

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

R. Knox McMahon, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

RANDALL Q. SANDERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2013-002632

APPENDIX

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INDEX

INDEX.....	i
TRIAL TRANSCRIPT (dated January 13-14, 2009).....	1
TRANSCRIPT OF MOTION TO RECONSIDER SENTENCE (dated September 24, 2009).....	78
FINAL <u>ANDERS</u> BRIEF OF APPELLANT	94
OPINION OF THE COURT OF APPEALS DISMISSING APPEAL FILED ON FEBRUARY 22, 2012)	104
APPLICATION FOR POST-CONVICTION RELIEF	105
RETURN	112
POST-CONVICTION RELIEF HEARING TRANSCRIPT	118
ORDER OF DISMISSAL	149
CLERK OF COURT RECORDS	157

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF SUMTER)

State of SC,)
) PLAINTIFF)
 vs.) TRANSCRIPT OF RECORD
)
Randall Sanders,)
) DEFENDANT)

January 13-14, 2009
Sumter, South Carolina

B E F O R E:

THE HONORABLE R FERRELL COTHRAN, JR., JUDGE; and
a jury.

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

TREY MCLEOD, ASSISTANT SOLICITOR
Attorney for the Plaintiff

LAUREN STEVENS, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

Kathleen Richardson, RPR, CRR
Official Court Reporter

INDEX OF WITNESSES

LILLIE BRITT

Direct By Mr. McLeod 13

SUSAN BAGWELL

Direct By Mr. Mcleod 15

MIKE MCCOY

Direct By Mr. Mcleod 25

Cross By Mrs. Stevens 31

Redirect By Mr. Mcleod 33

CINDY PIERSON

Direct By Mr. Mcleod 34

Cross By Mrs. Stevens 36

MITCH HANSEN

Direct By Mr. Mcleod 36

Cross By Mrs. Stevens 39

MIKE MCCOY

Direct By Mr. Mcleod 40

Opening Statement by Mr. Mcleod 21

Opening Statement by Mrs. Stevens 23

Closing Statement by Mr. Mcleod 44

Closing Statement by Mrs. Stevens 47

Jury Charge 48

Verdict 68

Sentencing 72

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
C-1	bond form	10	14
C-2	question of jury	68	
S-1	bag with drugs	27	39
S-2	yellow envelope w/bag	29	30
S-3	copy of driver's license	40	41

1 MR. MCLEOD: May it please the Court, Your
2 Honor.

3 THE COURT: Yes, sir.

4 MR. MCLEOD: The State calls South Carolina
5 versus Randall Sanders, indictment number
6 2008-GS-43-134, on the charge of possession with
7 intent to distribute cocaine.

8 THE COURT: Okay. Mrs. Stevens is coming?
9 Ladies and gentlemen of the jury, the State has
10 called the case of State versus Randall Sanders.

11 I need to know if there's any member of the jury
12 panel connected by blood or marriage, close personal
13 friends, or social relations with the defendant in
14 this case, Randall Sanders; if so, please stand.

15 The potential witnesses in this case are Deputy
16 Michael McCoy, Cindy Pierson and Mitch Hansen. Are
17 there any members of the jury panel connected by
18 blood or marriage, close personal friends, or social
19 relations with any of the potential witnesses in this
20 case; if so, please stand.

21 The attorneys in this case are Trey McLeod,
22 representing the State, and Lauren Stevens,
23 representing the defendant. Are any members of the
24 jury panel connected by blood or marriage, close
25 personal friends, or social relations with either one

1 of these attorneys or been represented by them; if
2 so, please stand.

3 Is there any member of the jury panel formed or
4 expressed an opinion about any of the issues or
5 matters involved in this case? This is a case that
6 allegedly occurred March the eighth, 2007.

7 Is there any member of the jury panel aware of
8 any bias or prejudice either toward the State of
9 South Carolina or this defendant; if so, please
10 stand.

11 Any member of the jury panel served on the Grand
12 Jury here in Sumter County that heard this case; if
13 so, please stand.

14 And the next question is dealing with moral or
15 religious issues, and I know we have one lady that we
16 need to pull aside that has that issue, but the rest
17 of you have been asked that question each time and
18 nobody else has stood up.

19 Any member of the jury panel know any reason
20 whatsoever they can't give both the State of South
21 Carolina and this defendant a fair and impartial
22 trial? If so, please stand. Any further questions
23 on behalf of the State?

24 MR. MCLEOD: No, Your Honor.

25 THE COURT: Behalf of the defense?

1 MRS. STEVENS: No, sir, Your Honor.

2 THE COURT: Okay. Mr. Clerk, if you'll give us
3 a jury.

4 BAILIFF: May it please the Court, Your Honor.

5 THE COURT: Yes, sir.

6 BAILIFF: Good morning, ladies and gentlemen.
7 Juror number 137, Kathleen Sutton (white female).
8 What says the State?

9 MR. MCLEOD: Please present the juror.

10 BAILIFF: What says the Defendant?

11 MRS. STEVENS: Beg the Court's indulgence.
12 Please seat Mrs. Sutton.

13 BAILIFF: Have a seat in the jury box, please
14 ma'am. Juror number 118, Rico Richardson (black
15 male). What says the State?

16 MR. MCLEOD: Please excuse the juror from this
17 trial.

18 BAILIFF: Have a seat back with the jury panel.
19 You have been excused from this trial, please sir.
20 Juror number 56, Marilyn Holmes (black female). Come
21 on over a little bit, ma'am. What says the State?

22 MR. MCLEOD: Please present the juror.

23 BAILIFF: What says the defendant?

24 MRS. STEVENS: Please seat Mrs. Holmes.

25 BAILIFF: Have a seat in the jury box, please

1 ma'am. Juror number 133, Lisa Stephenson (black
2 female). What says the State?

3 MR. MCLEOD: Please present the juror.

4 BAILIFF: What says the defendant?

5 MRS. STEVENS: Please seat Mrs. Stephenson.

6 BAILIFF: Have a seat in the jury box, please
7 ma'am. Juror number 103, Linda Owen (white female).
8 What says the State?

9 MR. MCLEOD: Please present the juror.

10 BAILIFF: What says the defendant?

11 MRS. STEVENS: Please seat Mrs. Owen.

12 BAILIFF: Have a seat in the jury box, please
13 ma'am. Juror number 38, Margaret English (black
14 female). What says the State?

15 MR. MCLEOD: Please present the juror.

16 BAILIFF: What says the defendant?

17 MRS. STEVENS: Please seat Mrs. English.

18 BAILIFF: Have a seat in the jury box, please
19 ma'am. Juror number seven, Bobby Bagley (black
20 male.) What says the State?

21 MR. MCLEOD: Please present the juror.

22 BAILIFF: What says the defendant?

23 MRS. STEVENS: Please seat Mr. Bagley.

24 BAILIFF: Have a seat in the jury box, please
25 sir. Juror number 122, Debra Rogg (white female).

1 What says the State?

2 MR. MCLEOD: Please present the juror.

3 BAILIFF: What says the defendant?

4 MRS. STEVENS: Please seat Mrs. Rogg.

5 BAILIFF: Have a seat in the jury box, please
6 ma'am. Juror number 62, Wanda Hunter (white female).

7 What says the State?

8 MR. MCLEOD: Please present the juror.

9 BAILIFF: What says the defendant?

10 MRS. STEVENS: Please excuse Mrs. Hunter.

11 BAILIFF: Have a seat with the panel. You have
12 been excused from this trial, please ma'am. Juror
13 number 18, Hartley Brewer (white male). What says
14 the State?

15 MR. MCLEOD: Please present the juror.

16 BAILIFF: What says the defendant?

17 MRS. STEVENS: Please seat Mr. Brewer.

18 BAILIFF: Have a seat in the jury box, please
19 sir. Juror number 43, Hilda Fox (white female).

20 What says the State?

21 MR. MCLEOD: Please present the juror.

22 BAILIFF: What says the defendant?

23 MRS. STEVENS: Seat Mrs. Fox.

24 BAILIFF: Have a seat in the jury box, please
25 ma'am. Juror number 142, John A Watt (white male).

1 What says the State?

2 MR. MCLEOD: Please present the juror.

3 BAILIFF: What says the defendant?

4 MRS. STEVENS: Please seat the juror.

5 BAILIFF: Have a seat in the jury box, please

6 sir. Juror number 99, Linda Moore (white female).

7 What says the State?

8 MR. MCLEOD: Please present the juror.

9 BAILIFF: What says the defendant?

10 MRS. STEVENS: Please excuse Mrs. Moore.

11 BAILIFF: Have a seat back with the panel. You

12 have been excused from this trial, please ma'am.

13 Juror number 111, Samuel Prescott (white male). What

14 says the State?

15 MR. MCLEOD: Please present the juror.

16 BAILIFF: What says the defendant?

17 MRS. STEVENS: Seat Mr. Prescott.

18 BAILIFF: Have a seat in the jury box, please

19 sir. Juror number 41, Margaret Fletcher (white

20 female). What says the State?

21 MR. MCLEOD: Please present the juror.

22 BAILIFF: What says the defendant?

23 MRS. STEVENS: Please seat Mrs. Fletcher.

24 BAILIFF: Have a seat in the jury box, please

25 ma'am.

1 *BAILIFF:* Alternate juror. Juror number 16,
2 Denny Bowman (white male). What says the State?

3 *MR. MCLEOD:* Please present the juror.

4 *BAILIFF:* What says the defendant?

5 *MRS. STEVENS:* Please seat Mr. Bowman.

6 *BAILIFF:* Have a seat in the jury box, please
7 sir.

8 *THE COURT:* Any matters of law pertaining to the
9 selection of the jury on behalf of the State?

10 *MR. JACKSON:* Nothing on behalf of the State,
11 Your Honor.

12 *THE COURT:* On behalf of the defense?

13 *MRS. STEVENS:* No, sir, Your Honor.

14 *THE COURT:* Okay. Ladies and gentlemen, I'm
15 going to need you to step to the jury room a few
16 minutes. I have got a matter of law I need to take
17 up before we can actually start this case.

18 I don't know how long it's going to be, but I
19 promise you -- I got that wrong every day this week,
20 but I will get you back out just as quick as I can.

21 (Jury left the courtroom at 10:17 am.)

22 (Whereupon, Court's Exhibit No. 1 was marked for
23 identification only.)

24 *THE COURT:* All right. Mrs. Stevens, I think
25 you had a motion?

1 MRS. STEVENS: Yes, sir, Your Honor. My first
2 motion, Your Honor, is a motion for continuance for
3 first of all my client is not here, Your Honor.

4 But second of all, the last communication I had
5 with Mr. Sanders was a preliminary hearing in
6 December where he expressed dissatisfaction with my
7 representation thus far, had told me that he was
8 going to hire a real attorney.

9 I have sent him a copy of his -- Mr. Mcleod's
10 trial letter, said, please come in, you're on the
11 trial letter, you may be up for trial. He has not
12 called.

13 Again, Your Honor, we actually called his
14 bondsman yesterday and asked that his bondsman sent
15 to get him up here, and unfortunately he is -- is --
16 he is not here, Your Honor.

17 THE COURT: And this point I will deny your
18 motion because it's not your fault he's not here. He
19 had notice to be here. He understands since he got
20 out on bond that if he's not present he'll be tried
21 in his absence, and the fact that merely not showing
22 up and not cooperating with the Court doesn't get him
23 a continuance.

24 MRS. STEVENS: Yes, sir Your Honor. Then I
25 would ask if we are going to do a trial in absence,

1 they do indeed prove that he was aware he could be
2 tried in his absence.

3 *THE COURT:* They'll have to do that. We won't
4 go forward. I mean, we are going to go through that
5 now because they can't...

6 *MRS. STEVENS:* I understand.

7 *THE COURT:* His bond is not right, then we don't
8 go.

9 *MRS. STEVENS:* Yes, sir.

10 *THE COURT:* All right. Anything -- any other
11 motions from you?

12 *MRS. STEVENS:* Not at this time, Your Honor.

13 *THE COURT:* Mr. McLeod, you ready to proceed on
14 the jurisdiction and the bond?

15 *MR. MCLEOD:* Yes, Your Honor.

16 *THE COURT:* Okay.

17 *MR. MCLEOD:* I believe the Court -- have the
18 bailiff call the defendant's name outside three
19 times.

20 *THE COURT:* Okay. And while they are doing
21 that, you want to deal with bonding issues?

22 *MR. MCLEOD:* Yes, sir.

23 *THE COURT:* Okay. At this time we would call
24 Lillie Britt to the stand.

25 *THE COURT:* All right.

1 LILLIE BRITT, after being duly
2 sworn, testified as follows:

3 BY MR. MCLEOD:

4 Q Mrs. Britt, can you tell the Court what your
5 profession is?

6 A I'm a Deputy Clerk in the Clerk of Court's office for
7 General Sessions.

8 Q And how long have you worked there?

9 A About 20 years.

10 Q And what are your duties in that position?

11 A Well, we're the official recordkeepers.

12 MR. MCLEOD: Your Honor, I have a document here
13 which is marked as Court's Exhibit 1 which I would
14 like to hand up to the witness.

15 THE COURT: Okay.

16 BY MR. MCLEOD:

17 Q Mrs. Britt, do you recognize that document?

18 A Yes, I do.

19 Q Are you responsible for the maintenance and custody
20 of that file?

21 A Yes.

22 Q And is that a official record of the Court?

23 A Yes, it is. It's a certified copy of the original
24 bond.

25 Q Okay. And at this time I'd ask that you read portion

1 labeled number three in the box.

2 A It says that the Defendant shall appear at the term
3 of the Court of General Sessions beginning on April the
4 ninth, 2007 at 8 am at Sumter County General Sessions, 141
5 North Main Street, room 308, Sumter, South Carolina,
6 29150, and remain there throughout that term of court.

7 If no disposition is made during that term, the
8 Defendant shall appear and remain throughout each
9 succeeding term of court until final disposition is made
10 on his case unless otherwise ordered by the Court.

11 Q And do you see where it says, initial the Defendant?

12 A Yes, I do.

13 Q Are there actually initials?

14 A Yes, sir.

15 Q Those appear to be the ones, the initials of the
16 Defendant?

17 A Yes.

18 Q And I believe you turn it over, is there a signature
19 by the Defendant?

20 A The top part where it says, special conditions of
21 release, there is not a signature.

22 MR. MCLEOD: This time, Your Honor, I would
23 submit this as Court's Exhibit 1.

24 (WHEREUPON, Court's Exhibit 1 was admitted into
25 evidence.)

1

THE COURT: What says the defense?

2

3

MR. MCLEOD: No further questions.

4

THE COURT: What says the defense?

5

6

MRS. STEVENS: Your Honor, I haven't seen which document he is talking about.

7

8

MR. MCLEOD: Your Honor, I have no questions and I have no problem with it coming in.

9

10

THE COURT: Okay. Then it is in as Court's Exhibit 1. Can I see?

11

12

13

MR. MCLEOD: Your Honor, I believe I misspoke. The signature of the Defendant is actually on the front of the form, not the back of the form.

14

15

THE COURT: Okay. All right. Do you have any questions?

16

17

MRS. STEVENS: No, sir.

18

THE COURT: Anything further from the State?

19

MR. MCLEOD: Your Honor, at this time we'd like to call Mrs. Bagwell to the stand.

20

THE COURT: Okay.

21

22

SUSAN BAGWELL, after being duly sworn, testified as follows:

23

DIRECT EXAMINATION

24

BY MR. MCLEOD:

25

Q Mrs. Bagwell, can you tell the Court what your job

1 position is?

2 A I'm a bailiff.

3 Q Did you have an opportunity to call the Defendant's
4 name three times?

5 A Yes, I did.

6 Q And did he answer?

7 A No, he did not.

8 MR. MCLEOD: No further questions, Your Honor.

9 THE COURT: Any questions?

10 MRS. STEVENS: No questions, Your Honor.

11 THE COURT: Thank you. You can step down.
12 Anything further?

13 MR. MCLEOD: No, Your Honor.

14 MRS. STEVENS: Your Honor, I must have missed
15 the part where he read into the record that my client
16 acknowledged that he would be tried in his absence if
17 he did not appear.

18 THE COURT: He did not read in the record, but
19 he put it into evidence without your objection. It
20 says on the bottom of the form, that your client
21 signed it, that if he did not appear, he would be
22 tried.

23 MRS. STEVENS: He asked her if she -- if he
24 signed the paper knowing what she read out. He did
25 not ask her if he was aware when he signed it that he

1 was going to be tried in his absence if he did not
2 appear.

3 THE COURT: That's true. He did not ask her
4 that.

5 MRS. STEVENS: So she did not testify that he
6 was aware --

7 THE COURT: That's right.

8 MRS. STEVENS: -- he was going to be tried in
9 his absence.

10 THE COURT: But the document was introduced into
11 evidence, and once it -- without your objection.
12 Once it was introduced in, that's when I looked at
13 it. The document in fact does say--

14 MRS. STEVENS: It doesn't have to be in the
15 record, Your Honor.

16 THE COURT: It's in the record -- it's either by
17 testimony or by exhibits. It's in the record by
18 exhibits because he moved it in. You didn't object.
19 And it's on the face of the document that he -- if he
20 did not appear, he would be tried in his absence.

21 Long as it's in the record either through
22 testimony or exhibits. I tell jury that every time
23 we try cases there are three ways to get in, through
24 testimony, through exhibits, or stipulation of
25 counsel.

1 And that -- that was introduced in the court
2 records as a Court's Exhibit and it is filled out
3 properly, and the victim -- I mean the Defendant
4 signed it acknowledging if he did not appear, his
5 case, he could be tried in his absence.

6 MRS. STEVENS: Yes, sir, Your Honor.

7 THE COURT: Okay. All right. Anything before I
8 bring the jury back?

9 MR. MCLEOD: Nothing from the State, Your Honor.

10 THE COURT: Can y'all give me an idea how long
11 this case is going to last?

12 MR. MCLEOD: I have three witnesses, Your Honor.

13 MRS. STEVENS: I have none, Your Honor.

14 THE COURT: Okay. Ladies and gentlemen, looks
15 like I'm going to at least fill up the morning. So
16 if you will call that number back I guess between 12
17 and one or you... should know something by then. One
18 and two? Okay.

