

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

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Certiorari to Darlington County

S.C. Supreme Court

Howard P. King, Circuit Court Judge

Opinion No. 2012-UP-577 (S.C. Ct. App. filed 10/24/2012)
08-GS-16-1502, 1504-1505.

THE STATE,

RESPONDENT,

V.

MARCUS ADDISON,

PETITIONER

APPELLATE CASE NO. 2011-185586

APPENDIX

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Attorneys for Respondent

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**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.

Marcus Addison, Appellant.

Appellate Case No. 2011-185586

Appeal From Darlington County
Howard P. King, Circuit court Judge

Unpublished Opinion No. 2012-UP-577
Submitted September 3, 2012 – Filed October 24, 2012

AFFIRMED

Assistant Appellate Defender Dayne C. Phillips, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Senior Assistant Deputy
Attorney General Salley W. Elliott, and Senior Assistant
Attorney General Harold M. Coombs, Jr., all of
Columbia; and Solicitor William B. Rogers, Jr., of
Bennettsville, for Respondent.

PER CURIAM: Marcus Addison appeals his convictions of trafficking in crack cocaine and two counts of contributing to the delinquency of a minor, arguing the trial court erred in denying his motion to suppress the drugs found at his residence because the magistrate did not have a substantial basis to conclude that probable cause existed to issue a search warrant. We affirm,¹ pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Gentile*, 373 S.C. 506, 513, 646 S.E.2d 171, 174 (Ct. App. 2007) (noting that a court reviewing a magistrate's decision to issue a search warrant has the duty "to ensure the issuing magistrate had a substantial basis upon which to conclude that probable cause existed" (internal quotation marks and citation omitted)); *id.* at 512, 646 S.E.2d at 174 ("A magistrate may issue a search warrant only upon a finding of probable cause."); *id.* at 512-13, 646 S.E.2d at 174 ("This determination requires the magistrate to make a practical, common-sense decision of whether, given the totality of the circumstances set forth in the affidavit, including the veracity and basis of knowledge of persons supplying the information, there is a fair probability that contraband or evidence of a crime will be found in a particular place." (internal quotation marks and citation omitted)); *State v. Dupree*, 354 S.C. 676, 683, 583 S.E.2d 437, 441 (Ct. App. 2003) ("The term 'probable cause' does not import absolute certainty. Rather, in determining whether a search warrant should be issued, magistrates are concerned with probabilities and not certainties." (citations omitted)); *State v. Rutledge*, 373 S.C. 312, 317, 644 S.E.2d 789, 792 (Ct. App. 2007) ("Oral testimony may be used to supplement search warrant affidavits.").

AFFIRMED.

FEW, C.J., and WILLIAMS and PIEPER, JJ., concur.

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

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

MARCUS ADDISON,

APPELLANT

Appeal from Darlington County

Howard P. King, Circuit Court Judge

Opinion No. 2012-UP-577

PETITION FOR REHEARING

Appellant Marcus Addison respectfully petitions this Court to rehear this case pursuant to Rule 221(a), SCACR. Appellant submits that this Court has overlooked and misapprehended points necessary for the proper resolution of this case. Specifically, this Court cited *State v. Gentile*, 373 S.C. 506, 512-13, 646 S.E.2d 171, 174 (Ct. App. 2007) in finding, “given the totality of the circumstances set forth in the [search warrant] affidavit, including the veracity and basis of knowledge of persons supplying the information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” (internal quotation marks and citation omitted). In *Gentile*, 373 S.C. at 514, 646 S.E.2d at 174, this Court found that “the affidavit and the supplemental oral testimony were insufficient to provide the magistrate with a substantial basis for

which to find probable cause to issue the search warrant for Gentile's residence." This Court also found that "the arrest of one of Gentile's visitors did not support a finding of probable cause to search the residence" because "[t]he officers . . . had no knowledge of whether the driver purchased the marijuana from Gentile" and "[n]either the driver nor his vehicle was searched prior to going to Gentile's residence." *Id.* at 516, 646 S.E.2d at 175-76.

In this case, the "[p]robable cause section [of the search warrant affidavit] state[d] that within the past seventy-two hours, a reliable confidential informant ["CI"] for the Darlington County Drug Unit, has *purchased a quantity of crack-cocaine from the described residence* located on [Appellant's address] in the Hartsville area of Darlington County. This event was monitored by law enforcement agents." R. 19, ll. 12-22. The property sought in the search warrant affidavit was "cocaine, crack-cocaine, U.S. currency, and any item[s] used to store or facilitate the sale of illegal drugs." R. 90. However, in actuality: the drug dealer was standing on the front porch *outside* of Addison's home; approached the CI's vehicle located "fifteen yards away from the house;" and sold the CI crack-cocaine. R. 21, l. 2 – 22, l. 20. Notably, law enforcement never saw the CI enter or exit Addison's home, the drug transaction did *not* occur inside Addison's residence, and the CI was *not* searched *after* the drug transaction occurred. R. 36, l. 22 – 37, l. 12.

Pre-trial, defense counsel moved to suppress the drug evidence found during the execution of the search warrant on May 21, 2008. R. 10, l. 4 – 52, l. 19. At the suppression hearing, Officer Charles Wright admitted that the drug dealer standing on Addison's porch was never seen inside the home. R. 16, l. 4 – 17, l. 19. Officer Wright also admitted that the drug dealer "could have" also been Dontavious Jackson, who "lives across the street" from Addison's home. R. 16, ll. 13-22.¹

¹ The State admitted that "[y]ou can't see the person [in the video] good" and "they didn't search [the drug dealer] afterwards." R. 44, ll. 10-14.

Additionally, Officer Brad Lawson admitted: (1) that Addison was not seen in the video at all; (2) that Addison's address was not mentioned in the video; (3) that the CI "was fifteen yards away from the house" when he was sold crack-cocaine; and (4) that the CI never went inside Addison's home. R. 22, l. 16 – 24, l. 13.

Defense counsel argued that probable cause did not exist to issue the search warrant for four reasons. First, the State failed to present evidence that drugs were inside Addison's home because neither the CI nor the drug dealer entered the home. R. 36, ll. 16-21; 46, ll. 3-17. Second, a more appropriate location for the search warrant existed because the officers knew the identity of the drug dealer and knew that he lived across the street from Addison's home. R. 38, l. 8 – 39, l. 22. Third, the State failed to show that Addison, the owner of the home, was involved in illegal activity because he was not present or even seen during the drug transaction that occurred "15 yards away" from his residence. R. 22, ll. 18-20; 39, l. 23 – 40, l. 12. Fourth, the drug transaction was not sufficient to establish probable cause because the CI was not searched immediately after the transaction. R. 36, ll. 22-25.

At the conclusion of the suppression hearing, Judge King denied defense counsel's motion to suppress. R. 47, l. 25 – 52, l. 19. In addressing the absence of entry into Addison's home, Judge King stated that "I don't think that there is any requirement that [the CI or the person engaged in illegal activity] must enter the house in order to establish probable cause, if [the person engaged in illegal activity] is shown coming from the house." R. 50, ll. 12-17. However, there is no evidence that the drug dealer was seen entering or exiting Addison's residence. R. 16, l. 4 – 17, l. 19.

Here, the drug transaction occurred "15 yards away" from Addison's home; thus, without further investigation, the drug transaction was insufficient to establish a fair probability that drugs would be found inside Addison's home. R. 10, l. 4 – 52, l. 19; *See Gentile*, 373 S.C. at 515, 646

S.E.2d at 175, n. 2 (Ct. App. 2008) (where this Court held that the trial judge erred in denying a motion to suppress because additional investigation into residence was required to establish probable cause); *see also State v. Adams*, 13 A.3d 1162 (Del. 2008). Consequently, this case is even weaker than *State v. Gentile* because the drug dealer standing on Addison's porch does *not* establish a fair probability that drugs would be found *inside* Addison's home when the drug dealer was *not* seen entering or leaving the residence. *Gentile*, 373 S.C. at 515-516, 646 S.E.2d at 175-176 (noting that an affidavit in support of a search warrant for Gentile's house was not sufficient to support a finding of probable cause when the police found marijuana on a visitor who had just left Gentile's residence); R. 16, l. 4 – 17, l. 19; 23, ll. 8-19; 57, ll. 20-21; 58, ll. 1-6

Furthermore, this case is easily distinguishable from the following cases: *State v. Dupree*, 354 S.C. 676, 583 S.E.2d 437 (Ct. App. 2003); *State v. Keith*, 356 S.C. 219, 588 S.E.2d 145 (Ct. App. 2003); and *State v. Scott*, 303 S.C. 360, 400 S.E.2d 784 (Ct. App. 1991); because the defendants in those cases were arrested after leaving the residences whereas here, neither the CI nor the drug dealer were ever inside Addison's home. R. 15, l. 11 – 17, l. 19. Officers Lawson and Wright also knew that the drug dealer was most likely one of two people: (1) minor child D.G., who lived "down the street" from Addison's residence, or (2) Dontavious Jackson, who "live[d] across the street" from Addison residence. R. 16, l. 4 – 17, l. 19.

Again, as for Addison and his residence, he is a paraplegic who was not present or seen during the drug transaction. R. 23, ll. 8-19; 57, ll. 20-21; 58, ll. 1-6. The drug transaction did not occur inside his residence and his address was never referenced in the video. R. 22, ll. 6-20. Therefore, without additional investigation, the only shred of circumstantial evidence that linked criminal activity to Addison's residence was the "complaints from citizens" and drug transaction that occurred on the periphery of Addison's premises. R. 21, ll. 2-8; *See Gentile*, 373 S.C. at 514,

646 S.E.2d at 175 (referencing *State v. Hunt*, 150 N.C.App. 101, 562 S.E.2d 597, 601-02 (2002) (reversed trial court's decision to deny defendant's motion to suppress drug evidence: "[a]ll that the affidavit offers are complaints from citizens suspicious of drug activity in a nearby house. There is no mention of anyone ever seeing drugs on the premises)).

Similar to facts in this case, in *State v. Adams*, 13 A.3d 1162 (Del. 2008), the Delaware Superior Court granted the motion to suppress because the search warrant affidavit did not establish nexus between police officers' surveillance of address where defendant lived and the belief that drugs would be found there where: (1) the CI provided a tip that a black male was known to sell cocaine at the residence; (2) the seller described by informant was not defendant; (3) there were no drug transactions observed in which defendant participated; and (4) defendant was never seen transporting anything that could be considered as containing drugs from residence.

In reviewing the validity of the search warrant, Magistrate Thomas "was misled by information in [the] affidavit that [Officer Lawson] knew was false or would have known was false except for his reckless disregard of the truth." R. 92; R. 19, ll. 12-20; *United States v. Leon*, 468 U.S. 897, 923 (1984) (citing *Franks v. Delaware*, 438 U.S. 154 (1978) (noting that suppression remains an appropriate remedy if the magistrate issuing a warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth)); *See United States v. Colkley*, 299 F.2d 297 (4th Cir. 1990); *See also State v. Missouri*, 337 S.C. 548, 524 S.E.2d 394 (1999). The search warrant affidavit was prepared without disclosure of all the known facts because Officer Lawson wrote in the affidavit that "within the past seventy-two hours, a reliable confidential informant for the Darlington County Drug Unit, has *purchased a quantity of crack-cocaine from the described residence* located on

[address] in the Hartsville area of Darlington County. This event was monitored by law enforcement agents” when the CI *actually* purchased the drugs “15 yards away” from the home. R. 19, ll. 12-22; *State v. Thompson*, 363 S.C. 192, 200, 609 S.E.2d 556, 560 (Ct. App. 2005) (noting that “[i]n reviewing the validity of a warrant, an appellate court may consider only information brought to the magistrate's attention.”).

Furthermore, Officer Lawson’s sworn statement and the State’s failure to address the exculpatory information demonstrates that they were “whistling past the grave yard” on this critical omission of fact. *State v. Missouri*, 337 S.C. 548, 524 S.E.2d 394 (1999) (citing *Gates*, 462 U.S. 213 (noting that when reviewing a magistrate's decision to issue a search warrant, an appellate court must consider the totality of the circumstances.)). The drug evidence obtained from the search warrant should have been suppressed because the affidavit includes a misstatement of fact, which bolstered the lack of evidence presented to Magistrate Thomas, and if the omitted exculpatory information (*the drug transaction occurred “15 yards away” from the home*) would have been included in the affidavit, then Magistrate Thomas would not have issued the search warrant for lack of probable cause. R. 19, ll. 12-22; *Missouri*, 337 S.C. at 554, 524 S.E.2d at 397; *see King*, 349 S.C. at 150, 561 S.E.2d at 644.

Therefore, the trial court erred by refusing to suppress the drug evidence found in Addison’s home because without additional investigation into the residence and the omitted data on the search warrant affidavit, there was an insufficient nexus between the events surrounding the drug transaction which did not occur inside Addison’s home and probable cause to search Addison’s residence. *See Baccus*, 367 S.C. at 50, 625 S.E.2d at 221 (“[t]he duty of the reviewing court is to ensure the issuing magistrate had a substantial basis upon which to conclude that probable cause existed.”); *See U.S. Const. amend. IV*; S.C.Code Ann. § 17-13-140 (1985).

For the foregoing reasons, Appellant Marcus Addison respectfully requests that this Court grant his petition for rehearing, reverse his convictions, and remand this case to the Darlington County Court of General Sessions for a new trial.

Respectfully submitted,


Dayne C. Phillips
Appellate Defender

This 25th day of October, 2012.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Darlington County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

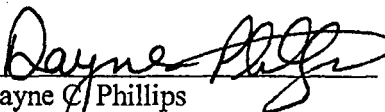
V.

MARCUS ADDISON,

APPELLANT

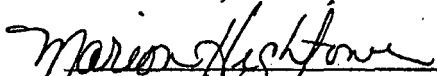
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Harold M. Coombs, Jr., Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 5th day of November, 2012.


Dayne C. Phillips
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 5th day
of November, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022

The South Carolina Court of Appeals

The State, Respondent,

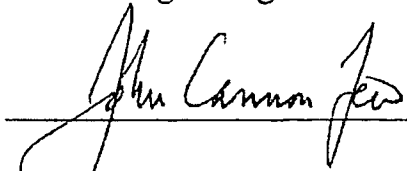
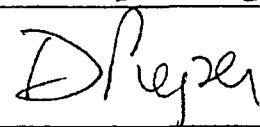
v.

Marcus Addison, Appellant.

Appellate Case No. 2011-185586

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

	C.J.
	J.
	J.

Columbia, South Carolina

cc: Harold M. Coombs, Jr.
Dayne C. Phillips
Howard P. King

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FILED

Dec. 4, 2012

SC OFFICE OF
APPELLATE DEFENSE

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARCUS ADDISON,

APPELLANT

SUPPLEMENTAL RECORD ON APPEAL

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1 contributing to the delinquency of a minor, that being
2 Dorenzo Graham. Signed Foreperson Andy Pusser. February
3 2, 2011. If this is your verdict, would you so signify by
4 raising your right hand. All twelve jurors have raised
5 their right hand.

6 Case number 2008-GS-16-1500. The State of South
7 Carolina versus Marcus Addison. We the jury by unanimous
8 agreement find the defendant Marcus Addison not guilty of
9 threatening the life, or a person, or family of a public
10 employee, Brad Lawson. Not guilty. Signed Foreperson
11 Andy Pusser. February 2, 2011. If this is your verdict,
12 would you so signify by raising your right hand, please.
13 All twelve jurors have raised their right hand.

14 **THE COURT:** Thank you. Anything before the jury is
15 discharged on behalf of the state, Mr. Holt?

16 **MR. HOLT:** There is nothing from the state, Your
17 Honor.

18 **THE COURT:** On behalf of defense?

19 **MR. GROVE:** None, Your Honor.

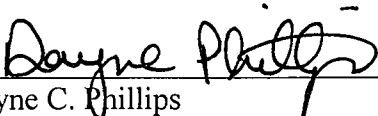
20 **THE COURT:** All right. Ladies and gentlemen of the
21 jury, I am going to discharge you from any further service
22 on this case. And there are a few things that I want to
23 say.

24 First of all, I will tell you that I make it a
25 practice never to comment on the verdict of a jury. In my

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Supplemental Record on Appeal complies to the best of my ability, with 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."

