense.
- B. Didn't file appeal in a timely matter: US. VS Dominguez, 810 F.2d 1281. It's clear that the attorney, not the client, is responsible for failure to file timely appeal.
- C. The Court didn't have Jurisdiction for a Jury trial.
- D. The Chain of Custody was broken from drug box to it got to Kukali Stanley.
- E. I was indicted on proximity of a school, before the distribution.
- F. The Grand Jury didn't have Jurisdiction to Indict me. No term of Court 14-5-730
- G. She testified that Drugs took her kids away from her and she use to do drugs and she also said, she didn't do the undercover buy for money then she said she did it for money.
- H. First she said detective Tyrone Goggins brought the seal drugs to her, then she said someone else signed for it, then she signed for it.
- I. Male officers searched her. She already had drugs on her. No female officer to search her.
- J. Kukali Stanley was the only one testified about the chain of custody. She said a co-worker got it before she did, but the co-worker never testified at trial.

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LAURENS
STATE VS.IAN RICE

AKA:

Race: BLK Sex: M Age: 27DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip Clinton, SCDL# SID#

2006 -GS- 30 1588

A/W#: 1641920Date of Offense: 3/30/2006S.C. Code §: 44-53-375 BCDR Code #: 3 1 0 1 3 1 9☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Dist (rank 3rd 115-30413 + 10r 40-502)in violation of § 44-53-375B of the S.C. Code of Laws, bearing CDR Code # 3 1 0 1 3 1 9☒ NON-VIOLENT☐ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 17 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with **probation** for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §7-25-135

A TRUE COPY OF ORIGINAL

[Signature]
Lynn W. Lancaster

Lynn W. Lancaster

Laurens County CCOP & GS

days/hours Public Service Employment

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPSRecipient: *Fine: \$ \$14-1-206 (Assessments 107.5%) \$ \$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ \$56-5-2995 (DUI Assessment) \$12 \$ \$ 35.13 (Public Def/Prob) \$500 \$ \$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100\$50-21-114(BUI Breath Test Fee) \$50 \$ \$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ 6.75TOTAL \$ 231.75

SPECIAL CONDITIONS:

PTUP

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

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

pmts. of \$ beginning\$ paid to Public Defender FundOther: complete ATU☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE [Signature]Judge Code: 2 1 1 1 3 1 8Sentence Date: 11-15-07

Clerk of Court/Deputy Clerk

Court Reporter: Henry Young

ARREST WARRANT

I-641920

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
CLINTON

THE STATE

against

IAN RICE

Address:

CLINTON SC 29325

Phone:

Sex: M Race: B Height: 5-9 Weight: 175

DL State:

DL#:

DOB:

Agency OR#: SC0300200

Prosecuting Agency:

CLINTON DPS

Prosecuting Officer:

DETECTIVE TYRONE GOGGINS

Offense:

DIST. OF CRACK COCAINE

Offense Code: 44-53-375

Code/Ordinance Sec.

00-00-0000

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.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant IAN RICE

on 8-22-2006

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

H.W. COPELAND

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
CLINTON

AFFIDAVIT

Personally appeared before me the affiant

DETECTIVE TYRONE GOGGINS

being duly sworn deposes and says that defendant

IAN RICE

did within this county and state on

03/30/2006 to 03/30/2006

State of South Carolina (or ordinance of

County/ ☒ Municipality of CLINTON

in the following particulars:

DESCRIPTION OF OFFENSE: 00-00-0000 / DIST. OF CRACK COCAINE

I further state that there is probable cause to believe that the defendant named above did commit
a crime set forth and that probable cause is based on the following facts:

ON MARCH 30, 2006 ONE IAN RICE DID SALE A QUANTITY OF CRACK COCAINE TO A CONFIDENTIAL INFORMANT. THE
CONFIDENTIAL INFORMANT WAS WORK IN A UNDER COVER CAPACITY TO PURCHASE THE CRACK COCAINE. THIS OFFENSE
TOOK PLACE AT THE CORNER OF WALDEN STREET AND BOND STREET WITH IN THE CITY LIMITS OF CLINTON, LAURENS
COUNTY.

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster

Lynn W. Lancaster

Laurens County CACP & GS

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
CLINTON

Affiant's Address

404 NORTH BROAD STREET

CLINTON SC 29325

Affiant's Telephone

833-7512

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN 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 03/30/2006 defendant IAN RICE

did violate the criminal laws of the State of South Carolina (or ordinance of

County/ ☒ Municipality of CLINTON

) as set forth below:

DESCRIPTION OF OFFENSE: DISTRIBUTION OF CRACK COCAINE

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant an
bring him or her before me forthwith to be dealt with according to the 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.

Sworn to and subscribed before me

on 8/21/06

Signature of Issuing Judge (L.S.)

Judge's Address 203 W PITTS ST

CLINTON SC 29325

Judge's Telephone

833-5879

Issuing Court:

☐ Magistrate☐ Municipal☒ Circuit

Judge Code: JUDGE 89

ORIGINAL

Case: 200603308

178

LAURENS COUNTY
CLERK OF COURT

2006 AUG 25 P

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

October Term, 2006

Indictment # 06GS30- 1588

THE STATE

vs.

IC

IAN RICE

INDICTMENT FOR

DISTRIBUTION OF CRACK COCAINE

A TRUE COPY OF ORIGINAL

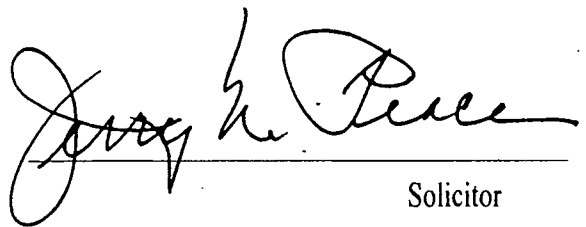
Lynn W. Lancaster

Lynn W. Lancaster
Laurens County CCP & GS

COUNT ONE

That IAN RICE, did in Laurens County, state aforesaid, on or about the 30th day of March, 2006, wilfully, unlawfully and knowingly manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase a quantity of Crack Cocaine, a Schedule II controlled substance in violation of the provisions of Title 44, Chapter 53, Article 3 of the South Carolina Code of Laws, 1976, as amended

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


Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

STATE VS.

IAN RICE

AKA:

Race: BLK Sex: M Age: 27

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip Clinton, SC

DL# SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2006 -GS- 30 1587

AW#: T-641921

Date of Offense: 3/30/2006

S.C. Code §: 44-53-445

CDR Code #: 0 / 1 / 0 / 8

☐ CASE RESTORED

SENTENCE

☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Proximity (Crack) (10-15yrs + 1000k)

in violation of § 44-53-445 of the S.C. Code of Laws, bearing CDR Code # 0 / 1 / 0 / 8

☒ NON-VIOLENT

☐ VIOLENT

☒ SERIOUS

☐ MOST SERIOUS

☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 06-65-30-1588

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-26-135.

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster

Lynn W. Lancaster

Laurens County CCP & GS

days/hours Public Service Employment

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine: \$ _____

\$14-1-206 (Assessments 107.5%) \$ _____

\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100

\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

\$56-5-2995 (DUI Assessment) \$12 \$ _____

\$ 35.13 (Public Def/Prob) \$500 \$ _____

\$73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25

\$33.7, 1B TP (Drug Court Surcharge) \$100 \$ 100

\$50-21-114(BUI Breath Test Fee) \$50 \$ _____

\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 6.75

TOTAL \$231.75

Clerk of Court/ Deputy Clerk

Court Reporter: Henry Young

PTUP

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

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

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

2 / 1 / 1 / 3 / 18

11-15-07

ARREST WARRANT

I-641921

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CLINTON

THE STATE

against

IAN RICE

Address: CLINTON SC 29325Phone: SSN: Sex: M Race: B Height: 5-9 Weight: 175DL State: DL#: DOB: Agency OR#: SC0300200Prosecuting Agency: CLINTON DPSProsecuting Officer: DETECTIVE TYRONE GOGGINSOffense: DIST. OF CRACK W/IN PROX. OF

SCHOOL

Code/Ordinance Sec. 00-00-0000 Offense Code: 44-53-4450188

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

is to be arrested and brought before me to be dealt with according to law.

The accused

Signature of Judge (L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to defendant IAN RICE

on 8-22-2006C.M.

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

H.W. COPELAND

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CLINTON

AFFIDAVIT

Personally appeared before me the affiant DETECTIVE TYRONE GOGGINS

being duly sworn deposes and says that defendant IAN RICE

did within this county and state on 03/30/2006 to 03/30/2006 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of CLINTON.

in the following particulars:

DESCRIPTION OF OFFENSE: 00-00-0000 / DIST. OF CRACK W/IN PROX. OF SCHOOL

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:

ON MARCH 30, 2006 ONE IAN RICE DID SALE A QUANTITY OF CRACK COCAINE TO A CONFIDENTIAL INFORMANT. THE INFORMANT WAS WORKING IN A UNDER COVER CAPACITY TO PURCHASE THE ILLEGAL DRUGS. THIS OFFENSE TOOK PLACE AT THE CORNER OF WALDEN STREET AND BOND STREET WITH IN 1/2 MILE FROM THE 6TH GRADE SCHOOL.

Lynn W. Lancaster

Lynn W. Lancaster

Laurens County COOP & GS

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

CLINTON

Affiant's Address 404 NORTH BROAD STREET

CLINTON SC 29325

Affiant's Telephone 833-7512

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER IN 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 03/30/2006 defendant IAN RICE

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of CLINTON

) as set forth below:

DESCRIPTION OF OFFENSE: DISTRIBUTION OR POSSESSION WITH INTENT TO DIST. CRACK COCAINE WITHIN PROX. OF A SCHOOL / PLAYGROUND

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to the 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.

Sworn to and subscribed before me

on 8/21/06

Signature of Issuing Judge (L.S.)

Judge Code: JUDGE 888

Judge's Address 203 W PITTS ST

CLINTON SC 29325

Judge's Telephone 833-5879

Issuing Court: ☐ Magistrate ☐ Municipal ☒ Circuit

ORIGINAL

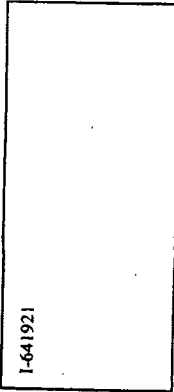
Case: 2006-182

WITNESSES

Jane Howell

WARRANT NUMBERS

I-641921



T-81

[Signature]

Foreman of the Grand Jury

Date: 10-20-06

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

October Term, 2006

Indictment # 06GS30-1587

THE STATE

vs.

IC

IAN RICE

INDICTMENT FOR

VIOLATION SECTION 44-53-445 (Proximity)

A TRUE COPY OF ORIGINAL

Lynn W. Lancaster

Lynn W. Lancaster
Laurens County, CCP & GS

THE STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

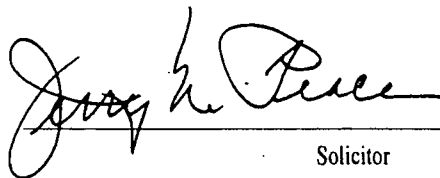
INDICTMENT FOR
VIOLATION SECTION 44-53-445 (Proximity)

At a Court of General Sessions, convened on the 20th day of October, 2006, the Grand Jurors of Laurens County present upon their oath:

COUNT ONE

That IAN RICE, did in Laurens County, state aforesaid, on or about the 30th day of March, 2006, wilfully, unlawfully and knowingly distribute, sell, purchase, manufacture, or possess with intent to distribute, a quantity of Crack Cocaine, a Schedule II controlled substance, while in, on, or within a one-half mile radius of the grounds of a public or private school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university, in violation of Section 44-53-445 of the South Carolina Code of Laws, 1976, as amended

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


Solicitor

CMTI330D

SCDC OFFENDER MANAGEMENT SYSTEM
RELEASE DATE SCREEN

09/11/08
C045420

OMCOMITA

SCDC# > ?274002

LOC: PERRY

RICE, IAN -

SCDC CLASSIFICATION...: NON-VIOLENT

OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE

SEXUAL REGISTRY...: N

SEXUAL PREDATOR...: NOT APP

DNA STATUS...: COMPLETED

GPS REQUIREMENT...: N

PREA DECISION...:

CURRENT SENTENCE: 017-00-000

CONSECUTIVE SENTENCE ...: N

017-00-000

CURRENT SENT START DATE: 07/17/2007

PROJECTED COMPLETION DATES

MAXOUT DATE ...: 12/23/2022

CURRENT EWC ...: NOT CURRENTLY EARNING EWC

YOA SIX YEAR DATE: / /

CURRENT EEC ...: NOT CURRENTLY EARNING EEC

INITIAL PAROLE DATE: 00/00/0000

NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL GT DAYS EARNED ...: 000039

LABOR CREW/WORK PROG DATE: 99/99/9999

TOTAL EARNED WORK CREDITS ...: 000011

LABOR CREW DISQ REASON:

TOTAL EDUCATION CREDITS ...: 000000

TERM FROM JOB/PROG WITHIN 6 MONTHS

TOTAL EXTRA EARNED CREDITS ...: 000

TOTAL SERVICE TIME EARNED ...: 000419

PFKEYS:

5: HISTORY OF DATE CHANGES

CLASSIFICATION SUMMARY REPORT DATED 09/11/08

C045420

SCDC# 274002

RICE, IAN -

FBI# 246470EB6

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... PERRY CORR INST

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 17 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: NO

MED CLASS: 1 NO MED PROB/NO WORK RESTRICT

MENTAL CLASS: NMH (NO MENTAL HEALTH TRE

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 29

DORM.....: Q2B0111T

RESIDENT STAB.: NOT APPLICABLE

PROJ MAXOUT DATE: 12/23/2022

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: NO CURRENT JOB

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 0 EEC LEVEL:

ASSIGNMENT...: GENERAL DETAIL UNEM

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE			
	YRS	MOS	DYS		START	V/NV	CAT	INDICT
CRACK DISTR PROX SCHOOL	10	0	0	LAURENS	07/17/2007	N	2	06GS301587
MANU/DIST CRACK-3RD,SUB.	17	0	0	LAURENS	07/17/2007	N	3	06GS301588
CHILD NEGLECT	1	0	0	LAURENS	03/14/2001	N	2	99GS30533
PRIOR SCDC OFFENSES(COMP)	SENTENCE			COUNTY	SENTENCE			
	YRS	MOS	DYS		START	V/NV	CAT	INDICT
CHILD NEGLECT	4	0	0	LAURENS	10/16/2003	N	2	02GS30373
CRACK POSSESS	2	0	0	LAURENS	07/25/2003	N	2	03GS30791
CDV 1/2/3-NON-MAND	1	0	0	LAURENS	07/13/2001	N	3	01GS30316
CDV 1/2/3-NON-MAND	1	0	0	LAURENS	07/13/2001	N	3	00GS30334
CHILD NEGLECT	0	30	0	LAURENS	05/02/2001	N	2	02GS300373
CARRY PROHIBITED WEAPON	1	0	0	LAURENS	03/14/2001	N	3	98GS30956

PRIOR COMMITMENTS OVER 90 DAYS:

NO PRIOR COMMITMENTS OVER 90 DAYS

DETAINEES (HOLD,WANTED,NOTIFY):

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

12/09/05	POSSESSION OF CONTRABAND	CONVICTED	MAJOR
12/09/05	I/M UNDER INFLUENCE/POSS	CONVICTED	MAJOR
08/06/05	INTERFERING WITH COUNT	CONVICTED	ADMIN
04/03/05	OUT OF PLACE	CONVICTED	ADMIN
01/21/05	DISRESPECT	CONVICTED	MAJOR
08/23/02	GAMBLING AND LOAN SHARKI	CONVICTED	MAJOR
07/21/02	OUT OF PLACE	DROPPED	MAJOR
07/01/02	OUT OF PLACE	CONVICTED	MAJOR
05/28/02	INCITING/CREATING A DIST	CONVICTED	MAJOR
01/30/02	STEALING		OTHER
01/17/02	GAMBLING AND LOAN SHARKI	CONVICTED	MINOR
01/09/02	OUT OF PLACE	CONVICTED	MAJOR
12/05/01	USE,POSS NARC,MARIJ,UNAU	CONVICTED	MAJOR
11/24/01	REFUSING OR FAILING OBEY	CONVICTED	MINOR
09/26/01	GAMBLING AND LOAN SHARKI	CONVICTED	MINOR
09/04/01	INCITING/CREATING A DIST	CONVICTED	MAJOR
08/09/01	INCITING/CREATING A DIST	CONVICTED	MAJOR
07/25/01	OUT OF PLACE		OTHER
07/21/01	INCITING/CREATING A DIST	NOT GUILTY	MAJOR
07/03/01	POSSESSION OF CONTRABAND		OTHER
05/17/01	OUT OF PLACE	CONVICTED	MINOR
04/26/01	DAMAGE,DESTROY,PROP.VALU	DROPPED	MAJOR

HISTORY OF MOVEMENTS:

SCDC# 274002

RICE, IAN -

(CONTINUED)

DATE	NAME	STATUS	ACTION
01/22/08	PERRY	INCARCERATED	ADMINISTRATIVE
11/29/07	KIRKLAND	INCARCERATED	R&E PROCESSING
11/29/07	PERRY	INCARCERATED	NEW SENT W/O PR/CS/SF REV
02/01/06	YORK CO	PROBATION	RELEASED TO PROBATION
01/05/06	EVANS	INCARCERATED	ADMINISTRATIVE
06/08/05	TYGER RIVER	INCARCERATED	ADMINISTRATIVE
06/08/05	PERRY	INCARCERATED	COURT/PAROLE HEARING VIA
09/20/04	TYGER RIVER	INCARCERATED	ADMINISTRATIVE
08/16/04	KIRKLAND	INCARCERATED	R&E PROCESSING
08/16/04	PERRY	INCARCERATED	PROBATION VIOLATOR
11/18/02	LAURENS CO	PROBATION	RELEASED TO PROBATION
05/29/02	TYGER RIVER	INCARCERATED	ADMINISTRATIVE
05/06/02	KIRKLAND	INCARCERATED	R&E PROCESSING
05/06/02	PERRY	INCARCERATED	NEW SENT W/O PR/CS/SF REV
03/24/02	LAURENS CO	PROBATION	RELEASED TO PROBATION
08/31/01	TYGER RIVER	INCARCERATED	RETURN FROM COURT
08/27/01	LAURENS CO	AUTH ABSENCE (AWL)	TO COURT
07/17/01	TYGER RIVER	INCARCERATED	RETURN FROM COURT
07/09/01	LAURENS CO	AUTH ABSENCE (AWL)	TO COURT
06/08/01	TYGER RIVER	INCARCERATED	RETURN FROM COURT
05/29/01	LAURENS CO	AUTH ABSENCE (AWL)	TO COURT
05/02/01	TYGER RIVER	INCARCERATED	ADMINISTRATIVE
04/03/01	KIRKLAND	INCARCERATED	R&E PROCESSING
04/03/01	PERRY	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
FOOD SERVICE AIDE	01/25/08	03/20/08	UNSAT JOB PERFORM	3F5
CUSTODIAL WORKER	01/06/06	02/01/06	RELEASED/PAROLED	3F5
CUSTODIAL WORKER	12/16/05	01/05/06	INSTIT TRANSFER	3F5
CUSTODIAL WORKER	10/28/05	12/15/05	ASLT/DRUG/MAJOR DISC	2F5
FOOD SERVICE AIDE	10/27/05	10/27/05	LATERAL TRANSFER	2F5
TEACHER AIDE	07/29/05	10/26/05	INMATE REQUEST	2F5
TEACHER AIDE	04/19/05	07/28/05	MI ELIGIBLE FOR LEVEL 2	3F5
LIBRARIAN/BOOKMOBILE	03/22/05	04/18/05	INMATE REQUEST	3F5
LIBRARIAN/BOOKMOBILE	01/28/05	02/01/05	PLACED IN ST/SP CUSTODY	3F5
LIBRARIAN/BOOKMOBILE	01/20/05	01/27/05	ASLT/DRUG/MAJOR DISC	2F5
WARDKEEPER	01/18/05	01/18/05	LATERAL TRANSFER	2F5
FOOD SERVICE AIDE	12/10/04	01/17/05	LATERAL TRANSFER	2F5
FOOD SERVICE AIDE	09/21/04	12/09/04	MI ELIGIBLE FOR LEVEL 2	3F5
PAINTER	09/10/02	11/18/02	RELEASED/PAROLED	5F5
PAINTER	05/30/02	09/09/02	CUSTODY REVIEW	3F5
WARDKEEPER	11/27/01	03/24/02	RELEASED/PAROLED	3F5
FOOD SERVICE AIDE	06/13/01	11/26/01	INMATE REQUEST	3F5
WARDKEEPER	06/12/01	06/12/01	LATERAL TRANSFER	3F5
FOOD SERVICE AIDE	05/03/01	05/29/01	COURT	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
BONUS 15 OR MORE	10/25/05	12/08/05	INMATE REQUEST
BONUS 4-7 HRS/WK	09/27/04	02/01/05	PLACED IN ST/SP CUSTODY
BONUS 15 OR MORE	06/11/02	11/18/02	RELEASED/PAROLED
BONUS 4-7 HRS/WK	02/04/02	03/24/02	RELEASED/PAROLED
BONUS 15 OR MORE	06/25/01	09/06/01	COMPLETED EDUC PROGRAM

***** END OF REPORT *****

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

Ian Rice, #274002

☐ Plaintiff

v.