19 If you'll call back between one and two today,
20 it will be a message on the answering machine as to
21 when I need you back, whether I need you back this
22 afternoon or in the morning. Have a nice day. Thank
23 you.

24 (Jury panel cleared the courtroom.)

25 THE COURT: We'll take a two minute break and

1 then we'll bring the jury in and start the testimony.

2 (Whereupon a brief recess was had.)

3 THE COURT: All right. Y'all ready for the
4 jury? All right. Bring us the jury.

5 (Jury entered the courtroom at 10:34 am.)

6 THE COURT: You may swear the jury.

7 (Whereupon the jury was sworn.)

8 THE COURT: Ladies and gentlemen, the State has
9 indicted Mr. Sanders for possession with intent to
10 distribute cocaine, allegedly occurred on March the
11 eighth, 2007.

12 And to that indictment he has pled not guilty.
13 Therefore, shifts the burden upon the State of South
14 Carolina to prove his guilt beyond a reasonable
15 doubt.

16 Now, your job is simply to listen to the
17 evidence that comes in this case. And that evidence
18 will come to you in three different ways, by sworn
19 testimony from this witness stand, by exhibits that
20 have been introduced into evidence, and by the
21 stipulation of counsel. Those are the three ways
22 that you will receive evidence.

23 Your job is simply to listen to the facts in
24 this case and determine what the true facts are
25 giving to the Defendant the benefit of every

1 reasonable doubt.

2 And the State has the burden of proving -- and I
3 will tell you that in great detail at the end of this
4 case -- but the State has to prove him guilty beyond
5 a reasonable doubt.

6 My job is to rule on the admissibility of the
7 law of the evidence. And under our rules, I
8 determine under -- lawful evidence is credible for
9 you to hear and what evidence is not credible for you
10 to hear.

11 So once I rule that evidence in, then you give
12 it whatever weight that you deem appropriate in
13 helping you determine what the true facts are in this
14 case.

15 At the end of the case I will instruct you on
16 the law. And as I -- some of you have been in other
17 jurisdiction -- your job is to determine what the
18 facts are. My job is to tell you what the law is.
19 And you have to accept the law as I give it to you.

20 I ask that you pay close attention. This will
21 not be a very long trial. But it's very important
22 that you get it right. So pay close attention to the
23 evidence that you hear from the witness stand.

24 During this trial, we will take breaks. I will
25 send you back to the jury room and ask you not to

1 discuss this case. The reason you can't discuss this
2 case -- and you may want to say, well, I believe --
3 why can't we talk about what we heard so far?

4 Because some of you are going to form an
5 opinion. You're going to, you know, play detective
6 or whatever and try to figure out what this case is
7 all about and you're going to express that opinion to
8 other jurors.

9 And at the end of the case you're going to want
10 to defend that opinion you had early on. And that
11 wouldn't be proper. Until you hear all of the
12 evidence, you're not to start forming an opinion as
13 to what the true facts are in this case.

14 So that's why I am going to tell you, don't talk
15 about the case and don't let anybody talk to you
16 about the case until you have heard all the facts in
17 the case, all the evidence, and then I have
18 instructed you on the law. And then and only then
19 would it be proper for you to start discussing the
20 case.

21 We're going to start with the attorneys making
22 an opening statement to you and we'll get into the
23 evidence, and they'll make the closing statement or a
24 closing argument, and then I will instruct you on the
25 law and give you this case to decide.

1 If you will give the attorneys your attention,
2 we'll begin. Mr. McLeod?

3 OPENING STATEMENT

4 MR. MCLEOD: Morning, ladies and gentlemen. As
5 the Judge said, this is going to be a short case we
6 hope. And it's also a fairly simple case.

7 It's basically a drug case, possession of drugs
8 is the evidence that you're going to see that the
9 defendant intended to distribute these drugs.

10 Basically what happened was on March 8th, 2007
11 in Sumter County on the intersection of Pruett Road
12 and Liberty Street, the officers, Mike McCoy and
13 others were conducting a driver's license checkpoint.

14 At that time Mr. Sanders was a passenger in a
15 vehicle. Upon approaching that vehicle, they smelled
16 marijuana. The smelled marijuana, curbed them to --
17 or excuse me -- prompted them to probe the car
18 further.

19 They asked for consent to search. They searched
20 the vehicle. Upon searching the vehicle, they
21 smelled an odor of I believe marijuana on
22 Mr. Sanders. At that time they asked him for consent
23 to search.

24 When they consented -- when he consented to
25 search, they searched him. Believe they found almost

1 \$2000 on his person. As well as removing his shoes,
2 they found what you look for -- actually analyzing --
3 the analyst will tell you analyzed it to be 1.5 grams
4 of cocaine, powder cocaine.

5 They arrested him at that time. In the car when
6 they searched the vehicle, not only did he have over
7 \$2000 in various bills on him, he also had digital
8 scales, which you will hear testimony from Senior
9 Corporal Mike McCoy, that that is commonly used to
10 distribute drugs.

11 Those are the facts. I can't ask you to find
12 him guilty at this point because you haven't heard
13 anything other than what I said, but I believe once
14 you hear testimony from all the witnesses, the
15 officer, the evidence custodian, and the drug
16 analyst, that you will find Mr. Sanders guilty of
17 possession with intent to distribute cocaine. Thank
18 you.

19 THE COURT: Mrs. Stevens?

20 OPENING STATEMENT

21 MRS. STEVENS: Good morning, ladies and
22 gentlemen. I'm the Chief Public Defender here in
23 Sumter County. The first thing I want to do is thank
24 you for being here.

25 I know that when you got your jury summons, you

1 were probably -- but it is because people like you
2 who come and do their duty and sit as a jury that we
3 have the great system of justice that we have. It's
4 not perfect, but it's a lot better than some of the
5 other ones.

6 I would like for you to remember that
7 Mr. Sanders is not here, but that does not mean that
8 he is admitting his guilt. He has the opportunity to
9 appear for his day in court or he can just have his
10 day in court, and that is what he has obviously
11 chosen to do is have me do it for him.

12 And he has a right to do that. So I don't want
13 you to think, oh, he's not here, he must be guilty.
14 That's not how it works.

15 Remember that the State has to prove he's guilty
16 beyond a reasonable doubt, not just guilty, but
17 guilty beyond a reasonable doubt. I'm not going to
18 try to explain to you what a reasonable doubt is.
19 That's what the Judge will do at the end of the case
20 when he is reading the charges to you.

21 I would like for you to make sure that you
22 listen to the evidence that you hear but also to know
23 what you don't hear because again the burden is on
24 them to prove every element of the crime beyond a
25 reasonable doubt.

1 And I submit to you that they will not do that,
2 and at the end of this trial, you will find my client
3 not guilty. Thank you.

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

6 MR. MCLEOD: Yes, sir. At this time we would
7 call Senior Corporal Mike McCoy to the stand.

8 MIKE MCCOY, after being duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. MCLEOD:

12 Q Officer McCoy, can you tell the jury how long you
13 have worked for the Sumter County Sheriff's Office?

14 A I was a reserve officer for two years, full-time six
15 years.

16 Q And did you work anywhere before that?

17 A Not in law enforcement, no.

18 Q And were you working on March 8th, 2007?

19 A Yes.

20 Q Can you tell us how you became involved in the
21 incident?

22 A In relation to the incident that's in question, on
23 March 8th, 2007 the Sumter County Sheriff's Office has a
24 community action team. I'm a team leader of one of the
25 team that consists of seven people.

1 Just give you a brief history of what the cat team
2 does. We actually get the concerns of the actual
3 neighborhoods, of the citizens that live in the
4 neighborhood, whether it be drugs, traffic, whatever the
5 case may be, and go in that neighborhood and stay until
6 the actual problem gets gone.

7 That's what the community action team does. We're
8 there to help and assist the public. On this date in
9 question, we was working this general area conducting a
10 driver's license safety checkpoint.

11 Q And what kind of -- types of things do you normally
12 look for at a driver's license checkpoint?

13 A We look for naturally people that's got a valid
14 driver's license, people that don't have a valid driver's
15 license, insurance. Also we look for other illegal
16 activities such as DUIs, alcohol violations, drugs, things
17 of that nature.

18 Q And can you tell us how you came to know Mr. Sanders?

19 A On the date in question, I observed a white in color
20 Cadillac that approached the checkpoint which was being
21 driven by a female. While talking with the female,
22 getting her documentation, I could smell an odor. It
23 smelled like marijuana.

24 I questioned and advised both her and Mr. Sanders of
25 my observation and the odor that I smelled. At that time,

1 she did give myself and law enforcement consent to search
2 the vehicle.

3 I had them exit out of the vehicle. By doing a
4 safety pat-down on Mr. Sanders, I observed and felt a
5 bulge in his pocket. I asked him in relation to the
6 bulge, what was it. He said it was currency.

7 While I was this -- I was very close to him as far as
8 during this pat-down, I could actually even smell the odor
9 of marijuana coming off his person, even stronger from his
10 clothing. I also advised him again in relation of what I
11 smelled. At that time he did advise me that he did use
12 marijuana.

13 Shortly after patting down, did give me consent to
14 search his persons. I located the money that was in his
15 pocket. I had him sit down and -- to remove his shoes.

16 When he removed his right shoe, I observed a silver
17 in color package fell from his shoe which looked like
18 aluminum foil. At that time I retrieved the aluminum
19 foil, opened it up, and there was a white powder substance
20 that was located in the aluminum foil.

21 Q Officer McCoy, I'm going to hand you up what's
22 been... marked as exhibit -- State's Exhibit one.

23 (Whereupon, State's Exhibit No. 1 was marked for
24 identification only.)

25 BY MR. MCLEOD:

1 Q Can you tell me if you recognize this item?

2 A Yes.

3 Q And how do you recognize that item?

4 A Yes.

5 Q How do you recognize it?

6 A This is the item that fell from Mr. Sander's right
7 shoe.

8 Q And you described it. Do you see the aluminum foil
9 that you just described in there?

10 A Yes.

11 Q And what did you find in the aluminum foil?

12 A A white in powder color substance that appeared to be
13 cocaine.

14 Q And is that what you're holding?

15 A Yes.

16 Q Once you retrieved that from Mr. Sanders, can you
17 tell the jury what you did with the item?

18 A Well, next thing I done, placed Mr. Sanders under
19 arrest, read him his rights. Shortly afterwards he was
20 transported to the Sumter Lee Regional Detention Center.
21 An incident report was actually conducted in relation to
22 the substance.

23 A best kit was done on the substance, Sled best kit,
24 which is B bravo 178179. He was turned into the drug
25 evidence locker for analysis.

1 Q Can you describe to the jury what a best kit is?

2 A The best kit is -- is basically a package in relation
3 to -- that we fill out as far as a -- as a control of the
4 substance we get analyzed to find out the true nature of
5 the substance.

6 Q Okay.

7 (Whereupon, State's Exhibit No. 2 was marked for
8 identification only.)

9 BY MR. MCLEOD:

10 Q I'm going to hand you up what's been marked as
11 State's Exhibit two. Can you go ahead and open that
12 package?

13 A (Complied.)

14 Q Do you recognize that item?

15 A Yes.

16 Q Where did you retrieve that item from?

17 A In relation to this purple bag, this purple bag,
18 shortly after Mr. Sanders was placed under arrest, we did
19 a actual search of the vehicle. And just behind his seat
20 this package was located, this purple bag. And inside the
21 purple bag contains two digital scales.

22 Q And can you describe or tell the jury in your
23 experience what you normally think of when you see a
24 digital scale such as this?

25 A Being in law enforcement, a lot of the cases and a

1 lot of the incidents that we deal with in relation to
2 narcotics is very common that when we do find narcotics,
3 we also find scales, whether it be digital or whether it
4 be manual, and these scales are actually used to actual
5 weighing the substance, the narcotics, whether it be
6 marijuana, crack, cocaine, things of that nature to
7 distribute it.

8 Q And you yourself actually seized those from the
9 vehicle?

10 A Yes.

11 MR. MCLEOD: At this time, Your Honor, we'd ask
12 to have that item entered into evidence, State's
13 Exhibit two.

14 THE COURT: What says the Defendant?

15 MRS. STEVENS: No objection, Your Honor.

16 THE COURT: State's Exhibit two is in without
17 objection.

18 (Whereupon, State's Exhibit 2 was admitted into
19 evidence.)

20 BY MR. MCLEOD:

21 Q All right. You made reference to money, that was
22 seized. Can you tell us, describe what you found in his
23 pocket?

24 A Yes. Shortly after Mr. Sanders was placed under
25 arrest, we do a even more thorough search -- down the

1 inventory of the person's belongings that's in their
2 pockets, pocketbooks, things of that nature.

3 In Mr. Sanders' left front pocket, the currency as
4 follows: He had one \$50 bill, eighteen \$20 bills, ten \$10
5 bills, three \$5 bills, six \$1 bills, which was a total of
6 \$581 that was retrieved from his left front pocket.

7 In his rear pocket containing his wallet, following
8 currency that was seized was four \$100 bills, one \$50
9 bill, three, four \$20 bills, seventeen \$10 bills, fourteen
10 \$5 bills and twenty-six \$1 bills with -- a total from that
11 location was 1396. Total of both came to \$1977.

12 MR. MCLEOD: At this time I don't have any other
13 questions. No further questions, Your Honor.

14 THE COURT: Okay. Mrs. Stevens?

15 CROSS-EXAMINATION

16 BY MRS. STEVENS:

17 Q Was Mr. Sanders charged with any marijuana charge?

18 A No.

19 Q Was the driver charged with anything?

20 A No, ma'am.

21 Q Where did you tell me that the scales were found?

22 A Behind where Mr. Sanders was sitting, behind the rear
23 passenger's seat.

24 Q But they were in the back seat, not the front seat?

25 A They was in the floorboard behind the passenger.

1 Q Okay. And how much cocaine was in that little piece
2 of aluminum foil?

3 MR. MCLEOD: Objection, Your Honor. He can't
4 testify. He didn't do the analysis. He doesn't know
5 exactly how much was in that.

6 MRS. STEVENS: Your Honor, he's reading from his
7 incident report. Along with the incident report it
8 says how much cocaine he thinks it is.

9 THE COURT: He knows the answer, what he thinks
10 it is, he can answer that.

11 MRS. STEVENS: Thank you, Your Honor.

12 THE WITNESS: Your Honor, if it please the
13 Court. The scales we have at the department, when
14 you do the inventory, we do have actually certified
15 scale that we use ourself.

16 And when -- my incident report, I do have 1
17 gram. But the analyst report, the chemist has the
18 actual true weight.

19 BY MRS. STEVENS:

20 Q Is that a great deal of powder cocaine?

21 A Yes.

22 Q How much street value would that have?

23 A I would say several hundred dollars.

24 Q Less than a gram of powder cocaine?

25 A To the best of my knowledge, yes.

1 Q Okay. Have you dealt with drug arrests a lot?

2 A Yes.

3 Q Is it typical for someone who is selling drugs to
4 only have a small amount in his shoe?

5 A Yes.

6 Q For him to -- if that money was from selling drugs,
7 how much drugs would he have had to sold?

8 A I can't answer that because I don't... what I found
9 was only a substance that appeared to be cocaine.

10 Q Okay. Do you know what the typical price for cocaine
11 is on the street?

12 A It all depends on the amount.

13 Q Okay. I don't have any further questions.

14 THE COURT: Okay. Anything further from the
15 State?

16 MR. MCLEOD: Yes, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. MCLEOD:

19 Q Yes. Senior Corporal McCoy, why didn't you arrest
20 the driver of the vehicle?

21 A In relation to the driver that -- driver of the
22 vehicle didn't have any charges.

23 Q So...

24 A Substance -- the substance was found on Mr. Sanders,
25 and the actual digital scales was in his proximity of

1 where he was sitting.

2 Q No further questions.

3 THE COURT: You can step down.

4 (Witness left the stand.)

5 MR. MCLEOD: State calls Cindy Pierson, Your
6 Honor.

7 THE COURT: Okay.

8 CINDY PIERSON, after being duly
9 sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. MCLEOD:

12 Q Could you tell the jury where you work?

13 A Sumter County Sheriff's Office.

14 Q And how long have you worked there?

15 A Ten years.

16 Q What is your present position?

17 A I'm the evidence technician along with crime scene
18 processing.

19 Q You tell us what your job duties are?

20 A I manage and control all evidence that's brought in.
21 I take it to Sled or turn it over to our -- our guy that
22 does our analysis. I have control over all of it until it
23 comes to court.

24 Q I'm going to hand you up what's been marked as --
25 marked as State's Exhibit Number one. Take a look at that

1 item. Have you seen that before?

2 A Yes, sir.

3 Q Where did you receive it from?

4 A I received it from our drug evidence locker at the
5 Sheriff's Office.

6 Q What -- that's when the item first came in your
7 possession?

8 A Yes, sir.

9 Q And what do you do with it once you receive it?

10 A Once I receive it, I check the paperwork, make sure
11 the control number, make sure the pouch has not been
12 tampered with in any way, and then I fill out a C-form,
13 and then I transport it to Sled.

14 Q What is the purpose of taking it to Sled?

15 A For it to be analyzed.

16 Q Did you take it to Sled in this particular instance?

17 A Yes, sir, I did.

18 MR. MCLEOD: One moment, Your Honor.

19 BY MR. MCLEOD:

20 Q Do you recall when it was you took it to Sled?

21 A It was taken to Sled on 3-26-07.

22 Q And what is the procedure for taking it to Sled?

23 A When I take it to Sled, I turn it over to log-in. At
24 that point, log-in houses it until the analyst picks it
25 up.