March 23rd, 2012



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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
In The Court of Appeals

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DEC 21 2012

APPEAL FROM DARLINGTON COUNTY
Howard P. King, Circuit Court Judge

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

MARCUS ADDISON,

APPELLANT

Appellate Case No. 2011-185586

RECORD ON APPEAL

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THE STATE,	)	
	)	JANUARY 31, 2011
PLAINTIFF,	)	
	)	
VERSUS	)	
	)	
MARCUS ADDISON,	)	2008-GS-16-1500
	)	
DEFENDANT.	)	
_____	)	

BEFORE

THE HONORABLE HOWARD P. KING

APPEARANCES

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Patti M. Parker, Esquire
ATTORNEYS FOR THE STATE

William Grove, Esquire
Richard Jones, Esquire
ATTORNEYS FOR THE DEFENDANT

Pamela Ozment-Cartee
Circuit Court Reporter

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WITNESSES

WITNESS	DIRECT	CROSS	REDIRECT	RE-CROSS
Charles Wright	42	45		
Brad Lawson	49	53	59	60

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WITNESSES

WITNESS	VOIR DIRE	DIRECT	CROSS	REDIRECT	RE-CROSS
Brad Michael Lawson		099	115	127	128
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WITNESS	VOIR DIRE	DIRECT	CROSS	REDIRECT	RE-CROSS
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WITNESS	DIRECT	CROSS	REDIRECT	RE-CROSS
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VOIR DIRECase No.: 2008-GS-16-1500 Date: January 31, 2011Plaintiff: The State Attorney: John HoltDefendant: Marcus Addison Attorney: William GrovePresiding Judge: Howard P. King Reporter: Pamela Ozment-Cartee

*****		***** STRIKES *****				
Juror #	Juror Name	Race	Sex	Court	State	Defd
148	VIOLA R. WHEELER	B	F	X	--	--
145	CHARLES P. TISDALE	W	M		✓	✓
147	SHALONDRICE M. WARD	B	F		✓	✓
008	ROBIN G. BARR	W	F		✓	x
029	SHEILA D. COOPER	B	F		✓	✓
039	JENNIFER L. DEWITT	W	F		✓	x
001	BETTY A. ADDISON	B	F		x	--
140	JANET S. TACK	W	F		✓	✓
035	FRANCES G. DANIELS	B	G		x	--
028	EARLINE COOPER	B	F		✓	✓
050	LUCAS R. FINE	W	M		✓	x
058	JAMES B. GRACE, II	W	M		✓	x
056	ROBERT GILBERT	B	M		✓	✓
019	RICHARD L. CADDELL III	W	M		✓	x
043	AMY D. DIXON	W	F		✓	x
059	MICHAEL D. GRAHAM	B	M		x	--
006	BARRON M. BAILEY	B	M		✓	✓
062	LASHONDA P., GREGG	B	F		x	--
106	MELISSA G. MURRAY	W	F		✓	✓
118	ANDY T. PUSSEY	W	M		✓	✓
155	LEROY PATTERSON	B	M		✓	✓
077	ELZENA B. JOHNSON	B	F		✓	✓
126	KATHERINE R. ROLLER	W	F		✓	x
113	BRENT E. PHILLIPS	B	M		✓	x
131	CAROL M. SMITH	W	F		✓	✓
005	BRONIE D. ATKINSON	W	F		✓	✓

COURT EXHIBITS

NUMBER	DESCRIPTION	PAGE
	NONE OFFERED	

DEFENSE EXHIBITS
SUPPRESSION HEARING

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THE STATE V MARCUS ADDISON

12

1 the name of Daris Graham. Michael Hall. Again, Corporal
2 Baird. And again the name of Mr. McInville, and Mr.
3 Flowers. And I think I gave you the name of D.R.
4 D.R. As I said, Michael Hall, and of course, Mr.
5 Marcus Addison.

6 Is any member of the jury panel related by blood,
7 connected by marriage to any of the proposed witnesses; if
8 so, please stand? Thank you.

9 Is there any member on the jury panel, close personal
10 friends to any of the parties; that is, the defendant in
11 this case, Mr. Addison, the lawyers, or any of the
12 witnesses whom I have read off to you. If so, please
13 stand.

14 Yes, sir.

15 (Whereupon, Mr. Forte, Juror Number 52 stands.)

16 **THE COURT:** All right, Mr. Forte, juror number 52.
17 All right, Mr. Forte, we already know your situation.
18 Thank you, very much. Anyone else?

19 All right. The Indictments in this case charge that
20 on or about May 21, 2008, the defendant did contribute to
21 the delinquency of a minor by wilfully encouraging,
22 aiding, or causing, or influencing a minor to violate the
23 law. Specifically the minor being D.R. whose
24 date of birth was [REDACTED] a child less than eighteen
25 years of age. That is in Indictment 1505.

THE STATE V MARCUS ADDISON

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1 In Indictment 1504, the allegation is that Mr.
2 Addison did contribute to the delinquency of a minor by
3 knowing and wilfully encouraging, aiding, or causing, or
4 influencing the law, specifically D.G. a child
5 less than eighteen years of age.

6 Indictment Number 1503, charges that the defendant on
7 May 21st, possess with intent to distribute a quantity of
8 marijuana.

9 Indictment 1502, charges that on or about May 21,
10 2008, the defendant did wilfully, unlawfully, and
11 knowingly transport and/or deliver, and sell crack cocaine
12 in the amount of 13.7 grams or more. And the charge is
13 one for trafficking in crack cocaine.

14 Indictment Number 1501, charges that the defendant
15 did on or about May 21st, threaten a public official,
16 specifically Kim Dorsett, an EMS provider.

17 And Indictment Number 1500 charges that on that same
18 date, May 22nd --- between May 22nd and May 23rd, that the
19 defendant did threaten the life of a public official,
20 specifically Agent Brad Lawson, a law enforcement officer
21 with the Darlington County Sheriff's Office.

22 Those are the charges. To these charges the
23 defendant has plead not guilty, and what I am telling you
24 is just so you can determine if you know anything about
25 the case, or anything that would prevent you from being

THE STATE VERSUS MARCUS ADDISON

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1 Thank you we will break for lunch at this time.

2 (Whereupon, a recess was taken from 1:28 p.m.
3 until 3:36 p.m..)

4 MOTION HEARING

5 THE COURT: All right. We are on the record with
6 regard to the matter of The State versus Marcus Addison.
7 Mr. Addison is present in the courtroom with his counsel.

8 Earlier today a jury was drawn in this case, and I
9 believe the matters before the Court at this time involve
10 one or more motions on behalf of the defendant.

11 First of all let me ask you if there are any motions
12 on behalf of the state, Mr. Holt?

13 MR. HOLT: There are none, Your Honor.

14 THE COURT: All right. Motions on behalf of the
15 defendant, Mister.

16 MR. GROVE: Yes, Your Honor. We do have one, a
17 Motion to Suppress.

18 THE COURT: All right, sir. Just tell me what the
19 motion is.

20 MR. GROVE: Your Honor, the state's case rests on a
21 search warrant, and we would argue that the search warrant
22 should be suppressed. It was issued on insufficient
23 evidence. And I can delve into that further if Your Honor
24 would --

25 THE COURT: All right. We will get into that in

THE STATE VERSUS MARCUS ADDISON

42

1 just a minute. Mr. Holt, do you have a copy of the search
2 warrant?

3 MR. HOLT: I do in fact have a copy of the search
4 warrant, Your Honor. Would you like for me to go ahead
5 and make this a State's Exhibit?

6 THE COURT: Yes. Go ahead and make it a State's
7 Exhibit.

8 (Whereupon, State Exhibits 1 and 2 were marked
9 for identification.)

10 THE COURT: All right. Give me just a minute. I
11 am going to review the memorandums admitted by the
12 defendant.

13 (PAUSE.)

14 THE COURT: All right. The state having --- I mean
15 the defendant having made a motion for suppression of the
16 evidence seized under the search warrant. The burden then
17 falls upon the state to respond to the motion to suppress,
18 and to show that the search warrant was properly issued.

19 Mr. Holt, you may present whatever testimony you wish
20 to present.

21 MR. HOLT: Thank you, Your Honor. At this time
22 the state would like to call two officers.

23 First, we would like to call Charles Wright of the
24 Darlington County Sheriff's Office.

25 THE COURT: Come around, please.

CHARLES WRIGHT - DIRECT EXAMINATION

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1 WHEREUPON, CHARLES WRIGHT

2 AFTER FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

3 MR. WRIGHT: I do.

4 THE COURT: - Come around and have a seat, please,
5 sir.

6 DIRECT EXAMINATION BY MR. HOLT

7 Q. Officer Wright, could you please state your name for
8 the jury?

9 A. Charles Wright.

10 Q. And who is your employer?

11 A. Darlington County Sheriff's Office.

12 Q. How long have you worked there?

13 A. A little over thirteen years.

14 Q. Officer Wright, I would specifically like to ask you,
15 looking at what has been marked as a Court's Exhibit
16 1, do you recognize what this is?

17 A. Yes, sir. It is a copy of a DVD we did from Marcus
18 Addison's residence.

19 Q. Officer Wright, have you ever seen that before?

20 A. Yes, I have.

21 Q. Can you explain to the jury --- first off, did you
22 watch it when you made it?

23 A. Yes.

24 Q. Can you explain to the jury what exactly is on it? I
25 said jury, I apologize, to the Court what exactly is

CHARLES WRIGHT - DIRECT EXAMINATION

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1 on there?

2 A. It is a distribution of crack cocaine on the
3 residence of Marcus Addison.

4 MR. HOLT: Your Honor, at this time the state would
5 like to move the DVD into evidence.

6 THE COURT: State's what?

7 MR. HOLT: State's 1, judge.

8 THE COURT: We marked the search warrant as State's
9 1, didn't we?

10 MR. HOLT: I apologize, State's 2, Your Honor.

11 THE COURT: Yeah. State's Number 2. Mr. Grove,
12 you don't object to the authenticity of the disc; is that
13 right?

14 MR. GROVE: Defense has no objection.

15 THE COURT: It will be entered into evidence as
16 State's Number 2, without objection.

17 WHEREUPON, STATE'S EXHIBIT

18 NUMBER 2 IS MARKED AND

19 ADMITTED INTO EVIDENCE

20 WITHOUT OBJECTION.

21 MR. HOLT: Your Honor, at this time the state would
22 like to play their actual video. We can make a laptop
23 available.

24 THE COURT: How long is it?

25 MR. HOLT: The video is thirty minutes, I believe.

CHARLES WRIGHT - CROSS EXAMINATION

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1 THE COURT: All right. Have you got the equipment
2 set up and ready to go?

3 MR. HOLT: Judge, I can attach my laptop. I've got
4 it set and ready to play, and you can watch it from right
5 there.

6 THE COURT: Well, how are you going to do it, if I
7 let all of this in, how are you going to do it to the
8 jury?

9 MR. HOLT: To the jury, my investigator who is in
10 charge of the performance itself, would then set that up.

11 THE COURT: All right. We will set it up and look
12 at it in a little bit. Right now I --- Do you have any
13 further questions of this witness?

14 MR. HOLT: No, sir, Your Honor, I don't.

15 THE COURT: All right. Cross examination?

16 MR. GROVE: Yes, Your Honor.

17 CROSS EXAMINATION BY MR. GROVE

18 Q. Officer Wright, how are you doing by the way?

19 A. Fine.

20 Q. Earlier you stated that this was a video of a
21 distribution from the residence of Marcus' house?

22 A. Yes, sir.

23 Q. How long has it been since you have seen the video in
24 this case?

25 A. I watched it --- Are you talking about how many times

CHARLES WRIGHT - CROSS EXAMINATION

46

1 I've seen it?

2 Q. How recently have you reviewed this video?

3 A. I actually viewed it before I came in the courtroom.

4 Q. Okay.

5 THE COURT: I'm sorry. What was the answer?

6 OFFICER WRIGHT: I viewed it before I came in the
7 courtroom, a little while ago.

8 THE COURT: Okay.

9 Q. So you have seen the video as recently as today?

10 A. Yes, sir.

11 Q. At what point did the confidential informant enter
12 the residence?

13 A. He never entered the residence.

14 Q. Never. At what point did he go onto the property?

15 A. He did it from the vehicle.

16 Q. Okay. At what point did he speak with Marcus
17 Addison?

18 A. He never spoke with your client Marcus Addison
19 directly.

20 Q. At what point does Mr. Addison appear on the video?

21 A. Mr. Addison doesn't appear on the video.

22 Q. At what point in the video is his address,
23 specifically discussed?

24 A. You can see it in the video. You can see the
25 residence in the video.

CHARLES WRIGHT - CROSS EXAMINATION

47

1 Q. You can see as the confidential informant drives by,
2 you can see where Marcus lives?

3 A. Yes.

4 Q. If Marcus isn't in this video, who then is in the
5 video?

6 A. The gentleman that came out of the residence of Mr.
7 Addison --- at that time we identified him as Mr.
8 Jackson.

9 Q. Mr. Dontavious Jackson?

10 A. Initially we identified him as Dorenzo Jackson. The
11 investigation was ongoing, and we didn't work out the
12 names until later on in the investigation.

13 Q. Okay. Is it possible that it could have been a
14 Dontavious Jackson instead?

15 A. It is possible.

16 Q. And would it surprise you to learn that Mr.
17 Dontavious Jackson lives across the street and one
18 house over from Mr. Addison?

19 A. I'm sorry, say again.

20 Q. Were you aware that Dontavious Jackson lives across
21 the street and one house over from the residence?

22 A. No, not at that time, no.

23 Q. Of Mr. Addison?

24 MR. GROVE: One moment, Your Honor.

25 (PAUSE.)

CHARLES WRIGHT - CROSS EXAMINATION

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1 MR. GROVE: Just a couple more questions, Mr.
2 Wright.

3 Q. You said that I guess the individual, whomever he may
4 be, who made the sale, came out of the residence of
5 Marcus Addison?

6 A. Yes, you can see that in the video.

7 Q. You can actually see him exit the residence?

8 A. Yes.

9 Q. At what point did you see him exit the residence?

10 A. Coming out of the --- or off the porch area of the
11 residence, down the stairs.

12 Q. And you have visual evidence of him being inside the
13 home?

14 A. Coming from the porch area, coming from inside the
15 house. Yes, sir.

16 Q. So he is coming from --- Is he coming from the area
17 of the home, or is he coming from inside the home?

18 A. No, coming off the --- stepping off the porch.
19 Stepping off the porch of the house.

20 Q. Okay.

21 MR. GROVE: Nothing further at this time, Your
22 Honor.

23 THE COURT: Redirect, Mr. Holt?

24 MR. HOLT: There is none, Your Honor.

25 THE COURT: All right. The Court will review the

BRAD LAWSON - DIRECT EXAMINATION

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1 video in a little bit. I don't need to do that, it is in
2 evidence. The witness can step down.

3 **OFFICER WRIGHT:** Thank you, Your Honor.

4 **THE COURT:** Call your next witness.

5 **MR. HOLT:** Thank you, Your Honor. At this time I
6 would like to call Officer Brad Lawson.

7 **THE COURT:** All right. Officer Lawson.

8 **WHEREUPON, BRAD LAWSON**

9 **AFTER FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS**

10 **OFFICER LAWSON:** I do.

11 **DIRECT EXAMINATION BY MR. HOLT**

12 Q. Officer Lawson, were you involved in obtaining the
13 search warrant for the residence of Marcus Addison
14 located at [REDACTED] in Hartsville?

15 A. Yes, I was.

16 Q. And I would like to show you this, this search
17 warrant, Officer Lawson. Here is a copy of the
18 search warrant. Do you recognize that?

19 A. Yes, I do.

20 Q. Can you tell the Court what that is?

21 A. It is a search warrant for the address of [REDACTED]
22 [REDACTED] in the Hartsville area of Darlington County.

23 Q. And did you prepare that search warrant?

24 A. Yes, I did.

25 Q. And did you present it to the magistrate?

BRAD LAWSON - DIRECT EXAMINATION

50

1 A. Yes, I did.

2 MR. HOLT: At this time, judge the state would move
3 the search warrant to be admitted into evidence.

4 THE COURT: Any objection?

5 MR. GROVE: None, Your Honor.

6 THE COURT: Admitted into evidence as State's
7 Number 1, without objection.

8 WHEREUPON, STATE'S EXHIBIT

9 NUMBER 1 IS MARKED AND

10 ADMITTED INTO EVIDENCE

11 WITHOUT OBJECTION.

12 Q. Officer Lawson, would you look at the probable cause
13 section of that search warrant. Did you provide the
14 magistrate with that information, and could you read
15 it to the Court please?