State Of South Carolina

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2008-CP-30-0477

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
C. Alice Whitesides, Bar No.
Address:
PO Box 222 Laurens, SC 29360
phone: fax:
e-mail: other:

Defendant's Attorney:
Ashley A. McMahan, Bar No. 71676
Address:
PO Box 11549 Columbia, SC 29211-1549
phone: 803-734-3737 fax: 803-734-4113
e-mail: amcmahan@ag.state.sc.us other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

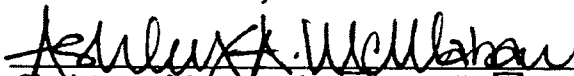
Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.



Signature of Attorney for ☐ Plaintiff / ☒ Defendant

January 7, 2009

Date submitted

SECTION III: Motion Fee

- ☐ PAID – AMOUNT:
☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCF)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the
attached order.
☐ Other:

JUDGE

CODE: _____ Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

)
)
)
IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT
Case No.: 2008-CP-30-0477

Ian Rice, #274002,

)
)
)
Applicant,

v.

)
)
)
RETURN

State of South Carolina,

)
)
)
Respondent.
)

Respondent, making its Return to the application for post conviction relief (PCR) filed June 9, 2008, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. Applicant was indicted at the October 2006, term of the Laurens County Grand Jury for Possession With Intent to Distribute Crack Cocaine Within Proximity to a Park or School (2006-GS-30-1587) and Distribution of Crack Cocaine (2006-GS-30-1588). Clyde L. Pennington, Jr., Esquire, represented him. On November 15, 2007, Applicant underwent trial, pursuant to which he was found guilty as indicted. The Honorable D. Garrison Hill concurrently sentenced him to confinement for a period of ten (10) years for Possession With Intent to Distribute Crack Cocaine Within Proximity to a Park or School and seventeen (17) years for Distribution of Crack Cocaine.

A Notice of Appeal was filed on Applicant's behalf, however it was dismissed on December 7, 2007. The Remittitur was sent on January 10, 2008.

Attached herewith and incorporated herein by reference are the records of the Laurens

County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the appellate court records, and the trial transcript.

II.

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel and
2. Grand Jury didn't have jurisdiction to indict.

III.

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). First, a PCR applicant must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 693 (1984); Alexander v. State, 303 S.C. 539, 541, 402 S.E.2d 484, 485 (1991). Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry v. State, 300 S.C. 115 at 117, 386 S.E.2d 624 at 625 (1989), *citing* Strickland.

Second, an applicant must show there is a reasonable probability, but for counsel's unprofessional errors, the result of the proceeding would have been different. Strickland, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693; Alexander, 303 S.C. at 541-42, 402 S.E.2d at 485. The Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, *Id.* Applicant must overcome this presumption in order to receive relief. Cherry, *Id.*

Respondent submits that Applicant cannot satisfy either requirement of the Strickland

test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant has in effect, claimed that the trial court lacked subject matter jurisdiction due to defects in his indictment due to the Grand Jury allegedly not meeting during the term his indictment was true-billed.

Defects in the indictment do not affect subject matter jurisdiction. However, an Applicant may challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. See Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by* State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” Gentry, *supra*, 610 S.E.2d at 499; See also S.C. Const. Art. V, § 7. Thus, the Applicant must present evidence that his case is of some class over which the Circuit Court does not have the authority to preside. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the Circuit Court had subject matter jurisdiction.

Still, Applicant alleges that the Grand Jury did not meet in October 2006, and thus the Court did not have jurisdiction to hear the matter since the indictment was “fraudulently” true-billed. Applicant cites SC Code §14-5-730 as support. Grand Jury meetings are scheduled within the county by either the Solicitor or the Chief Administrative Judge. The Laurens County Grand Jury did in fact meet on October 20, 2006, as noted by the foreman’s signature stating the indictments are “True Billed.”

V.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel and appellate counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. §17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

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

VII.

WHEREFORE, having made its Return, the State requests that a hearing be held.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

ASHLEY A. McMAHAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

Jan. 7th, 2009.

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

IAN RICE,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

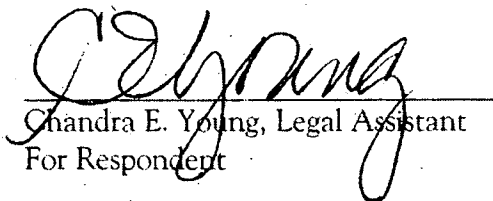
2008-CP-30-0477

AFFIDAVIT OF SERVICE BY MAIL

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

C. Alice Whitesides, Esquire
PO Box 222
Laurens, SC 29360

DATED this 7th day of January, 2009.


Chandra E. Young, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS
IAN RICE #274002,

Petitioner,
v.
STATE OF SOUTH CAROLINA,

Respondent.

LYNN W. LANCASTER
2013 JAN 18 P 1:20
LAURENS COUNTY CLERK OF COURT

IN THE FAMILY COURT
EIGHTH JUDICIAL CIRCUIT
CA# 2008-CP-30-0477

**AMENDED PETITION FOR
POST CONVICTION RELIEF**

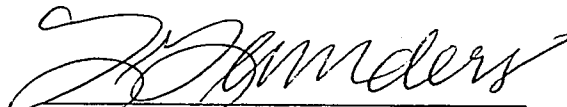
COMES NOW, the Petitioner Ian Rice, hereinafter "Petitioner", by and through his undersigned counsel files this Amended Petition for Post-Conviction Relief pursuant to South Carolina Code Annotated 17-27-10 et seq. and requests that his application for Post-Conviction Relief be granted for the following reasons:

1. Petitioner requests to be granted a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974) because Petitioner did not make a knowing and intelligent decision not to pursue an appeal, and that trial counsel for Petitioner failed to timely serve Notice of Appeal;
2. Petitioner requests a new trial on the grounds of ineffective assistance of counsel. Specifically, Petitioner alleges that trial counsel was deficient in his performance such that Petitioner was prejudiced for the following reasons:
 - a. That trial counsel unreasonably failed to preserve issues at trial for direct review and that this failure prejudiced the outcome of the case;

- b. That trial counsel failed to object to the introduction of the State's video evidence;
- c. That trial counsel failed to object to or motion to suppress the State's video evidence;
- d. That trial counsel failed to object to State's motion for closure of the courtroom when the confidential informant testified;
- e. That trial counsel failed to properly object to the State's introduction of chain of custody evidence prior to the introduction of such evidence;
- f. That trial counsel failed to file and serve a timely appeal pursuant to the South Carolina Appellate Court Rules; and
- g. That trial counsel failed to properly communicate State's offer to Petitioner.

WHEREFORE, Petitioner respectfully prays for the aforesaid relief to include a new trial on the basis of ineffective assistance of trial counsel; a belated appeal pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974); and for such other relief as the Court deems just and proper.

Laura M. Saunders, Esquire
The Law Offices of Laura M. Saunders, LLC
102 Church Street
Post Office Box 731
Laurens, South Carolina 29360
Phone: (864) 681-4444
Facsimile: (864) 984-5666
Email: lmsaunderslaw@gmail.com


Laura M. Saunders (SC #77957)

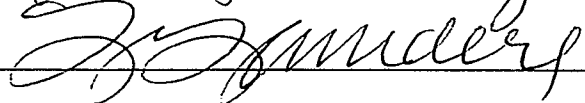
Attorney for the Petitioner Ian Rice

January 17, 2013
Laurens, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ mailing, ☐ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 18th day of January, 2012.



STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IAN RICE #274002,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
CA# 2008-CP-30-0477

**MEMORANDUM IN SUPPORT OF
APPLICATION FOR POST
CONVICTION RELIEF**

The Petitioner Ian Rice, hereinafter "Petitioner", by and through his undersigned counsel files this Memorandum in Support of his Application for Post-Conviction Relief pursuant to South Carolina Code Annotated 17-27-10 et seq. and requests that his application for Post-Conviction Relief be granted for the following reasons:

FACTS AND PROCEDURAL HISTORY

Petitioner is presently confined in the South Carolina Department of Corrections. Petitioner was indicted for Possession with Intent to Distribute Crack Cocaine within Proximity to a Park or School under indictment number 2006-GS-30-1587 and Distribution of Crack Cocaine Third or Subsequent Offense under indictment number 2006-GS-30-1588. Petitioner was found guilty at trial on November 15, 2007 and was represented by Clyde L. Pennington, Jr. The Honorable D. Garrison Hill presided over the trial. Petitioner was concurrently sentenced to ten (10) years confinement for Possession with Intent to Distribute

LEGAL ARGUMENT

A defendant has the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984); Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590 596 (2007), *cert. denied by* Ozmint v. Ard, 552 U.S. 944, 128 S.Ct. 370, 169 L.Ed.2d 247 (2007). However, the United States Supreme Court has recognized that in certain rare circumstances "prejudice is presumed." Strickland, 466 U.S. at 692, 104 S.Ct. 2052 (citing State v. Cronin, 466 U.S. 648, 658, 104 S.Ct. 2039, 2047 (1984); see also Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (S.C. 2006). In Cronin, the Court identified three situations where counsel is per-se ineffective: (1) when there is a complete denial of counsel at a critical stage of trial, (2) when counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, and (3) when circumstances are so prejudiced against the defendant that competent counsel could not render effective assistance. Cronin, 466 U.S. at 659, 104 S.Ct. 2039; see also Nance, 367 S.C. at 552, 626 S.E.2d at 880 (stating that "per-se prejudice occurs if there has been a constructive denial of counsel").

Absent a showing of per-se prejudice under Cronin, an applicant must show "actual prejudice" under Strickland. See Nance, 367 S.C. at 552, 626 S.E.2d at 880 (citing Strickland, 466 U.S. at 692, 104 S.Ct. 2052; Cronin, 466 U.S. at 666 and n.

client so that the client can make an informed decision regarding any proposals by the State." Davie, 675 S.E.2d at 420.

In the instant case, Petitioner claims that Trial counsel failed to properly communicate the State's offer of eight (8) years. In addition, Petitioner claims that he accepted the State's plea offer of "4.5 years non-violent" at a bond hearing in September 2007. Petitioner claims that this offer was revoked by the Solicitor after he had accepted this offer on the date of his bond hearing. Petitioner is able to show that he suffered prejudice because had he known of the offer of eight years, Petitioner would likely have accepted the offer.

II. TRIAL COUNSEL'S FAILURE TO OBJECT TO THE STATE'S MOTION TO CLOSE THE COURTROOM

Trial counsel's failure to object to the State's request to the trial judge to close the courtroom prior to the testimony of the State's star witness, the confidential informant, constitutes ineffective assistance of counsel which caused the Petitioner to suffer prejudice because counsel's failure to object a) denied Petitioner the right to a fair, impartial and public trial pursuant to the case law below and b) failed to preserve the record for an appeal. (Tr. 17, L. 5; Tr. 36, L. 13-25; Tr. 37, L. 1-9; Tr. 65, L 9-11; Tr. 66, L 11-24).

The Sixth Amendment to the United States Constitution and Article I, Section 14 of the South Carolina Constitution guarantee a criminal defendant a public trial. This protection is for the benefit of the accused, so the public may see that he is

There were a series of unrecorded bench conferences, presumably regarding the Solicitor's request, but no objection was entered on the record by Petitioner's trial counsel and there was no request by trial counsel that the Court articulate its reasons for closing the courtroom. (Tr. 17, L. 5; Tr. 36, L. 13-25) In addition, the transcript does not reflect that the courtroom was reopened after the confidential informant was excused and prior to the testimony of police officer Tyrone Goggins. (Tr. 66, L. 11-25). There exists a **reasonable probability** that the outcome of the trial might have been different had the courtroom been allowed to remain open to the public. Under the Strickland test, counsels failure to object constitutes deficient performance, and a reasonable probability that the outcome of the trial might have been different exists. Therefore, Petitioner suffered prejudice and his application for PCR should be granted.

b) **Failure to preserve record for appeal.** Issues that could have been raised at trial or on direct appeal cannot be asserted in an application for post-conviction relief absent a claim of ineffective assistance of counsel. Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983). *See also* Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993). In Petitioner's case, Trial counsel failed to object to the State's motion for closure of the courtroom prior to the confidential informant taking the witness stand. This failure to enter an objection on the record denied the Petitioner a record which could be preserved for an appeal, which the Petitioner so desired after being found guilty of the alleged crimes. (Tr. 17, L. 5; Tr. 36, L. 13-25; Tr. 37, L. 1-9). This constitutes a failure of counsel to render reasonably effective

sentenced to seventeen (17) years on November 15, 2007. Trial counsel filed a Notice of Appeal with the South Carolina Court of Appeals on November 26, 2007 on behalf of Petitioner. On November 26, 2007 trial counsel submitted a letter to the South Carolina Court of Appeals informing that he was filing the Notice of Appeal but would not be counsel of record for the appeal. Opposing trial counsel Mindy Zimmerman, Esquire was served the Notice of Appeal on November 27, 2007 and a Proof of Service was filed on December 3, 2007. On December 7, 2007, the South Carolina Court of Appeals issued an Order dismissing the Appeal pursuant to Rule 234(b) SCACR citing untimely service of the Notice of Appeal. On January 10, 2008, the South Carolina Court of Appeals issued the Remittitur dismissing the appeal.

CONCLUSION

For the foregoing reasons, Petitioner Ian Rice, by and through his undersigned counsel, requests that this Court issue an Order granting his application for Post-Conviction relief and remanding for a new trial.

-Signature on Next Page-

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IAN RICE #274002,

Petitioner,

v.

STATE OF SOUTH CAROLINA,

Respondent.

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IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT
CA# 2008-CP-30-0477

LAURENS COUNTY
CLERK

**SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF APPLICATION
FOR POST CONVICTION RELIEF**

The Petitioner Ian Rice, hereinafter "Petitioner", by and through his undersigned counsel files this Supplemental Memorandum in Support of his Application for Post-Conviction Relief pursuant to South Carolina Code Annotated 17-27-10 et seq. and requests that his application for Post-Conviction Relief be granted for the following reasons:

I. FACTS AND PROCEDURAL HISTORY

Petitioner is presently confined in the South Carolina Department of Corrections. Petitioner was indicted for Possession with Intent to Distribute Crack Cocaine within Proximity to a Park or School under indictment number 2006-GS-30-1587 and Distribution of Crack Cocaine Third or Subsequent Offense under indictment number 2006-GS-30-1588. Petitioner was found guilty at trial on November 15, 2007 and was represented by Clyde L. Pennington, Jr. The Honorable D. Garrison Hill presided over the trial. Petitioner was concurrently sentenced to ten (10) years confinement for Possession with Intent to Distribute

Crack Cocaine within Proximity to a Park or School and seventeen (17) years confinement for Distribution of Crack Cocaine Third or Subsequent Offense.

Trial counsel filed a Notice of Appeal with the South Carolina Court of Appeals on November 26, 2007 on behalf of Petitioner. On November 26, 2007 trial counsel submitted a letter to the South Carolina Court of Appeals informing that he was filing the Notice of Appeal but would not be counsel of record for the appeal. Opposing trial counsel Mindy Zimmerman, Esquire was served the Notice of Appeal on November 27, 2007 and a Proof of Service was filed on December 3, 2007. On December 7, 2007, the South Carolina Court of Appeals issued an Order dismissing the Appeal pursuant to Rule 234(b) SCACR citing untimely service of the Notice of Appeal. On January 10, 2008, the South Carolina Court of Appeals issued the Remittitur dismissing the appeal.

Petitioner filed his original application for Post-conviction relief with the Laurens County Clerk of Court within the one year statute of limitations on June 9, 2008. C. Alice Whitesides, Esquire was appointed to represent Mr. Rice. Ms. Whitesides was subsequently relieved as counsel on June 3, 2010 and M. Rita Metts, Esquire was appointed as substitute counsel on June 15, 2010. On May 20, 2011, M. Rita Metts was relieved as counsel due to her appointment as Magistrate Judge in Richland County and William K. Charles, Esquire was appointed to represent the Petitioner. On March 14, 2012, Mr. Charles requested to be relieved as counsel for Petitioner and Laura M. Saunders, Esquire was appointed to represent the Petitioner.

On October 13, 2008, trial counsel received a definite suspension of two years by Order of the South Carolina Supreme Court in reference to formal disciplinary charges brought by the Commission on Lawyer Conduct. In the Matter of Clyde L. Pennington, Jr., Opinion No. 26551, October 13, 2008. On July 11, 2011, trial counsel was disbarred by Order of the South Carolina Supreme Court following his suspension from the practice of law. In the Matter of Clyde Louis Pennington, Opinion No. 26999, July 11, 2011. On March 11, 2013, Petitioner's evidentiary hearing was held before The Honorable Clifton Newman, Circuit Court Judge in Greenwood, South Carolina.