1 Q Does that package appear to be in the same condition
2 as when you originally took custody of it?

3 A Yes, sir.

4 Q Are there any changes that you -- that you can
5 describe or explain, are there any changes?

6 A Only change is that it was taken out of the Sled
7 pack, which is the control pack, placed in a heat-sealed
8 pouch after the analyst analyzed it.

9 Q But other than that, there are no changes?

10 A No, sir.

11 MR. MCLEOD: No further questions, Your Honor.

12 CROSS-EXAMINATION

13 BY MRS. STEVENS:

14 Q You don't know where these drugs came from; do you?

15 A No, ma'am.

16 Q The first time you saw them was in the evidence box?

17 A That's correct.

18 Q I don't have anything further.

19 THE COURT: Okay. You can step down.

20 (Witness left the stand.)

21 THE COURT: You may call your next witness.

22 MR. MCLEOD: Your Honor, the State calls Mitch
23 Hansen.

24 MITCH HANSEN, after being duly
25 sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MCLEOD:

Q Mr. Hansen, I'm going to hand you the same item up that I just handed the last witness, which is marked as State's Exhibit one. Do you recognize that item?

A Yes.

Q Can you tell the jury when it first came into your possession?

A I received this item from Sled on 9-13-2007.

Q I'm sorry. Before I do that, where do you work?

A I work for -- I work at Sumter County Sheriff's Department as a drug analyst.

Q And how long have you worked there?

A I worked there roughly two -- two years and two months.

Q And can you explain to the jury your qualification as a drug analyst?

A I have a associates in science, associates in arts, a bachelors in chemistry. I had training at Sled for drug analysis. And I have also been to the academy for legal training.

Q How times approximately have you testified in court?

A This will be my third.

MR. MCLEOD: Your Honor, at this time we would like to certify Mr. Hansen as a drug analyst.

1 THE COURT: What says the defense?

2 MRS. STEVENS: No objection, Your Honor.

3 THE COURT: Okay. I so find that he's an expert
4 in drug analysis.

5 BY MR. MCLEOD:

6 Q Mr. Hansen, Mrs. Pierson stated that she took it to
7 Sled and now you said you picked it up from Sled?

8 A Yes.

9 Q Can you explain what happened and why it went to Sled
10 in the first place?

11 A It went to Sled because we had not started the drug
12 lab at the time, and that -- it was sent there for drug
13 analysis.

14 Q Was it analyzed at Sled?

15 A No, it was not. It was back-logged at Sled. And
16 once we got the lab up, I went to Sled and retrieved it
17 and brought it back to Sumter County for -- to be
18 analyzed.

19 Q So was anything done at Sled to -- to that item?

20 A No, it was not.

21 Q Now, let's go into what you did with it. Once you
22 picked it up from Sled, where did it go from there?

23 A I took custody of it and brought it back to the lab,
24 and that's -- I housed it and analyzed it. And then once
25 I was done, I turned it back over to Cindy Pierson.

1 Q Now, when you analyzed it, you got a result?

2 A Yes.

3 Q Can you tell the jury what the result was?

4 A Cocaine found, 1.53 grams.

5 MR. MCLEOD: At this time, Your Honor, we would
6 like to enter State's Exhibit Number one into
7 evidence.

8 THE COURT: What--

9 MRS. STEVENS: No objection, Your Honor.

10 THE COURT: Okay. State's Exhibit one is in
11 without objection.

12 (Whereupon, State's Exhibit 1 was admitted into
13 evidence.)

14 MR. MCLEOD: No further questions, Your Honor.

15 CROSS-EXAMINATION

16 BY MRS. STEVENS:

17 Q You don't have any idea where this cocaine came from.

18 A No, ma'am.

19 Q When you received it, it was already in that bag?

20 A Yes.

21 Q Okay. Corporal McCoy testified that it was about a
22 gram. What would account for the difference in -- with
23 field weight and what it actually was?

24 A I can't really answer that. I know the -- our scales
25 that we use in our lab are probably more accurate than the

1 scales that they may use. We -- our scales go out to
2 three and four decimal places where theirs might only go
3 to one decimal place.

4 Q All right. Now, I notice on this report says
5 1.53 grams. In parenthesis 6.48 grains. What's the
6 difference?

7 A A grain is another unit of measure.

8 Q So would 1.53 grams equal 6.48 grains?

9 A Yes.

10 Q Okay. I won't ask you about that. You can tell us
11 how that works, but -- so this was cocaine?

12 A Yes.

13 Q I don't have any further questions.

14 THE COURT: Okay. Any further questions from
15 the State?

16 MR. MCLEOD: None, Your Honor.

17 THE COURT: Okay. Step down.

18 (Whereupon the witness left the stand.)

19 MR. MCLEOD: Your Honor, may we approach?

20 THE COURT: Okay.

21 (Whereupon a bench conference was held.)

22 MR. MCLEOD: Your Honor, at this time the State
23 would recall Senior Corporal McCoy.

24 THE COURT: Okay.

25 MIKE MCCOY, after being duly

1 reminded of oath, testified as follows:

2 (Whereupon, State's Exhibit No. 3 was marked for
3 identification only.)

4 DIRECT EXAMINATION

5 BY MR. MCLEOD:

6 Q Corporal McCoy, I'm going to hand you up a document
7 which is marked State's Exhibit three. Can you tell the
8 jury what that document is?

9 A This documentation is a certified true document from
10 the Department of Motor Vehicles.

11 Q What is it a certified copy of?

12 A Certified copy picture of Randall Quinn Sanders.

13 Q And you recognize that picture?

14 A Yes.

15 Q Is that in fact the person that you arrested on a --
16 on March 8th, 2007?

17 A Yes.

18 Q For this charge?

19 A Yes.

20 Q And just to clarify, this did occur in Sumter County?

21 A Yes.

22 Q All right.

23 MR. MCLEOD: Your Honor, at this time we'd like
24 to enter that document in as State's Exhibit three.

25 MRS. STEVENS: No objection, Your Honor.

1 THE COURT: Okay. State's Exhibit three is in
2 without objection.

3 (Whereupon, State's Exhibit 3 was admitted into
4 evidence.)

5 MR. MCLEOD: No further questions, Your Honor.

6 THE COURT: Any questions?

7 MRS. STEVENS: No, sir, Your Honor.

8 THE COURT: You can step down.

9 (Whereupon the witness left the stand.)

10 THE COURT: Anything further from the State?

11 MR. MCLEOD: The State rests, Your Honor.

12 THE COURT: Okay. Anything further from the
13 defense?

14 MRS. STEVENS: Nothing.

15 THE COURT: Okay. Ladies and gentlemen, I need
16 y'all to go to the jury room for a few minutes. And
17 while you're there, I need you to do something for
18 me. I need you to select a foreperson.

19 The foreperson doesn't have any more vote than
20 anybody else. They simply will preside over
21 deliberation in this case and ultimately sign the
22 verdict form.

23 I have found out juries usually do better when
24 they select your own foreperson than when I do
25 because I don't know any of you, and sometimes I

1 select somebody who doesn't want to be the
2 foreperson.

3 So if you'll go to the jury room. And when
4 you -- when you have made that selection, if you'll
5 let the bailiff know. I may have to deal with some
6 legal matters, but I will get you back out just as
7 quick as I can. Thank you.

8 (Jury left the courtroom at 11:05 am.)

9 THE COURT: Any matter of law or anything that
10 we need to deal with?

11 MRS. STEVENS: Your Honor, I make a motion for a
12 directed verdict at this time. They have not
13 established the elements of the crime.

14 THE COURT: And I didn't hear you. Say that--

15 MRS. STEVENS: Elements of the crime.

16 THE COURT: Oh, okay. I respectfully deny your
17 motion. They have -- it's the existence of evidence
18 and whatever weight the jury gives it, so I think
19 they have at least done that, so I will deny your
20 motion.

21 MRS. STEVENS: Your Honor, I was this close. He
22 said Sumter County -- the very last thing that McCoy
23 said was Sumter County, and that's the first and only
24 time he mentioned it.

25 THE COURT: I understand.

1 MRS. STEVENS: I was so close.

2 THE COURT: Okay. Y'all ready to start closing
3 arguments and charge and go?

4 MR. MCLEOD: The State is ready.

5 THE COURT: Need a break? Okay. We'll get the
6 jury in a few minutes. When they knock on the door,
7 we'll bring them back out.

8 (Whereupon the jury entered the courtroom.)

9 THE COURT: All right. Now, we are -- you have
10 heard all of the evidence that you're going to hear
11 in this case. Now you will hear the closing
12 arguments of the attorneys and I will charge you on
13 the law and give you this case to decide.

14 MRS. STEVENS: Can we approach for just one
15 minute, Your Honor?

16 THE COURT: Okay.

17 (Whereupon a bench conference was held.)

18 THE COURT: Okay. Y'all ready? Solicitor, do
19 your closing argument.

20 MR. MCLEOD: Thank you, Your Honor.

21 CLOSING STATEMENT

22 MR. MCLEOD: Ladies and gentlemen, this was a
23 short trial. There were a couple of things -- I
24 apologize to that. Wanted to make sure the evidence
25 was in, which is why I called Senior Corporal McCoy,

1 but I believe we got everything we needed in,
2 everything that I said in the beginning we got in.

3 What I want to tell you right now is -- actually
4 we were having a discussion about it with the Judge.
5 There is a permissive inference in the law that
6 says -- it's kind of complicated, but I'm going to
7 throw it out there for you to understand if you
8 don't.

9 I think the evidence will show -- states about
10 this, that there was an intent to distribute drugs.
11 The law says that if a person has .65 grams of
12 cocaine powder, there is a permissive inference which
13 means you're allowed to find that they had intent to
14 distribute.

15 You obviously can't be in their mind to tell
16 what they actually intended, but you have to get it
17 from the circumstances surrounding what happened.
18 And the Judge is going to explain that to you as well
19 in his charge.

20 But .65 grams allows you to find that the person
21 intended to distribute cocaine. Well, he had 1.5 as
22 you heard the analyst testify to. 1.5 by my
23 calculations is almost two and a half times
24 .65 grams. So you take that for what it's worth.

25 But we also have testimony that the officer

1 found in the vehicle scales, which he said in his
2 experience are used to weigh drugs. I submit to you
3 to weigh drugs is to divide drugs or to -- in order
4 to sell them.

5 Also he found cash in numerous denominations in
6 his pocket. Now, money in the pocket by itself, you
7 know, you take that for what it's worth. If you put
8 drugs in the shoe -- you put money being found in the
9 pocket, you find scales in the car, I don't think you
10 can find any other intent other than to distribute
11 the drugs.

12 We have here a clear case of possession with
13 intent. We don't have him actually distributing, but
14 we have different charges. What we have is his
15 intent to distribute.

16 I'm going on back because that's really all the
17 facts we have. Person was stopped, drugs were found,
18 money in his pocket, there were scales in the car.
19 He was arrested for it.

20 There's not much else I can say. And that's all
21 the stuff I told you in my opening was what I was
22 going to prove. And I think through the testimony of
23 the officers and the evidence in the record, I have
24 shown you that.

25 So I'm not going to waste any more of your time

1 telling you anything else. You have the evidence to
2 take back with you. And I think you will find him
3 guilty. Thank you.

4 *THE COURT:* Yes, ma'am.

5 *MRS. STEVENS:* Yes, sir.

6 CLOSING STATEMENT

7 *MRS. STEVENS:* This might be the shortest trial
8 of record, I don't know, but it was very small. But
9 it's short, but it's important because Mr. Sanders is
10 innocent until proven guilty.

11 What we were discussing with the Judge was
12 there's a crime which he's charged for which is
13 called possession with intent to distribute cocaine,
14 but there is a lesser included offense called
15 possession of cocaine.

16 The State would have to prove to you not only
17 that Mr. Sanders had cocaine in his possession but
18 that he intended to distribute it. I submit to you
19 they haven't proven to you that he intended to
20 distribute it.

21 Is it illegal to carry money in your pocket? If
22 so, then I'm sure lots of people would be going to
23 jail for that. There wasn't that much cocaine. They
24 testified that it was a lot of cocaine. But you will
25 be able to see it. That's not a lot of cocaine. It

1 was in his shoe.

2 So who was he going to distribute it to? They
3 didn't say they -- they saw evidence of his snorting
4 cocaine. They said they smelled marijuana. Well,
5 they didn't charge him with marijuana.

6 They said he admitted he smoked marijuana.
7 Didn't mention anything about cocaine. It was in his
8 shoe. He gave a consent to search like he didn't
9 have anything to hide..

10 So I submit to you that he did not have the
11 intent to distribute. And I submit that you should
12 find him not guilty of possession with intent to
13 distribute. Thank you.

14 JURY CHARGE

15 *THE COURT:* Okay, ladies and gentlemen. It was
16 short. And you have heard the evidence in this case.
17 You have heard the arguments of the attorneys. And
18 now I'm going to explain to you the law that applies
19 in this case.

20 The Constitution and the code of laws of this
21 state says that only a jury can find the facts in a
22 case. I am not permitted to indicate to you, as I
23 told you earlier, about an opinion about the facts.
24 That's not my job.

25 So if I have done anything throughout this trial

1 that you think I may have an opinion about the facts,
2 you're to disregard that because I'm not allowed to
3 have an opinion. That is totally your job to do.

4 Now, the same Constitution and laws that says
5 you're the finders of facts makes me the finder of
6 the law. Therefore, if you have an opinion as to
7 what you think the law is or what the law ought to
8 be, and it differs from what I now tell you the law
9 is, you must disregard that and apply the law exactly
10 as I give it to you.

11 The fact that the defendant was arrested,
12 charged, and indicted in this case is not evidence in
13 this case and cannot be considered by you as evidence
14 of guilt in this case in any way. Nor does it create
15 any presumption or inference of guilt.

16 The indictment is simply a formal, written
17 instrument which contains the charges against this
18 defendant and serves as the formal document to
19 process this case through the court system.

20 The defendant has pled not guilty to this
21 indictment, and that plea casts the burden on the
22 State of South Carolina to prove the defendant guilty
23 beyond a reasonable doubt.

24 A person charged with committing a criminal
25 offense in South Carolina is never required to prove

1 himself or herself innocent.

2 Now, under the law of this state, a defendant
3 may be tried even if the defendant does not attend
4 the trial. But the fact that the defendant is not
5 present may not be considered by you against the
6 defendant in any way whatsoever.

7 And I also instruct you and emphasize to you the
8 fact that the defendant was not present and did not
9 testify is not a factor to be considered by you in
10 any way in your deliberation and in your
11 consideration of the question of guilt or innocence
12 in this case.

13 It must not be considered by you. The defendant
14 has a Constitutional Right to remain silent. And the
15 assertion of that right cannot be considered by you
16 in your deliberation.

17 I repeat. Under your oath, you're to draw no
18 conclusions whatsoever from the fact that the
19 defendant was not present and did not testify. And
20 you can't even discuss that in the jury room in your
21 deliberation because he has a Constitutional Right.

22 The State has the burden of proving their case
23 to you beyond a reasonable doubt. And the defendant
24 is not required to prove anything.

25 It is an important rule of law in this country

1 that the defendant in a criminal trial will always be
2 presumed innocent of the crime for which he is
3 indicted unless and until his guilt has been proven
4 to your satisfaction beyond a reasonable doubt.

5 The presumption of innocence is not a mere legal
6 theory. It is not just a legal phrase. It is a
7 substantial Constitutional Right to which every
8 defendant is entitled.

9 This presumption of innocence accompanies the
10 defendant from the time he's charged, throughout the
11 trial, and until you reach a verdict upon the
12 evidence that satisfies you of that guilt beyond a
13 reasonable doubt.

14 Now, reasonable doubt is a doubt which makes an
15 honest, sincere, conscientious juror in search of the
16 truth to hesitate to act.

17 Proof beyond a reasonable doubt must therefore
18 be proof of such a convincing character that a
19 reasonable person would not hesitate to rely and act
20 upon it in the most important of his or her own
21 affairs.

22 Proof beyond a reasonable doubt can be described
23 as proof that leaves you firmly convinced of the
24 defendant's guilt.

25 There are very few things in this world we know

1 with absolute certainty. And the law does not
2 require the State to prove their case beyond any
3 possible doubt.

4 If based on your consideration of the evidence,
5 you are firmly convinced that the defendant is guilty
6 of the crimes charged, you must find him guilty.

7 On the other hand, if you think there's a real
8 possibility that he's not guilty, you must give him
9 the benefit of that doubt and find him not guilty.

10 In determining what the facts are in a case, you
11 must necessarily pass upon the credibility of the
12 witnesses, which simply means the believability, and
13 give whatever weight and value you deem appropriate
14 to their testimony.

15 You alone must decide the force and effect and
16 the truth of that testimony. In making these
17 decisions, there are many things that you should
18 consider such as the appearance or the manner of the
19 witness on the stand, sometimes referred to as the
20 demeanor of the witness.

21 Was the witness forthright or hesitant. Was the
22 witness's testimony consistent or did it contain
23 discrepancies. What was the ability of the witness
24 to know about the facts which he or she testified?

25 Did the witness have cause or reason to be

1 biased or prejudiced in favor of their testimony?

2 Was the witness -- testimony of a witness
3 corroborated or made stronger by other testimony and
4 evidence or was it made weaker or impeached by such
5 other testimony and evidence.

6 Now, the rules of evidence do not ordinarily
7 permit a witness to testify to opinions or
8 conclusions.

9 An exception to this rule exists for witnesses
10 we call expert witnesses. A witness who by education
11 and experience has become an expert in some art,
12 science, profession, or calling may state an opinion
13 as to the relevant, material matters in which the
14 witness claims to be an expert and may also state the
15 reasons for that opinion.

16 You should consider any expert opinion received
17 in evidence in this case like any other -- any other
18 evidence. Give it the weight you think it deserves.

19 If you decide that the opinion of the expert is
20 not based on sufficient education and experience or
21 if you conclude the reasons given in support of that
22 opinion are not sound or the opinion is outweighed by
23 other evidence, you may disregard the opinion in its
24 entirety.