16 A. Probable Cause section states that within the past
17 seventy-two hours, a reliable confidential informant
18 for the Darlington County Drug Unit has purchased a
19 quantity of crack cocaine from the described
20 residence located on [REDACTED] in the Hartsville
21 area of Darlington County. This event was monitored
22 by law enforcement agents. And when I say that the
23 residence located on [REDACTED] described above that
24 in the Affidavit of this search warrant it fully
25 describes how to get to that residence, the

BRAD LAWSON - DIRECT EXAMINATION

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1 description of the residence, and the numeric of it.

2 Q. Now, did you provide any other sworn testimony to the
3 magistrate in support of a probable cause? And, if
4 you did, can you tell us what that was?

5 MR. GROVE: Objection, Your Honor. The defense
6 would object that none of the information that the
7 Solicitor is attempting to receive from Officer Lawson at
8 this time was included as a part of the search warrant.
9 It shouldn't be able to be used as a factual basis for
10 determining whether or not probable cause existed at the
11 time.

12 THE COURT: Isn't the case law that the magistrate
13 can consider other sworn testimony other than what is in
14 the Affidavit?

15 MR. GROVE: One moment, Your Honor. I apologize.

16 (PAUSE.)

17 MR. GROVE: I correct myself, I believe that there
18 is in fact.

19 THE COURT: All right. Thank you. The objection
20 is overruled.

21 Q. What did you tell the magistrate in support of this
22 Affidavit? Did you supply the magistrate who issued
23 the warrant any other evidence further?

24 A. Yes, I did. What I explained to the magistrate was
25 along with myself, Agent Charles Wright, and

BRAD LAWSON - DIRECT EXAMINATION

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1 Lieutenant George Wilks was with us at the time that
2 day. We had a confidential informant wired up with
3 audio and video equipment. Searched that informant
4 before we actually went and did this. That informant
5 was issued Darlington County monies to purchase the
6 crack cocaine. That informant then went --- who was
7 actually a reliable informant that we had used
8 before. Went to this location on [REDACTED] At [REDACTED]
9 [REDACTED] and in fact did purchase a quantity of
10 crack cocaine from that residence. It was seen in
11 the video of the person coming from the porch of [REDACTED]
12 [REDACTED] off of the porch at the front door, and
13 walked to the informant's vehicle, and sold that
14 crack cocaine to that confidential informant.

15 Q. Did you have any other reasons to suspect that crack
16 cocaine could be present at [REDACTED] [REDACTED] What did
17 you tell the magistrate?

18 A. Yes. We had received complaints from citizens about
19 drug activity at that area.

20 Q. The confidential informant that you used in the
21 making of this video, what reliable in the past ---
22 have you used him in the past?

23 A. Yes, along with Agent Charles Wright, he had --- that
24 informant had been used.

25 Q. Now, the defense alleged that you can't tell the

BRAD LAWSON - DIRECT EXAMINATION

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1 location in the video of exactly where you exactly
2 are. Now, can you tell where it is from the
3 landmarks on the video that you recognized --- that
4 you recognized exactly where the confidential
5 informant was when you made the purchase?

6 A. Oh, absolutely. Because in the video you can see
7 with the informant driving down the road, what road
8 they turn on. I am very familiar with that
9 particular area. I can tell which road the informant
10 turns on. You can tell exactly where the informant
11 turns into that particular piece of property which
12 was on the right side of [REDACTED] [REDACTED] And as that
13 informant is turning in, the camera go right directly
14 on the side of Mr. Addison's residence, [REDACTED]
15 [REDACTED] During the time of waiting for the
16 transaction to occur, you see the subject that sold
17 the crack cocaine come from the door, and off of the
18 front porch of [REDACTED] [REDACTED] walk straight to the
19 CI's vehicle, which was fifteen yards away from the
20 house. Approximately fifteen yards away from the
21 house, very close.

22 MR. HOLT: Thank you, Officer Lawson, no further
23 question.

24 THE COURT: Cross examination, Mr. Grove?

25 MR. GROVE: Thank you, Your Honor.

BRAD LAWSON - CROSS EXAMINATION

54

CROSS EXAMINATION BY MR. GROVE

1

2 Q. Officer Lawson, do I assume correctly that you have
3 had a chance to observe this video?

4 A. Yes, I have.

5 Q. How recently?

6 A. I've looked at it today. I have looked at it several
7 times. The day of the incident.

8 Q. Just to --- How many times did Marcus Addison
9 referenced in the video?

10 A. Marcus is not referenced in the video at all.

11 Q. How many times is his address referenced in the
12 video?

13 A. It is not.

14 Q. How many times does the confidential informant go
15 inside of Marcus' residence?

16 A. He didn't go in his residence.

17 Q. How many times does Mr. Addison, appear on the video
18 itself?

19 A. He doesn't.

20 Q. How many times --- How many confidential informant
21 buys did this particular informant go on before
22 returning to law enforcement?

23 A. One more after that buy. He did two.

24 Q. He did two?

25 A. Back to back. Uh'huh. Yes, sir.

BRAD LAWSON - CROSS EXAMINATION

55

1 Q. In one trip?

2 A. Yes, sir.

3 Q. And again, you testified that you see them, the
4 subject actually performing the alleged distribution
5 coming from the house off the porch?

6 A. That's correct. He came from the door, off the
7 porch.

8 Q. Did you ever see the inside of the house?

9 A. No, not in the house, I didn't see him in the house,
10 no.

11 Q. You also testified that the confidential informant
12 was fifteen or so yards or so away from the house?

13 A. That's correct.

14 Q. Do you know the address the confidential informant
15 prior to the buy?

16 A. There are two properties there. I would have to see
17 a picture of the tail, but on the property of [REDACTED]

18 [REDACTED]

19 MR. GROVE: Just a moment, please.

20 THE COURT: Okay.

21 (PAUSE.)

22 MR. GROVE: My apologies, Your Honor. Just one
23 more moment.

24 THE COURT: No problem.

25 (PAUSE.)

BRAD LAWSON - CROSS EXAMINATION

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1 MR. GROVE: May I approach, Your Honor?

2 THE COURT: Yes, sir.

3 Q. Mr. Lawson, can you take a look at those pictures and
4 tell me if you recognize them?

5 A. I sure do.

6 Q. What do you see in those three photos I handed you?

7 A. That is the very front of [REDACTED] [REDACTED] [REDACTED]

8 THE COURT: All right. They need to be in
9 evidence.

10 MR. GROVE: My apologies, Your Honor.

11 THE COURT: He has already recognized them. If you
12 want to put them in evidence for purposes of this hearing
13 only, you may do so, if you want me to consider them.

14 MR. GROVE: I would move at this time Your Honor as
15 Defense Exhibits 1, 2, and 3.

16 THE COURT: Exhibits for the Suppression Hearing
17 only, any objections, Mr. Holt?

18 MR. HOLT: There is none from the state, judge.

19 THE COURT: All right. Admitted into evidence for
20 that purpose. Let the Court reporter mark them, please.

21 WHEREUPON, DEFENDANT

22 EXHIBITS NUMBERS 1, 2, AND 3

23 ARE MARKED AND ADMITTED INTO

24 EVIDENCE FOR THE SUPPRESSION

25 HEARING ONLY WITHOUT

BRAD LAWSON - CROSS EXAMINATION

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OBJECTION.

Q. Officer Lawson, you have had a chance to look at those three photos?

A. Yes, sir.

Q. Could you describe for me what you see in those photos?

A. On Exhibit 1 of these photos, it is a view from across the street, looking directly at the front of

██████████ ██████████

Now on Picture Number 2, it is again from the street looking at the front of

██████████ but it shows more of the left side of the property if facing it.

And on picture 3, is from across the road, kind of diagonally, showing the complete right side of the residence. And if you look at this grass area right here, this is exactly where the CI was sitting, right here. And the camera was actually facing that way to see the suspect come from the porch to the car.

Q. Is there anything in number 3, right-hand side?

A. There is a mobile home and a building.

Q. As to Exhibit Number 2, Officer Lawson, if I may, the left-hand side of the house, what does that appear to be?

BRAD LAWSON - CROSS EXAMINATION

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1 A. It is a driveway.

2 Q. Do you believe that to be the driveway at [REDACTED]

3 [REDACTED]

4 A. That is part of it, yes.

5 Q. And can you look at Exhibit 3 again?

6 A. Yes, sir.

7 Q. And you identified a moment ago that the confidential
8 informant pulled into the grassy area there, Exhibit
9 3, is that right?

10 A. That's correct.

11 Q. And does that appear to be anywhere near the driveway
12 of [REDACTED] [REDACTED]

13 A. It is not near the other driveway, but it is right at
14 the house. And that particular piece of grass is
15 used at that house a lot --- people parking there.

16 MR. GROVE: One moment, please.

17 (PAUSE.)

18 Q. One more thing Officer Lawson, if you could, point to
19 the area in Exhibit 3, where you believe --- where
20 you believe the CI parked?

21 A. The CI was parked here, right in the edge of this
22 grass, right here.

23 MR. GROVE: Can you see that judge?

24 THE COURT: I can see through it. I can see
25 exactly what he is --

BRAD LAWSON - REDIRECT EXAMINATION

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1 A. Right here, and this is the house right here. Right
2 there.

3 MR. GROVE: Nothing further, Officer Lawson. Thank
4 you.

5 THE COURT: Mr. Holt?

6 MR. HOLT: Thank you, Your Honor.

7 REDIRECT EXAMINATION BY MR. HOLT

8 Q. Officer Lawson just to be clear, your search warrant
9 wasn't for Marcus Addison, you are telling me that it
10 was for [REDACTED] correct?

11 A. Exactly. It wasn't just for Marcus Addison though.
12 It was for that residence.

13 MR. HOLT: If I could approach judge, and get those
14 photos and look at them?

15 THE COURT: Yes, sir.

16 MR. HOLT: Thank you.

17 Q. Now, Officer Lawson, look at what defense has so
18 kindly exhibited for us here in Exhibit 2. That is
19 the driveway that looks like [REDACTED]

20 A. It is.

21 Q. If they were to pull into there, would they have to
22 back up to get out?

23 A. Yes, they would have.

24 Q. But, looking at what they have given us as Defense
25 Exhibit 3, if they were to pull in there, drive in

BRAD LAWSON - RE-CROSS EXAMINATION

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1 front of that trailer and park right there, how would
2 they get out?

3 A. Very easily by just having to drive straight and get
4 out of there and pull out.

5 Q. So it is sort of like a drive through isn't it?

6 A. Exactly.

7 Q. And is that how that confidential informant purchased
8 that crack cocaine?

9 A. Yes, sir. It is.

10 MR. HOLT: Thank you, Your Honor. There are no
11 further questions.

12 THE COURT: Re-cross?

13 MR. GROVE: Very briefly, Your Honor. May I
14 approach?

15 THE COURT: Yes, sir.

16 RE-CROSS EXAMINATION BY MR. GROVE

17 Q. Officer Lawson, Exhibit 1, that is the straight on
18 view of the house?

19 A. That's correct.

20 Q. In addition to the already mentioned left-hand
21 driveway at [REDACTED] [REDACTED] is there any where else
22 that appears to be used by vehicles?

23 A. Yes, sir, there is right there, I mean in front of
24 the house it could be used.

25 Q. There is here on the front right and through the

THE STATE VERSUS MARCUS ADDISON

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1 middle?

2 A. Yes.

3 Q. Does it appear to you as though people have already
4 used that once or twice?

5 A. It looks like someone has, yes.

6 Q. So, to say that there was only one occupant driving
7 into and then backing out of the driveway isn't a
8 100% accurate?

9 A. I guess there are numerous places. I mean, I pull in
10 my yard a lot of different ways every day. So I mean
11 that is every yard.

12 Q. Absolutely.

13 MR. GROVE: Thank you, Officer Lawson.

14 THE COURT: Thank you, you may step down. Be sure
15 to leave those exhibits --- Do you have the search
16 warrant? The search warrant, and the photographs. And
17 you should also have the video. Where is the video? The
18 Court reporter needs that.

19 THE COURT: All right. Mr. Holt, what else do you
20 wish to present on behalf of the state to testify for the
21 probable cause of the search warrant?

22 MR. HOLT: Just a brief argument in response to the
23 defenses' memo, Your Honor.

24 THE COURT: All right. We will hear from that in
25 just a minute. But that is all the testimony that you

THE STATE VERSUS MARCUS ADDISON

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1 wanted to present at this time?

2 MR. HOLT: That is, judge.

3 THE COURT: All right. Mr. Grove, do you wish to
4 present any testimony with regard to this suppression?

5 MR. GROVE: No, Your Honor. But in kind with Mr.
6 Holt, just an opportunity to review the memo and the
7 overall testimony.

8 THE COURT: Well, I will be glad to do that, but I
9 think I am going to need to view the video, and I think
10 that the time will be more productively served if I hear
11 your arguments after I have had a chance to view the
12 video.

13 So, I will hear from you by way of argument a little
14 bit later.

15 What I would like to do at this time counsel would be
16 --- I will plan to be over here early in the morning, or
17 either late this afternoon. What I would like for
18 somebody to go, depend on how far we are going to run this
19 afternoon, but go ahead and set up a computer in the
20 judge's chambers, and be where I can view the video either
21 this afternoon or first thing in the morning, and then I
22 will be prepared to rule on the motion.

23 All right. That will conclude the motion for
24 suppression at this time, and we will do that.

25 But if you will, Mr. Holt, take care of having

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1 appropriate equipment for me to view the video.

2 MR. HOLT: All right. I will, Your Honor.

3 THE COURT: All right. Is this all we have to do
4 on this case today?

5 MR. HOLT: It is judge.

6 THE COURT: All right. Then we will be in recess
7 on this matter until 9:00 tomorrow morning, at which time
8 I will be prepared to rule on the motion to suppress.

9 So we are in recess in this matter.

10 (Whereupon, day one of trial is completed at
11 4:06 p.m. on Monday, January 31, 2011.)

12 -- END OF DAY ONE --

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1 (Whereupon, court comes to order at 9:10 a.m. on
2 Tuesday, February 1, 2011.)

-- DAY TWO OF TRIAL --

3
4 THE COURT: All right. We are back on the record
5 in the matter of Marcus Addison, and get Mr. Addison out
6 and let's deal with the Motion to Suppress.

7 CLERK OF COURT: He's right here, Judge.

8 (Whereupon, Mr. Addison enters the courtroom at
9 9:12 a.m..)

MOTION TO SUPPRESS

10
11 THE COURT: All right. We are back on the record
12 with regard to the matter of The State versus Marcus
13 Addison, Indictments Numbers 08-1500, 1501, 1502, 1503,
14 1504, and 1505. Mr. Addison is present with his counsel,
15 and the state is present and represented by Mr. Holt and
16 Ms. Parker.

17 The matter before the Court concerns the Motion to
18 Suppress that was made yesterday by defense counsel in
19 connection with this matter. And I am prepared to hear
20 arguments from counsel in connection to this. But, before
21 I do that, let me ask you Mr. Grove, if you think the
22 burden of proving the lack of probable cause is on you, or
23 if the burden of proving probable cause is on the state?

24 MR. GROVE: Your Honor, my understanding is that
25 once the Motion has been made the burden becomes the

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1 state's to prove the existence of probable cause rather
2 than the burden being on the defendant to prove the lack
3 there of.

4 **THE COURT:** What about the cases that you cited in
5 your Brief, of Nix versus Wilson and State versus Jones;
6 the defendant must show by a preponderance of the evidence
7 that the search and seizure were conducted under an
8 invalid search warrant? Doesn't that put the burden on
9 you?

10 **MR. GROVE:** Yes, Your Honor, I guess it would.

11 **THE COURT:** That is the correct law. You cited it.

12

13 **MR. GROVE:** It is. It is, in fact, Your Honor.

14 **THE COURT:** That being the case, then I will hear
15 from you first.