II. POST CONVICTION RELIEF CASE LAW

A defendant has the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984); Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590 596 (2007), *cert. denied by* Ozmint v. Ard, 552 U.S. 944, 128 S.Ct. 370, 169 L.Ed.2d 247 (2007). However, the United States Supreme Court has recognized that in certain rare circumstances "prejudice is presumed." Strickland, 466 U.S. at 692, 104 S.Ct. 2052 (citing State v. Cronin, 466 U.S. 648, 658, 104 S.Ct. 2039, 2047 (1984); see also Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (S.C. 2006). In Cronin, the Court identified three situations where counsel is per-se ineffective: (1)

when there is a complete denial of counsel at a critical stage of trial, (2) when counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, and (3) when circumstances are so prejudiced against the defendant that competent counsel could not render effective assistance. Cronic, 466 U.S. at 659, 104 S.Ct. 2039; see also Nance, 367 S.C. at 552, 626 S.e.2d at 880 (stating that "per-se prejudice occurs if there has been a constructive denial of counsel").

Absent a showing of per-se prejudice under Cronic, an applicant must show "actual prejudice" under Strickland. See Nance, 367 S.C. at 552, 626 S.E.2d at 880 (citing Strickland, 466 U.S. at 692, 104 S.Ct. 2052; Cronic, 466 U.S. at 666 and n. 41, 104 S.Ct. 2039)). To establish a claim of ineffective assistance of counsel under Strickland, a Petitioner must show that: 1) counsel's performance was deficient, and 2) he was prejudiced by counsel's deficient performance. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. To prove counsel's performance was deficient, the Petitioner must show that his counsel failed to render reasonably effective assistance under prevailing professional norms. Id.; Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (S.C. 1989). To prove he was prejudiced, by trial counsel's deficiency, a PCR applicant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694, 104 S.Ct. 2052. "A reasonable probability is a probability sufficient to undermine the confidence in the outcome of the trial." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007). In a PCR proceeding, the Petitioner bears the burden of establishing that he is entitled to the relief

sought. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). “Where counsel entirely fails to subject the prosecution’s case to meaningful adversarial testing, there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable, and prejudice may be presumed.” Cronic v. U.S., 446 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984); Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006).

III. SIXTH AMENDMENT RIGHT OF THE ACCUSED TO A PUBLIC TRIAL

The Sixth Amendment to the United States Constitution and Article I, Section 14 of the South Carolina Constitution guarantee a criminal defendant a public trial.¹ Waller v. Georgia is the seminal United States Supreme Court case to analyze the accused’s explicit right to a public trial under the Sixth Amendment. 467 U.S. 39, 104 S.Ct. 2210, 81 L.Ed.2d 31 (1984). Waller also recognizes the coextensive nature between a defendant’s right to a public trial under the Sixth Amendment and that of the public under the First Amendment:

¹In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. U.S. Const. amendment VI.

“Trial by jury; witnesses; defense. The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both. (1970 (56) 2684; 1971 (57) 315.)” S.C. Const. art. I, section 14.

"Nevertheless, there can be little doubt that the explicit Sixth Amendment right of the accused is no less protective of a public trial than the implicit First Amendment right of the press and public. The central aim of a criminal proceeding must be to try the accused fairly, and "[o]ur cases have uniformly recognized the public trial guarantee as one created for the benefit of the defendant."

Id. at 46 (quoting Gannett Co. v. DePasquale, 443 U.S. 368 (1979)).

The Waller Court stated that "This protection is for the benefit of the accused, so the public may see that he is dealt with fairly, and the public's presence may keep his triers aware of the importance of their functions." Id. at 46 (quoting In re Oliver, 333 U.S. 257, 270, n. 25 (1948), in turn quoting 1 T. Cooley, Constitutional Limitations 647 (8th ed.1927)). The Waller Court held further that under the Sixth Amendment, any closure of a suppression hearing over the objections of the accused must meet the following test: the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced; the closure must be no broader than necessary to protect that interest; the trial court must consider reasonable alternatives to closing the hearing; and it must make findings adequate to support the closure. 467 U.S. 39, 40 (1984).

In recent years, the United States Supreme Court stressed that "[t]rial courts are obligated to take every reasonable measure to accommodate public attendance at criminal trials." Presley v. Georgia, 130 S.Ct. 721, 725, 175 L.Ed.2d 675 (2010). In Presley, the Supreme Court analyzed the public trial right under the First Amendment in conjunction with the accused's right to a public trial under the Sixth Amendment. Id. The lower court in Presley excluded a member of the public from

the voir dire of prospective jurors. The Presley Court reasoned that “The extent to which the First and Sixth Amendment public trial rights are coextensive is an open question, and it is not necessary here to speculate whether or in what circumstances the reach or protections of one might be greater than the other.” Id. at 724.²

Our South Carolina Supreme Court acknowledges that the Sixth Amendment guarantees to a public trial extend to the accused, and “must be closely scrutinized to assure that there is no impermissible infringement of the right.” State v. Sinclair, 275 S.C. 608, 612, 274 S.E.2d 411, 413 (1981). In Sinclair, the Court analyzed whether the trial judge abused his discretion in ordering the exclusion of the public while the prosecuting witness testified. 275 S.C. 608 at 613-614, 274 S.E.2d 411 at 415-416. Somewhat contrary to the facts in Petitioner’s case, the Court held that the trial judge was not in error in ordering the exclusion based upon the fact that “the trial judge took care to see that the order was carried out in a manner least likely to have an impression on the jury”. Id. at 614. In addition, the Sinclair Court justified the trial court’s closure and held that there was no abuse of discretion because the prosecution’s witness was a nine year old girl who was a victim of sexual battery. Id. See also State v. Bell, 293 S.C. 391, 360 S.E.2d 706 (1987) (holding that the trial judge’s ruling to restrict the comings and goings of

² In other cases, our courts have analyzed the rights of the public’s access, particularly the press, to criminal trials. The requirement of openness of criminal proceedings can be overcome only by a finding that closure is necessary to preserve higher values. Press-Enterprise Co. v. Superior Court, 464 U.S. 501, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984) (holding that the guarantees of open public proceedings in criminal trials cover proceedings for the voir dire examination of potential jurors). “Absent an overriding interest articulated in findings, the trial of a criminal case must be open to the public.” Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 100 S.Ct. 2814, 2829, 65 L.Ed.2d 973, 992 (1980).

spectators during trial withstands constitutional scrutiny underlying a defendant's Sixth Amendment right to a public trial).

IV. THE DENIAL OF RIGHT TO PUBLIC TRIAL IS A STRUCTURAL ERROR

The United States Supreme Court in Chapman v. California, 386 U.S. 18 (1967) first developed the "harmless constitutional error rule". Chapman reasoned that there are times when certain fundamental errors occur at trial which in turn assault the sanctity of a defendant's basic constitutional rights, and that these errors are inapplicable to the harmless error analysis and should be defined a constitutional error. In Chapman, the Court reversed and remanded the state court convictions of two defendants based upon the prosecution's inappropriate references to the defendants' failures to testify. The trial judge also charged the jury that they could draw adverse inferences from the defendants' choice not to testify. The Chapman Court reasoned that before a federal constitutional error can be held as a harmless error, the court must "be able to declare a belief that it was harmless beyond a reasonable doubt." Id. at 24. In closing, the Chapman Court declared that "Petitioners are entitled to a trial free from the pressure of unconstitutional inferences." Id. at 26.

A Defendant's right to a speedy and public trial by an impartial jury is the only Constitutional guarantee that appears in the texts of the Constitution and in the Bill of Rights. See Neder v. United States, 527 U.S. 1, 8, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999). In Neder, Supreme Court recently analyzed and held that the denial of a public trial is a "structural error" which defies any requirement for the

harmless error analysis, no matter if there is overwhelming evidence of guilt. In Neder, the trial court omitted an element of the offense charged against the Defendant in its instruction to the jury. In a unanimous court opinion, Chief Justice Rhenquist related back to Waller, holding that the denial of a public trial is considered a structural error. Neder, 527 U.S. at 7. “Some structural errors, like the complete absence of counsel or the denial of a public trial, are visible at first glance.” Id. at 37 (Scalia, J., concurring in part and dissenting in part). See also United States v. Hitt, 473 F.3d 146 (5th Cir. 2006). Further, the Court held pronounced that “The very premise of structural-error review is that even convictions reflecting the “right” result are reversed for the sake of protecting a basic right.” Id. The Chapman and Neder inquiries provide the grounds to identify the clear structural error that occurred in Petitioner’s trial, and is also the basis for the following argument that he was denied effective assistance of counsel and therefore suffered prejudice resulting from this denial of such a fundamental right.

V. GROUNDS FOR POST CONVICTION RELIEF

Petitioner argues that trial counsel’s failure to object at trial on the issue of closing the courtroom for the informant’s testimony constitutes ineffective assistance of counsel. Arguably, this case can be analyzed under the actual prejudice standard of Strickland and under the presumption of prejudice standard set forth in Cronic. Trial counsel failed to object to the State’s request to close the courtroom prior to the testimony of the State’s confidential informant witness, **in the presence of the jury.** (Tr. 36, L. 13-25, Tr. 37, L. 1-9.) Counsel’s failure to

object effectively denied Petitioner the right to a fair, impartial and public trial under the Sixth Amendment, which has been held by the Supreme Court to be a fundamental or structural error. In addition, counsel's complete denial of counsel at such a critical stage of trial failed to preserve this structural error for appeal. See Tr. 17, L. 5; Tr. 36, L. 13-25; Tr. 37, L. 1-9; Tr. 65, L. 9-11; Tr. 66, L. 11-24.

The State requested that the courtroom be closed prior to witness's testimony:

THE COURT: Thank you. Yes ma'am, you may call your first witness.

MS. ZIMMERMAN: Your Honor, the first witness is the witness that we have discussed previously that we would request the courtroom be cleared prior to her taking the stand. It is Miss Amanda Sanford.

THE COURT: Okay. Let me see the lawyers up here real quick.

(Unrecorded bench conference)

THE COURT: All right, ladies and gentleman, we're going to take just a short recess. Don't talk about the case, continue to keep an open mind. We'll take about a ten minute break. Thank you.

(The jury was excused from the courtroom)

THE COURT: We'll start back at 3:00 o'clock.

(Recessed at 2:50 p.m.)

(Reconvened at 3:02 p.m.)

THE COURT: Okay, bring the jury on back in.

(The jury returned to the Courtroom)

THE COURT: Okay, you may call your first witness.

MS ZIMMERMAN: The State Calls Amanda Sanford.

(Tr. 36, L. 13-25, Tr. 37, L. 1-9.)

The Confidential Informant testified regarding the closure in the presence of the jury on cross examination by trial counsel:

Q: Miss Sanford, I asked if you had ever made any other buys in front of these twelve people with common sense and you said no?

A: I didn't know I supposed to say that in public and give names. I didn't know. That is why they cleared the courtroom.

Tr. 65, L. 6-11.

Trial counsel's failure to object and make the appropriate legal arguments to challenge the courtroom closure falls below the test set forth in Strickland. The record is clear that trial counsel failed to object. At the evidentiary hearing on March 11, 2013, trial counsel admitted that he did not object to the State's request at trial and did not explain reasons for his failure to enter an objection. Petitioner suffered actual prejudice by counsel's errors. The State made its request to close the Courtroom **in the presence of the jury** which even prior to any objection would implicate an issue that should have been preserved for an appeal. Counsel committed a blatant failure to object to this request. Therefore, the record was unpreserved for appeal. The confidential informant later testified regarding the closure **in the presence of the jury** furthering appealable significance of the closure issue. Nonetheless, there is no record for appeal based upon counsel's failure to object. For the foregoing reasons, Petitioner makes a showing of "actual prejudice" pursuant to Strickland.

More importantly, the denial of Petitioner's Sixth Amendment right to a public trial and the structural nature of this error, brought on by counsel's failure to object, calls for an analysis under United States v. Cronin, 466 U.S. 648, 104 S.Ct.

2039, 80 L.Ed.2d 657 (1984) because prejudice may be presumed due to the fundamental and structural nature of such an error together with the clear denial of counsel at a critical stage of the trial. Applying Cronic, this failure meets two of the three situations where counsel is “per se” ineffective: where there is a complete denial of counsel at a critical stage of trial and when counsel entirely fails to subject the prosecution’s case to a meaningful adversarial testing. 466 U.S. at 659. In Cronic, the Court reasoned “[I]f counsel entirely fails to subject the prosecution’s case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable.” Id. at 659.

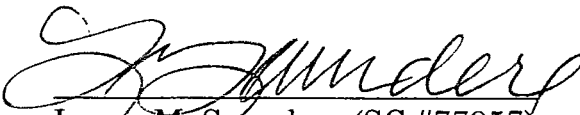
The State argues that there was overwhelming evidence of Petitioner’s guilt. However, applying the foregoing cases to the Petitioner’s case, there can be no question that the closure of the courtroom for the testimony of the confidential informant implicated Petitioner’s Sixth Amendment Constitutional right to a public trial. The closure should be viewed as a fundamental and structural error under the clear directives set forth in Chapman and Neder. Conclusively, even the existence of overwhelming evidence against Petitioner cannot subvert the fundamental nature of such an error that cuts straight to the pillars of our democracy. Trial counsel’s failure to challenge the State’s motion and the trial court’s failure articulate his reasons for closure unmistakably demonstrate that Petitioner’s trial lacked a crucial and distinctive *constitutionally required* step. In consequence, Petitioner experienced both a denial of effective assistance of counsel

as well as a denial of his right to a public trial under the Sixth Amendment. Thus, prejudice may be presumed in Petitioner's case based upon a showing that the clear error and denial of such a fundamental right create a trial process that is "presumptively unreliable" under Cronic.

CONCLUSION

For the foregoing reasons, Petitioner Ian Rice, by and through his undersigned counsel, requests that this Court issue an Order granting his application for Post-Conviction relief and remanding for a new trial.

Laura M. Saunders, Esquire
The Law Offices of Laura M. Saunders, LLC
102 Church Street
Post Office Box 731
Laurens, South Carolina 29360
Phone: (864) 681-4444
Facsimile: (864) 984-5666
Email: lmsaunderslaw@gmail.com


Laura M. Saunders (SC #77957)

Attorney for Petitioner Ian Rice

March 22, 2013
Laurens, South Carolina

LYNN W. LANCASTER

2013 MAR 22 A 11:47

LAURENS COUNTY
CLERK OF COURT

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by ☒ mailing, ☒ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 22d day of March, 2013.

J. J. J. J. J.

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Ian Rice, #274002,

2008-CP-30-0477

Applicant,

v.

RESPONDENT'S MEMORANDUM
IN OPPOSITION TO APPLICATION
FOR POST-CONVICTION RELIEF

State of South Carolina,

Respondent.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 9, 2008. The Respondent made its Return on January 7, 2009. An evidentiary hearing into the matter was convened on March 11, 2013, at the Greenwood County Courthouse. Laura M. Saunders, Esquire represented the Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Mindy Zimmerman, Esquire and Clyde Pennington¹ also testified. This Court took the case under advisement and allowed counsel for both parties to submit memoranda of law on this issue of Counsel's failure to object to the trial court's closure of the courtroom. The Applicant, through counsel, filed a memorandum of law on March 22, 2013, and it was received by this Court apparently on March 25, 2013. This Court gave the Respondent ten days in which to file a response. This memorandum follows.

¹ The Applicant correctly states in its procedural history there were disciplinary actions involving Mr. Pennington which led to his disbarment. However, as these actions were completely separate from the Applicant's case, the Respondent submits this information is completely and utterly irrelevant, and therefore, asks for this information to be stricken from the record.

FACTUAL BACKGROUND

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. The Applicant was indicted at the October 2006 term of the Laurens County Grand Jury for Possession with Intent to Distribute Crack Cocaine within Proximity to a Park or School (2006-GS-30-1587) and Distribution of Crack Cocaine (2006-GS-30-1588). Clyde L. Pennington, Jr. represented him. On November 15, 2007, the Applicant underwent trial, pursuant to which he was found guilty as indicted. The Honorable D. Garrison Hill concurrently sentenced him to confinement for a period of ten (10) years for Possession with Intent to Distribute Crack Cocaine within Proximity to a Park or School and seventeen (17) years, concurrent, for Distribution of Crack Cocaine, 3rd offense.

A Notice of Appeal was filed on the Applicant's behalf, however it was dismissed on December 7, 2007. The Remittitur was sent on January 10, 2008.

ANALYSIS

I. Counsel was not ineffective for not objecting to the trial court's closure of the courtroom as the Applicant failed to prove had Counsel objected, it would have changed the outcome of his trial.

The Respondent contends the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. *See Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. *Butler, Id.* Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial

cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, Id.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, Id. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

At the Applicant's trial, the solicitor, prior to the confidential informant (CI) testifying, asked for the courtroom to be cleared. (Tr. p. 36 lines 13-17). Whereupon, the trial judge asked the lawyers to approach for an unrecorded bench conference. (Tr. p. 36 lines 18-20). After this conference, the trial judge took a quick recess, excusing the jury from the courtroom. After the jury returned, the confidential informant, who purchased crack cocaine from the Applicant, testified as to her involvement in this case. (Tr. pp. 37-66). On re-cross-examination by Counsel, the CI was asked about her ongoing involvement with law enforcement as a CI. To which the following colloquy occurred:

CI: I thought we were only, I thought we were only here to talk about [Applicant] and not everything else. I think case just has to do with [Applicant].

Counsel: Miss Sanford, I asked you if you had ever made any other buys in front of these twelve people with common sense and you said no?

CI: I didn't know I was supposed to say that in public and give names. I didn't know. That is why they cleared the courtroom.

(Tr. p. 65 lines 3-11).

At the evidentiary hearing, the solicitor (Ms. Zimmerman) testified the reason she asked for the courtroom to be cleared was that other defendants, who had pending cases in which the CI was working, were present in the courtroom. She stated the CI was nervous about testifying because the defendants from other drug buys were present. The solicitor also testified she had discussions with the trial judge and Counsel about the fact that at the solicitor's request, the other defendants were there, and therefore, the solicitor could ask that the other defendants be cleared from the courtroom. The solicitor lastly testified she believed this was a non-issue as it was for the protection of the CI.

Additionally, Counsel admitted he did not object to the closing of the courtroom, but testified that at the unrecorded bench conference, explained to the trial judge that he saw no reason to close the courtroom. Counsel also indicated the judge explained since the solicitor was the one holding the other defendants in the courtroom, the solicitor could decide to let them leave the trial. Counsel further testified he did not think closing the courtroom for the CI was "a big deal," and opined it would have made no difference on appeal.

The Applicant is correct in citing Waller v. Georgia, 467 U.S. 39, S.Ct. 2210 (1984) and Presley v. Georgia, 120 S.Ct. 721 (2010) for the proposition that a right to a public trial is

guaranteed by the Sixth Amendment to the United States Constitution. "The requirement of a public trial is for the benefit of the accused; that the public may see he is fairly dealt with and not unjustly condemned, and that the presence of interested spectators may keep his triers keenly alive to a sense of their responsibility and to the importance of their functions..." Waller at 46, 104 S. Ct. at 2215. However, courts have also held that protecting witnesses such as a CI is a compelling interest sufficient to permit the closure of the courtroom during that witness's testimony. Cf. Brown v. Kuhlman, 142 F.3d 529, 537-538 (2d Cir. 1998) (recognizing preservation of undercover officer's safety as a compelling interest sufficient to permit closure of courtroom during officer's testimony); United States v. De Los Santos, 810 F.2d 1326, 1334 (5th Cir.1987) (safety of confidential informant and potential apprehension of suspected narcotics dealers constituted overriding interest).