25 An expert's testimony is to be given no greater

1 weight than that of any other witness simply because
2 the witness is an expert. Further, you're not
3 required to accept an expert's opinion even though it
4 is not contradicted.

5 As jurors you have a right to believe a small
6 portion of a witness's testimony and disregard the
7 larger or vice versa. You may believe all of a
8 witness's testimony or none. You may believe the
9 testimony of a single witness against that of many or
10 the other way around.

11 Now, there are two types of evidence which are
12 generally presented during a trial, direct evidence
13 and circumstantial evidence.

14 Direct evidence is the testimony of a person who
15 asserts or claims to have actual knowledge of a fact
16 such as an eye witness.

17 Circumstantial evidence is a chain of facts and
18 circumstances indicating the existence of a fact.
19 Give you an example of circumstantial evidence.

20 It's supposed to be real cold this weekend. If
21 I go to bed Saturday night and my front lawn is clear
22 and I wake up Sunday morning, it's covered in snow, I
23 can assume that some time during the night while I
24 was asleep, it snowed.

25 I didn't see it. If I'd have seen it snow,

1 that's direct evidence. But the fact that I woke up
2 and my lawn was covered in snow, that's
3 circumstantial evidence. I can assume that some time
4 during the night it snowed while I was asleep.

5 You're to give no greater weight to
6 circumstantial evidence over direct evidence. You
7 should weigh all of the evidence in this case.

8 And after weighing all the evidence, if you're
9 convinced of the guilt of the defendant beyond a
10 reasonable doubt, you must find the defendant guilty.

11 On the other hand, if -- if you do not think the
12 State has proven their case beyond a reasonable
13 doubt, you're to give the benefit to the defendant
14 and find him not guilty.

15 Criminal intent is a necessary element of each
16 crime and must be proved by the State beyond a
17 reasonable doubt. Criminal intent is always a matter
18 that must be determined by the jury from the
19 circumstances surrounding the situation.

20 There is no way to prove intent to a
21 mathematical certainty. There is no way medical
22 science can dissect a person's brain and determine
23 what he or she had in mind.

24 So the law states criminal intent may be
25 inferred from the circumstances shown to have existed

1 both before and after the fact.

2 This is how you, the jury, make a determination
3 of whether or not the elements requiring intent was
4 present.

5 Criminal intent is a state of mind that operates
6 jointly with an act or omission in the commission of
7 a crime. Criminal intent is a mental state of
8 conscious wrongdoing.

9 So it is up to you, the jury, to determine what
10 the defendant intended to do based on the
11 circumstances shown to have existed.

12 I tell you that the State must prove criminal
13 intent beyond a reasonable doubt just as the State
14 must prove every element beyond a reasonable doubt.

15 Now, the defendant is charged with possession
16 with intent to distribute cocaine. The State must
17 prove beyond a reasonable doubt that the defendant
18 possessed cocaine with the intent to distribute it.

19 To prove possession, the State must prove beyond
20 a reasonable doubt that the defendant had both the
21 power and the intent to control the disposition or
22 use of cocaine.

23 Possession may be either actual or constructive.
24 Actual possession means that the cocaine was in
25 actual physical custody of the defendant.

1 Constructive possession means that the defendant
2 had dominion and control or the right to exercise
3 dominion and control over either the cocaine itself
4 or the property on which the cocaine was found.

5 Mere presence at the scene where the drugs were
6 found is not enough to prove possession. Actual --
7 to prove possession. I'm sorry.

8 Actual possession of the presence of the cocaine
9 is strong evidence of the defendant's intent to
10 control its disposition or use.

11 The defendant's knowledge and possession may be
12 inferred when a substance is found from the property
13 under the defendant's control.

14 However, this inference is simply an evidentiary
15 fact to be taken into consideration by you along with
16 all of the other evidence in this case and to be
17 given whatever weight you decide it should have.

18 Two or more persons may have joint possession of
19 a drug. The State must prove beyond a reasonable
20 doubt that the defendant intended to distribute the
21 cocaine.

22 Distribution means to deliver other than by
23 administering the drug.

24 Intent may be shown by acts and conduct of the
25 defendant and other circumstances which you may

1 naturally infer and reasonably infer intent.

2 In determining whether the defendant had the
3 intent to distribute the cocaine, you may consider
4 the circumstances surrounding the defendant's alleged
5 possession.

6 You may consider the amount of the substance
7 alleged to have been possessed, the manner in which
8 it was allegedly possessed, the place where it was
9 allegedly possessed, and other factors which you --
10 to consider to be important.

11 You must find the defendant did not intend to
12 have the cocaine solely for his own use. Possession
13 or more than 10 grains of cocaine creates an
14 inference that the defendant possessed the cocaine
15 with the intent to distribute it.

16 This inference does not relieve the State from
17 proving beyond a reasonable doubt that the defendant
18 had intent to distribute. It is simply an
19 evidentiary fact to be taken into consideration by
20 you along with the other evidence in this case and to
21 be given the weight you decide it should have.

22 Now, I'm also going to define for you possession
23 of cocaine or simple possession of cocaine. And to
24 prove possession, the State must prove beyond a
25 reasonable doubt that the defendant had both the

1 power and intent to control the disposition or use of
2 the cocaine.

3 And as I have already explained to you, this
4 possession may be either actual or constructive. And
5 I've given you the definitions of actual and
6 constructive possession.

7 Now, ladies and gentlemen, you are not partisans
8 for the State of South Carolina or advocates for this
9 defendant. You're not here to reward your friends or
10 punish your enemies. Clearly that system of justice
11 would not be tolerated.

12 You have been selected by both the State and the
13 defendant to be fair and impartial. It is your duty
14 then by your joint deliberations to determine the
15 truth of this case giving to the defendant the
16 benefit of every reasonable doubt on each and every
17 issue.

18 Then to the facts that you determine to be true,
19 you're to apply the law that I am now giving you, and
20 arrive at a verdict which speaks the truth.

21 When you have accomplished this, you will have
22 satisfied your duties to this court and your
23 obligation under the oath that you took as jurors.

24 Now, I had my Law Clerk type up a possible
25 verdict form for you. And Madam Foreman, it simply

1 shows the caption of this case. And there are three
2 possible verdicts that you can receive -- reach in
3 this case.

4 The order that I put these in you should draw no
5 inference from. We just had to do it in some order.
6 First is, we the jury find the defendant guilty of
7 possession with intent to distribute cocaine.

8 If that is your verdict, if that is your
9 unanimous verdict, you would sign under that line.

10 The second possible verdict is, we the jury find
11 the defendant guilty of possession of cocaine. If
12 that is your unanimous verdict, then you would sign
13 under that line.

14 The third possible verdict is, we the jury find
15 the defendant not guilty. The -- now, if you find
16 the defendant guilty of possession with intent to
17 distribute cocaine, you would not go to the second
18 verdict.

19 If you're not satisfied that the State has
20 proven beyond a reasonable doubt that he possessed
21 the cocaine with the intent to distribute it, you
22 could consider the second verdict which is guilty --
23 we the jury find the defendant guilty of possession
24 of cocaine.

25 If you find that the State has not proven beyond

1 a reasonable doubt that he's guilty of possession of
2 cocaine, then you will go to the third possible
3 verdict, we the jury find the defendant not guilty.

4 Now, I'm going to send this back into the jury
5 room along with the evidence in this case. Before I
6 do that, though, I need to consult with the attorneys
7 to be sure I haven't left anything out in my charge.

8 If I have, I will bring you back out and further
9 charge you on the law. If I have covered everything,
10 I will send the verdict form along with the evidence
11 in the jury room.

12 When you receive that, that is your indication
13 to begin your deliberation. If during your
14 deliberation any of you need to be excused to leave
15 the jury room, you must stop your deliberation and
16 wait for that person's return. All 12 of you must be
17 present during the entire time.

18 When you have reached a verdict and it's a
19 unanimous verdict, which means all 12 of you agree,
20 then you're authorized to sign this form and knock on
21 the door, let the bailiff know you have reached a
22 verdict, and we will bring you back out and receive
23 the verdict. Okay?

24 So if you will go to your jury room at this
25 time. I will either send in the evidence where you

1 can start or bring you back out. Mr. Alternate, if
2 you will stay with me because everybody looks like
3 they are healthy and they look like they are going to
4 make it.

5 (Jury left the courtroom at 11:34 am.)

6 *THE COURT:* Any exceptions or deletions on
7 behalf of the State?

8 *MR. MCLEOD:* Your Honor, the only issue I think
9 is the same thing we visited when we came up and
10 spoke to you about. You said 10 grains. I said in
11 my closing .65 grams. Whether that causes confusion,
12 I don't know.

13 *THE COURT:* I know. But I just read the law as
14 the statute says. The statute -- the statute says 10
15 grains. You converted it to grams.

16 *MR. MCLEOD:* I mean, that's how they analyze the
17 drugs. That's the way I have always thought it was
18 supposed to be done. I understand what the statute
19 says...

20 *THE COURT:* The problem is the statute says 1
21 gram of crack, but it says 10 grains of cocaine. So
22 I charged the statute. And I'm not real sure you
23 shouldn't have made that clear. But I don't know
24 that...

25 *MR. MCLEOD:* The problem we have there is

1 because she made Hansen testify that the report said
2 6.4 grains. And apparently we are not talking about
3 the grains. The statute says 10 grains equals
4 .65-grams. The analysis says that 1.5 grams is
5 six-point--

6 *THE COURT:* That's why I wanted to see the
7 report. Somebody got confused.

8 *MRS. STEVENS:* It's got to be the decimal point,
9 but it actually says 6.45 grains.

10 *THE COURT:* It says 6.45 grains?

11 *MRS. STEVENS:* But 1.54 grams.

12 *MR. MCLEOD:* Yes, sir. It's possible the
13 decimal is in the wrong place, and that's...

14 *THE COURT:* I understand. That's your evidence.

15 *MRS. STEVENS:* Exactly.

16 *MR. MCLEOD:* That's what the analyst said. I
17 can't argue with the analyst. I don't know what
18 else...

19 *THE COURT:* Well, I wouldn't put him back on the
20 stand till I got that straight with him.

21 *MR. MCLEOD:* I agree.

22 *MRS. STEVENS:* I have no objection, Your Honor.

23 *THE COURT:* Okay. And I -- under the statute --
24 and I'm not going to try to get back in and
25 straighten out the tables because the statute says 10

1 grains. I don't want to confuse them with grams
2 and...

3 MR. MCLEOD: I thought it would be more
4 confusing to say this --

5 THE COURT: I understand.

6 MR. MCLEOD: -- says 1.5 grains and says 10
7 grams. There's no way to figure it out.

8 THE COURT: I understand that, but I -- I
9 charged the statute. The statute didn't deal with
10 grams. And 10 grains equals .648 grams. Now--

11 MR. MCLEOD: Well, that's a mathematical fact.
12 I don't see the issue--

13 THE COURT: But you -- I understand that.
14 That's something you should have argued, not me.
15 That's something you should have explained to them.
16 I just explained the statute.

17 You have got -- you have got to make that clear
18 to them in your evidence and your closing argument
19 what the statute says.

20 So I'm -- I'm going to stay within the realm of
21 the statute, so I'm not going to charge them any
22 further.

23 MRS. STEVENS: Thank you, Your Honor.

24 MR. MCLEOD: Thank you, Your Honor.

25 THE COURT: If y'all get the evidence together

1 and send them back, I -- I assume if y'all want to
2 look at this -- do you have any objection to this
3 verdict form --

4 MRS. STEVENS: No, sir.

5 THE COURT: -- then you need to let -- we'll
6 deal with it right now.

7 (Alternate excused.)

8 (Jury began deliberations at 11:39 am.)

9 (Whereupon the Court conducted other business
10 awaiting the verdict.)

11 THE COURT: I have got a question from the jury.
12 Two questions from the jury. Did the scales have
13 batteries and were they operable. And was the
14 vehicle his or the driver's.

15 I can't answer either one of those questions.
16 Those are comments on the facts. The only thing I
17 can do is bring them back out and tell them that they
18 have heard all the evidence they are going to hear in
19 this case, that's an evidentiary fact that I can't
20 answer, I can only answer questions of law, and send
21 them back.

22 MRS. STEVENS: That's wonderful.

23 THE COURT: If you will bring them.

24 (Jury entered the courtroom at 12:14 pm.)

25 THE COURT: Thank you, sir. Madam forelady, I

1 have received your question -- and two questions from
2 y'all. Did the scales have batteries and were --
3 operable. Was the vehicle his or the driver's.

4 Unfortunately, I can't answer those questions
5 because I cannot comment on the facts. You have
6 heard all of the evidence that you're going to hear
7 in this case. And so you have to determine the facts
8 based on what you have heard.

9 I can only clear up questions of law. Now, if
10 you had a legal question, I could answer that legal
11 question. But I can't answer factual questions, and
12 I'm sorry.

13 So y'all are going to have to take whatever
14 y'all recall from the evidence and testimony in this
15 case and determine what the facts are. I can only
16 answer legal questions.

17 So if you wanted me to clarify something I
18 charged you, I can certainly do that, but I can't
19 comment on the facts. And I can't reopen the case to
20 get you any more evidence.

21 I'm not in charge of the evidence you hear as
22 far as that's concerned. The parties present to you.
23 Okay.

24 Now, now that I have got you out here, do
25 y'all -- and y'all may or may not know this. But do

1 y'all think that y'all are going to be able to reach
2 a verdict before lunch or do y'all want me to order
3 y'all lunch?

4 They tell me it's going to -- get sandwiches or
5 something and it will take about 30 minutes to get it
6 here.

7 *BAILIFF:* Won't get it that quick, Judge. Don't
8 know how who told you that.

9 *THE COURT:* All right. How long do you think?

10 *BAILIFF:* Probably 45 minutes to an hour at the
11 earliest.

12 *THE COURT:* Okay. And so I don't know where you
13 are and how close -- and normally we break between
14 one and 2:30. If you think you're going to have a
15 verdict by one, you may not know, and you can
16 continue to deliberate.

17 If you want to deliberate a little bit further
18 and then let the bailiff know, you better get us
19 lunch, or whatever, but that will be y'all's call,
20 okay?

21 Because I can't -- once I give you the case, I
22 can't let you go to lunch. Once I got you together,
23 you have got to stay together until you decide this
24 case.

25 So if you think you need to get lunch coming, I

1 can get that -- make that happen, but it's going to
2 be a while. But if you think not, I can let you go
3 on your own after you reach a verdict, okay? Thank
4 y'all.

5 (Jury left the courtroom at 12:18 pm.)

6 THE COURT: Any exceptions from the State or the
7 defense? I'm going to make this a part of the
8 Court's record. And I guess we will just wait. We
9 will find out whether they order lunch, how long we
10 are going to be here.

11 (WHEREUPON, Court's Exhibit No. 2 was marked for
12 identification only.)

13 (Whereupon a recess was had.)

14 THE COURT: All right. I understand we have a
15 verdict. Y'all ready?

16 VERDICT

17 (Jury entered the courtroom at 12:25 pm.)

18 THE COURT: Madam Forelady, have y'all reached a
19 verdict?

20 FORELADY: Yes.

21 THE COURT: Is it a unanimous verdict?

22 FORELADY: Yes.

23 THE COURT: Okay. If you will pass it up.

24 (Bailiff approached the foreman and then
25 approached the Court.)

1 THE COURT: You may publish the verdict.

2 BAILIFF: State of South Carolina, county of
3 Sumter, in the Court of General Sessions, docket
4 number 2008-GS-43-134, the State of South Carolina
5 versus Randall Sanders, defendant.

6 We the jury find the defendant guilty of
7 possession with intent to distribute cocaine. Signed
8 Linda Owen. Dated January the 14th, 2007.

9 Ladies and gentlemen of the jury, if this is
10 your verdict, so say ye all by raising your right
11 hand.

12 (Whereupon the jury complied.)

13 BAILIFF: Thank you.

14 THE COURT: Okay. Anything further from the
15 State?

16 MR. MCLEOD: No, Your Honor.

17 THE COURT: From the defense?

18 MRS. STEVENS: No, sir, Your Honor.

19 THE COURT: Do you know yet what the message is
20 going to be at 1:00?

21 MR. MCLEOD: I do not.

22 (Jury dismissed to call back between one and 2
23 pm.)

24 THE COURT: Do you want to hear his criminal
25 record? Tell me what it is.

1 MR. MCLEOD: Your Honor, this is a third. He
2 has a PWID crack cocaine from 2003; possession of
3 marijuana second or subsequent from 2004; possession
4 of marijuana second or subsequent 2005; and appears
5 to be possession with intent to distribute either
6 cocaine -- I believe it's cocaine in 2006. So it's
7 easily a third offense.

8 THE COURT: You sure he's not in the Department
9 of Corrections somewhere?

10 MRS. STEVENS: I do not believe that he is, Your
11 Honor.

12 MR. MCLEOD: He is not, Your Honor. I checked
13 with probation. He was off probation in August of
14 '08.

15 THE COURT: No wonder he is not here. He is
16 looking at 15 to 30?

17 MR. MCLEOD: Yes, Your Honor. And just to be
18 clear, clarify, those actual things I read off came
19 through our system. So just to be doubly accurate,
20 he has a possession with intent to distribute
21 conviction from 2006 on his NCIC as well as a -- as
22 well as possession of marijuana second or subsequent
23 looks like in 2006 as well. That's on the NCIC.

24 But we also have stuff showing in our system
25 as...

1 THE COURT: Okay. So -- but do you have the
2 official Clerk's records? I mean, you know this is
3 his third? There's no question about that? Because
4 I don't want to sentence him as a third and it be a
5 question.

6 MRS. STEVENS: He was actually charged with
7 fourth, I think. But on his NCIC it shows a
8 conviction 8-30 for possession with intent to
9 distribute marijuana.

10 And then there was a custody revocation for a
11 probation revocation, and the charge that he was on
12 probation for was a possession of marijuana second,
13 so it... I...