16 **MR. GROVE:** Just to reiterate Your Honor. First
17 off, Marcus Addison has an expectation of privacy as to
18 the place and things that were searched and seized. He
19 has lived in that residence for over four years now. He
20 is the only person that lives there. No one else could
21 have given authority to enter the home other than Mr.
22 Addison. That not being an issue, I will move onto the
23 reasons --

24 **THE COURT:** -- I don't believe that is an issue is
25 it Mr. Holt?

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1 **MR. HOLT:** No, sir, Your Honor.

2 **THE COURT:** No question about the expectation of
3 privacy. Go ahead, Mr. Grove.

4 **MR. GROVE:** Certainly, Your Honor. The Motion ---
5 The defendant feels that the Motion should be granted for
6 several reasons, Your Honor.

7 The case law that I have cited in the memo clearly
8 says that a control buy from a confidential informant is
9 enough evidence to justify a search warrant. However, in
10 a long line of questions the theme is constant throughout.

11

12 One --

13 **THE COURT:** None of which are South Carolina cases,
14 and none of which you have cited are U. S. Supreme Court
15 cases, so they are really just persuasive authority at
16 this point, and nothing that I am bound to; is that
17 correct?

18 **MR. GROVE:** A --

19 **THE COURT:** You haven't cited any South Carolina
20 cases that say that those two elements have got to be
21 present.

22 **MR. GROVE:** If I may, Your Honor. I have a couple
23 of more things.

24 **THE COURT:** All right.

25 **(PAUSE.)**

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1 **THE COURT:** In your brief, the ones that you cited
2 requiring those two elements of entry into the dwelling,
3 and the search before, and the search after are either
4 Court of Appeal cases from the U. S. Court of Appeals, or
5 other states like Arkansas, Hawaii, Kansas.

6 **MR. GROVE:** Certainly, Your Honor. And I believe
7 that I did have another case that I think I failed to cite
8 the name of the case escapes me at this time. I can
9 certainly look into that and get back to you in a matter
10 of minutes.

11 However, notwithstanding that long line of cases,
12 while not authoritative in the state of South Carolina, is
13 more that suggestive as far as the requirements concerned
14 for establishing probable cause to enter a residence and
15 search that residence.

16 The first being actual entry into the residence,
17 which gives the state enough evidence to assume that there
18 are drugs present in the residence. Without entry into
19 the residence it is too far of a stretch to assume that
20 drugs are going to be present, or any illegal activity
21 whatsoever.

22 And furthermore, Your Honor, the other constant in
23 all of those cases is that the confidential informant is
24 searched immediately prior to the controlled buy and
25 immediately afterwards.

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1 **THE COURT:** Isn't there evidence in the record in
2 this case that the officer did search him immediately
3 prior to going into the residence, based on the video?

4 **MR. GROVE:** I think --

5 **THE COURT:** -- Based on his testimony, I mean, from
6 the stand here?

7 **MR. GROVE:** I don't recall that testimony, Your
8 Honor. I am not going to fight that. That is, if that
9 was admitted under testimony, it is not something that I
10 recall.

11 However, the video evidence is clear that there is no
12 search immediately afterwards.

13 **THE COURT:** Correct, but the drugs are shown in the
14 video.

15 **MR. GROVE:** Yes, Your Honor. I think there is a
16 presence --

17 **THE COURT:** -- It is showing the exchange of the
18 drugs in the video even though he was not searched
19 immediately afterwards.

20 **MR. GROVE:** Correct. However, it is impossible to
21 identify what was received on [REDACTED] versus what was
22 received from the other control buy, which I believe
23 happened inside of his vehicle as he drove down the road.

24 **THE COURT:** At that point he had not been to the
25 other place. When it showed that he took --- the money

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1 was exchanged, and the drugs were taken, and it is shown
2 clearly in the video that there was a substance; I can't
3 say that it was drugs, but there was a substance taken
4 from the deliverer at that time.

5 MR. GROVE: Sure.

6 THE COURT: And that shows clearly in the video.
7 And then he went onto the next location.

8 MR. GROVE: Yes, Your Honor. And I believe we also
9 had testimony that the officers involved believed that
10 they had the identity of the person who was actually
11 making the delivery who lives directly across the street
12 and one house over from where the confidential informant
13 was parked. Maybe that would have been a more appropriate
14 search warrant. Certainly that person --

15 THE COURT: -- Isn't there a difference, Mr. Grove
16 --- isn't there a difference between the probable cause
17 necessary for an arrest warrant, which I would concede at
18 this point the state doesn't have, because they don't have
19 any way of tying Mr. Addison to this seizure. But, isn't
20 there a difference between the degree of proof that is
21 necessary for a probable cause to determine whether a
22 particular location contains contraband as opposed as to
23 whether a particular individual is in possession of
24 contraband?

25 MR. GROVE: Yes, Your Honor. We would certainly

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1 concede that particular element. However, my position is
2 still that doesn't change the fact that the video is
3 insufficient evidence. There is no indication from the
4 video that the deliverer got any of the substances which
5 were transferred from inside of the residence. As far as
6 --

7 THE COURT: -- The testimony is that he came from
8 the residence.

9 MR. GROVE: There is in fact testimony that he did
10 come from the residence, Your Honor. The visual evidence
11 shows that it comes from the direction of the house. It
12 doesn't show him leaving the residence. It doesn't show
13 him opening or closing a door. It shows him merely on the
14 property which shouldn't be unusual, because, again, he
15 lives two doors down.

16 THE COURT: And --

17 MR. GROVE: -- My --

18 THE COURT: Go ahead.

19 MR. GROVE: I'm sorry, Your Honor. My position is
20 again clearly if the identity of the deliverer is known,
21 perhaps that person's residence, which is also known,
22 would have been a more appropriate place to search. Ah,
23 the video doesn't provide any sort of evidence that Marcus
24 Addison was involved. There isn't any mention of his
25 address in the video. There isn't any mention from the

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1 deliverer or from the purchaser that the substances
2 acquired came from the residence. They came from the
3 deliverer. We have no more reason to believe that they
4 were all in the deliverer's pocket, than they were inside
5 the residence of Marcus Addison. I simply don't find
6 enough evidence to support a finding of probable cause for
7 a search warrant, where the sole resider of the residence
8 is not mentioned, not present, not discussed, not
9 identified, and another person is, who lives just as far
10 away as my client does. I think that there is plenty of
11 probable cause for search warrant at another residence,
12 simply not in this one.

13 **THE COURT:** All right. Mr. Holt.

14 **MR. HOLT:** Thank you, Judge. I think defense
15 counsel's argument rests on several assumptions.

16 One is where a CI buys enough probable cause for a
17 search warrant. This one fails on two reasons. The first
18 being that the CI received it in the second buy without
19 being searched. And the second being, that the CI never
20 actually entered the home.

21 I think the first argument that I submit is that when
22 the drug gang was younger, before what we have now, a drug
23 dealer was a little bit like a butcher. You would go to
24 his home, place an order, and leave with said product. I
25 think now as the video indicates, drug deals are

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1 increasingly more mobile, competition, pressure from
2 police. I think he witnessed this deal being set up over
3 the phone. Hey, I'll meet you at [REDACTED] I'm on my
4 way. He drives to the location. The individual walks out
5 of the home. And he purchases crack from him. I think it
6 is certainly logical judge --- the defense would have you
7 believe that because the CI never entered the home, the
8 warrant lacks probable cause. But probable cause defined
9 by fair probability that contraband or evidence of a crime
10 would be found. And that is Illinois v Gates, judge.
11 That is a Supreme Court case, I have right here. 462 U.S.
12 213, 238 (1983.) And judge, it is certainly logical for
13 an individual to walk out of his house, complete a drug
14 transaction, and then re-enter the home, and for the
15 finder of fact in this case, the magistrate, to conclude
16 that drugs or evidence may still reside in this house.
17 Certainly a drug dealer just doesn't service one client
18 for one time. Certainly they have another supply of drugs
19 for which you continue other transactions.

20 And to expand on Gates, judge, a magistrate must make
21 a practical common sense decision of whether given the
22 totality of the circumstances set forth in the Affidavit,
23 including the veracity, and the basis of knowledge of
24 person supplying the information, that there is a fair
25 probability that the contraband or evidence of a crime

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1 will be found in a particular location.

2 Now, judge, deficiency of one of these elements,
3 veracity or reliability may be compensated for in the
4 determining of the overall reliability of a tip. Overall
5 reliability of information provided to a magistrate.

6 In here we had a strong showing. Our indication of
7 reliability is the video. And that is something that they
8 didn't have early on in the drug gang, where a defendant
9 would have to be searched before he entered the home.
10 They would place a wire on him. The defendant would be
11 searched when he exited the home. And the police would
12 keep their eyes on him as best they could. I think now
13 we live in a different gang. Now, we can just go to the
14 video. I think the video speaks for itself. An
15 individual walked out from around that house. He made a
16 drug transaction. You can see the crack in the hand. He
17 puts the crack in a cellophane rapper and puts it in his
18 truck. Now, at the end of the second buy, which we didn't
19 see on the video, the police officer searched him for two
20 sets of marked money. Found none. Searched him for two
21 orders of crack. Found them both.

22 Now, judge, if we hadn't seen the crack rock in the
23 video, perhaps defense counsel would have standing for his
24 argument. But we did.

25 Judge, I would like to remind you that in South

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1 Carolina, a magistrate must conclude that probable cause
2 exists before issuing a warrant. But probable cause does
3 not mean absolute certainty. The magistrate is concerned
4 with possibilities, probabilities, and not certainties.
5 And judge that is South Carolina versus DuPree, 354 S.C.
6 676; 583 S.E.2d 437, (2003.) And I want to continue to
7 quote another case judge. The evidence contained need not
8 be sufficient to support a conviction, or a verdict of
9 guilt, or establish guilt beyond a reasonable doubt, nor
10 that the proof be posited. It is enough if the evidence
11 is such to induce in the mind of the issuing officer an
12 honest belief that the facts set forth exist, or would
13 lead a man of prudence to believe that an offense has been
14 committed.

15 Judge --

16 **THE COURT:** -- Now, that is an arrest warrant
17 standard, isn't it?

18 **MR. HOLT:** I've got sufficiency of Affidavit, State
19 v Williams, I believe --

20 **THE COURT:** -- search warrant --

21 **MR. HOLT:** -- it is a search warrant for probable
22 cause, judge.

23 **THE COURT:** Well, there is probable cause. But my
24 position is that there, like in this case, as I indicated
25 to Mr. Grove, it is not probable case in this case for the

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1 arrest of the defendant, because he hadn't been
2 identified.

3 MR. HOLT: Judge, I could not agree with you more.

4 THE COURT: Right.

5 MR. HOLT: Would I prosecute a case against that
6 fellow in the video? Definitely not.

7 THE COURT: Right.

8 MR. HOLT: I mean, what evidence do I have?

9 THE COURT: You don't.

10 MR. HOLT: You can't see the person good. They
11 didn't search him afterwards. But is that evidence enough
12 to instill in the magistrate in honest belief that a crime
13 has been committed, and the evidence of that crime could
14 be found at that house?

15 THE COURT: Yes.

16 MR. HOLT: Definitely it is.

17 THE COURT: I understand.

18 MR. HOLT: Your Honor, just briefly. I feel that
19 you know the facts considering determining probable cause,
20 The State v DuPree, we could go back to that one. The
21 experience of a police officer. I think these police
22 officers are experienced with what the current drug gang
23 is. And that is mobile. They are like terrorist, judge.
24 You are not fighting Nations or States anymore, you are
25 fighting freelance, young men, that are on the go, that

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1 have cell phones, that are competing not only with the
2 police, but with other, younger drug dealers. And what
3 they want to do is be mobile, service the customer faster,
4 and be there quicker. And I think that the police
5 understand that. I think it should be shown the
6 difference. I think the fact that the magistrate himself
7 found probable cause, perhaps should be shown some
8 difference by the Court, judge.

9 And just to sum it up, I completely understand and
10 agree with everybody that this would not be enough to
11 prosecute this young man. This would not be anything
12 other than probable cause, and sealing the magistrate of
13 the belief that a probability that a crime or the evidence
14 thereof, could be found at the location that the deal was
15 made. I think everybody was sure that we were at [REDACTED]
16 [REDACTED]. I think the photos that the defense has put up
17 clearly show all houses that were shown on the video.

18 Basically, Your Honor, this house was set up like a
19 drive through drug operation. If you are to follow
20 defense counsel's argument out to its logical conclusion,
21 if they don't go in the house --- a drug dealer, they
22 could have five hundred video buys with him dealing drugs.
23 And it wouldn't amount to enough to search his residence.
24 And I think that there would be no way to stop it then,
25 judge.

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1 **THE COURT:** All right. Thank you, sir. All right,
2 Mr. Grove.

3 **MR. GROVE:** Yes, Your Honor. Actually State v
4 DuPree was the one that I was trying to think of, and
5 again from that case at page 404, they described the
6 evidence that was presented to the magistrate, and that
7 goes to include that the purchase was observed by narcotic
8 agents while making the purchase entering and exiting the
9 location. Again, we have that same standard from a long
10 line of cases that can also be --

11 **THE COURT:** -- But that doesn't say the only
12 situation, it just happens to be the fact of that case.

13 **MR. GROVE:** It certainly does, Your Honor. And our
14 position would be that that should be the standard. To
15 establish that this residence is the targeted residence.
16 Entry into that residence, or identification of the
17 resident should be necessary. And again, Your Honor, with
18 a neutral view of that drug buy video. Unless that drug
19 buy video is presented to you saying, Mr. Magistrate,
20 Madame Magistrate, we are looking for a search warrant for
21 Marcus Addison, you would have no idea that my client is
22 involved in any way whatsoever.

23 **THE COURT:** What difference does it make whose
24 house it is as far as the search warrant is concerned. It
25 doesn't does it? If the --- it doesn't matter whose it

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1 is. If they observed an individual, let's just say off
2 the porch, we won't even say inside, but come off the
3 porch from your house, your house, and walks to a police
4 vehicle, and delivers drugs, and is identified as a
5 residence --- they don't know who owns the residence, but
6 it happens to be your house. Wouldn't they have enough
7 probable cause to search that house?

8 **MR. GROVE:** Perhaps, Your Honor. Maybe they would.

9 But if the identity of that person making the delivery
10 could be made, and that person lived across the street
11 from me, I would hope that the search warrant would be
12 directed at their residence rather than mine. And that is
13 exactly the situation that we have here. A known
14 deliverer was identified in the video. His residence is
15 also known.

16 **THE COURT:** It wasn't shown from that residence, it
17 was shown coming from a different residence.

18 **MR. GROVE:** Yes, Your Honor, which happens to be
19 across the street from my client's residence. He has no
20 more probable cause to search my client's house than he
21 does the whole of [REDACTED] His location should be
22 irrelevant unless his location is within the residence.
23 His identity should be the controlling factor, and Marcus
24 Addison's identity is never established.

25 **THE COURT:** I disagree. I don't think that the

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1 controlling --- that the identity is the controlling
2 factor at all. I think the location is the controlling
3 factor.

4 Okay. The --- We are talking about here a search
5 warrant. The Court has reviewed all of the testimony, and
6 of course, has heard the arguments of counsel. And have
7 also reviewed the exhibits that were introduced into
8 evidence including the photographs, the search warrant,
9 and the video.

10 In my view it is important to remember that this is a
11 Motion to Suppress a search warrant for a location. The
12 enquiry here is not whether or not there is probable cause
13 to the issuance of an arrest warrant for this defendant,
14 Mr. Addison.

15 The search warrant describes very particularly the
16 description of the place to be searched, and is very
17 specific in detail in that description. Even telling how
18 to get there on a step by step basis, almost like a GPS.

19 The Affidavit of the Officer, Mr. Lawson, is to the
20 effect that a reliable confidential informant had
21 purchased a quantity of crack cocaine from this residence,
22 and that the transaction was monitored.

23 The contents of the search warrant were supplemented
24 by the testimony of Mr. Lawson, and, of course, the test
25 as to whether or not there was probable cause for the

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1 issuance of the search warrant is what was presented to
2 the magistrate either in the form of the written Affidavit
3 or sworn testimony. The law is clear that the facts in an
4 Affidavit can be supplemented by sworn testimony to a
5 magistrate or to a judicial officer who is issuing the
6 search warrant, and he can rely upon those additional
7 facts as well as those that are actually in the search
8 warrant.