Here, the solicitor wanted the courtroom closed for the safety of the CI as the CI was working or had worked on other drug buy cases. Defendants from those other drug buy cases were present in the courtroom at the beginning of the Applicant's trial at the solicitor's request. Counsel testified that, at the unrecorded bench conference, he explained to the trial judge that he found no reason for the courtroom to be closed, but the trial judge stated since the solicitor had the other defendants present at her request, she was allowed to release them from the courtroom. Both the solicitor and Counsel testified the closure of the courtroom for the CI's testimony was a non-issue. Additionally, the solicitor testified the CI was very nervous because the other defendants were in the courtroom. As evidenced by the CI's testimony, she knew she was there for the Applicant's trial only and not those of the other defendants. Clearly, protection of the CI in this case would warrant closing the courtroom during her testimony. As such, Counsel was not ineffective for not objecting to the closure.

II. Applicant failed to prove resulting prejudice from Counsel's alleged ineffective assistance of counsel as there was overwhelming evidence of guilt.

Even assuming *arguendo* Counsel was ineffective for not objecting to the closing of the courtroom, the Applicant can prove no resulting prejudice from Counsel's alleged error as there was overwhelming evidence of guilt.

U.S. v. Cronin is inapplicable

Contrary to the Applicant's position, this case clearly does not fall under the rubric of U.S. v. Cronin, 466 U.S. 648, 104 S.Ct. 2039 (1984), and thus, presumed prejudice is inapplicable. "In Cronin, the Court identified three distinct situations in which a presumption of prejudice is appropriate. First, prejudice is presumed when the defendant is completely denied counsel 'at a critical stage of his trial.'" Nance v. Ozmint, 367 S.C. 547, 551-52, 626 S.E.2d 878, 880 (2006). "Second, per-se prejudice occurs if there has been a constructive denial of counsel. This happens when a lawyer 'entirely fails to subject the prosecution's case to meaningful adversarial testing,' thus making 'the adversary process itself presumptively unreliable.'" Id. "Third, the Court identified certain instances 'when although counsel is available to assist the accused during trial, the likelihood that any lawyer, even a fully competent one, could provide effective assistance is so small that a presumption of prejudice is appropriate without inquiry into the actual conduct of the trial.'" Id.

The Applicant alleges his case falls under both the first and second prongs. This analysis is misguided. Under the first prong, the Applicant would have to show he was completely denied counsel 'at a critical stage of his trial.' This cannot be shown. Counsel was present during the entire trial and defended the Applicant throughout his trial. Plainly, the Applicant was

not denied counsel ‘at a critical stage of his trial.’ Under the second prong, the Applicant must show Counsel ‘entirely fail[ed] to subject the prosecution’s case to meaningful adversarial testing.’ As found in the trial transcript, Counsel gave an opening statement, thoroughly cross-examined each of the State’s witnesses, presented a closing argument, and made motions and objections on the Applicant’s behalf. Clearly, Counsel subjected the prosecution’s case to a meaningful adversarial testing. Therefore, presumed prejudice under Cronic is inapplicable to the Applicant’s case.

Applicant not denied right to a public trial

Next, the Applicant argues the “denial of right to a public trial” in this case was a structural error under Chapman v. California, 386 U.S. 18 (1967) and Neder v. United States, 527 U.S. 1(1999). The Applicant asserts because Neder mentions Waller, *supra*, as an example of a ‘structural error’ in that there was a denial of a right to a public trial, the Applicant’s case is not subject to a harmless-error analysis. The US Supreme Court has held a structural error applies in a “very limited number of cases.” Neder at 8. “A ‘structural’ error, [US Supreme Court] explained in Arizona v. Fulminante², is a ‘defect affecting the framework within which the trial proceeds, rather than simply an error in the trial process itself.’” Johnson v. United States, 520 U.S. 461, 468, 117 S. Ct. 1544, 1549, 137 L. Ed. 2d 718 (1997). The denial to the right to a public trial in Waller was held to be a structural error because the closure of the entire suppression hearing was unjustified due to the fact the State failed to specify whose interests were being infringed. Interestingly, there was no structural error found in Neder and thus, it was subject to the harmless error rule.

² 499 U.S. 279, 111 S.Ct 1246 (1991).

The Applicant was not denied the right to a public trial. The public was allowed to remain in the courtroom during jury voir dire and selection, unlike Presley, *supra*. The only time the courtroom was cleared was during the CI's testimony. As explained above, this was done because there were other defendants, on whose cases the CI was working, present in the courtroom that made the CI quite nervous. Without clearing the courtroom, the CI might not have testified as truthfully and frankly as she did. While there seems to be no indication in the record that the trial judge affirmatively "re-opened" the courtroom, no evidence was presented at the PCR hearing that the courtroom remained closed during the Applicant's entire trial. While Counsel testified only the other defendants were in the courtroom during the trial, the Applicant claims members of his family were also present. However, none of these family members testified at the PCR hearing that they were denied access to the courtroom during the trial. Since there was no evidence presented that the courtroom was closed during the entirety of the Applicant's trial, to presume such would be pure speculation. Since there was no structural error in this case as the Applicant was not denied the right to a public trial, this case is subject to the harmless error analysis, which includes an overwhelming evidence of guilt analysis.

Overwhelming evidence of guilt

The Respondent submits there was overwhelming evidence of the Applicant's guilt in this case, and as such, any alleged deficiency by Counsel is not prejudicial under Strickland, *supra*.

"Since Chapman, [the US Supreme Court has] repeatedly reaffirmed the principle that an otherwise valid conviction should not be set aside if the reviewing court may confidently say, on

the whole record, that the constitutional error was harmless beyond a reasonable doubt.” Delaware v. Van Arsdall, 475 U.S. 673, 681, 106 S. Ct. 1431, 1436 (1986). Where there is overwhelming evidence of guilt, a trial counsel’s deficient representation will not be prejudicial. Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994); See also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001), Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (S.C. 1991).

In this case, the CI testified she bought crack cocaine from the Applicant. (Tr. p. 40 lines 2-7). The CI also identified the two videos, which were introduced at trial, that recorded of her buying crack cocaine from the Applicant. (Tr. p. 43 lines 2-6). The first was her purchasing crack cocaine from the Applicant, and the second was making sure the Applicant was clearly on camera. (Tr. p. 44 lines 18-22). These videos showed the Applicant wearing a distinctive North Carolina State tee-shirt during the transaction. (Tr. p. 77 lines 7-12). The CI also testified she knew the Applicant prior to the drug transaction, and this is one of the reasons she was able to readily identify the Applicant. (Tr. p. 54 lines 6-9). Additionally, Officer Goggins testified he recognized the Applicant and his voice on the first video. (Tr. p. 76 line 24- p. 77 line 10). Therefore, Officer Goggins had the CI travel back to find the Applicant and record a clear video showing the Applicant’s face, while the Applicant was wearing the same shirt. (Tr. p. 77 lines 10-12; p. 84 lines 7-16). Further, Kukila Stanley, an expert in the chemical components of a controlled substance testified she tested the crack cocaine bought from the Applicant and confirmed that the substance was, in fact, .2 grams of crack cocaine. Lastly, the Applicant has two prior convictions for possession and distribution of crack cocaine, which proves a lack of mistake occurred in this case. Clearly, through these witnesses, the Applicant was involved in

the distribution of crack cocaine. As such, there is overwhelming evidence of his guilt in this case, and therefore, any alleged errors of Counsel cannot be deemed to have prejudiced the Applicant's case. Even assuming this Court does not find overwhelming evidence of guilt, viewing the record as a whole, any constitutional error was harmless beyond a reasonable doubt pursuant to Van Arsdall, *supra*.

CONCLUSION

Based upon the foregoing analysis, the Respondent submits that the Applicant's claim, that Counsel was ineffective for not objecting to closing of the courtroom during the CI's testimony, is wholly meritless. The Applicant had a public trial and the State had a substantial reason to request the courtroom be closed during the CI's testimony, as other defendants were present in the courtroom. Further, as found in the record, the Applicant was clearly involved in the distribution of crack cocaine. The State respectfully asks the Court to deny and dismiss the application for post-conviction relief.

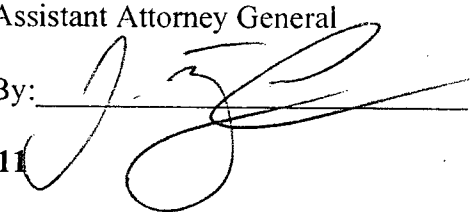
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

March 29, 2013.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD)

COURT OF COMMON PLEAS

IAN RICE,)
)
Applicant,)
v.)
)
STATE OF SOUTH CAROLINA,)
)
Defendant.)

ORIGINAL

Case No.
2008-CP-30-00477

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on March 11, 2013, before The Honorable Clifton B. Newman in the Greenwood County Courthouse, 528 Monument St., Greenwood, SC 29646, attended by counsel as follows:

APPEARANCES:

Laura McCall Saunders, Esq.,
Appearing for the Applicant.

J. Rutledge Johnson, Esq.,
Appearing for The State.

Vivian H. Cross
Circuit Court Reporter – 10th Judicial Circuit
P O Box 704
Belton, South Carolina 29627
vcross@sccourts.org

Ian Rice v. State of South Carolina
Case No. 2008-CP-30-00477
Hearing of March 11, 2013
Before The Honorable Clifton B. Newman

2

I-N-D-E-X

MARCH 11, 2013
(IAN RICE v. STATE OF SOUTH CAROLINA)
(PCR HEARING)
(2008-CP-30-00477)

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IDENTIFICATION ENTERED

*****NO EXHIBITS OFFERED*****

P R O C E E D I N G S

(10:25 A.M.)

THE COURT: All rightee (sic).

MR. JOHNSON: Yes, sir; may it please The Court,
Your Honor.

THE COURT: Yes, Mr...

MR. JOHNSON: This is the case of *Ian Rice versus The State of South Carolina*, case number 2008-CP-30-0477. Uh -- Mr. Rice was indicted at the October 2006 term of the Laurens County Grand Jury for Possession With Intent to Distribute Crack Cocaine Within Proximity of a Park or School. And also Distribution of Crack Cocaine on November 15, 2007. He underwent trial by Jury and was found guilty as indicted. The Honorable D. Garrison Hill concurrently sentenced him to confinement for a period of ten years for the PWID, uh, Crack Cocaine Within Proximity and seventeen years for Distribution of Crack Cocaine. I believe that was a third offense?

MS. SAUNDERS: Yes, it was.

MR. JOHNSON: A notice of appeal was filed on his behalf; however it was dismissed for failure to timely file. A remittitur was issued on January 10th 2008.

Uh -- just as procedural history, he -- Ms. -- Ms. Saunders is his fourth PCR Counsel. I think Ms. Metz was appointed; at some point she became a magistrate.

1 Uh -- Ken Charles was appointed; he had some personal
2 issues. And so that's the reason that this 2008 case is
3 just now getting heard. It's been continued a few times.
4 But, I'll turn this over to Ms. Saunders at this point.

5 **THE COURT:** Ms. Saunders.

6 **MS. SAUNDERS:** Thank you, Your Honor. Um -- I
7 apologize for the not getting this to you early; if I may
8 approach, I have a memorandum of law.

9 **THE COURT:** Very good; thank you.

10 **MS. SAUNDERS:** I've provided it to the other side as
11 well. Um -- as far as just housekeeping issues, uh, we
12 have -- I submitted a -- I made a mistake, a clerical
13 error or Scribner's error in my first amended petition;
14 therefore, I filed a second amended petition, did not
15 change any of the substantive issues which my client was
16 pleading for, but it is a second amended petition that
17 may be in the file, which I ask that you'd refer to, Your
18 Honor.

19 **THE COURT:** Second amended petition?

20 **MS. SAUNDERS:** There was just a mistake in the
21 caption actually, so...

22 **MR. JOHNSON:** Is that in your packet, Your Honor?

23 **THE COURT:** Uh -- nope, don't see it.

24 **MR. JOHNSON:** All right.

25 **THE COURT:** I see the -- the PCR application.

1 What's this one?

2 **MR. JOHNSON:** I have the original; I'll make you a
3 copy, Your Honor. I apologize for that.

4 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
5 CONFERENCE, OFF THE RECORD.)

6 (WHEREUPON, PROCEEDINGS CONTINUED.)

7 **THE COURT:** I must have the original application.
8 (Following lengthy review of paperwork) All right,
9 Ms. Saunders.

10 **MS. SAUNDERS:** Thank you, Your Honor. As for the
11 housekeeping issues, Mr. Rice, uh, does have some claims
12 which he wishes to withdraw at this time. If you'd like
13 for me to place those on the record?

14 **THE COURT:** Yes.

15 **MS. SAUNDERS:** Uh -- as far as -- in reference to
16 the second amended petition, we have decided to, uh,
17 withdraw the petition for a *White v. State* belated
18 appeal, um, based on the -- the failure to preserve the
19 issues. There's really nothing on the record that could
20 be preserved for appeal after reviewing it several times.

21 Uh -- so, the -- the Petitioner would like to
22 withdraw that and go forward on three separate claims of
23 ineffective assistance of counsel.

24 That would be, um, failing to communicate the offer,
25 failure to object to The State's request for the closure

1 of the courtroom for the confidential informant's
2 testimony, and failure to timely effect an appeal.

3 Um -- and those issues have been briefed and
4 submitted to Your Honor in the memorandum of law.

5 **THE COURT:** Okay.

6 **MS. SAUNDERS:** Um -- and, Your Honor, for -- just to
7 make this process easy -- I'm not sure if you have a
8 position on this, but I would like to ask your permission
9 to ask leading questions to all the witnesses. Um --
10 in -- in some situations just to make sure everybody's on
11 the same page.

12 **MR. JOHNSON:** I don't think the witnesses has --
13 have been, um, deemed adverse at this point, and I don't
14 think that leading questions, especially to, uh,
15 Mr. Rice, who is -- who has the burden of proof in this
16 case is appropriate.

17 Um -- also, just to ask Ms. Saunders to clarify, you
18 said that you're withdrawing the *White v. State*, but then
19 you're going on perfecting the appeal?

20 **MS. SAUNDERS:** Well, I -- I do believe at this
21 point, based on research, that that can be grounds on its
22 own for ineffective assistance of counsel, so we're using
23 that as an -- we're gonna go forward with that as an
24 argument. However, he doesn't wish to, um, go forward
25 with his *White v. State* petition today. Uh -- it was --

1 it was not filing -- timely filed or -- or timely served
2 upon opposing counsel, therefore it was dismissed under
3 the rules which constitutes a failure to perfect appeal.
4 Um -- and we have some case law on that issue.

5 **MR. JOHNSON:** But -- but I guess the only remedy
6 under that would be a belated direct appeal under *White*
7 v. *State*. Um -- he doesn't get a new trial base on --
8 so -- I guess I'm just having a hard time figuring out
9 exactly whether they're the same thing, or...

10 **MS. SAUNDERS:** If -- if that's your position, I
11 mean, we just say that it was -- it was not timely done
12 and it was not properly preserved on the -- the issues
13 for appeal were not properly preserved on the record.
14 Therefore, he has not -- he doesn't have an opportunity
15 to go forward on appeal. Um -- so I'm just kind-a using
16 that issue as a -- as a, um, part of a substantive
17 argument but not a primary issue.

18 Um -- and I would like to make a -- an argument to
19 The Court after the witnesses' testimony is -- is
20 complete.

21 **THE COURT:** All right; well, we'll press ahead and
22 we will deal with everything that you are asking in
23 advance to rule upon at the time I need to rule upon it.

24 **MS. SAUNDERS:** Thank you, Your Honor.

25 **THE COURT:** All right.

3 (WITNESS FORWARD.)

6 **CLERK:** Okay; you can have a seat right there.

8 Q Thank you, Ms. Zimmerman. Uh -- could you please
9 state your name for the Court Reporter and for the
10 record?

12 Q And you were the Solicitor who tried the case which
13 is *State versus Ian Rice* on or about November 14th and
14 15th 2007?

16 Q Um -- and I'll just get right to the meat of issues,
17 um, or the reasons for which I'm gonna -- I'm asking you
18 questions today.

21 A Um -- I was. Um -- I -- I took over that case from
22 the former Deputy Solicitor. Um -- I actually took
23 over the case in -- about October of '06. And so, I
24 did negotiations with Mr. Rice's first attorney who
25 was a Public Defender, and then subsequently with

1 Mr. Pennington after he was hired on the case.

2 Q Okay. Um -- and what is your recollection of an
3 off- -- any offer to plead guilty in this case?

4 A Um -- I would -- I would have offered eight years in
5 this case because it was a -- a third offense. I offered
6 eight years on all the -- the third drug offenses that I
7 handled.

8 Um -- I can't tell you an exact date on that or when
9 that offer would have been pulled exactly. I just know
10 that an eight-year offer was made. Um -- and, it would
11 have been pulled at some point prior to the case being
12 called for trial.

13 Q Okay. And was that offer ever amended or
14 renegotiated at any time, based on your recollection?

15 A I think -- and this has been a long time ago, but I
16 think that that case -- there was -- there was an issue
17 with the bond. I think I moved to revoke the bond and
18 maybe had tried to call the case during an earlier term
19 that I believe that I made a second offer of ten years,
20 um, at -- at another time. Because we -- generally, once
21 I call the case for trial, I would pull all offers
22 whether it actually went to trial or not.

23 Um -- and I believe we tried to call this case to
24 trial and it couldn't go; I don't know if we didn't have
25 time or whatever, and I made a ten-year offer just to try

1 to move it.

2 Q Okay. Um -- do you know if the offer was ever
3 conveyed to Mr. Rice?

4 A I was not privy to, you know, his conversations with
5 his counsel. Um -- I -- I know that his attorney came
6 back and told me that he -- he had rejected the offer.
7 Um -- and I know that Mr. Pennington spent a lot of time
8 talking to him in the courthouse. I don't know how many
9 times he talked to him at the jail or anything like that,
10 but I know he talked to him extensively at the
11 courthouse. Um -- so I would just have to assume on
12 that but I don't -- I don't know first-hand what they
13 discussed.

14 Q But to your recollection, you believe that eight
15 years was the offer?

16 A Yes.

17 Q Okay. Um -- let me ask you a couple of questions
18 about those issues where -- surrounding the closure of
19 the courtroom when the confidential witness testified in
20 this case.

21 Um -- and I'm just going off what I've got in the
22 transcript to ask you these questions, but do you recall
23 having any bench conferences with Judge Hill and
24 Mr. Rice's counsel, Mr. Pennington, regarding the closure
25 of the courtroom for Ms. Sanford's testimony?

1 A I do.

2 Q Do you remember any details regarding the nature of
3 those bench conferences?

4 A We -- at that time, um, we made all the Defendants
5 that had pending cases come and sit in the courtroom the
6 whole time. That was before The Court had told us we
7 can't do that. Um -- so there were multiple Defendants
8 sitting in the courtroom, and, uh, Ms. Sanford had been
9 used by the Clinton Police Department to make multiple
10 drug buys off of different Defendants completely
11 unrelated to this case, which she had made a lot of buys.

12 And a lot of the people from whom she had bought
13 controlled substances were sitting in the courtroom, uh,
14 which made her extremely nervous about testifying, you
15 know, because she knew that they would figure out she had
16 been the informant on their case as well.

17 So, we approached the bench because that's obviously
18 something we didn't want to argue in open court in front
19 of those people. Uh -- and The State had asked that all
20 of the other Defendants be removed from the courtroom for
21 her testimony so that they potentially wouldn't find out
22 that she was actually the informant against them.