14 THE COURT: Okay. As long as it's no question
15 but that this is in fact at least a third because he
16 is looking at 15 to 30 no parole, mandatory minimum
17 no suspension. I mean, that's what the statute says.

18 MRS. STEVENS: I mean, I don't think that I can
19 argue, Your Honor --

20 THE COURT: Okay.

21 MRS. STEVENS: -- because it's not a possession,
22 10 years because he has a possession with intent to
23 distribute. We couldn't argue that that was an
24 uncounseled conviction.

25 And it says simple possession second, you don't

1 get -- you know, there's only so many times I can try
2 to argue that simple possession shouldn't be counted.

3 *THE COURT:* Okay. I will -- all right -- issue
4 a bench warrant for him pick him up and read that
5 sentence to him. He will not be a happy camper.

6 (Whereupon the Court conducted other business
7 for the remainder of the day.)

8 ***** January 14, 2009 *****

9 SENTENCING

10 *THE COURT:* All right. Are you Mr. Randall
11 Sanders?

12 *THE DEFENDANT:* Yes, sir.

13 *THE COURT:* Okay. Mr. Sanders, I -- we tried
14 your case earlier. You were not present in the
15 courtroom. And so --

16 *THE DEFENDANT:* Your Honor?

17 *THE COURT:* -- we tried -- we tried the case.
18 Your lawyer was here representing you.

19 *THE DEFENDANT:* Yes, sir.

20 *THE COURT:* The State put up their evidence.
21 The jury deliberated and came back and found you
22 guilty.

23 *THE DEFENDANT:* She -- she said that they was
24 calling me early this morning or whatever to get to a
25 role call, but I been down here Monday, Tuesday, and

1 Wednesday. My name wasn't even on the list.

2 And when I came here this morning or whatever,
3 Mrs. Lauren Stevenson (sic) said that they called me
4 this morning or whatever and that nobody answered the
5 phone, you know.

6 So I told her I wasn't running or anything.
7 That's why I came up here this morning, you know, to
8 see what was going on because y'all try me in my
9 absence, and I didn't even know, you know.

10 And so when I came and talked to Mrs. Stevenson
11 or whatever, she was like they trialed (sic) me or
12 whatever. And I came -- well, I stayed -- I was
13 going to talk to Murrell Smith, you know, about this
14 case right here or whatever, and then they like,
15 was -- I was running.

16 And they scared me. I ran, you know, because
17 they startled me, you know. But I was actually going
18 to talk to Murrell Smith about my case being that
19 y'all had trialed me in my absence, you know, because
20 I was kind of scared.

21 And I ain't never been trialed in my absence. I
22 didn't know what was going on or nothing, Your Honor.

23 THE COURT: I understand. You know, you had a
24 bond to be here and you had a notice on that bond
25 that if you weren't here, that the State could

1 proceed in your absence, and that's what they did.

2 We tried the case. The jury found you guilty
3 and I sentenced you. And I'm here today to read the
4 sentence to you because you were found guilty of PWID
5 cocaine base third offense which carries a minimum of
6 15 years, the maximum of 30 years, and it cannot be
7 suspended. It's a mandatory minimum sentence.

8 So I sentenced you to the State Department of
9 Corrections for a term of 18 years or \$50,000 fine.

10 THE DEFENDANT: Sir, please, sir, I got four
11 kids, I mean...

12 THE COURT: I understand that. And you'll have
13 to take that up. There's nothing -- the minimum I
14 could have given you was 15. I could have given you
15 30. But I took that into consideration based on the
16 facts I heard in this case.

17 THE DEFENDANT: Your Honor, please, Your Honor.
18 I swear to God. I mean, I never been in no trouble
19 like this before in my lifetime, you know. My
20 mother, she got breast cancer.

21 And not only that, she raising my two kids. You
22 know what I'm saying. I got four kids, but she got
23 two of them with -- with her, you know.

24 And I been on cocaine for approximately about --
25 about two and a half years, you know. And I smoked

1 marijuana. I ain't going to tell you no lie, Your
2 Honor.

3 And I don't think that I need to go there. I
4 think I need help, to be honest with you. I think I
5 need some kind of help. I don't need to be sentenced
6 to 18 years for a crime like this.

7 And had I known that I -- I does drugs, Your
8 Honor. I was on drugs ever since I was 17 years old.
9 You know what I mean. I'm almost 30 years old now.
10 And I'm trying to make a change. I'm trying to
11 better myself for the better of me and my kids.

12 *THE COURT:* I understand. But see, I -- the
13 law -- the legislature made this law. I don't have
14 any discretion. I mean, it's a minimum sentence of
15 15 years because this is your third offense.

16 And you should have -- the legislature takes the
17 position, if you're going to get cured, you have got
18 to do it before now. And it's added up on you. Now
19 you were looking at 15 to 30.

20 And I didn't max you, but I -- I took into
21 consideration the elements in this case. I gave you
22 what I thought was a fair sentence. Now, you have
23 got 10 days to appeal this if you disagree with it.
24 You understand?

25 *THE DEFENDANT:* Please, Your Honor.

1 THE COURT: I can't do anything for you. Good
2 luck to you.

3 (End of requested transcript of record.)
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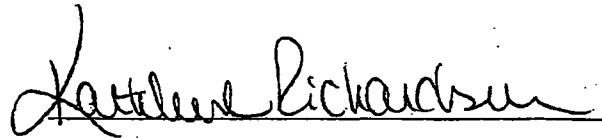
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

I, KATHLEEN RICHARDSON, RPR, CRR, Official Court Reporter for the Third Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Sumter County, South Carolina, on the fourteenth day of January, 2009.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

April 17, 2009



KATHLEEN RICHARDSON, RPR, CRR

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF SUMTER	)	2008-GS-43-134

STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
RANDALL Q. SANDERS	)	
<u>DEFENDANT</u>	)	

September 24, 2009
Sumter, South Carolina

B E F O R E:

THE HONORABLE R. FERRELL COTHRAN, JR., JUDGE.

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

EUGENE MCLEOD, III, ASSISTANT SOLICITOR
Attorney for the State

LAUREN B. STEVENS, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

I N D E X

WITNESSES:

PAGE

(There were no witnesses produced.)

EXHIBITS

(There were no exhibits marked.)

1 MR. McLEOD: Randall Sanders.

2 Your Honor, this is the State of South Carolina
3 versus Randall Sanders, Indictment No. 2008-GS-43-134, on
4 the charge of possession with intent to distribute cocaine
5 base, which was a third offense.

6 Mr. Sanders had a trial in his absence on
7 January 14th, 2009, which he was found guilty. He was
8 subsequently arrested on a bench warrant and the sentence
9 was unsealed the same day. He was sentenced to 18 years
10 by Your Honor.

11 He is here. His attorney, Ms. Stevens, has made
12 a motion to reconsider that sentence.

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

14 MS. STEVENS: Yes, sir, Your Honor.

15 It's actually sort of a two-pronged motion, and
16 I was not really able to find any law either supporting my
17 argument or denying my argument.

18 My first argument, Your Honor, is that
19 Mr. Sanders was tried in his absence. And, as we know,
20 the wheels of justice are generally slow, but on this
21 particular day, we were able to pick a jury, have a case,
22 get it to the jury and have their decision before
23 lunchtime.

24 About an hour after that, Your Honor,
25 Mr. Sanders came to my office because he discovered that

1 we were looking for him, and I'm not going to lie to you,
2 Your Honor, he found out he had a bench warrant and he
3 ran, so I'm not going to try to sugarcoat that, because he
4 didn't understand how we could have already had his trial
5 in that short of time and he wasn't a part of it.

6 We had made several attempts to get him up here,
7 Your Honor, and I had mentioned those attempts to you when
8 we tried to get the continuance, which you denied.

9 So my argument on this particular issue is
10 probably more of an equity argument than a legal argument.
11 As I said, I couldn't find any case law really either way.

12 Your Honor, there was a plea offer to a lesser
13 charge that would not have exposed him to the mandatory 15
14 to 30 years. Mr. Sanders and I had talked about that plea
15 and he was willing to take that plea and I do not believe
16 that he was fully prepared for his trial going forward
17 before he had the opportunity to take that plea.

18 He was tried on a Wednesday, Your Honor, and the
19 first day that his name appeared on that trial list was on
20 Tuesday, and we made efforts to get him up here. And if
21 we had had more notice, Your Honor, perhaps we could have
22 gotten him over here, and if the system had moved as it
23 normally does and he had arrived before the verdict was
24 read, Your Honor, he would have wanted to take advantage
25 of that plea.

1 I would simply ask that you consider allowing
2 him to plead to that lesser-included offense because he
3 would not be facing the mandatory minimum of 15 under that
4 lesser charge, or in the alternative, Your Honor, I would
5 ask you that you reconsider an 18-year sentence. I know
6 that there is a mandatory minimum of 15, but we would
7 simply ask that you consider lowering the 18 years.

8 THE COURT: Okay. What's the State's position?

9 MR. McLEOD: Your Honor, we gave him a written
10 offer. The date was December 5th, 2008. The term of
11 court was January 5th through January 9th, which is the
12 plea week, and stated he must accept or reject that offer
13 by January 9th, 2009. That day came and went. He did not
14 accept.

15 We put it on the trial list, notified Ms.
16 Stevens it was on the trial list, proceeded with trial,
17 had a trial in his absence, verified on the record that he
18 was given proper notice that his trial would go forward in
19 his absence.

20 He did arrive after the verdict was read, and he
21 did run. And I think she failed to mention that not only
22 did he run but he had to be actually tackled by law
23 enforcement and dragged back into the building where he
24 was read his sentence. And I believe the sealed sentence
25 was 18 years, Your Honor, and based on his prior record,

1 which he had a PWID crack cocaine in 2003, a possession of
2 marijuana in 2004, a possession of marijuana again in
3 2005, a -- it looks to be a possession of -- he pled to a
4 possession of cocaine base in 2006, so he certainly has a
5 significant prior record, easily the two requirements for
6 a third prior to this, so I don't see any problem with the
7 recommendation, Your Honor.

8 And also I would add that he had pending charges
9 for a failure to stop for a blue light, second offense, a
10 PWID marijuana, third offense, which we dropped once he
11 was found guilty and received the 18 years, but he could
12 potentially received certainly a higher sentence if we had
13 taken those others to trial, so I believe 18 is, you know,
14 to his benefit.

15 THE COURT: Okay. Yes, sir, do you want to say
16 something?

17 THE DEFENDANT: Yes. I just want to say that I
18 never had no crack cocaine charge or whatever. This is my
19 first possession, PWID, intent to distribute. It actually
20 happened at a roadblock, you know, I ran into a roadblock
21 with me and a young lady riding one night and possessing
22 one gram or less than a gram of cocaine, which I was on
23 drugs at that particular time, and I stated to Ms. Stevens
24 also that I was on drugs at that particular time, but I
25 never possessed crack cocaine or intent to distribute

1 anything, any type of drug at this particular time.

2 Yes, I have prior marijuana charges because at
3 that particular time I was on marijuana also, but I never
4 possessed with intent to distribute anything, especially
5 not cocaine after I ran into a roadblock using drugs and
6 got this charge.

7 THE COURT: You read me the record with two
8 counts of marijuana and one count of cocaine?

9 MR. McLEOD: Your Honor, there were two counts
10 of marijuana, a -- I misplaced it at this point.

11 He did have a possession of cocaine it looks
12 like from 2006 where he received three years suspended to
13 two years probation, so I believe that would have been a
14 first offense.

15 THE COURT: What about that?

16 THE DEFENDANT: I never had no crack. This is
17 my first possession or possession with intent to
18 distribute charge ever.

19 MR. McLEOD: Your Honor, the charge is
20 manufacture or possession of other substances in Schedule
21 I, II, III, or flunitrazepam with intent to distribute,
22 which I think is also the statute for crack cocaine, and
23 unless he had any of those other ones, it was crack
24 cocaine.

25 THE DEFENDANT: The last time, Your Honor, the

1 State -- well, they had a paperwork mixup because me and
2 my brother's name are also just alike and he had prior
3 charges that happened at the same time that he explained,
4 but I never had no crack cocaine charge or possession
5 charge ever. This is my first possession to intend to
6 distribute cocaine or whatever.

7 MR. McLEOD: Your Honor, I have his actual NCIC
8 here where it says Randall Quinn Sanders, height six one,
9 weight 185 -- I'm trying to find the birth date on here.
10 It looks to be ; Social Security,

11 He in 2005 had a failure to stop for a blue
12 light conviction; in 2006, manufacturing, possession or
13 other substance with intent to distribute, first offense.

14 MS. STEVENS: It's marijuana.

15 MR. McLEOD: And I assume that's either
16 cocaine -- it must be cocaine because -- is it cocaine or
17 marijuana?

18 MS. STEVENS: Marijuana.

19 MR. McLEOD: It's either cocaine or marijuana.
20 We'll go with marijuana. It's a conviction for marijuana.
21 He also had one in 2006, a conviction for marijuana. So
22 regardless of whether it's cocaine or marijuana, this is
23 the third offense.

24 THE COURT: So he's telling me you had at least
25 two prior drug offenses, right? You said you didn't have

1 a prior cocaine offense, but you had two prior marijuana
2 offenses?

3 THE DEFENDANT: Yes, sir, in the past.

4 THE COURT: And where were those cases disposed
5 of?

6 THE DEFENDANT: I think in 2004 and 2006. I
7 believe I got probation.

8 THE COURT: Here?

9 MR. McLEOD: Yes, sir, Your Honor.

10 THE COURT: In this courtroom?

11 MR. McLEOD: Yes, sir.

12 THE COURT: Who was your lawyer then?

13 THE DEFENDANT: I want to say John Clark at that
14 particular time.

15 THE COURT: Both times you had an attorney?

16 THE DEFENDANT: Yes, sir. I want to say John
17 Clark at that particular time.

18 THE COURT: Both of them were counseled drug
19 pleas, right? So you had an attorney both times?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: So this is your third offense.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And the minimum sentence you could
24 have gotten was 15 years. And I didn't give you the
25 minimum because you didn't come in here and plead guilty.

1 I mean, normally, you know -- your lawyer tells me you
2 wanted to accept the deal, but they offered you the deal
3 and the deal expired and you never accepted it.

4 THE DEFENDANT: I was willing to take the plea
5 but never got a chance to plead to it because I was tried
6 in my absence. I never was high on my trial taking place.
7 The day that I came to court my trial just happened.

8 THE COURT: I understand that. But what date
9 were you tried in your absence? What date was that?

10 THE DEFENDANT: They stated the 14th that they
11 tried me, but actually I came to court January 7th, 2009,
12 and I was in the county up until the 16th and was
13 shipped to Kirkland at that particular time.

14 MS. STEVENS: Your Honor, the plea does say you
15 must accept or reject the offer by January 9th, but as
16 you're well aware, Your Honor, just because we accept an
17 offer doesn't mean that we're going to have the
18 opportunity to get in front of a judge.

19 Normally we only have four days during plea week
20 to try and get as many pleas as we can done.

21 I don't remember particularly, but there is a
22 very good chance that Mr. Sanders sat up here every day
23 waiting to plead and we just never got the opportunity to
24 because that just happens because there's so many that
25 want to plead and not enough time.

1 THE DEFENDANT: I also attended every roll call.

2 THE COURT: I understand, but I don't have any
3 way to back that up. He had a chance to plead and he
4 didn't plead. Even if he'd have been here the day that
5 his case was called -- I mean, he's out on bond and you're
6 supposed to be in court. You weren't here, you didn't
7 plead, they tried you, it was your third offense and the
8 jury convicted you. I don't have any option to that. And
9 the sentence I gave you was conservative based on the fact
10 that you weren't here and that you had run. I only gave
11 you three years more than the minimum.

12 THE DEFENDANT: I didn't actually ran. I was
13 outside the courthouse at this particular time on the cell
14 phone and yes, I got scared.

15 THE COURT: But if you'd been with your lawyer
16 and come up here and accepted the plea or at least sent
17 something in writing that we accept the deal and we want
18 to plead or whatever, but you didn't do that so we ended
19 up having to try you. I sent the bailiff to call your
20 name three times at the courthouse. You didn't answer,
21 you didn't show.

22 THE DEFENDANT: I never had no knowledge. When
23 I came to court on January 1st (sic), I left a message
24 with Ms. Stevens' secretary to state that I came to court,
25 you know.

1 THE COURT: Why did you leave?

2 THE DEFENDANT: I showed up for roll call or --

3 THE COURT: But if you're on the trial list
4 you're not supposed to leave.

5 THE DEFENDANT: My name wasn't even on the trial
6 list at that particular time. My name wasn't even on the
7 trial list for the next week. The following week come up
8 and I asked Ms. Stevens' secretary and she stated my name
9 wasn't even on the following trial list that was coming
10 up, so I feel like my trial wasn't taking place at that
11 particular time right now.

12 THE COURT: Okay. Let me see what she says.

13 MS. STEVENS: Your Honor, this was the time that
14 they would tell us that someone was up for trial on Monday
15 afternoon and it would be the first we'd heard of it and
16 they'd expect us to try him on Tuesday morning.

17 MR. McLEOD: Your Honor, I'm looking in the file
18 and I cannot verify whether or not we told her verbally or
19 whether or not we actually sent a letter to her explaining
20 to her that we were trying him that term. Regardless of
21 the fact that I sent a plea offer for that week, so he
22 knew that the plea offer was made and he should have known
23 with the incident date being March 8th of 2007 that it was
24 a potential or at least Ms. Stevens should have known that
25 there was a potential for trial.

1 MS. STEVENS: Just as an aside, Your Honor, I
2 just got one of my clients out of jail who's been in there
3 for four and a half years. I thought he would have been
4 tried a long time ago. So to tell me it's a 2007 case so
5 I should have known it would be tried does not make sense
6 to me. People are not tried --

7 THE COURT: The motion you have before me is to
8 let you take a plea deal.

9 MS. STEVENS: Yes, sir.

10 THE COURT: That's not in my prerogative. I
11 don't have that option. They're the only ones that can --
12 I mean, especially if it was something less than what he's
13 charged with.