9 In this particular case, the officer testified as to
10 what was in the video to the magistrate, and told him what
11 the video showed. And, of course, the video does show an
12 individual, not the defendant, coming from this house and
13 selling crack to the confidential informant.

14 As I say, the Affidavit was supplemented by the
15 officer who testified to these facts, sworn testimony to
16 the issuing officer, the magistrate in this case. He
17 further testified that he told the magistrate under oath
18 additional facts not contained in the search warrant.
19 These include that the individual was coming from the
20 house. That in addition he also testified that he told
21 the magistrate that he was a confidential reliable
22 informant that they had relied upon before. Furthermore
23 that he was searched before he was sent into the house.
24 My recollection of the testimony is that he did not
25 testify that he told the magistrate that he was searched

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1 after the buy. But the video clearly shows as he
2 testified to, that he related to the magistrate that the
3 drug transaction took place, and those drugs and money are
4 shown in the video.

5 The defendant's contention, of course, is that the
6 state must establish two points to show probable cause.
7 That is, that the confidential informant must go into the
8 house. I am aware that DuPree is a South Carolina case
9 that does say in that particular case that he went into
10 the house and exited the house. But, the other cases that
11 are cited are similar type cases, but are not South
12 Carolina cases or controlling cases. But I don't think
13 that there is any requirement that they must enter the
14 house in order to establish probable cause, if he is shown
15 coming from the house as the officer testified to in this
16 court, and also as he indicated that he told or testified
17 to before the magistrate.

18 He also testified as to the other point the defendant
19 makes is that there was no --- nothing about searching the
20 confidential informant before and after. The officer
21 testified yesterday that he did tell those things to the
22 magistrate about searching him before, the confidential
23 informant. My recollection of his testimony is that he
24 did not say anything to the magistrate about searching him
25 afterwards. But, that the video clearly showed the drug

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1 transaction took place.

2 I disagree with the defense that those two elements
3 are a requirement for the showing of probable cause.

4 I think probable cause can be established by the
5 totality of the circumstances, and it is a practical
6 common sense analysis of the probability that contraband
7 will be found. That is the test. And if I had to
8 articulate a test, I would say you would have to look at
9 the totality of the circumstances, and conclude that a
10 magistrate hearing the testimony could conclude on a
11 practical common sense analysis that there was a
12 probability that contraband would be found at this
13 particular location.

14 Based upon, and we have to look at it from the facts
15 that were related to the magistrate, and that is what I am
16 looking at it from. He is the one who has got to make
17 that determination of fair probability that contraband
18 will be found based upon all of the circumstances, and a
19 common sense approach. He can base that on the Affidavit.
20 He can also base it upon the testimony of the officer who
21 appears before him.

22 So, as I have said, and has already been said in
23 here, the test is overall reliability. I have some
24 doubts, and I think the state concedes that there was not
25 probable cause for the issuance of an arrest warrant for

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1 Mr. Addison, but in my view, there is certainly probable
2 cause to the issuance of a search warrant for this
3 particular residence in view of the testimony that was
4 related to the magistrate of the individual coming from
5 this location, and brings drugs to the confidential
6 informant which are clearly shown in the video. I don't
7 think it matters who owns the house. It could have been
8 anybody's house, and if he came off of that porch, or out
9 of that house as the officer testified to, that furnishes
10 the basis for the probable cause for a search warrant
11 regardless of the owner of the house.

12 Again, I think you have got to take a common sense
13 approach to it. And look at it from the standpoint of
14 fair probability that contraband would be found, and that
15 is present in this case, and was present in its
16 presentation to the magistrate.

17 I would find that there was probable cause for the
18 issuance of a search warrant.

19 Motion to Suppress is denied.

20 How are we standing with jurors?

21 **CLERK OF COURT:** They are here, and Mr. Andy
22 Pusser, juror number 118 is the foreperson.

23 **THE COURT:** All right. Are you ready to go
24 forward, Mr. Holt?

25 **MR. HOLT:** The state is, Your Honor.

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1 first witness.

2 **MR. HOLT:** Thank you, Your Honor. At this time the
3 state would like to call Deputy Brad Lawson to the stand.

4 **DEPUTY CLERK:** If you would come forward and be
5 sworn.

6 **WHEREUPON, BRAD MICHAEL LAWSON**

7 **FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS**

8 **DEPUTY LAWSON:** I do.

9 **DIRECT EXAMINATION BY MR. HOLT**

10 Q. Deputy Lawson, can you please state your full name
11 for the jury?

12 A. Brad Michael Lawson.

13 Q. Officer Lawson, where are you currently employed?

14 A. With the Darlington County Sheriff's Office.

15 Q. And what is your possession within the Sheriff's
16 Office?

17 A. At this time I am part of our Special Enforcement
18 Unit. I mainly work traffic on the Interstate and
19 major highways.

20 Q. Deputy Lawson, how long have you been in law
21 enforcement?

22 A. Nine years.

23 Q. And did you work in law enforcement before the
24 Sheriff's Office?

25 A. No, I did not. That is where I started my law

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1 enforcement career.

2 Q. All right. How about on the day in question here,
3 May 21, 2008. What was your possession that you held
4 then?

5 A. I was a member of our narcotics or drug unit at the
6 Sheriff's Office.

7 Q. Now, can you explain to the jury what the purposes of
8 the Drug Unit was, and who it consisted of?

9 A. At that time it consisted of Lieutenant George Wilks,
10 Sergeant Mike Hall, Agent Charles Right, and myself
11 at that time. And our purpose was to gain
12 intelligence, information of course on narcotic drug
13 activity within the county. And make buys of that
14 nature regarding drug activity, and to then make an
15 arrest. Put faces on drug dealers.

16 Q. Now, you were on the drug team at the time, can you
17 tell the jury what was on the agenda for the day in
18 question, May 21, 2008, with the drug team, and can
19 you expand on your particular role in that?

20 A. Yes, on May 21, 2008, we had already obtained a
21 narcotics search warrant for the address of [REDACTED]
22 [REDACTED] in the Hartsville area of the county. With
23 that we put together a team to make entry on that
24 house, which consisted of Officer Neil Flowers,
25 Sergeant Tony Baird, Investigator Chad McInville, and

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1 myself. We had a lot of other officers involved that
2 went around surrounding the house, and were there
3 working the scene, but that was the actual unit that
4 actually hit the house; went into the house.

5 Q. Now, you say hit the house, went into the house. Was
6 the door locked, how did y'all get into the house?
7 Would you explain to the jury how the procedure
8 works?

9 A. Yes. With a narcotics search warrant, it is
10 considered high risk. So four of us were in a
11 vehicle, pulled up to the house. Before we came in
12 we announced that we were with the Sheriff's Office
13 and had a search warrant. We actually announced that
14 two times before we knocked in the door with the use
15 of a battering ram as far as knocking in the door.

16 Q. What was inside of the house, Deputy Lawson, what did
17 you observe?

18 A. I am the one that hit the door. Sergeant Baird went
19 in first, and then Investigator Chad McInville, and
20 then myself, and Neil Flowers followed. But as we
21 were entering, what was found was to be a juvenile, a
22 sixteen-year-old juvenile had come from Mr. Addison's
23 bedroom through a small little hallway into a
24 livingroom area and ran back to an older kitchen area
25 that is not used anymore. Of course, we commanded

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1 him to the ground to try and get the house secured.
2 Observed that being Mr. Daris Graham, a sixteen-year-
3 old juvenile. Observed him appearing to throw
4 something under a cabinet in that kitchen area. We
5 commanded him back toward us into that livingroom.
6 Had him get on the floor of the livingroom. We then
7 secured him. Investigator McInville went to the left
8 into Mr. Addison's bedroom where he had located Mr.
9 Addison laying in a hospital type bed. And another
10 juvenile was found to be thirteen years old, a D.R.
11 was in that bedroom with Mr. Addison.

12 Q. What was the juvenile doing inside of the bedroom?
13 Do you remember?

14 A. I do not know exactly what he was doing. I was not
15 in that room at that time, but he was in the room
16 with Mr. Addison, and he was secured as everyone in
17 the house was secured.

18 Q. And when you say you got into the door, you saw the
19 sixteen-year-old juvenile running in the kitchen?

20 A. That's correct.

21 Q. What was he doing in the kitchen, and what did you
22 later find?

23 A. As I said, he ran toward the kitchen area, or into
24 that kitchen area. We seen him attempting to or
25 trying to hide something under one of the counters.

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1 Later on after the house was secured, and all
2 suspects were taken out of the house, we went back
3 and, of course, searched the house thoroughly. And
4 right where Mr. Graham was seen throwing something
5 under a cabinet was a fairly large amount of crack
6 cocaine that he later admitted that he threw under
7 that sink.

8 Q. Now, did you suspect that there would be --- And
9 obviously a lot of planning goes in this. Would you
10 suspect that there would be juveniles in the home
11 when you entered the home?

12 A. Oh, yeah. I didn't expect really maybe a thirteen-
13 year-old, someone that young. But I did expect
14 juveniles of course to be there. As information was
15 gained through investigations of juveniles involved
16 in that kind of activity at Mr. Addison's house,
17 hanging out there, yeah.

18 Q. Thank you. You found the defendant in his bed. What
19 kind of condition was he in?

20 A. Of course he is paralyzed, so he was laying in the
21 bed with --- And we observed immediately when we saw
22 him, we observed digital scales laying on the floor
23 beside of the bed. Sandwich bags, which are commonly
24 used for packaging drugs, a box of sandwich bags.
25 Things of that nature were beside of the bed.

1 Q. Now, who helped you take him from the bed outside?
2 How was it since he is paralyzed, did you take
3 himself outside of the bed to outside?

4 A. Myself and Officer Baird, Officer Tony Baird, we
5 assisted him from the bed into his wheelchair, and
6 rolled him outside.

7 Q. And he has had time --- Right before you brought him
8 outside, did you search his person?

9 A. We did search his person as good as we could after we
10 got him secured and put in the wheelchair. That was
11 mainly searching him for weapons. We knew going in
12 that he possibly was going to need some medical
13 attention. And he also complained of having diaper
14 rashes on him.

15 Q. When you searched him for weapons, did you find any
16 currency?

17 A. Yeah. He did have \$436.00 of U.S. currency on his
18 person.

19 Q. Now, you took him outside, you had the admittance
20 ready form, did the defendant say anything while you
21 were taking him outside in between the time you got
22 him and EMS got him?

23 MR. GROVE: Objection, Your Honor, relevance.

24 THE COURT: Counsel, approach.

25 (Whereupon, a bench conference was held in the

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1 presence of the jury, but out of the hearing of the jury.)

2 THE COURT: The objection is overruled. It is
3 based on hearsay as I understand it. Be careful with your
4 questions, Mr. Holt.

5 MR. HOLT: Thank you, judge.

6 THE COURT: You may answer the question.

7 DEPUTY LAWSON: Excuse me?

8 Q. Did the defendant say anything to you when you took
9 him out of the house?

10 A. He did. I don't remember everything that he said. I
11 just remember once getting him outside that he kind
12 of became a little irate, very mouthy.

13 Q. Okay. Now after the house was cleared of the
14 defendants, who searched the home, and what was found
15 during that search?

16 A. In the home, myself --- I searched the house along
17 with Investigator Chad McInville, the Chief, he
18 helped search, but his main role was taking photos of
19 the evidence that was located. Russ Harrell who is
20 our evidence collector, he was in the house, and he
21 collected all of the evidence. And Sergeant Mike
22 Hall, who was my Sergeant in the Narcotics Unit,
23 assisted with the search of the residence.

24 MR. HOLT: Your Honor, at this time I would like to
25 approach the Court reporter, and have some things marked.

1 THE COURT: Yes, sir.

2 MR. HOLT: Thank you, Your Honor. Permission to
3 approach the witness?

4 THE COURT: Yes, sir.

5 Q. Deputy Lawson, I am going to hand you what has been
6 marked as State's Exhibit 3. Now, without saying
7 what they are --- Can you tell the jury if you
8 recognize those items?

9 A. Yes, I do.

10 Q. And have you seen those items before?

11 A. I have.

12 Q. And have they changed in any way since the last time
13 you saw them?

14 A. No, they haven't.

15 MR. HOLT: Your Honor, at this time the state would
16 like to place State's Exhibit 3 into evidence.

17 THE COURT: All right. Any objection Mr. Holt ---
18 Mr. Grove?

19 MR. GROVE: If I may briefly --

20 THE COURT: Sure.

21 MR. GROVE: Thank you, Your Honor.

22 (PAUSE.)

23 MR. GROVE: No objection, Your Honor.

24 THE COURT: State's Exhibit 3, is admitted into
25 evidence without objection.

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1 WHEREUPON, STATE'S EXHIBIT
2 NUMBER 3 IS MARKED AND
3 ADMITTED INTO EVIDENCE
4 WITHOUT OBJECTION.

5 THE COURT: Ladies and gentlemen, let me mention to
6 you at this time now that we do have in addition to
7 testimony some physical exhibits.

8 The lawyers may ask during the testimony, while the
9 witness is on the stand to publish the exhibits. That is
10 basically to show the jury the exhibits, and pass them
11 around to you, while you are sitting there in the jury
12 box. More than likely, I will grant that motion, and
13 allow them to do so.

14 Do not be concerned if you do not have as long to
15 look at an exhibit as you would like to while it is being
16 passed around to you there in the jury box. Anything that
17 is admitted into evidence will go with you to the jury
18 room at the end of the case, when you go to deliberate
19 your verdict. And you will have as much time to study or
20 look at it as you would like to at that time.

21 All right, Mr. Holt.

22 MR. HOLT: Thank you, judge.

23 Q. Deputy Lawson, what is inside of that bag?

24 A. Two digital scales and a box of Ziploc sandwich bags.

25 Q. Now we all know what Ziploc sandwich bags are, but

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1 did you find those sandwich bags in the kitchen?

2 A. No. They were laying next to his bed.

3 Q. Were they in close proximity to the scales?

4 A. Because they were lying right next to one of the
5 scales.

6 Q. Can you explain to the jury what the significance of
7 that might be?

8 A. Sandwich bags are just very commonly used in the
9 packaging illegal narcotics.

10 Q. Now, the scales in question, the jury may not and
11 probably does not know exactly what those are. Can
12 you explain to them what those are?

13 A. Scales --- Digital scales are used to measure out the
14 weight of narcotics, before the sale of that
15 narcotic.

16 Q. Now you said that you found a bag and one scale on
17 the floor. Where did you find the other scale?

18 A. The other scale, there was a small closet area on the
19 right side of his bed, if you were facing his bed.
20 In that closet area was a little small attic space.
21 And the other digital scale was up on that attic
22 space.

23 Q. Now, knowing that the defendant is paralyzed from the
24 waist down, would he have been able to place those
25 scales up there?

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1 A. No.

2 Q. Deputy Lawson, were any other drugs found inside of
3 the residence?

4 A. Inside of the residence was some marijuana found in
5 an old oil heater, I guess it was a oil heater, some
6 kind of heater in the livingroom area.

7 Q. Just laying in the heater?

8 A. Yes. The heater was I mean, very accessible to
9 anyone. I mean, walking into the house it was right
10 there in the livingroom and had a door, a little
11 small door on the heater. And inside of that was
12 just a quantity of marijuana.

13 Q. Deputy Lawson, over the next couple of days, did you
14 have an occasion to come across the defendant again?

15 A. I sure did.

16 Q. And did the defendant tell you anything?

17 A. When at the jail, getting his warrant served that I
18 had obtained on him, the --- he made numerous remarks
19 of knowing where my father lives.

20 Q. And was he right about where your father lives?

21 A. Oh, he was exactly right. He was right on. I was
22 kind of surprised that he knew exactly where, and he
23 was right on. He knew exactly where he lived.

24 Q. And did --- How did you take those?

25 A. I didn't take them lightly. I took them as a threat.

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1 Not only the words that he said, but the way he said
2 it.

3 Q. How did he say it?

4 A. In a chuckling type of way. It is hard to explain,
5 but he seemed very serious of making threats, and
6 knowing where my father lives.