23 Q Okay, but those -- any agreements regarding this
24 closure of the courtroom? Those are on unrecorded bench
25 conferences; correct?

1 A Correct.

2 Q Not openly on the record?

3 A Correct.

4 Q Um -- and do you recall if Mr. Pennington ever
5 objected to the closure of the courtroom or your request
6 for the closure of the courtroom?

7 A I -- I don't remember if he objected. Um -- I
8 believe it was Judge Hill's position that the Solicitor's
9 Office was the one forcing all those folks to sit there
10 anyway. So, if the Solicitor's Office wanted to tell 'em
11 they didn't have to sit there, you know, obviously that
12 was our prerogative.

13 Um -- I know that's not necessarily the same thing
14 as closing the courtroom, but, you know, if the
15 Solicitor's Office told people they could leave, they
16 usually took that opportunity.

17 Um -- so, I don't -- I don't remember if there was
18 ever any objection made by Mr. Pennington. I think it
19 was kind of a non-issue for everybody. You know, um,
20 because it was based on the informant's protection and --
21 and based on the fact that the Solicitor's Office was the
22 one making those people stay there anyway.

23 Q Okay. If you hadn't had Ms. Sanford available to
24 testify, would you have gone to trial anyway?

25 A If I had not had the informant?

1 Q If you hadn't had the informant there to testify,
2 would you have called the case for trial anyway?

3 A No; I don't think I could have called the case
4 without her.

5 Q Okay. Um -- and let me go back to one more thing
6 and I'll -- I'll -- I won't have any more questions at
7 this point.

8 Do you recall -- or, what was the procedure for
9 making offers back in '07 when you were with the
10 Solicitor's Office?

11 A At that time it was very, very different from what
12 it is now. We didn't have a case management system in
13 place. Um -- when cases came over for a Grand Jury, that
14 was generally the first time the Solicitor's Office saw
15 the file. Law Enforcement brought 'em for Grand Jury and
16 left 'em there.

17 And so, during the first term of Court after
18 indictment, any Solicitor would pick up a case, talk to
19 the Defense attorney, just try to move as many of them as
20 we could.

21 After that they would be assigned out to particular
22 Solicitors. And once I came to work there, I handled all
23 the drug cases so they came to me.

24 Basically, a Defense attorney comes in and we're
25 trying to negotiate pleas; they ask me the offer, I

1 convey it to them. We never did written offers. And, in
2 fact, I personally would not have even responded to
3 discovery requests; we had an administrative person
4 that -- that did that. So, there were never offers
5 conveyed with the Rule 5 because it was a non-attorney
6 answering those.

7 Q Okay; thank you.

8 MS. SAUNDERS: And that's all the questions I have
9 for this witness, Your Honor.

10 MR. JOHNSON: None from The State, Your Honor.

11 THE COURT: Okay, thank you.

12 (WITNESS STEPPED DOWN.)

13 MR. JOHNSON: Can we ask this witness be excused?

14 THE COURT: And she'll be excused.

15 MS. ZIMMERMAN: Thank you.

16 MS. SAUNDERS: Your Honor, my next witness I would
17 like to call is Clyde Pennington.

18 (WITNESS FORWARD.)

19 (WHEREUPON, CLYDE LOUIS PENNINGTON, JR. WAS DULY
20 SWORN AND TESTIFIED AS FOLLOWS:)

21 CLYDE LOUIS PENNINGTON, JR., DIRECT EXAMINATION BY

22 MS. SAUNDERS:

23 Q Thank you, Mr. Pennington. Uh -- if you would just
24 please state your name for the record?

25 A Clyde Louis Pennington, Junior.

1 Q It's good to see you today.

2 A It's good to see you as well.

3 Q What -- thank you. What is your occupation?

4 A I am a mental health specialist.

5 Q Okay, but at the time that Mr. Rice went to trial,
6 you represented him in November of 2007?

7 A I did.

8 Q And that's on the charges he's currently
9 incarcerated for?

10 A Yes, ma'am.

11 Q Okay. Um -- did you get retained or appointed?

12 A I was retained.

13 Q Um -- and did you get paid on that case?

14 A I did.

15 Q Okay. Um -- do you recall how many times you met
16 with Mr. Rice prior to going to trial?

17 A A lot of times.

18 Q Okay.

19 A We met on many, many, many occasions to discuss
20 issues that were before The Court -- would be before The
21 Court. A lot of the issues were about the C-I, Amanda
22 Sanford. That was mostly what we talked about 'cause,
23 uh, we were -- it was pretty clear that he and I knew
24 some things about her that -- that would -- we were gonna
25 use against her to make her look -- try to make her look

1 as bad as we could. And hopefully, given her past, she
2 wouldn't be available for trial.

3 Q Okay. Do you recall if there was as offer in this
4 case?

5 A There was.

6 Q What was offered?

7 A I recall the offer being five years. But I -- it
8 has been some time. I was thinking it was five years.

9 Q Okay; but Ms. Zimmerman just testified that it was
10 eight years to her recollection.

11 A I think it was five. I think that, uh -- my
12 recollection was that they were having some difficulty
13 finding Ms. Sanford and, uh -- because she was having
14 some significant issues with drugs at the time and they
15 were looking pretty hard for her. And as I recall, there
16 was an issue of -- offer of five. But I could be wrong
17 about that; it might have been eight. But I -- it seems
18 to me that they came down from the eight because of the
19 issue of her location.

20 Q Okay. Um -- now I re- -- received your file; I got
21 it from the Office of Disciplinary Counsel. It was
22 all -- all -- everything was being stored there; it took
23 me some time to get them to release it. And I've got it
24 here if you'd like to look through it, but I don't find
25 that there was any written correspondence to your client

1 regarding any offer to plea.

2 A No; no. All of our, uh, correspondence was face to
3 face.

4 Q Okay.

5 A Uh -- I like to do most of my talking with my
6 clients face to face. That way, there's no issue about
7 whether they understand what you're talking about, uh,
8 what's going on, that type of thing. I wasn't one that
9 typically I would write somebody a letter in jail and
10 tell them something and then they would correspond back.

11 This was a very serious case, and so Ian and I met
12 quite often about it. And, spoke with his mother about
13 it as well -- quite often.

14 Q Okay. But as far as your recollection, do you
15 recall if -- if there was ever an offer of eight years?

16 A There may have been an offer of eight years, but my
17 recollection was that it was less than that. But, I
18 would not swear and I certainly don't -- I wouldn't say
19 Ms. Zimmerman is wrong, but it just seems like to me
20 there was a time when there was an offer of less than
21 that.

22 Q What -- were there circumstances, um, regarding this
23 case where the offer was ever revoked by the Solicitor?

24 A Yes.

25 Q And what are the details regarding that?

1 A Basically, uh, the Solicitor became fed up with, uh,
2 their continuous attempt to make an offer and Mr. Rice
3 seemed to just take that as meaningless. He wouldn't --
4 you know, he'd consider it, but he just thought that he
5 had a great chance at trial, and they did not take that
6 very well.

7 Q Well, did Mr. Rice, in your recollection, ever
8 accept that five years and then it was revoked before he
9 ever had the opportunity to plea?

10 A No, he never accepted any of the offers.

11 Q Okay. Um -- let me ask you, on to the next issue
12 regarding closure of the courtroom, have you had an
13 opportunity to review the transcript from the trial?

14 A Just briefly. I -- I finally got a copy of it this
15 morning.

16 Q Okay.

17 A So, that is -- is something that -- I remember there
18 is -- was another issue. And I can't remember if it came
19 up before The Court or not. But I do remember, uh -- uh,
20 Ms. Zimmerman saying that they wanted the courtroom to be
21 closed because of the C-I issue. And after she said that
22 it kind-a brought back a -- something in my mind.

23 It seems like there was some issue about the fact
24 that I was going to be asking her questions about D-S-S
25 matters and that there might have been -- there might

1 have been an issue with that as well.

2 But that's -- it's been a long time.

3 Q Oh yeah; I understand that completely. Um -- but
4 you didn't object to the closure -- of the Solicitor's
5 request for the courtroom to be closed for this
6 testimony?

7 A I didn't object on the record. When we went up to
8 the -- to the bench, uh, I explained that I didn't see
9 any reason we needed to close the courtroom. Uh -- that
10 was my position; I didn't ask to put that on the record,
11 but, uh, I think basically, just like Ms. Zimmerman said,
12 the Judge indicated that they're the ones that are
13 holding these people here. If they want to let them go,
14 most likely they're all gonna go. So, after that, it was
15 pretty much -- it was pretty much understood that The
16 Court was gonna rule that, but I probably should have
17 saved it for appeal, but I did not.

18 Q Now -- so, wait a minute. Could you say that last
19 statement again? You...

20 A I probably should have asked to have that on the
21 record that I didn't see any reason to close the
22 courtroom, but I did not.

23 Q Okay.

24 A The Court essentially make it clear that he was
25 going to let people go and close the courtroom.

1 Q Okay. And based on the transcript -- I'm not sure
2 if you recall this or picked this up in your review --
3 but, after the testimony of Ms. Sanford ended, um, the
4 police officer with Clinton City Public Safety, Tyrone
5 Goggins, testified and there was no mention of this
6 courtroom being reopened to the public for his testimony?

7 A No; no.

8 Q Um---

9 A I don't think either Ms. Zimmerman nor myself asked
10 that everyone be asked to call back -- be called back.
11 Because, I think at that point what had happened is, is
12 that the Solicitor, uh, said everyone could -- would --
13 could go and should go and in Laurens at that time, the
14 way the -- the system worked, everybody who I -- had a
15 Public Defender or no attorney was required to sit during
16 the term, and it did not take very long for the courtroom
17 to clear, and you would rarely ever see anybody wanting
18 to come back. They -- they wanted to be out of there as
19 quickly as they could.

20 So even if I -- I -- I felt like even if I'd asked
21 The Court to -- people be allowed to come back in, they
22 would already have been gone.

23 Q Okay.

24 A I don't think I could have gained anything from
25 that.

1 Q But did you -- I think -- I think you've indi- --
2 indicated to me that closing the courtroom for the
3 testimony of a -- The State's star witness is a big deal,
4 and in this case could have a appealable issue had it
5 been preserved for the record?

6 A I don't think it was a big deal. I mean, I -- I
7 think that maybe just as a -- as a matter of just to put
8 it on the record I object. I probably should have done
9 that just -- just for that purpose, but I don't think it
10 would have been anything that would have made any
11 difference on appeal.

12 Q Um -- but do you think that there is a possibility
13 or a probability that Ms. Sanford's testimony could have
14 been heightened enough in the eyes of the jury, based on
15 that closure of the courtroom, that it caused them to
16 give her more credibility than she really should have
17 been given in this case?

18 MR. JOHNSON: Objection, Your Honor, that's complete
19 speculation on what credibility was given -- the jury
20 gave, uh, to Ms. Sanford.

21 THE COURT: How about that, Ms. Saunders? You want
22 him to speculate about it or no?

23 MS. SAUNDERS: Well, Your Honor, I'm just asking him
24 from his -- his experience. I'll withdraw that question.

25 THE COURT: All right.

1 Q Um -- now, let me move on to the next issue. Enough
2 about the closure of the courtroom. Um -- what was your
3 agreement with Mr. Rice regarding the handling of the
4 appeal after his conviction?

5 A We indicated we would file an appeal.

6 Q Okay, but did you tell him that as part of his fee
7 you would handle an appeal?

8 A I don't believe our contract included the handling
9 of an appeal.

10 Q I believe you're correct on that just for the sake
11 of efficiency. Um -- but did you file a notice of
12 appeal?

13 A We did.

14 Q Okay, and---

15 A It was late.

16 Q ---and it was dismissed for untimely service?

17 A It was.

18 Q Okay. Um -- and do you agree that this constitutes
19 a failure to perfect an appeal?

20 A Oh, I think that's a given.

21 Q Okay.

22 **MS. SAUNDERS:** Um -- thank you, Your Honor; I have
23 no more questions for this witness.

24 Thank you, Mr. Pennington.

25 **MR. JOHNSON:** Just briefly, Your Honor.

2 (WITNESS BEGINS TO STEP DOWN.)

4 **MR. PENNINGTON:** Oh -- oh, I'm sorry.

6 MR. JOHNSON:

8 | A Yes?

12 A I did a lot of investigation in this case. Uh --
13 especially about Ms. Sanford. It took a while to find
14 out some of the issues that she was having. Uh --
15 Mr. Rice explained to me that she and he had had a
16 relationship before and that, uh, they had had a bit of a
17 falling out and we learned after some investigation that
18 she had significant issues with drugs and that she had
19 been working as a C-I and getting paid for it for some
20 time.

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1 but it was very clear -- at least I thought from our
2 investigation -- that she had been using crack for much
3 longer than that, uh, and that the fact that she had lost
4 her children was clear proof of that.

5 Q Did The State have any audio or video recording of
6 this alleged transaction?

7 A They did; they had two recordings.

8 Q And can you please explain, uh, to Judge Newman the
9 detail of those recordings?

10 A There was the first recording whereby Ms. Sanford
11 went to make the buy. And in that recording you could
12 see her actually -- you could hear her and you could
13 hear, uh, Mr. Rice talking and you could see the drugs
14 being passed back and forth. But you could not see
15 Mr. Sanford's -- I mean Ms. -- Mr. Rice's face at all in
16 the video.

17 And there was a second video whereby, because they
18 could not see his face, they had her come back by later
19 and she said -- kind of went back and forth as you can
20 tell in the transcript -- to either re-identify him or
21 rebuy from him.

22 Uh -- my understanding was that it was really just
23 so that she would go back by and there would be a clear
24 picture of him in the -- the clothing that he was
25 wearing. And he talked to her and I think that was when

1 he may have called her a good soldier or something like
2 that.

3 Uh -- and he felt like the fact that he had on a
4 certain shirt the first time and you couldn't quite
5 recognize him and then the second video he comes back and
6 he has on the same shirt and you can recognize him, he
7 felt that that was going to be meaning -- extremely
8 meaningful because a lot of different people could buy
9 that type of shirt.

10 Um -- I advised him I didn't think that that was
11 going to be that meaningful; that that, in and of itself,
12 was going to help very much at trial with that. But, he
13 felt like we could make -- make light of that. But it
14 just -- just -- to me it just did not seem to be of any
15 help.

16 Q And as the transcript would indicate, that's
17 actually a distinctive NC State University shirt?

18 A It was; it was very distinctive. Uh -- and -- and
19 you could -- you could see some of -- of him. Uh --
20 his -- his -- his features in the first video but they
21 weren't clear. Uh -- and in the second video they were
22 clear and, uh, if I recall correctly, I think in the
23 second video that was when he said something to the
24 effect of you're a good little soldier or something like
25 that, which is a -- a euphemism.

1 Q Meaning what, in your experience?

2 A Uh -- from my experience it means that, uh, you're
3 a -- you're a good purchaser. You're a, you know, you're
4 a good, uh, member of my family; we're close. That type
5 of thing.

6 Q And she identified Mr. Rice in the courtroom?

7 A She did.

8 Q And as a matter of fact, uh, Investigator Goggins
9 also knows Mr. Rice and identified him in the courtroom?

10 A He did.

11 Q And it's your recollection that, uh, The State
12 introduced three still photographs from these videos that
13 clearly show Mr. Rice involved in this drug transaction?

14 A That's correct. (After pause) That's why I didn't
15 think we should have gone to trial.

16 Q So was it your advice that he take the plea -- plea
17 offer?

18 A It was -- vigorously.

19 Q Did he ever indicate to you that he would like to
20 accept that plea offer?

21 A No.

22 Q Or any of the plea offers?

23 A No. (After pause) We were actually hoping
24 Ms. Sanford wouldn't make it to trial because we had --
25 had heard through the grapevine through our investigation

1 that she had gone elsewhere and law enforcement was
2 having some significant issues with finding her. And we
3 were hoping that upon the day of the trial that she just
4 simply wouldn't be there. That was our -- once he
5 decided he did not want to plea, that was -- that was --
6 that was our saving grace; we thought we might get lucky
7 on that.

8 Q And additionally, uh, this substance that was
9 exchanged between Mr. Rice and Ms. Sanford was out -- was
10 confirmed through SLED's analysis as crack cocaine,
11 correct?

12 A It was. There was no issue of that.

13 MR. JOHNSON: Your Honor, that's all I have for this
14 witness at this time.

15 **CLYDE LOUIS PENNINGTON, JR., EXAMINATION BY THE COURT:**

16 Q With regard to the, uh, courtroom closure, was it
17 done in the presence of the jury or while the jury was
18 out?

19 A I believe they -- it was what -- in the presence of
20 the jury. I think we stepped up in front of the Judge's
21 bench kind-a close and spoke very quietly and...

22 Q And what did the Judge say to the audience?

23 A Uh -- I don't remember the Judge saying anything
24 other than, uh, we're gonna empty the courtroom; we're
25 gonna close the courtroom. The Solicitor's gonna allow

1 everyone to leave. I don't think there was any -- any
2 great drama from that.

3 Q Was there anyone in the audience other than
4 Defendants?

5 A Not that I was aware of. It was just -- as I said,
6 at that time that was -- that was kind of a standing way
7 of dealing with things. Everybody that didn't have a
8 private attorney, uh, or was represented (sic), they had
9 to stay in the courtroom every day of every term from
10 beginning to the end. And there was no end to people
11 begging to leave. So...

12 Q So was it closing the courtroom or was it -- or was
13 it releasing the Defendants who were in the courtroom?

14 A I think -- I -- I more thought of it as releasing
15 them. And -- and that was -- that was essentially what I
16 felt like the Judge was saying, as -- as Ms. Zimmerman
17 said, which -- which, if -- if she wants, no matter what,
18 she can let them go, uh, and they're most likely going to
19 go. And they promptly did.

20 Q And with regard to the plea offer, tell me again,
21 what did you convey to, um, the Defendant?

22 A I conveyed to him that the plea offer was not what I
23 wanted it to be -- I would love for it to have been
24 better -- but considering what he was facing on a third
25 and the video case, our discussions that, uh, a trial was

1 very, very risky.

2 Q I mean, how much time did you tell him that he
3 could -- the plea offer, was that either a negotiation or
4 a recommendation? I don't know which it was.

5 A I believe that I told him that -- that it was five;
6 but, it may have been eight. It has been some time.

7 Q As a -- as a recommendation or as a negotiation?

8 A Negotiation.

9 Q A negotiation; and he rejected that?

10 A He did. (After pause) And we actually -- I actually
11 went out while this offer was being made, I -- I talked
12 with his Mom, uh, and, you know, she was of the opinion
13 that he should probably take that.

14 As I recall, his Mom was a doctor. I think that's
15 correct; I think from, uh, up -- up around New York or
16 somewhere from there. A very nice lady, and she was of
17 the opinion that given the evidence that he should
18 probably accept the plea as well.

19 Q All right.

20 A Given the exposure that he had.

21 Q And with regard to the evidence itself of -- of
22 guilt as -- as it existed, what was the clear evidence --
23 overwhelming evidence of guilt regarding the Defendant
24 that was produced at trial?

25 A Uh -- the C-I and the video.

1 Q And was he clearly on the video?

2 A He was clearly on the second video.

3 Q All right.

4 **THE COURT:** All right, Ms. Saunders?