14 MS. STEVENS: Well, Your Honor, he was actually
15 charged with possession with intent to distribute not
16 because of the amount. The amount was less than a gram.
17 And what he was offering him to plead to was not a
18 reduction in the number of drug charges but allowing him
19 to plead to the quantity of crack that he actually did
20 possess, which was less than a gram. So it wasn't an
21 offer of a second or a first or anything like that. It
22 was simply allowing him to charge -- to plead to the
23 amount of crack cocaine that he possessed.

24 THE COURT: Yes. But what was the indictment
25 for?

1 MS. STEVENS: Possession with intent to
2 distribute, because it was in tinfoil in his shoe and he
3 had two digital scales in the back seat, which we never
4 determined whether they actually worked or not.

5 THE COURT: But the motion you made before me
6 was to allow him to plead to whatever the deal was. I
7 don't know that I can do that. That is up to the
8 Solicitor's office.

9 The other motion is to change the sentence. And
10 I think based on PWID crack cocaine, third offense, the
11 sentence was fair, so I'm going to decline to change the
12 sentence.

13 Now, as far as whether to allow him to take the
14 plea deal, that's up to the Solicitor's office because I
15 can't make them do that.

16 And as far as notice is concerned for a new
17 trial, that's a whole different ball game. That's not
18 before me.

19 MS. STEVENS: Yes, sir, Your Honor.

20 THE COURT: And whether he had adequate notice
21 or not, that's something else you need to explore.

22 MS. STEVENS: Yes, sir.

23 THE COURT: Okay.

24 MS. STEVENS: Thank you, Your Honor, for your
25 time.

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(The proceedings were concluded.)

*** END OF REQUESTED TRANSCRIPT OF RECORD ***

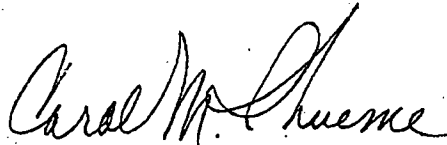
1 CERTIFICATE OF REPORTER

2
3
4 STATE OF SOUTH CAROLINA)5 COUNTY OF SUMTER)
6
7

8 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of General Sessions
14 for Sumter County, South Carolina, on the 24th day of
15 September, 2009.

16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18

19 February 22, 2010
20

21 
22

23 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

R. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RANDALL Q. SANDERS,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUE ON APPEAL.....	3
STATEMENT OF THE CASE	4
ARGUMENT.....	5
CONCLUSION.....	6
PETITION TO BE RELIEVED AS COUNSEL.....	7
CERTIFICATE OF COUNSEL.....	8

TABLE OF AUTHORITIES

Cases

State v. Manning, 305, S.C. 413 409 S.E.2d 372 (1991) 5

STATEMENT OF ISSUE ON APPEAL

Whether the trial judge's jury charge on reasonable doubt met constitutional standards?

STATEMENT OF THE CASE

Appellant was convicted of possession with intent to distribute cocaine, third offense after a jury trial held before the Honorable R. Ferrell Cothran, Jr. in Sumter County on January 13-14, 2009. A sentence of eighteen (18) years was imposed along with a \$50,000 fine.

This appeal follows.

ARGUMENT

The trial judge's jury charge on reasonable doubt failed to meet constitutional standards.

The trial court gave the following jury charge on reasonable doubt:

This presumption of innocence accompanies the defendant from the time he's charged, throughout the trial, and until you reach a verdict upon the evidence that satisfies you of that guilt beyond a reasonable doubt.

Now, reasonable doubt is a doubt which makes an honest, sincere, conscientious juror in search of the truth to hesitate to act.

Proof beyond a reasonable doubt must therefore be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs.

Proof beyond a reasonable doubt can be described as proof that leaves you firmly convinced of the defendant's guilt. (Tr. p. 51, lines 9-24)

In State v. Manning, 305, S.C. 413 409 S.E.2d 372 (1991) the South Carolina Supreme Court ruled that due process is violated when a jury charge on reasonable doubt is so confusing that a reasonable juror could interpret the charge as a whole to allow a finding of guilt on a degree of proof less than required by the law. Our court went on to note that the following simple definition be charged:

A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act.

CONCLUSION

Because the above charge was not given to the jury, appellant's conviction should be reversed.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of October, 2009.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Sumter County

 R. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RANDALL Q. SANDERS,

APPELLANT

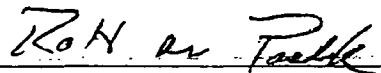
 PETITION TO BE RELIEVED AS COUNSEL

Counsel for Randall Q. Sanders states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge R. Ferrell Cothran, Jr., which was held on January 14, 2009, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Randall Q. Sanders.

Respectfully submitted,



 Robert M. Pachak
 Appellate Defender

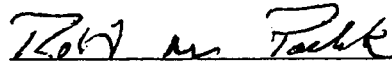
ATTORNEY FOR APPELLANT

This 5th day of October, 2009.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 5th, 2009



Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

R. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

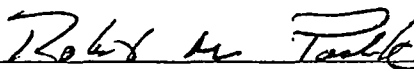
V.

RANDALL Q. SANDERS,

APPELLANT

CERTIFICATE OF SERVICE

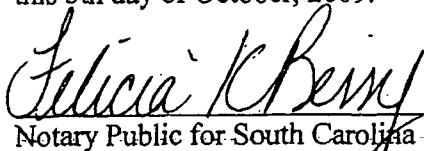
The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and the Final Anders Brief of Appellant and Record on Appeal has been served on Randall Q. Sanders, #332675 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010; this 5th day of October, 2009.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of October, 2009.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: August 15, 2010

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Randall Q. Sanders, Appellant.

Appeal From Sumter County
R. Ferrell Cothran, Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-082
Submitted February 1, 2012 – Filed February 22, 2012

APPEAL DISMISSED

Appellate Defender Robert M. Pachak, of Columbia; and
Randall Q. Sanders, pro se, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, and Assistant Deputy Attorney
General Salley W. Elliott, all of Columbia; and Solicitor
Ernest A. Finney, III, of Sumter, for Respondent.

PER CURIAM: Randall Q. Sanders appeals his conviction for possession with the intent to distribute cocaine. In his Anders brief, Sanders argues the trial court erred in charging the jury on reasonable doubt because the charge was so confusing that it violated his right of due process. Additionally, Sanders filed a pro se brief. After a thorough review of the record and briefs pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.[1]

APPEAL DISMISSED.

FEW, C.J., HUFF and SHORT, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

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SOUTH CAROLINA
JUDICIAL SYSTEM

In the Court of Common Pleas

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STATE OF SOUTH CAROLINA

County of

SUMTER

RANDALL JUTAIN SANDERS # 33265
Full name and prison number (if any) of Applicant,

vs.

STATE OF SOUTH CAROLINA
Name of Respondent.**APPLICATION FOR
POST-CONVICTION RELIEF****INSTRUCTIONS — READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. 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 applicant was convicted.

- Place of detention LEE CORRECTIONAL INSTITUTION, 910 WESACKY HIGHWAY, BISHOPVILLE, SOUTH CAROLINA 29301
- Name and location of Court which imposed sentence SUMTER COUNTY COURT IN GENERAL SESSIONS, SUMTER, SOUTH CAROLINA 29150
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
(a) 2002-95-43-00134; POSSESSION WITH THE INTENT TO
(b) _____
(c) _____
- The date upon which sentence was imposed and the terms of the sentence:
(a) JANUARY 14, 2009; EIGHTEEN (18) YEARS OR FIFTY
(b) _____
(c) _____

C

C

3. a. DISTRIBUTE COCAINE

4. a. THOUSAND (\$50,000.00) DOLLAR FIVE

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒ _____

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

YES, I DID.

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. SOUTH CAROLINA COURT OF APPEALS

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. DISMISSED

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. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) N/A

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL

(b) DENIAL OF EQUAL PROTECTION OF THE LAW

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) COUNSEL FAILED TO INVESTIGATE CASE ADEQUATELY;

(b) DENIED RIGHT TO BE PRESENT DURING HEARING

(c) _____

10. (a) COUNSEL FAILED TO OBJECT TO CERTAIN TESTIMONY WHICH WAS NOT DEEMED STRATEGIC; COUNSEL FAILED TO ~~CONTEND~~ CONTEMPORANEOUSLY OBJECT TO PRESERVE ISSUES FOR APPELLATE REVIEW

(b) STAGE 2) TRIAL

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? NO.

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO.

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO.

(d) any other petitions, motions or applications in this or any other Court?

NO.

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. /

iii. /

iv. /

(b) the name and location of the Court in which each was filed:

i. N/A

ii. /

iii. /

iv. /

(c) the disposition thereof:

i. N/A

ii. /

iii. /

iv. /

(d) the date of each such disposition:

i. N/A

ii. /

iii. /

iv. /

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. /

iii. /

iv. /

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO, THEY HAVE NOT.

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. N/A

ii.

iii.

(b) the proceedings in which each ground was raised:

i. N/A

ii.

iii.

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) FIRST COLLATERAL ATTACK

(b) FIRST COLLATERAL ATTACK

(c)

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A

(b) your trial, if any? YES, I WERE.

(c) your sentencing? YES, I WERE.

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES, I WERE.

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. LAUREN STEVENS

ii. ROBERT M. PACHAN, DIVISION OF APPELLATE DEFENSE, POST OFFICE BOX 11524, COLUMBIA, SOUTH CAROLINA 29211

iii.

(b) the proceedings at which each such attorney represented you:

i. TRIAL AND SENTENCING

ii. SOUTH CAROLINA COURT OF APPEALS

iii.

18. State clearly the relief you seek in filing this application.

CONVICTION AND SENTENCE REVERSED AND REMANDED FOR A NEW TRIAL

19. Are you now under sentence from any other court that you have not challenged?

NO, I AM NOT.

STATE OF SOUTH CAROLINA

County of SUMTER

VERIFICATION

I, RANDALL GUYNN SANDERS, #332675, 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.

Randall Sanders

SWORN to and subscribed before me this 13day of March, 2012

Debra Sines (L.S.)
Notary Public

My Commission Expires: 11-4-2015

APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, RANDALL GUYNN SANDERS, #332675, 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 therefor.

Randall Sanders
Applicant

SWORN or affirmed to and subscribed before me this

13 day of March, 2012

Debra Sines
Notary Public

11-4-2015

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2012-CP-43-520

Randall Q. Sanders, #332675,

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post-conviction relief, filed March 15, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true billed indicted during the January 2008 term of the Sumter County Grand Jury for possession with intent to distribute cocaine (2008-GS-43-134). Lauren Stevens, Esquire, represented him. The Applicant proceeded to trial and on January 14, 2009, he was convicted of possession with intent to distribute cocaine base – third or subsequent offense. The Honorable R. Ferrell Cothran, Jr. sentenced the applicant to eighteen years imprisonment and a fine of fifty thousand dollars.

A timely notice of appeal was filed on the Applicant's behalf and appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Sanders, Unpublished Op. No. 2012-UP-082 (S.C. Ct. App. filed February 22, 2012). The Remittitur was sent on February 13, 2012.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the Applicants Appellate records. The transcript of Applicant's guilty plea has been ordered and will be forwarded upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to investigate case adequately
 - b. "Denied right to be present during stage of trial"
 - c. "Counsel failed to object to certain testimony which was not deemed strategic"
 - d. "Counsel failed to contemporaneously object to preserve issues for appellate review"
2. Due Process violation
 - a. "Denial of equal protection of the law"
 - b. "Denied right to be present during stage of trial"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which

these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of 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 an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

July 25, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2012-CP-43-520
	)	
RANDALL Q. SANDERS, 332675,	)	
	)	
Applicant,	)	
	)	
vs.	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Richard Simmons, II, Esquire
McWhirter Bellinger & Associates, PA
485 N. Lafayette Drive
Sumter SC 29150

DATED this 6th day of August, 2012.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

1 State of South Carolina) In the Court
2 County of Sumter) Of General Sessions

3 Indictment No.: 2012-CP-43-0520
4

5
6 Randall Q. Sanders,)
7 Applicant,)

8 vs.)

Transcript of Record

9
10 State of South Carolina,)
Respondent.)

11
12 October 2, 2013
13 Sumter, SC
14

15 B E F O R E:

16 The Honorable R. Knox McMahon, Judge.
17

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

19 Charles T. Brooks, Esquire
Attorney for the Applicant

20 Daniel Gourley, Assistant Attorney General
21 Attorney for the State
22
23

24 Brenda J. Sigwald, Circuit Court Reporter
25 For the Honorable R. Knox McMahon
P.O. Box 206, Jackson, South Carolina 29831

I N D E X

	<u>Page</u>
Randall Q. Sanders	
Direct Examination by Mr. Brooks.....	5
Cross-Examination by Mr. Gourley.....	12
Lauren Stevens	
Direct Examination by Mr. Gourley.....	18
Cross-Examination by Mr. Brooks.....	22
Certificate of Reporter.....	31

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
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(REPORTER'S NOTE: There were no exhibits
entered during this hearing.)

1 THE COURT: All right. You may be seated -- is
2 this Mr. Sanders?

3 MS. STEVENS: It is, Judge.

4 THE COURT: Yes, you may be seated.

5 All right. Mr. Attorney general?

6 MR. GOURLEY: Yes, Your Honor, the next case is
7 Randall Sanders versus the State of South Carolina, Docket
8 No. 2012-CP- 43-520. Applicant is presently confined in
9 the South Carolina Department of Corrections pursuant to
10 orders of the Sumter County Clerk of Court. The indictment
11 was true bill indicted in the January, 2008 term of the
12 Sumter County Grand Jury for possession with intent to
13 distribute cocaine.

14 He was represented by Ms. Lauren Stevens. The
15 applicant proceeded to a trial on January 14, 2009. He was
16 convicted of possession with intent to distribute cocaine
17 base, third or subsequent offense. The Honorable R.
18 Ferrell Cothran, Jr. sentenced the applicant to eighteen
19 years imprisonment and a fine of \$50,000.

20 Timely notice of appeal was filed on the
21 applicant's behalf and the appeal was perfected. The South
22 Carolina Court of Appeals affirmed the applicant's
23 conviction and sentence.

24 A remittitur was issued on February 13, 2012.

25 Subsequently, applicant filed a timely application or post

1 conviction relief on March 15th 2012, alleging that he was
2 being held in custody unlawfully based on ineffective
3 assistance of counsel, specifically for failing to
4 investigate. He was denied the right to be present during
5 the stated trial, for failing to object to certain
6 testimony, for failing to contemporaneously object for
7 preservation of appellate review. The applicant further
8 alleged a due process violation.

9 The State made its return on August 6, 2012. The
10 applicant is represented by Mr. Brooks in this matter.

11 THE COURT: Thank you.

12 Mr. Brooks?

13 MR. BROOKS: Your Honor, we're ready to proceed.

14 THE COURT: All right. You may call your first
15 witness.

16 MR. BROOKS: We would call Mr. Sanders to the
17 stand.

18 THE COURT: All right. Mr. Sanders, if you would
19 come around and be sworn, please.

20 Randall Q. Sanders,

21 having been duly sworn, testified as follows:

22 THE BAILIFF: Come around here and have a seat.
23 State your full name and spell your last for the record.

24 THE WITNESS: Your Honor with all due respect, I
25 Randall Q. Sanders is present here today under the United

Randall Q. Sanders - Direct Examination by Mr. Brooks

1 States Constitution of America.

2 MR. BROOKS: Hold on, we're going to get there. He
3 just asked your name.

4 THE WITNESS: Okay. Randall Sanders.

5 THE COURT: All right. Mr. Brooks?

6 DIRECT EXAMINATION

7 BY MR. BROOKS:

8 Q Okay. Mr. Sanders, I know you're nervous.

9 A Yeah, I am.

10 Q Take a deep breath.

11 A Yes, sir.

12 Q Now, I'm going to ask you some background questions
13 like we talked about. You're currently incarcerated on
14 this drug charge; you go eighteen years; is that correct?

15 A Yes, sir.

16 Q Now --

17 THE COURT: Speak up just a little bit for me.

18 THE WITNESS: Yes, sir.

19 BY MR. BROOKS:

20 Q Now, you understand you're here for your post
21 conviction relief, where the only remedy is to get you a
22 new trial?

23 A Yes, sir.

24 Q And you and I have talked about that. You
25 understand that the only relief the judge can give you is

Randall Q. Sanders - Direct Examination by Mr. Brooks

1 to give you a new trial?

2 A Yes, sir.

3 Q Okay. And you understand that if you get a new
4 trial, there are some risks. You could potentially get
5 more time?

6 A Yes, sir.

7 Q Okay. And you told me you understand that and it's
8 your desire to go forward; is that correct?

9 A Yes, sir.

10 Q Okay. Now, I'm also going to ask you this,
11 Randall. See that lady sitting right there? That's the
12 court reporter, so when I ask you a question, you're going
13 to have to give a verbal answer. You got to say yes or no.
14 You can't just nod your head and say uh-huh or huh-huh like
15 we were talking back there because she's got to take
16 everything down. Do you understand that?