7 Q. Now, Deputy Lawson --

8 MR. HOLT: And permission to approach the Court
9 reporter again?

10 THE COURT: Yes, sir.

11 MR. HOLT: Permission to approach?

12 THE COURT: Yes, sir.

13 Q. Deputy Lawson, I am going to show you what has been
14 marked as State's Exhibit 4, and without talking
15 about what is in it; do you know what that is?

16 A. Yes, I do.

17 Q. There are several pages to that. Can you explain
18 what happens when you do one of the search warrants
19 at a defendant's home, how do you take control of the
20 drugs after it is over with? And how did that
21 particular piece, what has been marked as State's
22 Exhibit 4, plays into that?

23 A. Well, there is a chain of custody to any evidence
24 that is collected. Whoever collects that, finds that
25 evidence or takes possession of it first, of course,

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1 you have to keep a chain of custody, which is
2 basically --- What this is, is a Form B, Rule 6, of a
3 SLED Best Kit. It is what we put our narcotics
4 evidence in to submit to SLED for them to do drug
5 analysis on. And in that is a chain of custody. And
6 this particular one is where Officer Rodney Hopkins
7 had found some --- a large amount of crack cocaine on
8 Mr. Addison's person, after he was arrested from
9 home. And then that was passed on to evidence.

10 Q. And can you read through that first two or three
11 pages, to where you are in there?

12 A. Okay. It just shows where Officer Rodney Hopkins, as
13 I said, he located a large amount of crack cocaine
14 from Mr. Addison's person after being arrested, in
15 the back of the EMS vehicle. That was then passed on
16 to me. And then of course I passed it onto --- I
17 turn it over to Officer Russ Harrell for evidence.

18 Q. Now, Deputy Lawson, --

19 MR. HOLT: Your Honor, at this time the state would
20 move Exhibit 4 into evidence.

21 THE COURT: All right. Show it to Mr. Grove and
22 let him --

23 MR. GROVE: Thank you, Your Honor.

24 (PAUSE.)

25 MR. GROVE: No objection, Your Honor.

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1 **THE COURT:** All right. Exhibit 4, will be admitted
2 into evidence without objection.

3 **WHEREUPON, STATE EXHIBIT**
4 **NUMBER 4 IS MARKED AND**
5 **ADMITTED INTO EVIDENCE**
6 **WITHOUT OBJECTION.**

7 **THE COURT:** Mr. Lawson, let me just look at that
8 document.

9 **(PAUSE.)**

10 **THE COURT:** All right. You may proceed, Mr. Holt.

11 **MR. HOLT:** Thank you, judge.

12 Q. Deputy Lawson, it is your testimony that you in fact
13 completed the Best Kit that was sent to SLED?

14 A. That's correct.

15 Q. Now, before I sit down, I just want to ask you one
16 more thing. Going back to the threats against your
17 father, do you remember the exact verbiage the
18 defendant might have used?

19 A. If I can, I can read it directly from the report.

20 Q. Yes, sir, you may.

21 A. It was actually the day after the initial incident.
22 This happened on May 22, 2008. I was at the jail
23 serving these warrants that I had obtained on Mr.
24 Addison.

25 As I was in the jail, Mr. Addison called me

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1 over to the holding cell that he was in. I
2 approached that holding cell, and Addison at
3 that time asked me, Brad, how is your father
4 doing? This caught me by surprise. So I asked
5 him who are you talking about? Addison then
6 stated, and this is in quotes, "your father that
7 lives behind the Amspak Company," which that
8 Amspak Company is on North Fifth Street in
9 Hartsville. If you are not familiar with it, it
10 is in the North Hartsville area. I played that
11 off like I didn't know who he was talking about.
12 Addison then stated, "Brad, I know who you are,
13 and who your father is. Don't play these games.
14 I know who you are. Now, tell me, how is your
15 father doing?"

16 During this whole time, Addison was
17 grinning and chuckling as if this were some type
18 of scare tactic toward me and my family.

19 Q. Deputy Lawson, even though at that time the defendant
20 was in jail, did you presently fear for your family
21 that he might have some ability to hurt them, even
22 while in jail?

23 MR. GROVE: Objection, Your Honor. That calls for
24 speculation.

25 THE COURT: He was just asking how he felt.

1 Overruled.

2 A. Oh, most definitely, I felt like the threats could be
3 taken out.

4 MR. HOLT: Thank you, very much, Deputy Lawson. At
5 this time I would like to publish Exhibits 3 and 4 to the
6 jury.

7 THE COURT: Permission granted. As I told you
8 ladies and gentlemen, the lawyers may ask to publish
9 something as an exhibit to you. That means show it to you
10 as you sit there in the jury box. And I have given
11 counsel permission to do that. But do not be concerned if
12 you do not have as long to look at it as you would like
13 to. You will be able to take it with you to the jury room
14 when you retire to deliberate your verdict.

15 (Whereupon, Exhibits 3 and 4 were published to
16 the jury.)

17 MR. HOLT: Your Honor, at this time the state has
18 no further questions.

19 THE COURT: All right. We will wait just a minute,
20 Mr. Grove, until the jury has looked at these exhibits.

21 MR. GROVE: Certainly, Your Honor.

22 (PAUSE.)

23 THE COURT: All right. Mr. Grove.

24 MR. GROVE: Thank you, Your Honor. Just one
25 moment.

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1 (PAUSE.)

2 THE COURT: I'm sorry. I thought it had already
3 gone around.

4 MR. GROVE: Not a problem.

5 (PAUSE.)

6 THE COURT: All right. Mr. Grove, you may cross
7 examine.

8 MR. GROVE: Thank you, Your Honor.

9 CROSS EXAMINATION BY MR. GROVE

10 Q. Good morning, Officer Lawson?

11 A. Good morning.

12 Q. You have kind of walked us through the whole
13 procedure, I guess, from the initiation of the search
14 warrant, and through the arrest, and then even a
15 couple of days after that arrest. I want to go back
16 and kind of review some of the things that you
17 testified to earlier. You said there were two kids
18 in the house, a thirteen-year-old and a sixteen-year-
19 old, right?

20 A. That's correct.

21 Q. The sixteen-year-old --- you come into the house and
22 the sixteen-year-old takes off running?

23 A. That's correct.

24 Q. The thirteen-year-old was in another room?

25 A. He was in the same room with Mr. Addison.

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1 Q. And what did he do when you guys came barging in?

2 A. I wasn't --- Another officer was responsible for that
3 room. So, I don't know exactly what he did.

4 Q. How many rooms are we talking about --- total house?

5 A. Basically three. There is a bedroom, a livingroom
6 area, and a kitchen area that is not used anymore.

7 Q. The kitchen area is not used? I mean, running water
8 not used, or --

9 A. Running water not used.

10 Q. So, basically another room with a sink that doesn't
11 get any sort of action?

12 A. Basically.

13 Q. Okay.

14 A. It had a lot of clutter in it.

15 Q. So the sandwich bags that you found in the bedroom,
16 they don't belong in the kitchen, because the kitchen
17 isn't the kitchen, right?

18 A. They weren't in the kitchen. They were next to his
19 bed.

20 Q. Right. But the kitchen is just another room. At
21 this point in time it is not actually a kitchen
22 anymore?

23 A. That's right. It wasn't used as a kitchen.

24 Q. Okay. Mr. Addison, you know that he has been
25 paralyzed for several years now?

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1 A. That's correct.

2 Q. And he takes medication. Are you aware that he does
3 or doesn't?

4 A. I have no idea what he takes. I do not.

5 Q. Would it surprise you to know that he does take
6 medication?

7 A. No, it wouldn't surprise me that he does.

8 Q. Okay. And perhaps the scales could be used for
9 medication purposes?

10 A. I have never seen scales used for medication
11 purposes. No, sir.

12 Q. Okay. So, one set of scales, were found in a closet?

13 A. That's correct.

14 Q. In the attic almost?

15 A. That's correct.

16 Q. How high off of the ground are we talking?

17 A. I'm imagining maybe a normal eight foot ceiling. I
18 don't know exactly how high. A normal high ceiling,
19 I guess.

20 Q. Sure. But well over eye level head high?

21 A. Oh, yeah. Yes, sir.

22 Q. And back to the search of Mr. Addison's person, that
23 kind of happened between the full search in the
24 house, but before --- after the --- after the injury,
25 but before the full search of the house, right?

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1 A. The search of Mr. Addison's person took place while
2 myself and other officers were searching the house.

3 Q. What is the extent of that search?

4 A. The search of his person or his house?

5 Q. His person.

6 A. His person was, as I said, we had EMS already
7 awaiting us, because of --

8 Q. -- Go ahead.

9 A. Just knowing that he had some medical issues being
10 that he is paralyzed. So we had him waiting. And
11 after we secured the house we had them come on scene.
12 He was already complaining of having diaper rash, so
13 we had medical personnel to take a look at that. He
14 was then, after we made sure he didn't have no
15 weapons on him immediately, we let EMS take care of
16 him. He was placed in the back of the EMS vehicle.
17 At that time they felt uncomfortable in the back,
18 because of some things that they saw, and wanted an
19 officer to further search him. That officer then ---
20 Officer Rodney Hopkins put on gloves and actually
21 searched down in his crotch area --- his diaper area,
22 and that is when the large amount of crack was
23 located.

24 Q. Okay. And Officer Lawson were you present at that
25 time?

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1 A. I was not present when it was found, but I was called
2 to the back of the ambulance, and went, and
3 acknowledged, and observed what was pulled from his
4 crotch area.

5 MR. GROVE: One moment, please...

6 (PAUSE.)

7 Q. That initial pat-down --- I'm sorry. How many times
8 was Mr. Addison patted down and or searched prior to
9 placing him in the EMS vehicle?

10 A. Really just once. I mean, if you count us getting
11 him off of the bed and putting in the wheelchair, of
12 course you could I guess say that is a little bit of
13 a pat-down, because we did have to touch him to do
14 that. We didn't find any weapons. But once getting
15 him in the wheelchair, out and getting him outside,
16 we did another pat-down of him, as good as we could
17 in a wheelchair just to check for weapons.

18 Q. So the pat-down was for checking for weapons?

19 A. Checking for weapons and I mean drugs too. And of
20 course we were looking for anything that he might
21 have had on his person, drugs or anything. We just
22 didn't go directly into his diaper at that time,
23 because of medical issues. And I didn't have any
24 gloves on at the time to be going into his diaper.

25 Q. But you had EMS there, right?

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1 A. Yeah, they were called to come to the house.

2 Q. So, you could have gotten some gloves, and given a
3 thorough search?

4 A. Yeah, I could have.

5 Q. Because we are talking about looking for weapons
6 here. I mean we are not talking about looking for
7 bazookas that would easily be found. We are talking
8 about looking for a handgun, I am assuming, that is
9 what you were --

10 A. Yes, sir. That would be the pat-down. Weapons can
11 be felt from doing that.

12 Q. Sure. But you didn't find anything?

13 A. No, we didn't find any weapons.

14 Q. Okay. So it is fair to say that you didn't find
15 anything at all the first time, right?

16 A. Other than money on him, in the pockets of whatever
17 he was wearing, that's it.

18 Q. You also testified that there was some marijuana
19 found in the house?

20 A. That's correct.

21 Q. Remind me where that marijuana was found?

22 A. In the livingroom, as you enter the house, in a
23 heater.

24 Q. And in relation to where Mr. Addison was when he
25 entered the home, where was the marijuana?

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1 A. Just in the next little room. I mean it was very
2 close to his room, but not in the same --

3 Q. -- Not in the same area?

4 A. No.

5 Q. Where somebody else is?

6 A. Uh --

7 Q. The sixteen-year-old, right?

8 A. He ran through that room. He wasn't in that room.
9 He ran through it.

10 Q. But he --- From your intake, the only person in that
11 home when they went through that home was a sixteen-
12 year-old?

13 A. That's correct.

14 **MR. GROVE:** I'm sorry, if you would give me just
15 one moment.

16 **DEPUTY LAWSON:** That's fine.

17 Q. Can you describe the condition of Mr. Addison's home
18 when you entered it?

19 A. It was fairly nasty. I mean there were dog feces
20 everywhere. It smelt like urine. There was some
21 clutter in some rooms, thing of that --- just --

22 Q. I guess not like it is at your house?

23 A. I'm sorry?

24 Q. Does it look like the inside of your house?

25 A. Oh, no.

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1 Q. Messy?

2 A. I would say it looked messy, yes.

3 Q. Dirty?

4 A. Dirty.

5 Q. Clutter you said?

6 A. In some areas yes.

7 Q. Easy to get around?

8 A. In certain areas you could get around fairly easy.

9 In the back of the house, no.

10 Q. A fair amount of tiptoeing around, I guess with all
11 the dogs?

12 A. At points, yes.

13 Q. How easy would it be to get around in a wheelchair?

14 A. Oh, he could get around his room, the little hallway,
15 in between the two front doors and the livingroom, he
16 could get around in a wheelchair. He has gotten
17 around in the neighborhood a good bit. He can get
18 around in the house.

19 Q. Not as easy as walking around on foot though, right?

20 A. Of course it is not as easy as on foot. No, sir.

21 Q. How long after his arrest did you say it was the next
22 day that you had a conversation with Mr. Addison at
23 the jail?

24 A. It was at the jail, yeah. The next day --- Actually
25 the next day on the 22nd and the 23rd, I'm sorry.

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1 Q. Okay.

2 MR. GROVE: Just one moment.

3 (PAUSE.)

4 Q. Was Mr. Addison incarcerated at the time you had the
5 conversation?

6 A. Yes, he was.

7 Q. Behind bars?

8 A. That's correct.

9 Q. Restrained?

10 A. Yes, sir.

11 Q. And up until a review of the incident report, you
12 didn't even remember what he said, right?

13 A. I'm sorry?

14 Q. Up until you reviewed the incident report a few
15 minutes ago, you didn't remember what he said to you?

16 A. Oh, I remembered what he said. I was just trying to
17 give verbatim what he said, exactly what he said.

18 Q. Right. And what did he say? He asked you how your
19 dad was doing, right?

20 A. Well, that was the words that were used, yes, sir.

21 Q. Are you from Hartsville?

22 A. I sure am.

23 Q. Not a big town?

24 A. No, sir.

25 Q. How old are you?

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1 A. Thirty-two.

2 Q. Thirty-two. So, you are a year or two removed from
3 Marcus in school, right?

4 A. Yes, sir.

5 Q. Okay. And again, what were the threatening words
6 that Marcus used?

7 A. The words that day was --- it was more or less how he
8 said it, the words that he said.

9 Q. So they weren't in a threatening way. We are just
10 talking about a tone.

11 A. There was threatening words the following day during
12 Bond Hearings. But it was the way he said it that
13 made me feel uncomfortable and uneasy about my
14 father, that day, of knowing where he lived. Yes.

15 Q. And again, Hartsville, not a big place, right?

16 A. It is not a big place, no, sir.

17 Q. And just one more time, Officer Lawson, you patted
18 down Mr. Addison prior to putting him in the EMS
19 vehicle, and then someone else patted him down later
20 on?

21 A. That's correct. I patted him down. I didn't
22 thoroughly search him. That was done when he was in
23 EMS. He got thoroughly searched. There is a
24 different between being patted down and thoroughly
25 searched. I did not search him, I patted him down to

BRAD M. LAWSON - CROSS EXAMINATION

125

1 make sure he didn't have any weapons on him.

2 Q. -- Right. And at what point was he handcuffed, because
3 he is under arrest?

4 A. He was handcuffed at that point, when we secured the
5 home, and patted him outside, he was handcuffed.

6 Q. What kind of a restrain are we talking about?
7 Handcuffed in the front? Handcuffed to his chest?
8 Having his hands behind his back?

9 A. We handcuffed him in the front, because of his
10 condition.

11 Q. Sure. How much time elapsed between entry into the
12 home and EMS driving away, taking Mr. Addison to get
13 some medical treatment?

14 A. I am not exactly sure how much time there was before
15 EMS took him away to get to the hospital. I don't
16 know exactly how much time.

17 Q. I'm not looking for an exact --- An hour, four hours,
18 three hours?

19 A. Thirty minutes to an hour at the most. I mean, of
20 course we were there longer at the house. But for
21 him to be taken to the hospital, by the time we got
22 there I would say thirty minutes or so. That is not
23 exact, but somewhere around that time frame.