5 **MS. SAUNDERS:** Yes, Your Honor?

6 **THE COURT:** Further questions?

7 **MS. SAUNDERS:** Um -- beg The Court's indulgence.

8 **THE COURT:** Yes.

9 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
10 CONFERENCE, OFF THE RECORD.)

11 (WHEREUPON, PROCEEDINGS CONTINUED.)

12 **MS. SAUNDERS:** No questions, Your Honor.

13 **THE COURT:** All right.

14 **MR. JOHNSON:** None from The State, Your Honor.

15 **THE COURT:** Thank you, sir; you may step down.

16 **MR. PENNINGTON:** Thank you.

17 (WITNESS STEPPED DOWN.)

18 **MR. JOHNSON:** Can I ask that he be, uh, be detained?
19 He's, uh -- he's under subpoena from The State.

20 **MR. PENNINGTON:** I---

21 **MR. JOHNSON:** Just in case I need rebuttal
22 testimony.

23 **MR. PENNINGTON:** ---I don't have a problem staying.

24 **THE COURT:** All right; yes, sir.

25 **MR. JOHNSON:** Thank you, Mr. Pennington.

1 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
2 CONFERENCE, OFF THE RECORD.)

3 (WHEREUPON, PROCEEDINGS CONTINUED.)

4 **THE COURT:** Next witness please.

5 **MS. SAUNDERS:** Thank you. At this time I call
6 wit- -- Ian Rice to the stand.

7 (WITNESS FORWARD)

8 (WHEREUPON, **IAN RICE** WAS DULY SWORN AND TESTIFIED AS
9 FOLLOWS:)

10 **IAN RICE, DIRECT EXAMINATION BY MS. SAUNDERS:**

11 Q Thank you, Ian. Would you please state your name
12 for the record?

13 A Ian Rice.

14 Q And you waited a long time for this day to be heard?

15 A Yes, ma'am, I have.

16 Q On you application for PCR?

17 A Yes, ma'am.

18 Q I think you've been through three other attorneys
19 and then your application finally fell in my lap when I
20 came back to Laurens?

21 A Yes, ma'am, that's true.

22 Q And where are you currently serving time?

23 A Tyger River.

24 Q How long?

25 A I been at Tyger River for a year. I done four years

1 at Perry Correctional Institution.

2 Q Okay. What's your -- what is the sentence you're
3 serving?

4 A Uh -- seventeen years.

5 Q Okay. When were you arrested on the offenses for
6 which you're currently serving time?

7 A August the 22nd 2006.

8 Q Um -- and if you will just educate The Court, um,
9 and the Attorney General on what happened between August
10 of 2006 and December 2006? Were you incarcerated?

11 A Yes, ma'am; I was being held in the County of
12 Laurens for a ninety-thousand-dollar bond. I made bond
13 in December of 2006.

14 Q Okay, so you were out on bond from December until
15 May of 2006 (sic)?

16 A Yes, ma'am; Mother's Day 2007.

17 Q Seven, excuse me.

18 A Yes, ma'am.

19 Q Correct. And you were arrested again on some new
20 drug charges allegedly?

21 A Yes, ma'am.

22 Q Those charges have since been dismissed, correct?

23 A Yes; yes, ma'am.

24 Q Uh -- so at that point in May of 2007, were you
25 represented by anybody in particular?

1 A Clyde Pennington.

2 Q Are you sure about that?

3 A Yes, ma'am.

4 Q When did you hire Mr. Pennington?

5 A I think we hired Mr. Pennington in June---

6 Q Okay.

7 A ---of 2007.

8 Q So you had these pending charges, you were
9 arrested in -- rearrested in May, and then you hired
10 Clyde Pennington?

11 A Yes, ma'am.

12 Q Okay. Um -- (after pause) how many times did you
13 meet with Mr. Pennington once you hired him as your
14 attorney?

15 A The day before the trial.

16 Q Did you ever meet with him other than the day before
17 the trial?

18 A No, ma'am.

19 Q Okay. Um -- and just to clarify, who paid for
20 Mr. Pennington to represent you?

21 A My sister, Doctor Pricilla Rice.

22 Q And she's a doctor, living in---

23 A Pennsylvania.

24 Q ---Pennsylvania?

25 A Yes, ma'am.

1 Q Okay. Um -- so just tell me the circumstances
2 around how your case was called for trial just to educate
3 The Court.

4 A On September the 7th, I was -- well, in May, on
5 Mother's Day, I was locked up again for a -- another
6 distribution charge and I had no bond. And we hired
7 Mr. Pennington in June. And he was supposed to get me in
8 court in July; he wasn't able to. And September the 7th
9 he got me in court. And I sat in the juror's box, and he
10 came to me with a plea of four years, non-violent, given
11 by Mrs. Zimmerman. And I accepted the plea. And he
12 comes back out about ten minutes later and tells me that
13 while him and Ms. Zimmerman was coming up with the
14 negotiated plea, that Mr. Jerry Peace, the former
15 Solicitor of Laurens County, told him that he was not
16 gonna allow me to get four years for a third year
17 distribution and we took it off the table. And that was
18 the only plea I heard of.

19 Uh -- I got me a job at Michelin and was doing well.
20 In November he calls me and tells me they wanna pick the
21 jury.

22 Q Were you -- and tell me those circumstances. You
23 were in the bed asleep---

24 A Yes, ma'am.

25 Q ---you got a call from your attorney---

1 A Yes, ma'am.

2 Q ---saying come on to the courthouse, we got to pick
3 a jury?

4 A Yes, ma'am.

5 Q Okay. Um -- was there ever an offer of eight years
6 that was ever conveyed to you in writing or verbally from
7 your attorney, Mr. Pennington?

8 A No, ma'am.

9 Q Okay. Um -- so -- but that -- you say that there
10 was some sort of offer of four to four-and-a-half years
11 that was offered to you when you were at the courthouse
12 for your bond hearing on September the 7th 2007?

13 A Yes, ma'am.

14 Q You accepted that offer?

15 A Yes, ma'am, I did.

16 Q And then that offer was yanked by the Solicitor?

17 A Yes, ma'am, it was.

18 Q Okay. Now, if your attorney had conveyed a
19 reasonable offer, other than this four-and-a-half which
20 you say that you accepted, would you have taken it?

21 A I probably would have.

22 Q Like the eight years that Ms. Zimmerman had conveyed
23 to you?

24 A That's pushing it.

25 Q Okay. Um---

1 **THE COURT:** You said it's pushing it?

2 **MR. RICE:** Yes, Your Honor.

3 **THE COURT:** You mean you would not have accepted it?

4 **MR. RICE:** I don't think I would have; no, sir.

5 **THE COURT:** All right.

6 Q Okay. Um -- and let me -- let me skip forward in
7 time a little bit. What happened the day after you were
8 convicted? I think that was probably a Friday on
9 November the 16th of 2007. Tell me what happened that
10 day.

11 A Well, they brought me back to the courtroom, and,
12 uh, Ms. Zimmerman asked me to plea to an eighteen, uh,
13 for the pending charges that I had. And, you know, I'm
14 break- -- I'm -- I'm emotionally just destroyed because
15 of the seventeen and I'm ready to take the eighteen but
16 Mr. Pennington takes me aside of the room and tells me if
17 I take the eighteen then that's gonna override the
18 seventeen. And if I get the seventeen, uh, overturned
19 then the eighteen will still be pending.

20 Q Right. Um -- now, to your knowledge, were the
21 charges brought against you in May of '07 ultimately
22 dismissed?

23 A Yes, ma'am.

24 Q Okay. So you're serving time on the arrest that
25 happened in August of '06?

1 A Yes, ma'am.

2 Q Okay; and the conviction that happened at trial
3 in '07?

4 A Yes, ma'am.

5 Q All right. Well, let me move on. With regard to
6 the closing of the courtroom from Ms. Sanford's
7 testimony, do you recall any discussions at trial about
8 closing the courtroom when Ms. Sanford was gonna testify?

9 A No, ma'am.

10 Q Okay. Um -- do you recall if Mr. Pennington
11 objected to the closure of the courtroom?

12 A No, ma'am.

13 Q So nothing was talked about with Madame Court
14 Reporter, um, to put it on the record?

15 A No, ma'am.

16 Q Okay. Um -- do you believe that you suffered
17 prejudice of any kind because the courtroom was closed
18 for this testimony?

19 A Yes, ma'am, I do.

20 Q Tell me about that.

21 A I feel like that -- with the -- I don't believe that
22 Ms. Sanford was going to testify. Uh -- I think that was
23 a deal with the Solicitor that if she testified that the
24 courtroom would be closed. And I feel like it heightened
25 her testimony to the jury, uh, because of the courtroom

1 closure.

2 Q Okay.

3 A The courtroom was, in fact -- it was, indeed, packed
4 that day because we had the jury selection and all that.
5 And a lot of people were still around. It wasn't just a
6 lot of Defendants that was around.

7 And, uh, when she made the call for the next
8 witness, she asked that the courtroom be closed and there
9 was a private bench conference and my lawyer never did
10 object to that.

11 Q Okay. Um -- so there were other people, other than
12 Defendants, there for a roll call that morning?

13 A Yes; yes, ma'am.

14 Q And they included other members of the public like
15 your family?

16 A Yes, ma'am.

17 Q Your friends?

18 A (Nod.)

19 Q Other people waiting to do business with the
20 Solicitor, or their attorney, or Probation, or whatever?

21 A People, in fact, that was in my jury pool was still
22 there. All of the jury pool had not left.

23 Q Okay. Um -- so do you -- you don't think that
24 Ms. Sanford would have testified if the Judge hadn't had
25 locked the doors?

1 A No, ma'am.

2 Q And kept the public out?

3 A No, ma'am.

4 **MR. JOHNSON:** Objection, Your Honor; that's a
5 speculation on whether she'd -- she would or would not
6 have testified based on the closing of the courtroom.

7 **THE COURT:** Overrule the objection.

8 Q Um -- let me move on to the appeal issue. And
9 this -- this takes less significance because of, um, the
10 fact that there's really not much on the record. But,
11 did you wish to appeal your conviction?

12 A At the beginning I did want to appeal my conviction;
13 yes, ma'am.

14 Q And Mr. Pennington agreed to file the appeal for
15 you, correct?

16 A Yes, ma'am.

17 Q Correct?

18 A Yes, ma'am.

19 Q Um -- did you believe that your appeal had been
20 properly filed?

21 A Yes, ma'am, I did.

22 Q And were you just kind-a sitting in the Department
23 of Corrections waiting on some paperwork from your
24 attorney?

25 A Yes, ma'am.

1 Q And did you have any idea that it had been dismissed
2 for failure to file timely service?

3 A Not until I wrote the, uh, Court of Appeals and
4 found out that, uh, my appeal had been filed untimely and
5 it was dismissed.

6 Q Okay. Um -- so that's kind-a when you decided you
7 needed to file a PCR action?

8 A Yes, ma'am.

9 Q And you filed your PCR within the one year statute
10 of limitations?

11 A Yes, ma'am, I did.

12 **MS. SAUNDERS:** Your Honor, I have no more questions
13 for this witness.

14 **THE COURT:** Yes, sir?

15 **IAN RICE, CROSS-EXAMINATION BY MR. JOHNSON:**

16 Q Mr. Rice---

17 A Yes, sir?

18 Q ---would you agree with me that at the trial, uh,
19 the C-I testified that she had a transaction with you
20 involving crack cocaine?

21 A Would I agree that?

22 Q That's -- that's the testimony at trial?

23 A Yes, sir -- yes, sir.

24 Q Okay. And she knew you from a prior relationship?

25 A Uh -- according to what she said, yes.

1 Q Okay. So you're saying that she -- you never knew
2 Ms. Sanford?

3 A Well, I knew her. When we was growing up we went to
4 school together and things of that (sic); yes, I did.

5 Q And she -- you know, at the trial it comes out that
6 she's got you on camera twice. One selling that did not
7 show your face and the second video that was introduced
8 shows the NC State shirt that you were wearing?

9 A Uh -- according -- yeah; yes, sir.

10 Q It gets your face on the second video, didn't it?

11 A Yes, sir.

12 Q So that was you wearing the NC State shirt?

13 A Not on the transaction, no, sir. In -- in fact, if
14 you would-a read the transcript---

15 Q So somebody else was out there wearing an NC State
16 shirt?

17 A Exactly -- yeah, exactly.

18 Q The exact same shirt that you had on?

19 A I mean, there was other people out there that day
20 that she said she did not want to be around.

21 Q But you're saying that somebody else out there was
22 wearing the exact same shirt you were?

23 A Could-a had the same clothing on; yes, sir.

24 Q Could have or -- or was wearing?

25 A Did have; yes, sir.

1 Q Do you have that person in the courtroom to prove
2 that?

3 A No, sir.

4 Q Also, uh, Investigator Goggins testified that he
5 knew you and identified you on that video---

6 A Uh-huh.

7 Q ---correct?

8 A Yes, sir---

9 Q Okay.

10 A ---he testified that.

11 Q And also, The State brought in a SLED anal- -- an
12 analyst who said that that point-two grams of crack
13 cocaine was in fact crack cocaine?

14 A Uh -- yes, sir, she said that.

15 Q Okay. And this isn't your first time in the
16 criminal justice system is it?

17 A No, sir.

18 Q As a matter of fact, you have two priors for crack
19 cocaine don't you?

20 A Uh -- yes, sir.

21 Q You also testified that, uh, you know, there were
22 other people other than the -- the Defendants in the
23 jury -- in the -- in the room, including people in the
24 jury pool and friends and family, uh, when the Solicitor
25 asked to close the courtroom; isn't that right?

1 A Yes, sir.

2 Q But those people aren't trying your case, are they?
3 They're not the ones that are hearing the evidence and
4 deciding your fate, are they?

5 A No, sir.

6 Q Okay. And you weren't back in the deliberation room
7 to hear what the jury was deliberating about, where you?

8 A No, sir.

9 Q So you don't know what discussions they may or may
10 not have had in the jury room, do you?

11 A No, sir.

12 Q Okay. You also, uh, claim that the Solicitor at a
13 bond hearing offered you four years/five years and that
14 you accepted that offer?

15 A Yes, sir; I accepted a four-year, non-violent
16 sentence.

17 Q Okay, but you just told the Judge that you wouldn't
18 have accepted an eight-year plea offer, right?

19 A Yes, sir, I did.

20 Q Okay. So going back, you accepted the four-year
21 sentence?

22 A Yes, sir.

23 Q Correct; okay. Did you ever have a guilty plea
24 hearing where the Judge says, I accept your guilty plea?

25 A No, sir.

1 **MR. JOHNSON:** No further questions, Your Honor.

2 **THE COURT:** Redirect?

3 **MR. JOHNSON:** Thank you, Your Honor.

4 **IAN RICE, REDIRECT EXAMINATION BY MS. SAUNDERS:**

5 Q Um -- Mr. Rice, is this your file that was in
6 the possession of Mr. Pennington -- or, this was
7 Mr. Pennington's file regarding the defense of the
8 charges you're currently incarcerated on?

9 A Yes, sir -- yes, ma'am.

10 Q Did you have an opportunity to look through this
11 file?

12 A Briefly; yes, ma'am.

13 Q Because technically, this is your file?

14 A Uh-huh.

15 Q Is there anything in writing in this file that
16 communicates any kind of offer to you?

17 A No, ma'am.

18 Q Okay.

19 **MS. SAUNDERS:** I have no further questions, Your
20 Honor.

21 **THE COURT:** Anything further?

22 **MR. JOHNSON:** (Nod.)

23 **THE COURT:** You may step down.

24 (WITNESS STEPPED DOWN.)

25 **THE COURT:** Your next witness?

1 **MS. SAUNDERS:** Your Honor, that is our case.

2 **THE COURT:** Any witnesses by The State?

3 **MR. JOHNSON:** The Court's indulgence, Your Honor.

4 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
5 CONFERENCE, OFF THE RECORD.)

6 (WHEREUPON, PROCEEDINGS CONTINUED.)

7 **MR. JOHNSON:** None, Your Honor.

8 **THE COURT:** All right. Any argument?

9 **MS. SAUNDERS:** Your Honor, I do have a brief
10 argument just to -- to recap.

11 Um -- in regards to the first issue with a failure
12 to communicate the offer, I think Your Honor can -- can
13 see that there is some major confusion about whether an
14 actual offer was properly communicated to my client.

15 Um -- I -- I believe that the current case law is
16 *The State v. Davie*, um, where The Court held that counsel
17 was required to fully communicate with his client so that
18 he can make an informed decision. Um -- and in that case
19 I believe counsel was found ineffective for failure to
20 properly communicate The State's offer of fifteen years
21 on a burglary charge.

22 Um -- so, Your Honor, I think that -- my client
23 remem- -- recalls a four-and-a-half year offer on the day
24 of his bond hearing in '07. He says he accepted that
25 offer and it was revoked from him before he had the

1 opportunity to -- to -- to plea on the record.

2 **THE COURT:** Was this -- this the bond hearing before
3 he was indicted? Or -- or...

4 **MS. SAUNDERS:** This was a bond hearing after he was
5 picked -- he had been indicted on the distribution
6 charges for which he's serving time. He got out on bond
7 and then he got re-arrested in May of '07 on an ad- --
8 addi- -- additional drug charge. Um -- those charges
9 have since been dismissed.

10 **THE COURT:** Well, it's often the case after someone
11 gets eighteen years on the -- the trial. What would be
12 the point of having another trial for another eighteen
13 years? That -- that's not unusual, is it?

14 **MS. SAUNDERS:** I understand that, Your Honor.

15 **THE COURT:** Yeah.

16 **MS. SAUNDERS:** I understand---

17 **THE COURT:** I know you've emphasized it a few times
18 as if it's something---

19 **MS. SAUNDERS:** I just want to make sure that---

20 **THE COURT:** ---significant.

21 **MS. SAUNDERS:** ---that -- that The Court understands
22 that---

23 **THE COURT:** I understand---

24 **MS. SAUNDERS:** Okay.

25 **THE COURT:** ---it 'cause you've said it more than

1 one time. I'm just asking whether there's anything
2 significant about the fact that it's -- it's been
3 dismissed considering the fact that he's been convicted
4 and given eighteen years.

5 **MS. SAUNDERS:** No, Your Honor; I just decided, um --
6 I -- I wanted to point out to The -- to The Court that
7 the following day after his conviction he was -- we was
8 offered the plea on the additional charges. Um -- I -- I
9 don't think that that's anything out of the ordinary
10 either necessarily, but, um, I think it could show that
11 there was a recognition that there was some possible
12 issues in this -- this case that could be overturned at a
13 later date.

14 Um -- and, Your Honor, I think that you heard from
15 Mr. Pennington who has said that his recollection is
16 there was an offer of five years. Ms. Zimmerman
17 testified that there was an offer of eight years.

18 We have nothing on the record, um, in the file, or
19 in writing that shows what the actual offer was. At this
20 point in time, I know that current cases are dealt with
21 in a different way. That a written offer is communicated
22 to the Defendant when the discovery is provided to him
23 most on -- most of the time.

24 Um -- and that helps with, um, clarifying---

25 **THE COURT:** He said Rice wasn't gonna plead guilty

1 to anything because he didn't think the, uh, C-I was
2 gonna show.