17 A I understand.

18 Q Okay. Now, in this case, your case ended up going
19 to trial?

20 A Yes, sir.

21 Q You had Ms. Stevens as your court-appointed public
22 defender; is that correct?

23 A Yes, sir.

24 Q But you weren't there at your trial?

25 A No, sir, I wasn't.

Randall Q. Sanders - Direct Examination by Mr. Brooks

- 1 Q That wasn't fair, was it?
- 2 A No, sir, it wasn't.
- 3 Q Why weren't you there -- now, I'm going to ask you,
- 4 you were out of jail, right?
- 5 A Yes, sir.
- 6 Q You were out on bond?
- 7 A Yes, sir.
- 8 Q Did you get notified to come to your court date?
- 9 A No, sir, I haven't.
- 10 Q You didn't know about it at all; is that right?
- 11 A No, sir, I didn't. Actually --
- 12 Q Go ahead and explain.
- 13 A Actually moments after my trial took place, I
- 14 showed up to court.
- 15 Q Okay. So after your trial was over --
- 16 A Yes, sir.
- 17 Q -- you just happened to come in?
- 18 A Yes, sir.
- 19 Q And that's when they apprehended you and you got
- 20 the sentence of eighteen years?
- 21 A Yes, sir.
- 22 Q Okay. Now, if you had known to be there, would you
- 23 have been there?
- 24 A Yes, sir, I would have.
- 25 Q Did you get a letter or a phone call from

Randall Q. Sanders - Direct Examination by Mr. Brooks

1 Ms. Stevens?

2 A No, sir, I didn't.

3 Q So basically you're saying you didn't get notice in
4 any way, shape or form to be at your trial?

5 A No, sir, I did not.

6 Q Okay. As a matter of fact, when you asked for your
7 discovery after you got incarcerated, you said you saw that
8 there was a plea offer?

9 A Yeah, a plea for five years.

10 Q Would you have taken that?

11 A Yes, sir, I would have.

12 Q Did you get told about that?

13 A Not to my knowledge.

14 Q Okay. So basically what you're saying is your
15 lawyer was ineffective because they didn't tell you about
16 the plea offer?

17 A No, sir, I really --

18 Q If you had known about it, you would have taken it?

19 A Yes, sir, I would have.

20 Q Okay. And if you'd known it, you definitely would
21 have been at your trial?

22 A Yes, sir, I would have.

23 Q Okay. Now, had you had opportunity to meet with
24 Ms. Stevens prior to the case being called, maybe give her
25 your contact information? Tell us about that?

Randall Q. Sanders - Direct Examination by Mr. Brooks

1 A I knew Ms. Stevens prior to this case because she
2 had handled a case prior to this that I was on, but I have
3 no knowledge of ever speaking with her or nothing because I
4 did met with her secretary and informed her secretary that
5 I was there to speak with Ms. Stevens. She told me that
6 Ms. Stevens was in a court hearing at that time and that I
7 wanted to look at the Court docket for court. My name was
8 not on the Court docket.

9 I did look at the next court term docket and my
10 name was also not on that docket. So I did left a message
11 with the secretary to let her know that it was urgent that
12 I speak with Ms. Stevens.

13 Q Did you leave contact information?

14 A Yes, sir, I did.

15 Q Okay. Did you ever get contacted?

16 A No, sir, I didn't.

17 Q Okay. Now -- so basically that's your number one
18 reason why you're asking this Court to overturn your
19 conviction; is that correct?

20 A Yes, sir.

21 Q Okay. And to give you a new trial?

22 A Yes, sir.

23 Q Okay. Because you didn't get notice to come to
24 court?

25 A No, sir, I did not.

Randall Q. Sanders - Direct Examination by Mr. Brooks

1 Q Now, you also talked about some other issues. You
2 felt the indictment was defective and not true billed; is
3 that correct?

4 A Yeah, being that it's a violation of your due
5 process, you got to follow due course, you know what I
6 mean? And due process of the law, you understand, treats
7 you with the fundamental fairness of justice. So
8 therefore, you know, I felt like I was deprived.

9 Q Okay. All right. That's another reason why you
10 wanted Judge McMahon to grant you a new trial?

11 A Yes, sir.

12 Q Okay. All right. Now we've covered not getting
13 notice to come to court; and we've covered the indictment
14 issues. Is there anything else that we need to tell the
15 judge why you should get another trial that we haven't
16 said?

17 A Just the point that you know, the basis for the --
18 just being present at trial. You know, violation of
19 confrontation clause of the Fifth Amendment, Sixth
20 Amendment, as well as Fourteen. They failed me out of due
21 process alone and I felt like I was deprived of that right.
22 If I have known, you know what I mean, maybe the outcome
23 would have been different.

24 Q Okay. We got that, Randall. I want to make sure
25 you understand. We've got it on the record that you didn't

Randall Q. Sanders - Direct Examination by Mr. Brooks

1 get notice and why that was important and that was what
2 we're saying was a deficiency and why you should be granted
3 a new trial.

4 Now, we talked about the indictment. Is there
5 anything else?

6 A That's my -- just, I guess the way that -- the
7 evidence, they stated to the judge that there was 6.48
8 grains. The drug analysis stated it was 6.49 grams and the
9 arresting officer stated it was 0.9 grams.

10 Q Okay.

11 A So less than a gram, a gram or less than a gram.

12 Q Okay. In reviewing the transcript, do you think
13 that's something your lawyer should have tried to point out
14 during the trial? Even though you weren't present, she
15 could have done some things to talk about the weight and
16 how that ended up having an impact on your case; is that
17 correct?

18 A Yeah, because it was a first offense, you know what
19 I'm saying, of position, which was enhanced to possession
20 with intent to distribute. But I had the plea, it would
21 have been just a possession charge.

22 Q Okay.

23 A You know.

24 Q All right. We got that. Is there anything else?

25 A I'm thinking -- not to my knowledge.

Randall Q. Sanders - Cross-Examination by Mr. Gourley

1 Q I believe that covers all your issues?

2 A Yeah.

3 Q All right. Answer any questions of Mr. Gourley
4 here.

5 THE COURT: Thank you, Mr. Brooks.

6 Mr. Gourley?

7 MR. GOURLEY: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. GOURLEY:

10 Q Mr. Sanders, how many times did you meet with
11 Ms. Stevens?

12 A I have no recollection.

13 Q No recollection?

14 A No, sir.

15 Q You were out on bond this entire time?

16 A Yes, sir.

17 Q You never went -- you went down to her office one
18 time, right?

19 A I went to her office -- each time I went to
20 Ms. Stevens' office -- I did see Ms. Stevens one day in the
21 hallway of the courthouse and -- I was coming to see her
22 then. I was always there for roll call --

23 Q Uh-huh.

24 A -- and things of that nature, but, no I do not.

25 Q Okay. So how many times would you estimate you

Randall Q. Sanders - Cross-Examination by Mr. Gourley

1 went to her office?

2 A Numerous of times.

3 Q Numerous of times?

4 A Yeah.

5 Q So you never -- did you ever review discovery with
6 your attorney?

7 A No, sir. I reviewed the discovery when I was in
8 prison.

9 Q Okay. And you were on bond when this case was
10 pending, right?

11 A Yes, sir.

12 Q And do you remember that your bond stated that if
13 you were not present, you would be tried in your absence?

14 A No, sir.

15 Q You don't recall signing that?

16 A No, sir.

17 Q Okay.

18 A I probably did sign it, but I had no knowledge or
19 understanding of it.

20 Q So you signed a document that you didn't
21 understand?

22 A Probably did.

23 Q Did you meet with Ms. Stevens the morning of the
24 trial?

25 A No, sir.

Randall Q. Sanders - Cross-Examination by Mr. Gourley

1 Q No. Okay. Ms. Stevens didn't say that your -- the
2 solicitor was going to call your case that morning?

3 A No, sir, I never spoke with Ms. Stevens.

4 Q So how did you show up to court that day?

5 A I just took it upon myself and showed up. Ten
6 minutes after I showed up, I ran into Ms. Stevens and I was
7 like, Ms. Stevens, I'm here to see what's going on with my
8 court case.

9 And she said, Well, I'm sorry, Mr. Sanders, we just
10 had your trial. You have to go to Courtroom 2 and see the
11 judge.

12 When I went to Courtroom 2 to see the judge, he
13 sentenced me to them eighteen years.

14 Q Okay. And then what happened after that?

15 A I went to prison.

16 Q You didn't run away?

17 A Oh, yeah, I did get a little scared and left the
18 courthouse and was brought back. That was it.

19 Q Okay. Now, you told the judge that your attorney
20 said they were going to call you early this morning. Do
21 you remember saying that to the judge during sentencing?

22 A Say again.

23 Q That your attorney said they were going to call
24 your case early this morning. Remember that? Did you tell
25 the judge that? Remember that? Telling the judge that?

Randall Q. Sanders - Cross-Examination by Mr. Gourley

1 A When, this morning here?

2 Q No, no, no, the morning that you were sentenced?

3 A Say again?

4 Q That you told the judge, when you were talking to
5 the judge prior to your sentencing, you told him that
6 Ms. Stevens said they were going to call your case early
7 this morning?

8 A No, I did not.

9 Q You didn't say that?

10 A No, I did not.

11 MR. GOURLEY: Give me one second. Beg the Court's
12 indulgence, Your Honor.

13 (WHEREUPON there was a pause in the proceedings.)

14 MR. GOURLEY: May I approach, Your Honor?

15 THE COURT: Yes, sir, certainly.

16 BY MR. GOURLEY:

17 Q You think you can read?

18 A I can.

19 Q Okay. Can you read line 23, please to yourself.

20 A She said that they was calling me earlier this
21 morning and -- whatever.

22 Q Okay. Can you repeat that one more time a little
23 bit louder?

24 THE COURT: What page is this on?

25 MR. GOURLEY: Line -- page 72, Your Honor, line 23.

Randall Q. Sanders - Cross-Examination by Mr. Gourley

1 THE COURT: All right. Thank you.

2 BY MR. GOURLEY:

3 Q So you did tell the judge that your attorney said
4 that they were going to call your case early this morning?

5 A I have no recollection of that.

6 Q But it's in the transcript?

7 A Yes, I see it's in the transcript.

8 Q Okay. All right. And you elected not to show
9 up -- so you elected not to show up that morning?

10 A I showed up, but --

11 Q Just late?

12 A Yeah, I had no knowledge --

13 Q And they had already tried the case?

14 A I had no knowledge of what was going on.

15 Q Now, you admitted that you do drugs?

16 A Yeah, at that particular time, yes, I was using.

17 Q Right. You told the judge that you had been using
18 drugs since you were about 17 years old?

19 A As a minor -- low -- or a minor, maybe, yeah.

20 Q And you'd been doing cocaine for two-and-a-half
21 years?

22 A I was on drugs period. I don't recall how long
23 or --

24 Q Okay.

25 A -- you know, whatever.

Randall Q. Sanders - Cross-Examination by Mr. Gourley

1 Q So you are guilty, then?

2 A No, I'm not.

3 Q Well, you were charged with intent to distribute
4 cocaine, so you just admitted to the judge that you do
5 cocaine?

6 A No, I used to.

7 Q You used to?

8 A Yeah.

9 MR. GOURLEY: No further questions, Your Honor.

10 THE COURT: Redirect, Mr. Brooks?

11 MR. BROOKS: No, sir.

12 THE COURT: All right.

13 Thank you, thank you very much, Mr. Sanders.

14 MR. BROOKS: Your Honor, that's the applicant's
15 case.

16 THE COURT: All right. Mr. Gourley.

17 MR. GOURLEY: Yes, Your Honor, the State would call
18 Ms. Lauren Stevens.

19 LAUREN STEVENS,

20 having been duly sworn, testified as follows:

21 THE BAILIFF: Thank you. Have a seat. State your
22 name and spell your last for the record.

23 THE WITNESS: Lauren Stevens, S-t-e-v-e-n-s.

24 ///

25 ///

Lauren Stevens - Direct Examination by Mr. Gourley

DIRECT EXAMINATION

BY MR. GOURLEY:

Q Ms. Stevens, how long have you been practicing law?

A I was sworn in in May of 1996.

Q And how much of that is criminal?

A I was a judicial clerk, then I worked for the solicitor's office for two years and then I worked as a public defender for thirteen.

Q Were you appointed or retained in this case?

A Appointed.

Q You recall when?

A There is an application that our office received January 15th, 2008.

Q Okay.

A Which includes this charge as well as several others.

Q Okay. And how many times did you meet with the applicant prior to his guilty plea? Just a rough estimate if you recall?

A Every time he showed up for roll call, he would say, come on Ms. Stevens, put this off as long as you can. You know I don't want to go to jail.

Q Uh-huh.

A So I did speak to him at every roll call.

Q And one of those meetings was the morning of the

Lauren Stevens - Direct Examination by Mr. Gourley

1 trial?

2 A Oh, yeah. I can even tell you what he was wearing.

3 Q Okay. And did you explain that the case was going
4 to be tried that morning?

5 A I did and he said, I'm going to go get me another
6 attorney. And I said, well, that's fine Mr. Sanders, but
7 your trial is going forward at 9:30, whether you and your
8 new attorney are here or not.

9 Q And he didn't show up that morning?

10 A No.

11 Q And you made a motion for continuance based on the
12 fact that he wasn't there, right?

13 A Yes.

14 Q Now he had a -- he was out on bond at this time,
15 correct?

16 A Yes.

17 Q And the bond says that if he's not there, he's
18 going to be tried in his absence, correct?

19 A Correct.

20 Q And he signed that bond?

21 A Yes, he did.

22 Q Okay. Did you file any Brady or Rule 5 motions in
23 this case?

24 A I did indeed.

25 Q Did you review it with the applicant?

Lauren Stevens - Direct Examination by Mr. Gourley

1 A I did indeed.

2 Q Now, did you discuss the applicant's version of the
3 facts in this case?

4 A Yes.

5 Q Discuss any possible defenses?

6 A Yes.

7 Q Okay.

8 A Well, the only hope we had was that I could argue
9 the amount did not meet the requisite for possession with
10 intent to distribute, but the items that they found in his
11 car, including a set of scales, were the justification the
12 State had for calling it possession with intent to
13 distribute.

14 Q Okay. So would you briefly describe characterize
15 the State's evidence against the applicant.

16 A They found a white rock-like substance wrapped in
17 tin foil in his shoe.

18 Q Uh-huh. Okay. Did he ever give you leads or
19 witnesses to investigate?

20 A I'm not sure that investigation would have removed
21 the tin foil full of crack from his shoe.

22 Q All right. Do you feel you had enough time to
23 prepare for trial?

24 A There was a plea offer on the table which he and I
25 had discussed in detail. He was originally charged with

Lauren Stevens - Direct Examination by Mr. Gourley

1 possession with intent to distribute cocaine base, third --

2 Q Uh-huh.

3 A A failure to stop for a blue light, second; and
4 possession with intent to distribute marijuana, third.

5 Q Uh-huh.

6 A The plea offer was made December 5th, 2008 for
7 possession of cocaine base, third; failure to stop for a
8 blue light, second; and simple possession of marijuana,
9 second. If he had taken the plea, which we had discussed
10 on several occasions, and he told me he always intended to
11 take the plea --

12 Q Uh-huh.

13 A -- but to try to put it off as long as possible
14 because he knew he would do some time and just wanted to
15 try to put it off as long as possible. If he had taken the
16 plea, which he claims to be unaware of, he would not have
17 been facing an 85 percent possession with intent to
18 distribute cocaine base, third, because it was sentenced,
19 back then as a distribution. He would have been facing a
20 zero to ten, of which he would have to do a third before he
21 would have been eligible for parole.

22 Q So just to be clear, you did relay that plea offer
23 and the applicant understood it was on the table?

24 A Every time he showed up for roll call and asked me
25 to put it off, I reminded him that the plea offer would

Lauren Stevens - Cross-Examination by Mr. Brooks

1 only be good until they pulled a jury.

2 Q Okay.

3 MR. GOURLEY: No further questions, Your Honor.

4 THE COURT: Thank you. Thank you, Mr. Gourley.

5 Mr. Brooks?

6 CROSS-EXAMINATION

7 BY MR. BROOKS:

8 Q Ms. Stevens.

9 A Yes, Mr. Brooks.

10 Q How are you today?

11 A Wonderful.

12 Q As you stated, you represented Mr. Sanders in your
13 capacity as a public defender back then?

14 A I did indeed.

15 Q And did you have contact information for him?

16 A It's very interesting that you should ask that,
17 Mr. Brooks, because the first number that we had for him
18 was 316-5800, which we attempted to call him on 11/7/2008.
19 That number was not correct. There was also another
20 number, which we tried and it said that the subscriber is
21 not taking any calls at this time. We made those calls on
22 11/7/2008, 11/10/2008, 11/11/2008, 11/12/2008, 11/14/2008,
23 11/17, 2008, 11/17, 2008, 11/18/2008, and twice on
24 11/19/2008.

25 We had a new number for him listed for January

Lauren Stevens - Cross-Examination by Mr. Brooks

1 12th, 2009: 236-0544; and that number no longer belonged
2 to Randall. So his assertion that we did not try to
3 contact him is incorrect.

4 THE WITNESS: And if the judge would like a copy of
5 this, I have no problem printing it out for you.

6 THE COURT: Thank you, thank you very much,
7 Ms. Stevens.

8 You may ask your next question, Mr. Brooks.

9 BY MR. BROOKS:

10 Q So, Ms. Stevens, now -- you stand by your assertion
11 that you went over -- that you went over this offer with
12 Mr. Sanders; is that correct?

13 A On several occasions.

14 Q Okay. And this was obviously prior to the trial;
15 is that correct?

16 A It is indeed.

17 Q Okay. Now, when did you get notified that they
18 were going to try this case at the time they tried the
19 case?

20 A He was on the trial list and that plea offer was
21 for the January term. We wrote him a letter on December
22 29, 2008. I received the -- excuse me, I received the
23 letter on December 29, 2008, letting me know that he would
24 be coming up for trial during the January 5th, 2009 term,
25 which would have been plea week, so the first trial week

Lauren Stevens - Cross-Examination by Mr. Brooks

1 would have been January 12th. We tried to notify the
2 client and let him know that, and of course, as I
3 mentioned, we were unable to do so. He was on the trial
4 list for Monday, January 12th. So if he was coming up here
5 and checking -- it actually was not listed for the 12th.

6 THE COURT: Say that again.

7 THE WITNESS: He was not listed for the 12th, Your
8 Honor. They changed it daily.

9 BY MR. BROOKS:

10 Q This was under solicitor Jackson's regime, they
11 were just --

12 A Correct. He was, however, listed on the 13th and
13 the note here next to his name was that there was no phone
14 number, then he was on the probable trial list for the
15 15th -- I mean the 14th, but again we had no number and
16 then again on -- no he would not have been on the 16th
17 because we would have already tried him.