24 Q. And who was in the vehicle with Mr. Addison when he
25 left?

BRAD M. LAWSON - CROSS EXAMINATION

126

1 A. In the back of the EMS?

2 Q. Yeah. Who was in the vehicle?

3 A. While he was in the back of EMS was EMS personnel,
4 and Officer Rodney Hopkins.

5 Q. Do you know how many EMS personnel?

6 A. I'm not --- The only thing I remember was just two of
7 them being in the back --- back there with him. I
8 don't know exactly. Again, I wasn't in the back of
9 the EMS.

10 MR. GROVE: Just a moment, Your Honor.

11 (PAUSE.)

12 Q. And just a couple more questions, Officer Lawson.
13 Did you see Mr. Addison get moved into the EMS
14 vehicle?

15 A. No, I didn't watch him get loaded up, no, sir.

16 Q. You may have seen this before, Officer Lawson, I'm
17 not sure. If you don't know that is perfectly fine.
18 Was he upright, reclined, I am assuming he was on one
19 of those stretchers where the legs go up and down?

20 A. I don't know. They loaded him in the EMS vehicle as
21 far as I know on a stretcher type in the EMS vehicle.
22 That is pretty common.

23 Q. Right.

24 A. To be put in that. But again, I wasn't there, so I
25 don't really recall.

BRAD M. LAWSON - REDIRECT EXAMINATION

127

1 Q. That's perfectly all right.

2 MR. GROVE: No further questions at this time.

3 THE COURT: Redirect, Mr. Holt?

4 MR. HOLT: Thank you very much, judge.

5 REDIRECT EXAMINATION BY MR. HOLT

6 Q. Officer Lawson, there was some testimony about --- he
7 was asking you about what the defendant said to you
8 at certain times. At his Bond Hearing, he said
9 something else. Do you remember exactly what he said
10 to you at his Bond Hearing?

11 A. I do. This was on May 23rd, there was a Bond Hearing
12 at the Detention Center. He looked back at me
13 several times with a very angry look during the bond
14 hearing. And I know that the magistrate had warned
15 him several times during the Bond Hearing, and that
16 got noted in the report. His behavior and comments
17 in the Bond Hearing, and as he was going out he
18 turned and looked at me as they were finishing with
19 the Bond Hearing --- jail personnel was rolling him
20 out, and he turned around and looked at me, and under
21 his breath, I could very clearly read his lips
22 saying, I'm going to get you.

23 MR. HOLT: Thank you very much, Officer Lawson.

24 No further questions, judge.

25 THE COURT: Re-cross?

BRAD M. LAWSON - RE-CROSS EXAMINATION

128

1 MR. GROVE: Thank you, Your Honor.

2 RE-CROSS EXAMINATION BY MR. GROVE

3 Q. The warnings that the judge at the Bond Hearing gave,
4 weren't about making threats were they?

5 A. It was him --- He turned around and told his family
6 that they are crazy. This is crazy. At that time
7 the judge warned him about you know saying something
8 else in the Bond Hearing.

9 Q. But he wasn't just wildly making threats at everybody
10 in the room?

11 A. No, sir.

12 Q. And you also said that he gave you a very ugly look.

13 A. Yes, sir.

14 Q. That is correct as well? How long have you been on
15 the force, Officer Lawson?

16 A. Nine years.

17 Q. How often do people that you arrest, or people
18 walking down the street give you an ugly look just
19 because you are an officer?

20 A. Well, you get that a good bit.

21 Q. I'm sure. I do too. Don't worry about it. Do
22 people --- I am sure people kind of get mouthy with
23 you fairly often with you, right?

24 A. Yes, sir.

25 Q. How often, 50% of the time?

WILLIAM "TONY" BAIRD - DIRECT EXAMINATION

129

1 A. I don't percentage. I know there are very few that
2 make me feel the way that Mr. Addison made me feel
3 about it though.

4 MR. GROVE: Nothing further.

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

7 THE COURT: All right. Mr. Holt, you may call your
8 next witness.

9 MR. HOLT: Thank you very much, judge. At this
10 time,
11 the state would like to call Tony Baird to the stand.

12 THE COURT: All right. Come around, please.

13 DEPUTY CLERK: If you would come forward and be
14 sworn.

15 WHEREUPON, WILLIAM "TONY" BAIRD

16 FIRST BEING DULY SWORN TESTIFIES AS FOLLOWS

17 OFFICER BAIRD: I do.

18 DIRECT EXAMINATION BY MR. HOLT

19 Q. Deputy, could you please state your full name for the
20 jury?

21 A. William Anthony Baird. Everybody calls me Tony. I go
22 by Tony for short.

23 Q. And where are you currently employed?

24 A. With the Darlington County Sheriff's Office.

25 Q. And what is your official position?

GEORGE WILKES - CROSS EXAMINATION

186

1 Q. You didn't. When the defendant here today was
2 outside of the home, were you ever watching over him?

3 A. Yes.

4 MR. HOLT: Thank you very much, Deputy Wilkes.
5 Please answer any questions the defense counsel may have.

6 THE COURT: Cross examination.

7 MR. GROVE: Thank you, judge.

8 CROSS EXAMINATION BY MR. GROVE

9 Q. Deputy Wilkes, you were the head of the Narcotics
10 Division at the time?

11 A. Yes, sir.

12 Q. So you were in charge of sort of corralling this
13 whole search?

14 A. Yes, sir.

15 Q. What were y'all searching for?

16 A. We were looking for D.G.

17 Q. Why were you looking for Mr. Graham?

18 A. He had warrants on him.

19 Q. Do you remember which ones in particular?

20 A. No, sir. I don't.

21 Q. But he had pre-existing warrants before May 21, 2008?

22 A. I don't remember.

23 Q. Well, if you were looking for him, and he had
24 warrants on him, then they had to predate the day of
25 the search, right?

THE STATE VERSUS MARCUS ADDISON

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1 A. I haven't looked at this case since 2008, and I got
2 called this morning, and I came up here. If you will
3 give me time to read over it, I'll tell you.

4 Q. That's quite all right, deputy. I certainly
5 understand. Mr. Graham did in particular did. Did
6 you know him in the past?

7 A. Yes, sir.

8 Q. Have you ever had dealings with him before?

9 A. Yes, sir.

10 Q. Outside of [REDACTED] [REDACTED]

11 A. Yes, sir. And at [REDACTED] [REDACTED]

12 Q. All over town?

13 A. Yes, sir. But he hung out at [REDACTED] [REDACTED] in that
14 area.

15 Q. And he lived right there down the street, correct?

16 A. Yes, sir.

17 Q. You say that you didn't search the juveniles at the
18 home, but you did observe my client, Mr. Addison
19 outside the home, during this process?

20 A. Yes, I did talk to him outside of the home.

21 Q. Okay.

22 MR. GROVE: Beg the Court's indulgence.

23 THE COURT: Yes, sir.

24 (PAUSE.)

25 MR. GROVE: Nothing further, Your Honor. Thank

THE STATE VERSUS MARCUS ADDISON

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1 MR. GROVE: Yes, Your Honor, we have.

2 THE COURT: I need to talk with him again. Mr.
3 Addison, I previously advised you of your rights under the
4 Fifth Amendment to the Constitution of South Carolina Law,
5 and the United States, and the counterpart to the
6 constitution to the state of South Carolina. Have you
7 understood what I told you with regard to your Fifth
8 Amendment Right?

9 MR. ADDISON: Yes.

10 THE COURT: Have you had a chance to talk with your
11 lawyer about your Fifth Amendment Rights?

12 MR. ADDISON: Yes.

13 THE COURT: Have you understood your discussions
14 with him?

15 MR. ADDISON: Yes.

16 THE COURT: Do you have any questions that you wish
17 to ask him or me regarding your Fifth Amendment Rights?

18 MR. ADDISON: No.

19 THE COURT: Have you made the decision as to
20 whether you do or do not wish to testify in this matter?

21 MR. ADDISON: I do.

22 THE COURT: First of all, my question is have you
23 made a decision as to whether you do or do not wish to
24 testify?

25 MR. ADDISON: Yes.

THE STATE VERSUS MARCUS ADDISON

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1 or exclamations, or verbal, or body language, or anything
2 else as contempt of court. If there is anyone who thinks
3 that they cannot sit quietly when the jury verdict is
4 published, I would ask that you leave now.

5 All right. Bring the jury in, please.

6 **BAILIFF:** All right, sir.

7 (Whereupon, the jury enters the courtroom at
8 12:37 p.m..)

9 **THE COURT:** All right. Mr. Foreman, I have been
10 advised that the jury has reached a verdict; is that
11 correct?

12 **MR. FOREMAN:** Yes, sir.

13 **THE COURT:** Would you hand it up to the clerk,
14 please?

15 All right. From the standpoint of form, the verdicts
16 appear to be correct.

17 Mr. Clerk, you may publish the verdicts?

18 **CLERK OF COURT:** Yes, sir, Your Honor. This is
19 case number 2008-GS-16-1502. The State of South Carolina
20 versus Marcus Addison. We the jury, by unanimous verdict,
21 find the defendant Marcus Addison, guilty of trafficking
22 ice, crank, or crack cocaine. Signed Foreperson Andy
23 Pusser. February 2, 2011.

24 If this is your verdict would you so signify by
25 raising your right hand, please? All twelve jurors have

THE STATE VERSUS MARCUS ADDISON

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1 raised their right hand.

2 THE COURT: I'm sorry. Did you raise your hand?
3 Okay. I didn't see it. Okay. I am looking at the light,
4 and I can't really see. Go ahead.

5 CLERK OF COURT: 2008-GS-16-1503, The State of
6 South Carolina versus Marcus Addison. We the jury by
7 unanimous agreement find the defendant Marcus Addison, not
8 guilty. Signed Foreperson Andy Pusser.

9 THE COURT: What charge is that?

10 CLERK OF COURT: Charge of not guilty of
11 possession of attempting to distribute marijuana. If this
12 is your verdict, would you so signify by raising your
13 right hand, please. All twelve jurors have raised their
14 right hand.

15 Case number 2008-GS-16-1505. The State of South
16 Carolina versus Marcus Addison. We the jury by unanimous
17 agreement find the defendant, Marcus Addison guilty of
18 contributing to the delinquency of a minor, that being
19 D.R. Signed Foreperson Andy Pusser. February
20 2, 2011. If this is your verdict, would you so signify by
21 raising your right hand. All twelve jurors have raised
22 their right hand.

23 Case number 2008-GS-16-1504. The State of South
24 Carolina versus Marcus Addison. We the jury by unanimous
25 agreement find the defendant, Marcus Addison guilty of

SENTENCING HEARING

363

1 I do believe that a substantial sentence is appropriate.

2 It is going to be a burden to you Mr. Addison, but it
3 is also going to be a burden to the State of South
4 Carolina, because of your condition. But, we can't let
5 that deter the justice that needs to be handed out.

6 The sentence on the trafficking on cocaine base is,
7 the defendant is committed to the State The Department of
8 Corrections for a term of ten years. Given credit for the
9 time he has served, if he has served any.

10 The sentence on 1504, for the contributing to the
11 delinquency of one minor is three years consecutive to 08-
12 GS-16-1502.

13 And the sentence on the contributing to the
14 delinquency of the other minor is three years also
15 consecutive.

16 A total of ten plus three plus three. Good luck to
17 you, sir.

18 All right. No one leave please. I would like for
19 the members of the jury who did come in, may leave at this
20 time. If the bailiffs will notify me when they have
21 cleared the building.

22 (Whereupon, this trial was concluded at 1:05
23 p.m. on Wednesday, February 2, 2011.)

24 -- END OF TRANSCRIPT --

STATE OF SOUTH CAROLINA

TRUE CERTIFIED COPY
JAN 25 2008
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

County of Darlington

816 "F" St.

SEARCH WARRANT
Hartsville, SC 29550

Date 05-16-08

Officer B. Lawson

STATE OF SOUTH CAROLINA

COUNTY OF

Darlington

SEARCH WARRANT

Form Approved 91
S.C. Attorney General
Section 17-13-160
March 15, 1976

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF Darlington County

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

Leaving Hartsville Detective Office travel on 5th St north Apprx. 1/4 tenth of a mile.
Turn right on Society Ave, travel Apprx. 1/6 tenth of a mile. Turn right on "F" St, travel Apprx.
2 tenths of a mile. Residence is on the right, 816 "F" St. White in color dwelling with
two red doors in front. This to include all vehicles and outbuildings
associated with residence.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

Cocaine, Crack-cocaine, U.S. Currency, and
any item used to store or facilitate
the sale of illegal drugs.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

TRUE CERTIFIED COPY
CLERK OF COURT
DARLINGTON COUNTY S.C.

Hartsville, S.C.
James E. Thomas 5-19, 20 08

James E. Thomas (L.S.)
Signature of Judge

STATE OF SOUTH CAROLINA

COUNTY OF Darlington

AFFIDAVIT

Personally appeared before me, one B. Lawson
 who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions
 of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Cocaine, Crack-Cocaine, U.S. Currency, and any
item used to store or facilitate the
sale of illegal drugs.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

Leaving Hartsville Detective Office travel on 5th St north Apprx. 1/4th of a mile.
Turn right on Society Ave, travel Apprx. 6 tenths of a mile. Turn right on "F" St, travel Apprx.
2 tenths of a mile. Residence is on the right, 816 "F" St. white in color dwelling with
two red doors in front. This to include all vehicles and outbuildings
associated with residence.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

That within the past 72 hours, a reliable
confidential informant, for the Darlington County
Drug Unit, has purchased a quantity of crack-
cocaine from the described residence located
on "F" St. in the Hartsville area of
Darlington County. This event was
monitored by law enforcement agents.

Sworn to and Subscribed before me
 this 20 day of 08

TRUE COPY!
CLERK OF COUNTY
DARLINGTON COUNTY, S.C.

(L.S.)

Bud Lawson
 Affiant

Address

P.O. Box 783Darlington, SC 29532

Phone

(843) 398-4501

93

RETURN

I received the attached Search Warrant May 19, 20 08, and have executed it as follows:

On May 21, 20 08 at 7:00 o'clock P M, I searched
(the person) described in the warrant and (the premises)

I left a copy of the warrant with Marcus Addison
Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

- ① Crack-cocaine under sink - Approx. 8.9 grams
- ② Crack-cocaine from Dorenzo Graham - Approx. 2 grams
- ③ Bag with Approx. 67.2 grams marijuana.
- ④ Box Sandwich bags.
- ⑤ Two (2) Digital Scales.
- ⑥ Two (2) bags crack-cocaine from M. Addison - Approx. 13.7 grams
- ⑦ \$436 U.S. currency
- ⑧ Panther Rx 4 110 4-wheeler VIN# L4P6um42973A26009

This inventory was made in the presence of Inv. McInville, Cpl. Baird, L/cpl. Flowers,
AND Agent G. Lawson, Russ Harrell

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this

day of

22nd

, 20

08

James E. Roman
Signature of Judge

(L.S.)

SGT. M. Hall

(Signature of Officer Executing Warrant)

TRUE CERTIFIED COPY
Scott B. Suggs
CLERK OF COURT/AMC
DARLINGTON COUNTY, S.C.

WITNESSES

Lawson
DCCDU

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

WITNESS:

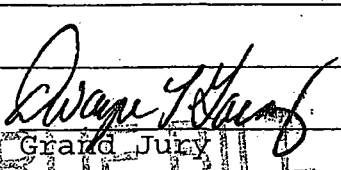
C.C.C. PLS. AND G.S.

ARREST WARRANT #:

J651956

Arrested on May 22, 2008

ACTION OF GRAND JURY

Foreman: 

Grand Jury

TRUE BILL

VERDICT

Foreman:

Petit Jury

Date: NOV 6 2008

DOCKET #: 08GS16-1502

THE STATE OF SOUTH CAROLINA

County of Darlington

- COURT OF GENERAL SESSIONS

Term: November, 2008

THE STATE

vs.