3 **MS. SAUNDERS:** Your Honor, I -- I -- I heard him --
4 him make that statement for the record, but I just -- I
5 feel like there was some major confusion on, um, whether
6 or not there was an actual firm offer on the table for
7 Mr. Rice to accept or reject and that wasn't communicated
8 to him.

9 Um -- and if I may move on to the second issue?

10 **THE COURT:** Yes.

11 **MS. SAUNDERS:** Regarding the failure to object to
12 the closure of the courtroom, um, this goes to the
13 Petitioner's application for ineffective assistance
14 because, number one, he was denied the right to a fair,
15 impartial public trial. And I believe I have provided
16 Your Honor with some case law regarding that issue.

17 **THE COURT:** Well, tell me about that.

18 **MS. SAUNDERS:** Um -- well, I think that it's the --
19 the *State v. Waller*, *State v. Sinclair* cases. *Waller*
20 would be the U.S. Supreme Court case, and *Sinclair* would
21 be the State Supreme Court case where, um, The Court did
22 agree, I believe, um, that the offer -- or, excuse me,
23 that the courtroom -- there needs to be reasons
24 articulated on the record by the trial judge in order to
25 close the courtroom to the public for the testimony of a

1 witness.

2 And in this case, Your Honor, I can direct you to
3 page thirty-six of the transcript. I don't know if
4 you've had a chance to review the transcript.

5 **THE COURT:** Yeah; I saw that part of it, yeah.

6 **MS. SAUNDERS:** Um -- but -- well actually, prior to,
7 on page seventeen, line six, there was an unrecorded
8 bench conference. I have no idea what the -- the
9 attorneys talked about with Judge Hill.

10 On page thirty-six, lines ten through twenty-five,
11 the Solicitor was asked to call her first witness and
12 that was her first indication on the record that the
13 attorneys or the Judge had discussed previously --
14 presumably at this unrecorded bench conference -- that
15 they were gonna close the courtroom for this testimony of
16 this witness.

17 **THE COURT:** Well there is -- there's nothing in the
18 record that shows that any of this was done in the
19 presence of the jury other than the re- -- the request
20 that, um, the requesting that the courtroom be cleared.
21 Then the Judge -- then they took a break. When they came
22 back from the break then she was the witness who was
23 called. And there's no indication that the Judge an- --
24 announced anything to the jury.

25 And I had asked Mr., uh, Pennington that question,

1 how was that handled, it appeared the lawyer says, Judge,
2 remember we said we wanted the courtroom closed for this
3 witness. And the Judge called everyone up to the bench
4 conference and then, uh, took a break.

5 **MS. SAUNDERS:** Yes, Your Honor.

6 **THE COURT:** The jury left, and when the trial
7 resumed, she was the witness.

8 Um -- so, there was no ruling on the issue in the
9 presence of the jury is, uh, is my point to you as I can
10 see it from this -- from this, uh, record.

11 **MS. SAUNDERS:** I understand that, and thank Your
12 Honor for you -- for your clarification.

13 But, I believe it -- my client's position is, is
14 that because Mr. Pennington did not object, this
15 constitutes, uh, ineffective assistance that caused him
16 prejudice because it's an appealable issue and it wasn't
17 preserved for the record. And, he should have objected
18 and asked for the Judge to articulate his reasons on the
19 record for closure of the courtroom in order to properly
20 preserve his, uh, record for appeal.

21 **THE COURT:** Yeah; and I understand that argument.
22 I'm looking at just some notes in this case that you
23 mentioned. Uh -- Wallis -- *Waller v. Georgia*, uh, where
24 it indicates that, where a party seeks to close a trial
25 over the Defendant's objection, the -- the moving party,

1 uh -- there is a heavy burden and that party must advance
2 an overriding interest. There is likely to be prejudice.
3 Uh -- the closure must be no broader than necessary and
4 The Court must make reasonable alternatives and it must
5 make findings adequate to support a closure.

6 So, had there been an objection, then The, um, State
7 would have a heavy burden in closing the courtroom, if
8 the courtroom was in fact closed.

9 Um -- the record doesn't -- the record says a motion
10 was made and the record said a recess was taken, and the
11 record shows that the trial was resumed. There --
12 there's no order on the record closing the courtroom.

13 Pennington says that they let the Defendants go, um,
14 because they might have been on the next case.

15 So, your argument is that prejudice is presumed
16 where there is a closed courtroom? Is that -- that's
17 your argument?

18 **MS. SAUNDERS:** (No response.)

19 **THE COURT:** You're presuming that the jury knew the
20 courtroom was closed and presuming that the jury added
21 additional weight and credibility to the witness's
22 testimony because the jury -- courtroom was closed. And,
23 you are presuming that the Defendant was prejudiced
24 because of all of this. There are like three
25 presumptions on -- it appears.

1 **MS. SAUNDERS:** Yes, Your Honor, I will accept that
2 as a -- as -- as an argument or I'll -- I'll---

3 **THE COURT:** No, ma'am, no. I'm not arguing, I'm
4 just---

5 **MS. SAUNDERS:** ---state -- I'll state that as an
6 argument---

7 **THE COURT:** Okay.

8 **MS. SAUNDERS:** ---for my client's request that there
9 is a presumption of, uh -- of prejudice.

10 But also I believe that if you look at it from the
11 ineffective assistance of counsel arguments where, um --
12 that -- and this gets a little confusing for me, but I
13 believe that it can be argued that there exists a
14 reasonable probability that the outcome of the trial
15 could have been different had the courtroom been allowed
16 to remain open---

17 **THE COURT:** Yeah.

18 **MS. SAUNDERS:** ---taking into consideration the --
19 the -- the facts that have presented -- been presented to
20 you regarding the busyness of that day and the amount of
21 people who were in the courtroom and out of the courtroom
22 and the stark contrast between what it was prior to --
23 what -- what it was like in the presence of the jury
24 prior to the closure of the courtroom and Ms. Sanford's
25 subsequent testimony.

1 **THE COURT:** Yeah.

2 **MS. SAUNDERS:** Um---

3 **THE COURT:** Then of course, the context of these
4 cases generally come up in, um, closing of the courtroom.
5 You generally have the press seeking to cover a trial.
6 So, some of the cases you have here, uh, *The Island*
7 *Packet* case and, you know, the case from Hilton Head.
8 Um -- then you have a *Press-Enterprise* case. I'm not
9 sure who -- who's involved in *Walker v. -- v. Georgia*,
10 whether that's a newspaper or what. But -- then another
11 one involving the *Greenville News*, the *First Charleston*
12 *Corporation*. So you generally have, um -- uh, the press
13 seeking to cover a trial, uh, or, uh -- it is -- this is
14 an unusual context where a Defendant is claiming that,
15 um, his right to a fair trial has been a- -- been a- --
16 affected and adversely affected by the Judge, uh -- and
17 acting as the Judge did in this manner and by the lawyer
18 not objecting to it. Particularly where the lawyer says,
19 well, he didn't see it as a big deal because the effect
20 of what they were doing was letting the Defendants who
21 had to, uh, sit around, uh, go.

22 That's almost like if the -- we're in a trial
23 setting now and The, uh, State moved to exclude all
24 Defendants from the courtroom because the people sitting
25 over there in jumpsuits might intimidate the jury or

1 something. And then, uh -- and the Judge says forget it.
2 I mean, come on, what are you talking about? And then we
3 go up -- go up on appeal on an issue like that. And
4 there's a lot of presumptions and assuming that seem to
5 be inherent in that.

6 So that's why I'm saying, the -- the context in
7 which these issues come about is -- this is a very
8 unusual context where the Defendant, um, is saying, I
9 didn't have a fair trial because there were -- because
10 only the jury was present and the main witness against me
11 testified. So they were intimidation, they -- or they
12 were -- they believed her because no one else was there
13 to listen. And -- I'm trying to follow the discovery.

14 **MS. SAUNDERS:** Well, Your Honor, I think that --
15 that it has a -- an ability to bolster this witness
16 tes- -- witness's testimony to the point where---

17 **THE COURT:** Bolstered by the absence?

18 **MS. SAUNDERS:** Well, bolster her credibility in some
19 way. But, Your Honor, another case, since the newspaper
20 cases I understand are -- are -- may deal with the --
21 excluding the press from the gallery, um, is *The State v.*
22 *Sinclair*. And I think in that case, the public was
23 excluded only while the prosecution witness testified.

24 **THE COURT:** Okay.

25 **MS. SAUNDERS:** And so that was the Defendant's

1 argument in this case.

2 **THE COURT:** And what happened in that case, they
3 agreed with the Defendant or disagreed or what?

4 **MS. SAUNDERS:** Well, The State -- well, excuse me,
5 The Court in this case took care to show -- or, to give
6 great weight to what the trial Judge -- Judge did in this
7 case. He took care to analyze the reasons for closing
8 the courtroom prior to---

9 **THE COURT:** On the -- on the record?

10 **MS. SAUNDERS:** On the record.

11 **THE COURT:** All right.

12 **MS. SAUNDERS:** So that's where, um, I think that our
13 argument has some -- some sticking power in that it
14 closed the courtroom without an analysis of any of the
15 issues of the -- of the -- an -- an articulation of the
16 reasons why the Judge wanted to close it.

17 **THE COURT:** Well the reason, to have a silent
18 record. We have the -- the Solicitor says, Judge,
19 remember we wanted to close the courtroom and the Judge
20 says, well let's take a break. Then they took a break,
21 and there's nothing else on the record.

22 So -- so we're to read between the lines in a whole
23 lot of things here. Either to read between the lines
24 like, uh, Pennington said the Defendants were excused, or
25 read between the lines that your Mr. Rice says they had

1 other jurors and friends and family and everyone had to
2 leave. Uh---

3 **MS. SAUNDERS:** Thank you, Your Honor.

4 **THE COURT:** ---or Judge Hill just, uh -- he, uh --
5 he didn't address the issue. He just went let's take a
6 break. When he came back from the break, all of these
7 folks who were here were no longer here. There's no
8 record of him saying to the Bailiffs, guard the door,
9 don't let anyone else come in. He just -- the jury comes
10 back, call your witness, the witness testifies.

11 **MS. SAUNDERS:** Yes; but and -- and another basis
12 for, um, our argument is that counsel was ineffective
13 because he should have objected on this issue. He should
14 have asked The Court to articulate the reasons on the
15 record.

16 **THE COURT:** Well he says, well maybe I should have
17 done that, but then I -- the question is, do you want
18 then to presume all of this prejudice? That but for all
19 of this, uh, they -- they would -- would not have
20 believed the witness, he would have been found not
21 guilty -- he most likely would have been found not
22 guilty. She might have gotten scared and not testified.
23 Of course, that's of course The State's position if he's
24 saying well, we wanted -- we wanted her there because we
25 think that if she had to testify, um, in the presence of

1 other people she had bought drugs from -- that she
2 claimed that she bought drugs from -- she would have been
3 intimidated and would not have testified.

4 **MS. SAUNDERS:** We're -- we're asking The Court to
5 look at whether or not there was a presumed --
6 presumption of prejudice. But, we're also asking The
7 Court to look that -- look at the existence of a
8 reasonable probability that prejudice exists.

9 **THE COURT:** Yeah. But there must be someplace in
10 the United States, in the annals of the history of this
11 great nation where you can pull a case and -- and show me
12 that that was done before; that they presume what you
13 want me to presume.

14 **MS. SAUNDERS:** Your Honor, I'm not -- I---

15 **THE COURT:** In this great nation of the United
16 States -- State or Nation.

17 **MS. SAUNDERS:** Thank you, Your Honor. I -- I don't
18 have a case that I could put -- put, um, on the bench for
19 you to review today. But, we just stated that---

20 **THE COURT:** Well, if you get one tomorrow, send it
21 to me.

22 **MS. SAUNDERS:** I will be on the hunt for it---

23 **THE COURT:** Okay.

24 **MS. SAUNDERS:** ---if you'll allow me that -- that
25 time. Thank you, Your Honor.

1 Um -- lastly and briefly, I think that the Solicitor
2 has noted his -- or, the A-G has noted his objection on
3 this issue, but the failure to prop- -- properly perfect
4 the appeal. I -- I wanted to present those issues
5 because my client wanted to appeal. He felt that there
6 were some appealable issues on the table with his case --
7 or, on the record with his case. But after we discussed
8 this in -- at length, um, we just don't think that there
9 is anything preserved for appeal that we should go
10 forward with today.

11 **THE COURT:** I'm listening; I'm accustomed to
12 listening to three people at one time.

13 **MS. SAUNDERS:** Thank you. Uh -- but we just wanted
14 to -- to -- to note that we feel that counsel should be
15 found ineffective for failure to file -- timely file and
16 serve that appeal.

17 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
18 CONFERENCE, OFF THE RECORD.)

19 (WHEREUPON, PROCEEDINGS CONTINUED.)

20 **MS. SAUNDERS:** That's all I have, Your Honor.

21 **THE COURT:** Well, just, uh, one other question to
22 you, and I -- I'm sure that the A-G has some arguments or
23 things to say.

24 But this case, um, the *U.S. v. Hitt* -- H-I-T-T, and
25 maybe some others, it says, where a person failed to

1 object to a sealing of a, um -- a closure of the
2 courtroom then they waive their right to a -- a public
3 trial. Um, and I know that you're arguing in the PCR
4 context, but, uh, I didn't hear anything from, Mr., um,
5 Rice saying he objected or told his lawyer I disagree
6 with this or is that, uh, that this waiver issue that
7 if -- if you don't object then you waive it. The lawyer
8 says that he didn't see a big deal.

9 **MS. SAUNDERS:** Yes, Your Honor. Um -- Mr. Rice -- I
10 didn't ask him whether or not he actively or -- or
11 fervently objected to his attorney in order to get that
12 issue, um, on the record at that time.

13 **THE COURT:** That's not his burden, that's the
14 lawyer's burden.

15 **MS. SAUNDERS:** Correct; that -- that is what I'd
16 like to -- to present to Your Honor that -- that that
17 would have been his lawyer's burden to properly preserve
18 the record and also ask the Judge to articulate his
19 reasons for closure of the courtroom.

20 **THE COURT:** Okay, I understand; thanks.

21 **MS. SAUNDERS:** Thank you, Your Honor.

22 **THE COURT:** Yes, sir?

23 **MR. JOHNSON:** Thank you, Your Honor; may it please
24 The Court. The State's position is that Mr. Pennington
25 did render an -- render effective assistance of counsel.

1 Uh -- just to go to Mr. Rice's claims, first, uh,
2 the failure to communicate an offer. Uh -- Mr. Rice's
3 testimony is that he was given a four-year offer from the
4 Solicitor; he accepted that offer and then it was
5 subsequently revoked by the Solicitor.

6 Uh -- Reed v. Veckus (phonetic) -- Reed v. Becka
7 (phonetic) states that until he enters a guilty plea, the
8 offer is not completely accepted. Uh -- so Mr. Rice
9 never accepted the offer; the Solicitor can revoke that
10 at any time. Uh -- so there is no failure to communicate
11 that offer. Obviously, he rejected it himself.

12 He gets up on the stand today and testifies this
13 eight-year offer that he -- he wanted to push it. He --
14 he -- you know, it was his decision that he would not --
15 he testified that he would not accept that eight-year
16 offer. Uh -- so, we find that, uh, he has not met his
17 burden of proof on that issue.

18 As to the closing of the courtroom, uh, State's
19 position is that, uh, there is no prejudice as there is
20 overwhelming evidence of Mr. Rice's guilt. Uh -- you
21 have a confidential informant who knows Mr. Rice from a
22 previous relationship, uh, that goes to set up a buy and
23 the first video that was introduced at trial it shows
24 there's an exchange of crack cocaine. Uh -- obviously,
25 you know, Ms. Sanford knew Mr. Rice. She goes back --

1 police have her go back, get a second video. Clearly
2 shows Mr. Rice's face and the very distinctive NC State
3 shirt, uh, which Mr. Rice claims that somebody else in
4 the vicinity had on that day. However, he brings no
5 proof of that and no witnesses to confirm that. This is
6 his burden of proof. As he did not present the
7 witnesses, um, he could prove, uh, no prejudice.

8 Uh -- also, um, as he admitted on the stand, he was
9 not in the jury deliberation room. He does not know that
10 the jury elevated Ms. Sanford, um, in their eyes just
11 because she is in a -- quote/unquote -- closed courtroom.

12 (After pause) Uh -- as to the appellate issue, we
13 have to stipulate that Mr., uh, Pennington did not file
14 that timely; or, did not serve the Attorney General's
15 Office timely, uh, with that. However, it seems that
16 they are not going forward on that issue if I am correct
17 on that. So, that -- we find that to be a non-issue.

18 So as such, uh, The State's position is that, A,
19 Mr. Pennington did represent, uh, Mr. Rice to a very
20 adequate level and, uh, further there could be no
21 prejudice shown. Or, he has proved no prejudice as there
22 is overwhelming evidence of his guilt.

23 Thank you.

24 **THE COURT:** Ms. Saunders?

25 **MS. SAUNDERS:** Thank you, Your Honor. One more

1 thing. If I could point you to page sixty-five of the
2 transcript---

3 **THE COURT:** Yes, ma'am.

4 **MS. SAUNDERS:** ---lines six through twelve.
5 Ms. Sanford, the confidential informant, actually
6 referred to the closure of the courtroom issue in the
7 presence of the jury---

8 **THE COURT:** All right.

9 **MS. SAUNDERS:** ---so they knew that the courtroom
10 had been cleared.

11 **THE COURT:** Let's see. I didn't know I'm -- I was
12 supposed to say that in public, his name. I didn't know.
13 That is why they cleared the courtroom.

14 (After pause) Ms. Sanford, I asked if you had ever
15 made any other buys in front of these twelve peoples --
16 people with common sense, and you said, no.

17 Answer, I didn't know I was supposed to say that in
18 public and give names, I didn't know. That's why they
19 cleared the courtroom.

20 That's, uh, part of the cross-examination. But --
21 all right.

22 **MS. SAUNDERS:** Your Honor, on page sixty-six---

23 **THE COURT:** All right.

24 **MS. SAUNDERS:** ---when the witness was excused, um,
25 the police officer, Detective Tyrone Goggins was called

1 without any -- any breaks in the transcript or anything
2 to note that the courtroom had been reopened for his
3 testimony. I would just like to point that out to The
4 Court.

5 **THE COURT:** On line?

6 **MS. SAUNDERS:** Page sixty-six, lines eleven through
7 the end, twenty-five.

8 **THE COURT:** I see; okay. State, Ms. -- Mrs... Line
9 what please?

10 **MS. SAUNDERS:** Page sixty-six; I guess if you follow
11 page -- lines twelve through the end of the page.

12 **THE COURT:** Okay; you can call your next witness.

13 The State requests permission for Ms. Sanford to be
14 dismissed.

15 Judge -- Judge, we'd like to ask her to stay in case
16 we have to call her.

17 All right.

18 Um -- okay, ma'am, you're still under oath.

19 Yeah, okay. All right, thank you.

20 **MS. SAUNDERS:** Thank you, Your Honor.

21 **THE COURT:** All right, we'll, uh, take this matter
22 under advisement and, uh, as I indicated, Ms. Saunders,
23 if you find anything else for me to look at in the next
24 day or so let me know.

25 I'll take it under advisement; we'll take about ten

1 minutes.

2 **MS. SAUNDERS:** Thank you.