18 Q Okay. So your file indicates that you made -- you
19 tried to make contact with him?

20 A Yes.

21 Q Okay. And your assertion is that you were
22 unsuccessful?

23 A Yes.

24 Q Okay. But you do recall seeing him the morning of?

25 A Yes, as a matter of fact he was wearing a green and

Lauren Stevens - Cross-Examination by Mr. Brooks

1 yellow striped Polo shirt and jeans. And I remember that
2 because I'm a Green Bay fan and they were green and yellow.

3 Q And you say that with such confidence.

4 A I'm extremely sure.

5 MR. BROOKS: Beg the Court's indulgence, Your
6 Honor.

7 THE COURT: Certainly, Mr. Brooks.

8 MR. BROOKS: Judge, that's all our questions.

9 THE COURT: Redirect?

10 MR. GOURLEY: No, Your Honor.

11 THE COURT: Well, Ms. Stevens, I know that the --
12 I haven't had opportunity to read all the transcript of
13 record.

14 THE WITNESS: Yes, sir.

15 THE COURT: But you've got January 13 and 14th of
16 09. Did it go over to the next day? Like I say, I just
17 haven't read it all --

18 THE WITNESS: Well, Your Honor, we did -- we pulled
19 a jury in the morning. I tried to delay as much as I could
20 so it would go until after lunch so I could spend lunch
21 hour trying to get Mr. Sanders up here. I was still
22 hopeful they would take the plea. He did show up that
23 afternoon. When I told him he had a bench warrant, he took
24 off. I don't remember if he was actually sentenced that
25 day --

1 THE COURT: All right.

2 THE WITNESS: -- or if he was sentenced the next
3 day. But the trial, Your Honor, only to the morning --

4 THE COURT: So it may have been the next day when
5 he was sentenced and that's why they have the 14th on here.

6 THE WITNESS: That's the only thing I could think
7 of, Your Honor. And I don't remember exactly -- I just
8 remember when I told him he had a bench warrant they did
9 have to chase him down and the judge may have not wanted --
10 I don't know. I don't really know.

11 THE COURT: And like I say, I haven't read all the
12 transcript but I'll get into that. I see where you also
13 made a number of motions and a motion of continuance.

14 THE WITNESS: Yes, sir. Your Honor, I made a
15 motion for the bench warrant and then I know that my client
16 was -- Mr. Sanders was very upset about that. But again, I
17 was trying to do anything I could to try to delay it
18 because I was hoping that I could get him back up there and
19 still get him that plea offer.

20 THE COURT: And I notice that you contacted his
21 bondsman.

22 THE WITNESS: We did that the night before and I
23 think that's how he ended up coming in that morning.
24 That's not something that we normally -- we do.

25 THE COURT: And I notice Court's Exhibit No. 1,

1 which I don't have, appears to be the bond form.

2 THE WITNESS: Yes, sir Your Honor.

3 THE COURT: Is that correct?

4 THE WITNESS: Yes, sir, Your Honor.

5 THE COURT: And you questioned its admissibility --

6 THE WITNESS: Yes, sir.

7 THE COURT: -- as I understand it.

8 So he came up here -- let me make sure my timetable
9 is correct, I'm tracking correctly. He came up here or you
10 saw him sometime after the jury had returned.

11 THE WITNESS: Yes, sir.

12 THE COURT: After his trial. And then he -- and
13 this -- it's not relevant to my decision on his post
14 conviction relief, I just want to make sure I'm tracking
15 right -- and that's when he said I got scared and his feet
16 started moving like his mouth did when he first went on the
17 stand. He just kind of took off, right?

18 THE WITNESS: Yes, sir, the old -- this took place
19 in the old courthouse, and I believe the library is across
20 the street and I think after some weaving and going this
21 way and that way, they caught him over by the family court.

22 THE COURT: I got you. All right. And then maybe
23 the next day is when they sentenced him.

24 THE WITNESS: That may be why it says the 14th.
25 Your Honor.

1 THE COURT: Had he been regularly been attending
2 what we no longer have, roll call.

3 THE WITNESS: Yeah, he was pretty much showing up
4 when he was supposed to and every time we would talk and he
5 would say, come on, man, Ms. Stevens, come on, okay. Come
6 on, I don't want to go to jail, put it off as long as you
7 can.

8 THE COURT: You heard that very often?

9 THE WITNESS: Your Honor, every one of my clients
10 would do that and I could promise them I could do
11 everything I could to put it off as long as I could, but at
12 some time, you have to pay the piper.

13 THE COURT: Thank you, thank you.

14 Anybody have any follow-up questions to anything
15 asked, you may certainly ask, Mr. Brooks and Mr. Gourley.

16 MR. GOURLEY: I have none, Your Honor.

17 MR. BROOKS: No other questions.

18 THE COURT: Thank you. Thank you very much,
19 Ms. Stevens.

20 THE WITNESS: No problem, Your Honor.

21 THE COURT: Any other witnesses, Mr. Gourley?

22 MR. GOURLEY: No, Your Honor.

23 THE COURT: All right. Thank you.

24 Mr. Brooks, I'll be glad to hear from you.

25 MR. BROOKS: May it please the Court, Judge. This

1 has been a very short post conviction relief matter,
2 nonetheless very important. Our client -- my client's
3 position is that he did not get notice to be at trial that
4 day and as he has testified to, we would respectfully ask
5 the Court to grant his PCR case and give him a new trial.

6 THE COURT: Thank you, thank you very much,
7 Mr. Brooks.

8 MR. GOURLEY: May it please the Court, Your Honor?
9 In regards to the notice outside of the City of Aiken
10 versus David Michael Koontz, it's 629 Southeastern 2(d),
11 686, stands for the proposition that if the defendant
12 signed the bond, that's adequate notice that --

13 THE COURT: Does that cite Flemming and Osborne?

14 MR. GOURLEY: Yes, sir, it sure does. And then
15 also --

16 THE COURT: I know the old law. I don't know the
17 new. If they don't change it, I still know it.

18 MR. GOURLEY: That is correct. It states that the
19 bond receiver signature is an adequate notice as regards to
20 trial. Further, Your Honor, it's Ms. Stevens' testimony
21 that she met with the applicant the morning of the trial
22 and notified him that he was supposed to be there and just
23 for clarity's sake, January 14th according to transcript on
24 page 27, was when the sentencing proceeded.

25 THE COURT: And I didn't -- I didn't catch that

1 part, I just haven't read it closely enough by that point.

2 MR. GOURLEY: Yes, Your Honor.

3 THE COURT: Thank you. That makes sense.

4 MR. GOURLEY: And with regards to contact and the
5 failure to contact the defendant, I believe Ms. Stevens'
6 testimony is that she attempted to contact him on numerous
7 occasions and that is sufficient in regards to that and we
8 would ask that this Court would deny the applicant's post
9 conviction relief application.

10 THE COURT: Thank you.

11 Anything else?

12 MR. BROOKS: Judge, we stand by testimony and we
13 want a new trial.

14 THE COURT: Thank you very much.

15 All right. Thirty days proposed order to each
16 other, to my law clerk.

17 Good luck to you, very much, Mr. Sanders.

18 MR. BROOKS: Thank you, Judge.

19 THE COURT: Thank you. Thank y'all for being here.

20 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

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4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald, Official
7 Court Reporter for the Fifth Judicial Circuit of the State
8 of South Carolina, do hereby certify that I reported the
9 proceedings in the captioned case in the Court of General
10 Sessions in and for the State of South Carolina on the 2nd
11 day of October, 2013.

12 I FURTHER CERTIFY that the foregoing 31 pages,
13 constitute a true, accurate and complete transcript of said
14 hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 5th day of March, 2014.

19

20

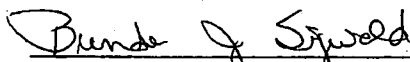
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Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020.

STATE OF SOUTH CAROLINA **RECORDED** IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER 2013 DEC -9 PM 12:59 FOR THE THIRD JUDICIAL CIRCUIT

Randall Q. Sanders, #332675;

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Case No. 2012-CP-43-520

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED

Sherry H. Hunt
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of a post-conviction relief application filed on March 15, 2012. Respondent made its Return on August 6, 2012. An evidentiary hearing into the matter was convened on October 2, 2013, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. Applicant was true bill indicted during the January 2008 term of the Sumter County Grand Jury for possession with intent to distribute cocaine (2008-GS-43-134). Lauren Stevens, Esquire, represented him. Applicant proceeded to trial and on January 14, 2009, he was convicted of possession with intent to distribute cocaine base- third or subsequent offense. The Honorable R. Ferrell Cothran, Jr. sentenced the Applicant to eighteen years imprisonment and a fine of fifty thousand dollars.

A timely notice of appeal was filed on the Applicant's behalf and appeal was perfected.

The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Sanders, No. 2012-UP-082 (Ct. App. filed February 22, 2012). The Remittitur was sent on February 13, 2012.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel regarding trial preparation
 - a. "Counsel failed to investigate case adequately."
 - b. "Denied right to be present during state of trial."
 - c. "Counsel failed to object to certain testimony which was not deemed strategic."
 - d. "Counsel failed to contemporaneously object to preserve issues for appellate review."
2. Due Process Violation
 - a. "Denial of equal protection of the law."
 - b. "Denied right to be present during stage of trial."

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. The State presented testimony from plea counsel, Lauren Stevens, Esquire (Counsel). This Court also had before it a copy of Applicant's trial transcript, Applicant's appellate records, the records of the Sumter County Clerk of Court, and records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified he was out on bond prior to his trial. Applicant testified he made multiple attempts to get in contact with Counsel. Specifically, Applicant testified he went to her office on several occasion and left his contact information, but Counsel never contacted him. Applicant testified Counsel never gave him any notice of trial. Applicant testified he showed up for roll call that afternoon and learned that he had been tried in his absence. Applicant testified he went to Counsel's office and Counsel informed him that he

was found guilty. During cross-examination, Applicant testified that his bond papers gave him notice that his case could be called for trial and if he did not appear he would be tried in his absence. Applicant testified and the transcript reflects him explaining to the trial judge that Counsel told him his case would be called for trial that morning. (Tr. p. 72 ln. 23—p.73 ln. 1). Applicant testified he was aware that his case would be called for trial that morning and he elected not to show up. Applicant further testified he had been on drugs since he was seventeen years old and that he had been a cocaine user for the past two and a half years prior to his arrest.

Following Applicant's testimony, Counsel was called to testify by the State. Counsel testified she was appointed to Applicant's case January 15, 2008. Counsel testified she met with Applicant "every time that he would show up" for roll call. Counsel testified she filed for and reviewed discovery with Applicant. Counsel further testified she discussed Applicant's version of the facts and any possible defenses. Counsel testified that Applicant was out on bond the entire time. Counsel testified the State offered a plea deal on December 5, 2008 and Applicant intended to accept the plea offer. However, Counsel testified Applicant continually requested her to delay his case. Counsel testified the State had very good evidence against Applicant. Specifically, Counsel testified the Police found cocaine wrapped in aluminum foil hidden in Applicant's sock.

Furthermore, Counsel testified Applicant continually changed his phone number. Specifically, Counsel testified she attempted to contact him at least twelve different times during the course of her representation on various numbers given to her by Applicant. Counsel testified she met with Applicant the morning of Applicant's trial. Counsel testified she explained to Applicant that his case was going to be called for trial that morning. Counsel testified Applicant failed to appear for trial and she made a motion for continuance as a result, but her motion was

ultimately denied.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is less credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test 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, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient

performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

INEFFECTIVE ASSISTANCE OF COUNSEL

Counsel failed to investigate case adequately.

This Court finds Applicant's allegation that he was denied effective assistance of counsel for failing to investigate his case adequately is without merit. Counsel testified she filed for and reviewed discovery with Applicant. Counsel further testified that she discussed Applicant's version of facts and discussed any possible defenses with Applicant. Counsel testified she met with Applicant "every time he would show up." Counsel testified Applicant was out on bond and was a very difficult client to get in touch with as he continually changed phone numbers. Counsel testified she attempted to get in contact with Applicant at least twelve times on various phone numbers. Counsel testified Applicant intended to accept the plea offer, but continually requested her to delay his case. Further, despite Applicant's intention, Counsel testified she was prepared for trial. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). Applicant can prove no prejudice when he presents no evidence at PCR hearing to show what Counsel could have further investigated in preparation for a trial. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998);



Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997). Applicant provided no testimony or evidence which would substantiate this allegation and show what further investigation Counsel should have undertaken in preparation for a trial. Applicant has failed to meet his burden of proof and thus, this allegation is denied.

Trial Counsel ineffective for allowing Applicant to be tried in his absence

This Court finds Applicant's allegation of ineffective assistance of counsel for allowing Applicant to be tried in his absence is without merit. Counsel testified and Applicant confirmed that they met the morning of trial. Counsel testified and Applicant confirmed that she explained his case would be called for trial that morning. Specifically, Applicant testified that a condition of his bond stated that he would be tried in his absence if he failed to appear. Applicant further testified that he understood he could be tried in his absence if he failed to appear and ultimately chose not to appear for his trial.

Furthermore, Counsel testified she requested a continuance prior the start of the trial as a result of Applicant failure to appear. However, Counsel testified her motion was ultimately denied. This Court finds that Applicant knowingly and voluntarily waived his right to be tried in his presence. Furthermore, this Court finds that Applicant has not shown that Counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Applicant provided no testimony or evidence which would substantiate this allegation. Applicant has failed to meet his burden of proof and thus, this allegation is denied.

ALL OTHER ALLEGATIONS

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. Specifically, Counsel's failure to object to certain testimony, failure to preserve issues for appellate review, and a denial of due

process. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

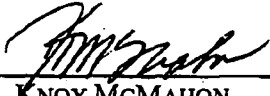
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.



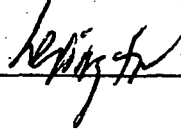
IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 26 day of Nov, 2013.



R. KNOX MCMAHON
Presiding Judge
Third Judicial Circuit


_____, South Carolina

ARREST WARRANT

J-289189

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of

Sunder

THE STATE

Randall q Sanders

Address:

SUMTER, SC 29150-

Phone:

Sex: M Race: B Height: 6 1 Weight: 180

DL State: SC DL #:

DOB:

Prosecuting Agency: Sumter County Sheriff

Prosecuting Officer: J Lane - 0390

Offense: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 1st offense

Offense Code: 0183

Code/Ordinance Sec: 44-53-0370(B)(1)

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 the law. The accused

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on 3-9-07

RETURN WARRANT TO:

Sumter County General Sessions
 141 N. Main St., Rm 308
 Sumter, SC 29150

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Sunder

Personally appeared before me the affiant J Lane

being duly sworn deposes and says that defendant Randall q Sanders

did within this county and state on or about 03/08/2007

violate the criminal laws of the

State of South Carolina (or ordinance of

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Form Approved By
 S.C. Attorney General
 April 21, 2003
 SCCA 518

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ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/8/2007

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of

Sumter

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Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Sunder

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Affiant's Address 107 East Hampton Street

Sumter, SC 29150-

Affiant's Telephone (803)436-2790

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Signature of Issuing Judge

Judge Code: 5769

Judge's Address

Issuing Court

Megistrate

Municipal

DEPUTY CLERK OF COURT

SUMTER COUNTY

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Signature of Issuing Judge

Judge Code: 5769

Judge's Address

Issuing Court

Megistrate

Municipal

DEPUTY CLERK OF COURT

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WITNESSES

SCSO

Inv. J. Lane

DOCKET NO. 2008-GS-43- 134

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

JANUARY TERM 2008

THE STATE

vs.

RANDALL Q. SANDERS

ARREST WARRANT NUMBER

J289189

D/A: 03/09/07

ACTION OF GRAND JURY

True Bill

William Bookless
Foreperson of Grand Jury

Date: 1/3/2008

VERDICT

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE COCAINE

Foreperson of Petit Jury
Date:

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER) POSSESSION WITH INTENT TO DISTRIBUTE
COCAINE

At a Court of General Sessions, convened on January 3, 2008, the Grand Jurors
of SUMTER County present upon their oath:

CERTIFIED TRUE COPY
ORIGINAL FILE
Barbara Hager
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

That RANDALL Q. SANDERS did in Sumter County on or about March 8, 2007, possess with intent to distribute a quantity of cocaine, a controlled substance under the provisions of Act No. 445, Acts of 1971, General Assembly of South Carolina, as amended (Section 44-53-370 et. seq., 1976 Code of Laws of South Carolina, as amended), such possession not having been authorized by law.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

C. Kelly Jackson
SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

STATE

VS.

RANDALL Q. SANDERS

AKA:

Race: Black

Sex: Male

Age:

DOB:

SS#:

Address:

Sumter, SC 29150

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-43-0134

AW#: J289189

Date of Offense: March 08, 2007

S.C. Code §: 44-53-0370(b)(1)

CDR Code #: 0183

CERTIFIED TRUE COPY
OF ORIGINAL FILE

SENTENCE SHEET

Barbara Shaper
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINAIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☒ PLEADSTO: PWID Cocaine Base (3-1)in violation of § 44-53-370 of the S.C. Code of Laws, bearing CDR Code # 01185☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 18 days/months/years or ☒ under the Youthful Offender Act not to exceed _____ yearsand/or to pay a fine of \$ 50,000, provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$56-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114 (BUI Breath Test Fee)

\$56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

	\$50.00
	\$53.75
\$100	\$100.00
\$100	\$
\$12	\$
\$500	\$
\$25	\$25.00
\$100	\$100.00
\$50	\$
\$40/ea	\$
	\$31,999.40
	\$32,000.00

Plus 5.00

101,099.40

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13-TP
Requires \$500 be paid to Clerk during probation.

Court Reporter:

James C. Campbell
Clerk of Court/ Deputy Clerk

Kathy Richardson

PRESIDING JUDGE

Judge Code:

Sentence Date:

2 11 14 14
1-14-09