3 **THE COURT:** Or maybe five minutes; how about that?
4 Five minutes.

5 (WHEREUPON, HEARING ENDED 11:45 A.M.)

6 *****END OF REQUESTED TRANSCRIPT*****
7

8 (PLEASE NOTE: As no case cites or spellings were
9 provided during this hearing, all case cites have been
10 recorded phonetically.)
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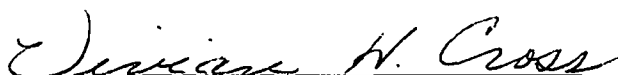
Ian Rice v. State of South Carolina
Case No. 2008-CP-30-00477
Hearing of March 11, 2013
Before The Honorable Clifton B. Newman

65

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON) CERTIFICATE OF REPORTER

I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THOSE PROCEEDINGS REQUESTED AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF COMMON PLEAS FOR GREENWOOD COUNTY, SOUTH CAROLINA, ON THE 11TH DAY OF MARCH 2013.

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


VIVIAN H. CROSS, COURT REPORTER
TENTH CIRCUIT AT LARGE
FEBRUARY 12, 2014

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IAN RICE #274002,

v.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

2013 CA# 2008-CP-000477

ORDER GRANTING APPLICANT
POST-CONVICTION RELIEF

This matter is before the Court pursuant to Ian Rice's ("Petitioner") Application for Post-Conviction Relief ("PCR") filed with the Laurens County Clerk of Court on June 9, 2008. Petitioner filed his original application for Post-Conviction Relief with the Laurens County Clerk of Court within the one year statute of limitations on June 9, 2008 and C. Alice Whitesides, Esquire was appointed to represent Mr. Rice. Ms. Whitesides was subsequently relieved as counsel on June 3, 2010 and M. Rita Metts, Esquire was appointed as substitute counsel on June 15, 2010. On May 20, 2011, M. Rita Metts was relieved as counsel due to her appointment as Magistrate Judge in Richland County and William K. Charles, Esquire was appointed to represent the Petitioner. On March 14, 2012, Mr. Charles requested to be relieved as counsel for Petitioner and Laura M. Saunders, Esquire was appointed to represent the Petitioner.

I. FACTS AND PROCEDURAL HISTORY

Petitioner is presently confined in the South Carolina Department of Corrections. Petitioner was indicted for Possession with Intent to Distribute Crack Cocaine within Proximity to a Park or School under indictment number 2006-GS-

30-1587 and Distribution of Crack Cocaine Third or Subsequent Offense under indictment number 2006-GS-30-1588. Petitioner was found guilty at trial on November 15, 2007 and was represented by Clyde L. Pennington, Jr. The Honorable D. Garrison Hill presided over the trial. Petitioner was concurrently sentenced to ten (10) years confinement for Possession with Intent to Distribute Crack Cocaine within Proximity to a Park or School and seventeen (17) years confinement for Distribution of Crack Cocaine Third or Subsequent Offense.

On March 11, 2013, Petitioner's evidentiary hearing was held before me in Greenwood, South Carolina. At the hearing, Petitioner was present with his attorney Laura M. Saunders of Laurens, South Carolina, and Assistant Attorney General Rutledge Johnson was present representing the State of South Carolina. Petitioner submitted a Memorandum of Law in support of his application for PCR, several witnesses were called and arguments presented to the Court. At the close of the hearing, this Court took the matter under advisement and granted both parties leave to supplement the record with an additional memorandum of law on the issue of trial counsel's failure to object to the closure of the courtroom for the confidential informant's testimony. Petitioner submitted a Supplemental Memorandum in Support of his application for PCR, and the State submitted a Memorandum in Opposition.

In making the following Findings of Fact and Conclusions of Law, this Court considered the arguments made at the evidentiary hearing, the testimony given at the hearing, the Petitioner's initial and subsequent applications, the trial

transcript, the records of the Spartanburg County Clerk of Court," as well as the briefs and memorandums of law submitted by each party.

Petitioner claims that a structural error occurred at his trial which caused a violation of his Sixth Amendment rights and denial of effective assistance of counsel, and that in turn Petitioner suffered prejudice by this denial of effective assistance of counsel. This Court agrees.

II. FINDINGS OF FACT

Petitioner's PCR counsel points out several instances at trial where trial counsel should have objected to the State's motion to close the courtroom. Trial Counsel failed to object to or to elicit the trial judge's reasons for closing the courtroom and failed to properly preserve the issues for appeal by way of objection. Trial counsel failed to object to the State's request to close the courtroom prior to the testimony of the State's confidential informant witness, in the presence of the jury. (Tr. 36, L. 13-25, Tr. 37, L. 1-9.) Petitioner's trial counsel failed to object to the State's request and therefore the record was unpreserved for appeal. At the evidentiary hearing on March 11, 2013, trial counsel admitted that he did not object to the State's request at trial and did not explain reasons for his failure to enter an objection. The confidential informant later testified regarding the closure in the presence of the jury furthering appealable significance of the closure issue. Nonetheless, there is no record for appeal based upon counsel's failure to object. **The State requested that the courtroom be closed prior to witness's testimony:**

THE COURT: Thank you. Yes ma'am, you may call your first witness.

MS. ZIMMERMAN: Your Honor, the first witness is the witness that we have discussed previously that we would request the courtroom be cleared prior to her taking the stand. It is Miss Amanda Sanford.

THE COURT: Okay. Let me see the lawyers up here real quick.

(Unrecorded bench conference)

THE COURT: All right, ladies and gentleman, we're going to take just a short recess. Don't talk about the case, continue to keep an open mind. We'll take about a ten minute break. Thank you.

(The jury was excused from the courtroom)

THE COURT: We'll start back at 3:00 o'clock.

(Recessed at 2:50 p.m.)

(Reconvened at 3:02 p.m.)

THE COURT: Okay, bring the jury on back in.

(The jury returned to the Courtroom)

THE COURT: Okay, you may call your first witness.

MS ZIMMERMAN: The State Calls Amanda Sanford.

(Tr. 36, L. 13-25, Tr. 37, L. 1-9.)

The Confidential Informant testified regarding the closure in the presence of the jury on cross examination by trial counsel:

Q: Miss Sanford, I asked if you had ever made any other buys in front of these twelve people with common sense and you said no?

A: I didn't know I supposed to say that in public and give names. I didn't know. That is why they cleared the courtroom.

Tr. 65, L. 6-11.

III. LAW AND CONCLUSIONS OF LAW

A. INEFFECTIVE ASSISTANCE OF COUNSEL

A defendant has the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution. United States v. Cronic, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984); Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). "There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case." Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590 596 (2007), *cert. denied by* Ozmint v. Ard, 552 U.S. 944, 128 S.Ct. 370, 169 L.Ed.2d 247 (2007). However, the United States Supreme Court has recognized that in certain rare circumstances "prejudice is presumed." Strickland, 466 U.S. at 692, 104 S.Ct. 2052 (citing State v. Cronic, 466 U.S. 648, 658, 104 S.Ct. 2039, 2047 (1984); see also Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (S.C. 2006). In Cronic, the Court identified three situations where counsel is per-se ineffective: (1) when there is a complete denial of counsel at a critical stage of trial, (2) when counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, and (3) when circumstances are so prejudiced against the defendant that competent counsel could not render effective assistance. Cronic, 466 U.S. at 659, 104 S.Ct. 2039; see also Nance, 367 S.C. at 552, 626 S.E.2d at 880 (stating that "per-se prejudice occurs if there has been a constructive denial of counsel").

Absent a showing of per-se prejudice under Cronic, an applicant must show "actual prejudice" under Strickland. See Nance, 367 S.C. at 552, 626 S.E.2d at 880

(citing Strickland, 466 U.S. at 692, 104 S.Ct. 2052; Cronic, 466 U.S. at 666 and n. 41, 104 S.Ct. 2039)). To establish a claim of ineffective assistance of counsel under Strickland, a Petitioner must show that: 1) counsel's performance was deficient, and 2) he was prejudiced by counsel's deficient performance. Strickland, 466 U.S. at 694, 104 S.Ct. 2052. In a PCR proceeding, the Petitioner bears the burden of establishing that he is entitled to the relief sought. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). "Where counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable, and prejudice may be presumed." Cronic v. U.S., 446 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984); Nance v. Ozmint, 367 S.C. 547, 626 S.E.2d 878 (2006).

Petitioner argues that 1) trial counsel was ineffective by failing to object to the State's motion to close the courtroom for the testimony of the confidential informant and he suffered prejudice by this failure; 2) trial counsel was ineffective because he failed to preserve the record for appeal such that Petitioner suffered prejudice; and 3) the closure of the courtroom constitutes a structural error which allows prejudice to be presumed to the Petitioner. The State argues that even if trial counsel's performance was deficient, the Petitioner does not make the required showing of prejudice because of the overwhelming evidence of guilt presented at trial. This Court disagrees.

B. THE SIXTH AMENDMENT RIGHT OF THE ACCUSED TO A PUBLIC TRIAL

The Sixth Amendment to the United States Constitution and Article I, Section 14 of the South Carolina Constitution guarantee a criminal defendant a public trial.¹ Waller v. Georgia is the seminal United States Supreme Court case to analyze the accused's explicit right to a public trial under the Sixth Amendment. 467 U.S. 39, 104 S.Ct. 2210, 81 L.Ed.2d 31 (1984). Waller also recognizes the coextensive nature between a defendant's right to a public trial under the Sixth Amendment and that of the public under the First Amendment:

"Nevertheless, there can be little doubt that the explicit Sixth Amendment right of the accused is no less protective of a public trial than the implicit First Amendment right of the press and public. The central aim of a criminal proceeding must be to try the accused fairly, and "[o]ur cases have uniformly recognized the public trial guarantee as one created for the benefit of the defendant."

Id. at 46 (quoting Gannett Co. v. DePasquale, 443 U.S. 368 (1979)).

The Waller Court stated that "This protection is for the benefit of the accused, so the public may see that he is dealt with fairly, and the public's presence may keep his triers aware of the importance of their functions." Id. at 46 (quoting In re Oliver, 333 U.S. 257, 270, n. 25 (1948), in turn quoting 1 T. Cooley, Constitutional Limitations 647 (8th ed.1927)). The Waller Court held further that

¹In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense. U.S. Const. amendment VI.

"Trial by jury; witnesses; defense. The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both. (1970 (56) 2684; 1971 (57) 315.)" S.C. Const. art. I, section 14.

under the Sixth Amendment, any closure of a suppression hearing over the objections of the accused must meet the following test: the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced; the closure must be no broader than necessary to protect that interest; the trial court must consider reasonable alternatives to closing the hearing; and it must make findings adequate to support the closure. 467 U.S. 39, 40 (1984).

In recent years, the United States Supreme Court stressed that "[t]rial courts are obligated to take every reasonable measure to accommodate public attendance at criminal trials." Presley v. Georgia, 130 S.Ct. 721, 725, 175 L.Ed.2d 675 (2010). In Presley, the Supreme Court analyzed the public trial right under the First Amendment in conjunction with the accused's right to a public trial under the Sixth Amendment. Id. The lower court in Presley excluded a member of the public from the voir dire of prospective jurors. The Presley Court reasoned that "The extent to which the First and Sixth Amendment public trial rights are coextensive is an open question, and it is not necessary here to speculate whether or in what circumstances the reach or protections of one might be greater than the other." Id. at 724.²

Our South Carolina Supreme Court acknowledges that the Sixth Amendment guarantees to a public trial extend to the accused, and "must be closely scrutinized to assure that there is no impermissible infringement of the right." State v.

² In other cases, our courts have analyzed the rights of the public's access, particularly the press, to criminal trials. The requirement of openness of criminal proceedings can be overcome only by a finding that closure is necessary to preserve higher values. Press-Enterprise Co. v. Superior Court, 464 U.S. 501, 104 S.Ct. 819, 78 L.Ed.2d 629 (1984) (holding that the guarantees of open public proceedings in criminal trials cover proceedings for the voir dire examination of potential jurors). "Absent an overriding interest articulated in findings, the trial of a criminal case must be open to the public." Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 100 S.Ct. 2814, 2829, 65 L.Ed.2d 973, 992 (1980).

Sinclair, 275 S.C. 608, 612, 274 S.E.2d 411, 413 (1981). In Sinclair, the Court analyzed whether the trial judge abused his discretion in ordering the exclusion of the public while the prosecuting witness testified. 275 S.C. 608 at 613-614, 274 S.E.2d 411 at 415-416. Somewhat contrary to the facts in Petitioner's case, the Court held that the trial judge was not in error in ordering the exclusion based upon the fact that "the trial judge took care to see that the order was carried out in a manner least likely to have an impression on the jury". Id. at 614. In addition, the Sinclair Court justified the trial court's closure and held that there was no abuse of discretion because the prosecution's witness was a nine year old girl who was a victim of sexual battery. Id. See also State v. Bell, 293 S.C. 391, 360 S.E.2d 706 (1987) (holding that the trial judge's ruling to restrict the comings and goings of spectators during trial withstands constitutional scrutiny underlying a defendant's Sixth Amendment right to a public trial).

C. THE DENIAL OF RIGHT TO PUBLIC TRIAL IS A STRUCTURAL ERROR

The United States Supreme Court in Chapman v. California, 386 U.S. 18 (1967) first developed the "harmless constitutional error rule". Chapman reasoned that there are times when certain fundamental errors occur at trial which in turn assault the sanctity of a defendant's basic constitutional rights, and that these errors are inapplicable to the harmless error analysis and should be defined a constitutional error. In Chapman, the Court reversed and remanded the state court convictions of two defendants based upon the prosecution's inappropriate references to the defendants' failures to testify. The trial judge also charged the jury that they

could draw adverse inferences from the defendants' choice not to testify. The Chapman Court reasoned that before a federal constitutional error can be held as a harmless error, the court must "be able to declare a belief that it was harmless beyond a reasonable doubt." Id. at 24. In closing, the Chapman Court declared that "Petitioners are entitled to a trial free from the pressure of unconstitutional inferences." Id. at 26.

A Defendant's right to a speedy and public trial by an impartial jury is the only Constitutional guarantee that appears in the texts of the Constitution and in the Bill of Rights. See Neder v. United States, 527 U.S. 1, 8, 119 S.Ct. 1827, 144 L.Ed.2d 35 (1999). In Neder, Supreme Court recently analyzed and held that the denial of a public trial is a "structural error" which defies any requirement for the harmless error analysis, no matter if there is overwhelming evidence of guilt. In Neder, the trial court omitted an element of the offense charged against the Defendant in its instruction to the jury. In a unanimous court opinion, Chief Justice Rehnquist related back to Waller, holding that the denial of a public trial is considered a structural error. Neder, 527 U.S. at 7. "Some structural errors, like the complete absence of counsel or the denial of a public trial, are visible at first glance." Id. at 37 (Scalia, J., concurring in part and dissenting in part). See also United States v. Hitt, 473 F.3d 146 (5th Cir. 2006). Further, the Court held pronounced that "The very premise of structural-error review is that even convictions reflecting the "right" result are reversed for the sake of protecting a basic right." Id.

Petitioner argues that trial counsel's failure to object at trial on the issue of closure of the courtroom for the informant's testimony constitutes ineffective assistance of counsel under Strickland and this Court agrees. The Chapman and Neder inquiries above provide the framework for identifying the structural error that occurred in Petitioner's trial and therefore, this Court agrees that under Cronic, prejudice may also be presumed as a result of this denial of such a fundamental right.

Trial counsel failed to object to the State's request to close the courtroom prior to the testimony of the State's confidential informant witness, in the presence of the jury. (Tr. 36, L. 13-25, Tr. 37, L. 1-9.) Counsel's failure to object effectively denied Petitioner the right to a fair, impartial and public trial under the Sixth Amendment, which has been held by the Supreme Court to be a fundamental or structural error. In addition, counsel's complete denial of counsel at such a critical stage of trial failed to preserve this structural error for appeal. See Tr. 17, L. 5; Tr. 36, L. 13-25; Tr. 37, L. 1-9; Tr. 65, L. 9-11; Tr. 66, L. 11-24.

Trial counsel's failure to object and make the appropriate legal arguments to challenge the courtroom closure falls below the test set forth in Strickland. The record is clear that trial counsel failed to object. At the evidentiary hearing on March 11, 2013, trial counsel admitted that he did not object to the State's request at trial and did not explain reasons for his failure to enter an objection. Petitioner suffered actual prejudice by counsel's errors. The State made its request to close the Courtroom in the presence of the jury which even prior to any objection would

implicate an issue that should have been preserved for an appeal. Counsel committed a blatant failure to object to this request. Therefore, the record was unpreserved for appeal. The confidential informant later testified regarding the closure in the presence of the jury furthering appealable significance of the closure issue. Nonetheless, there is no record for appeal based upon counsel's failure to object. For the foregoing reasons, Petitioner makes a showing of "actual prejudice" pursuant to Strickland.

More importantly, the denial of Petitioner's Sixth Amendment right to a public trial and the structural nature of this error, brought on by counsel's failure to object, calls for an analysis under United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984) because prejudice may be presumed due to the fundamental and structural nature of such an error together with the clear denial of counsel at a critical stage of the trial. Applying Cronin, this failure meets two of the three situations where counsel is "per se" ineffective: where there is a complete denial of counsel at a critical stage of trial and when counsel entirely fails to subject the prosecution's case to a meaningful adversarial testing. 466 U.S. at 659. In Cronin, the Court reasoned "[I]f counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable." Id. at 659.

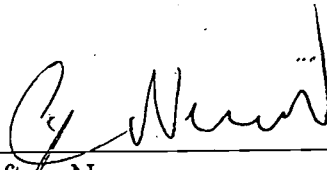
The State argues that there was overwhelming evidence of Petitioner's guilt. However, applying the foregoing cases to the Petitioner's case, there can be no

question that the closure of the courtroom for the testimony of the confidential informant implicated Petitioner's Sixth Amendment Constitutional right to a public trial. The closure was a fundamental and structural error under the clear directives set forth in Chapman and Neder. Conclusively, even the existence of overwhelming evidence against Petitioner cannot subvert the fundamental nature of such an error that cuts straight to the pillars of our democracy. Trial counsel's failure to challenge the State's motion and the trial court's failure articulate his reasons for closure unmistakably demonstrate that Petitioner's trial lacked a crucial and distinctive *constitutionally required* step. In consequence, Petitioner experienced both a denial of effective assistance of counsel as well as a denial of his right to a public trial under the Sixth Amendment. Thus, prejudice is presumed in Petitioner's case based upon a showing that the clear error and denial of such a fundamental right create a trial process that is "presumptively unreliable" under Cronic. A structural error in the trial of this case occurred in the manner in which representations concerning the closing of the courtroom were made in the presence of the jury without objections. Additionally, an aura of credibility was afforded the testimony of the state's informant witness when she was allowed to testify without objection as to the reason the courtroom was closed.

CONCLUSION

For the foregoing reasons, Petitioner's application for Post-Conviction Relief is hereby GRANTED and remanded for a new trial.

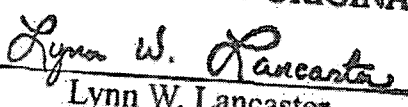
AND IT IS SO ORDERED.



Clifton Newman
Presiding Judge

July 9, 2013

Columbia, South Carolina

A TRUE COPY OF ORIGINAL


Lynn W. Lancaster
Laurens County CCCP & GS