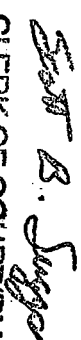
Marcus Addison

I N D I C T M E N T F O R

0451

TRAFFICKING IN ICE, CRANK OR CRACK 10G OR

MORE BUT < THAN 28 G 44-53-0375

TRUE CERTIFIED COPY,

 CLERK OF COURT/RMC
 DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
 County of Darlington)

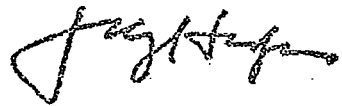
INDICTMENT #08GS16-1502

At a Court of General Sessions, convened on November 10, 2008
 the Grand Jurors of Darlington County present upon their oath:

COUNT: TRAFFICKING IN ICE, CRANK OR CRACK 10G OR
 MORE BUT < THAN 28 G 44-53-0375

That Marcus Addison in the County of Darlington on or about May 21, 2008,
 unlawfully, unlawfully and/or knowingly transport, and/or deliver and sell and/or
 knowingly in possession of 13.7 grams or more of crack cocaine, this
 constituting the crime of Trafficking in Crack Cocaine under provisions,
 44-53-375, et. seq., Code of Laws of South Carolina 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute
 in such cases made and provided.

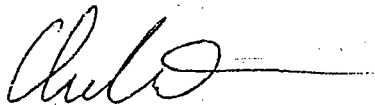
SOLICITOR: 

TRUE CERTIFIED COPY,

B. Suggs

CLERK OF COURT/RMC
 DARLINGTON COUNTY, S.C.

WITNESSES

Lawson
DCCDU

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

WITNESS:

C.C.C. PLS. AND G.S.

ARREST WARRANT #:

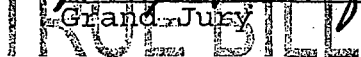
J651971

Arrested on May 22, 2008

ACTION OF GRAND JURY

Foreman:

Grand Jury


TRUE BILL

VERDICT

Foreman:

Petit Jury

Date:

NOV 6 2008

DOCKET #: 08GS16-1504

THE STATE OF SOUTH CAROLINA

County of Darlington

COURT OF GENERAL SESSIONS

Term: November, 2008

THE STATE

vs.

Marcus Addison

INDICTMENT FOR

0048

CONTRIBUTING TO DELINQUENCY OF A MINOR

(16-17-490)

TRUE CERTIFIED COPY,
 Scott B. Suggs
 CLERK OF COURT/RMC
 DARLINGTON COUNTY, S.C.

SOUTH CAROLINA)
) INDICTMENT #08GS16-1504
 county of Darlington)

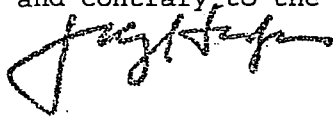
At a Court of General Sessions, convened on November 10, 2008,
 the Grand Jurors of Darlington County present upon their oath:

COUNT: CONTRIBUTING TO DELINQUENCY OF A MINOR
 (16-17-490)

That Marcus Addison, a person over the age of eighteen years, did in
 Darlington County on or about May 21, 2008, knowingly and willfully encourage,
 or cause, or influence a minor to violate the law or to do deport himself
 to willfully injure or endanger his morals or health, to wit: D. G.

date of birth [REDACTED], a child less than eighteen years of age, all in
 violation of S. C. Code Section 16-17-490.

Against the peace and dignity of the State, and contrary to the statute
 in such cases made and provided.

SOLICITOR: 

TRUE CERTIFIED COPY,
 B. J. J. J.
 CLERK OF COURT/RMC
 DARLINGTON COUNTY, S.C.

WITNESSES

Lawson
DCCDU

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to:

Defendant

WITNESS:

C.C.C. PLS. AND G.S.

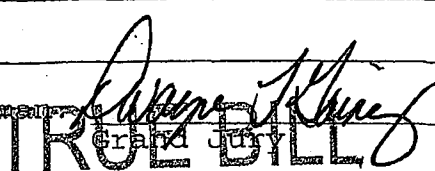
ARREST WARRANT #:

J651972

Arrested on May 22, 2008

ACTION OF GRAND JURY

Foreman


TRUE BILL

VERDICT

Foreman:

Petit Jury

Date:

NOV 6 2008

DOCKET #: 08GS16-1505

THE STATE OF SOUTH CAROLINA

County of Darlington

COURT OF GENERAL SESSIONS

Term: November, 2008

THE STATE

vs.

Marcus Addison

INDICTMENT FOR

0048

CONTRIBUTING TO DELINQUENCY OF A MINOR

(16-17-490)

TRUE CERTIFIED COPY,
 Scott B. Singer
 CLERK OF COURT/RMC
 DARLINGTON COUNTY, S.C.

SOUTH CAROLINA)
)
county of Darlington)

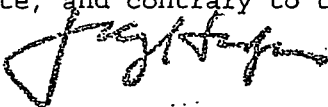
INDICTMENT #08GS16-1505

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to willfully injure or endanger his morals or health, to wit: Darius
D.R. date of birth [REDACTED], a child less than eighteen years of age, all
in violation of S. C. Code Section 16-17-490.

Against the peace and dignity of the State, and contrary to the statute
in such cases made and provided.

SOLICITOR: 

TRUE CERTIFIED COPY,
Sgt. B. J. J. J.
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with 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."

February 16th, 2012


Dayne C. Phillips
Assistant Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED

DEC 21 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

S.C. Supreme Court

Appeal from Darlington County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARCUS ADDISON,

APPELLANT

FINAL BRIEF OF APPELLANT

DAYNE C. PHILLIPS
Appellate Defender

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

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err by refusing to suppress the drug evidence found in Appellant's home during the execution of a search warrant where the Magistrate did not have a substantial basis to conclude that probable cause existed to issue the search warrant when there was an insufficient nexus between the events surrounding a drug transaction which did not involve Appellant or occur inside Appellant's home and probable cause to search Appellant's residence?

STATEMENT OF THE CASE

On November 10, 2008, Marcus Addison was indicted by the Darlington County Grand Jury for: (1) threatening the life or family of a public official, Brad Lawson; (2) threatening the life or family of a public official, Kim Dorsett; (3) trafficking crack-cocaine in the amount of ten grams or more; (4) possession with the intent to distribute marijuana; (5) contributing to the delinquency of a minor; and (6) contributing to the delinquency of a minor R. 94; R. 8, l. 19 – 9, l. 21.

On January 31, 2011, Addison proceeded to trial before the Honorable Howard P. King and a jury, where he was represented by William Grove and Richard Jones. R. 1. The State was represented by assistant solicitors John Holt and Patti Parker. R. 1. Judge King granted defense counsel's motion for a directed verdict in regards to the indictment for threatening the life or family of a public official, Kim Dorsett, because she did not qualify as a public official. R. 86, ll. 12-22.

On February 2, 2011, the jury found Addison guilty of trafficking crack-cocaine and contributing to the delinquency of minors. R. 87, ll. 18-25; Supp R. 1, ll. 1-2. The jury found Addison not guilty of possession with the intent to distribute marijuana and threatening the life or family of a public official, Brad Lawson. R. 88, ll. 5-25; Supp R. 1, ll. 6-10. Judge King sentenced Addison to ten years imprisonment for trafficking crack-cocaine and six years imprisonment for contributing to the delinquency of minors. (three years for each charge), to run consecutively with the prior sentence. R. 94; R. 89, ll. 6-16. Addison was therefore sentenced to a total of sixteen years imprisonment. R. 89, ll. 6-16.

This appeal follows.

STATEMENT OF FACTS

Relevant Facts

On May 19, 2008, Brad Lawson, a police officer for the Darlington County Sheriff's Office, presented a search warrant affidavit to the Magistrate James E. Thomas. R. 18, l. 12 – 19, l. 1; 90. The “[p]robable cause section [of the search warrant affidavit] state[d] that within the past seventy-two hours, a reliable confidential informant [“CI”] for the Darlington County Drug Unit, has *purchased a quantity of crack-cocaine from the described residence* located on [address] in the Hartsville area of Darlington County. This event was monitored by law enforcement agents.” R. 19, ll. 12-22. The property sought in the search warrant affidavit was “cocaine, crack-cocaine, U.S. currency, and any item[s] used to store or facilitate the sale of illegal drugs.” R. 90. The drugs, however, were actually sold “fifteen yards away from the house,” not “from the described residence” as indicated in the search warrant affidavit and the CI was never searched after the drug transaction. R. 22, ll. 15-20; 36, l. 22 – 37, l. 12.

Officers Lawson, Charles Wright, and George Wilkes, also provided Magistrate Thomas with additional information concerning the drug transaction. R. 18, l. 12 – 24, l. 18. Specifically, the officers told Magistrate Thomas that there had been some “complaints from citizens about drug activity [in] that area,” so the Officers “had a [CI who was] wired up with audio and video equipment” drive to the location on [address]. R. 21, ll. 2-8. Upon the CI's arrival to the location, a drug dealer who was standing on the porch outside of Addison's home, walked to the CI's vehicle, “which was fifteen yards away from the house,” and sold the CI crack-cocaine. R. 21, l. 2 – 22, l. 20.

After reading the affidavit presented by Officer Lawson and considering the information supplemented by Officers Wilkes, Wright, and Lawson; Magistrate Thomas issued a search warrant for the residence located at “[address] . . . to include all vehicles and outbuildings associated with residence.” R. 90. The record, however, does not show that Magistrate Thomas was aware that: (1) the CI never saw the drug dealer enter or exit Addison’s home located at [address]; (2) the CI never personally entered the home; (3) the owner of the home, Addison, is a paraplegic and could not have been the drug dealer in the video; or (4) the drug transaction did not occur inside the residence. R. 15, ll. 11-21; 16, l. 4 – 17, l. 19; 22, ll. 18-20; 57, l. 20 – 58, l. 6.

On May 21, 2008, the search warrant was executed by numerous officers from the Darlington County Sheriff’s office on Addison’s residence located at [address], Hartsville, South Carolina. R. 54, l. 20 – 55, l. 4. The police subsequently seized crack-cocaine, marijuana, four-hundred and thirty-six dollars, and weighing scales. R. 57, l. 5 – 63, l. 12.

Suppression Hearing

Pre-trial, defense counsel moved to suppress the drug evidence found during the execution of the search warrant on May 21, 2008. R. 10, l. 4 – 52, l. 19. In support of his motion, defense counsel argued that the search warrant lacked probable cause because it “was issued on insufficient evidence.” R. 10, ll. 20-23; 39, l. 19 – 40, l. 12.

During the suppression hearing, the State called Officers Wright and Lawson to attempt to prove that probable cause existed at the time the search warrant was issued to search the residence located at [address], Hartsville, South Carolina. R. 11, ll. 21-24.

Officer Wright

On direct-examination, Officer Wright testified as to the contents of the video that was captured from the camera located in the CI's car during the drug transaction. R. 12, l. 14 – 17, l. 19. Officer Wright stated that the video showed the "distribution of crack-cocaine on the residence of Marcus Addison." R. 12, l. 17 – 13, l. 3.

On cross-examination, Officer Wright testified: (1) that the CI "never entered [Addison's] residence;" (2) that the CI "never spoke [to] . . . Addison directly;" and (3) that "Addison doesn't appear on the video." R. 15, ll. 11-21. Officer Wright also testified that the drug dealer on Addison's porch was never seen inside the home. R. 16, l. 4 – 17, l. 19. Officer Wright admitted that the drug dealer "could have" also been Dontavious Jackson, who "lives across the street" from Addison's home. R. 16, ll. 13-22.¹

Officer Lawson

As for Officer Lawson, he testified as to his "involve[ment] in obtaining the search warrant for the residence of Marcus Addison located at [address], in Hartsville." R. 18, ll. 12-15. Officer Lawson stated that he prepared and presented the search warrant to Magistrate Thomas. R. 18, l. 23 – 19, l. 1.

On cross-examination, Officer Lawson admitted: (1) that Addison was not seen in the video at all; (2) that Addison's address was not mentioned in the video; (3) that the CI "was fifteen yards away from the house" when he was sold crack-cocaine; and (4) that the CI never went inside Addison's home. R. 22, l. 16 – 24, l. 13.

¹ The State admitted that "[y]ou can't see the person [in the video] good" and "they didn't search [the drug dealer] afterwards." R. 44, ll. 10-14.

Defense counsel argued that probable cause did not exist to issue the search warrant for four reasons. First, the State failed to present evidence that drugs were inside Addison's home because neither the CI nor the drug dealer entered the home. R. 36, ll. 16-21; 46, ll. 3-17. Second, a more appropriate location for the search warrant existed because the officers knew the identity of the drug dealer and knew that he lived across the street from Addison's home. R. 38, l. 8 – 39, l. 22. Third, the State failed to show that Addison, the owner of the home, was involved in illegal activity because he was not present or even seen during the drug transaction that occurred "15 yards away" from his residence. R. 22, ll. 18-20; 39, l. 23 – 40, l. 12. Fourth, the drug transaction was not sufficient to establish probable cause because the CI was not searched immediately after the transaction. R. 36, ll. 22-25.

The State argued that *Illinois v. Gates*, 462 U.S. 213 (1983), and *State v. Dupree*, 354 S.C. 676, 583 S.E.2d 437 (Ct. App. 2003), supported that there was sufficient probable cause for Magistrate Thomas to issue the search warrant. R. 40, l. 14 – 43, l. 14. Defense counsel, however, distinguished *State v. Dupree* from the facts of this case because in *Dupree*, the CI "was observed by narcotics agents . . . entering and exiting the location." R. 46, ll. 3-10. The State also admitted that "[y]ou can't see the person [in the video] good" and "they didn't search [the drug dealer] afterwards." R. 44, ll. 10-14.

At the conclusion of the suppression hearing, Judge King denied defense counsel's motion to suppress. R. 47, l. 25 – 52, l. 19. Judge King stated that "probable cause can be established by the totality of the circumstances, and it is a practical common sense analysis of the probability that contraband will be found. That is the test." R. 51, ll. 4-13. After applying that test to the facts of this case, Judge King found that "there was a probability that contraband would be found at this particular location." R. 51, ll. 4-13.

In addressing the absence of entry into Addison's home, Judge King stated that "I don't think that there is any requirement that [the CI or the person engaged in illegal activity] must enter the house in order to establish probable cause, if [the person engaged in illegal activity] is shown coming from the house." R. 50, ll. 12-17. However, there is no evidence that the drug dealer was seen entering or exiting Addison's residence. R. 16, l. 4 – 17, l. 19.

Judge King also addressed the absence of evidence concerning Addison's involvement to the drug transaction when he stated that "I don't think . . . [Addison's] identity is the controlling factor at all. I think the location is the controlling factor" because the search warrant was for a specific location. R. 47, l. 25 – 48, l. 3.

With regard to searching the CI after the drug transaction, Judge King ruled that the drug transaction was sufficient to establish probable cause because "the video clearly shows...that the drug transaction took place" and what appeared to be crack-cocaine. R. 49, l. 24 – 50, l. 4.

Trial

After the suppression hearing and in the presence of the jury, Officer Wright testified that prior to the search of Addison's home, "[the Darlington County Sheriff's Office was] looking for D.G." because "[h]e had warrants" for his arrest. R. 84, ll. 9-18. Officer Wright also testified that he had dealt with D.G. prior to the search of Addison's home and that he knew D.G. lived "down the street" from Addison's home. R. 85, ll. 4-16.

As for Officer Lawson, his trial testimony was consistent with his suppression hearing testimony. R. 53, l. 10 – 83, l. 3.

ARGUMENT

- I. **The trial court erred by refusing to suppress the drug evidence found in Addison's home during the execution of a search warrant where the Magistrate did not have a substantial basis to conclude that probable cause existed to issue the search warrant because there was an insufficient nexus between the events surrounding a drug transaction which did not involve Addison or occur inside Addison's home and probable cause to search Addison's residence.**

Despite that Magistrate Thomas did not have a substantial basis to conclude that drugs would be found inside Addison's home, Judge King found that "there was a probability that contraband would be found at this particular location" and denied defense counsel's motion to suppress. R. 47, l. 25 – 83, l. 19. Consequently, Judge King erred by refusing to suppress the drug evidence found in Addison's home because without additional investigation into the residence and the omitted data on the search warrant affidavit, there was an insufficient nexus between the events surrounding the drug transaction which did not occur inside Addison's home and probable cause to search Addison's "residence . . . to include all vehicles and outbuildings associated with residence." R. 90.²

The Fourth Amendment of the United States Constitution guarantees "[t]he right of the people to be secure . . . [from] unreasonable searches and seizures." U.S. Const. amend. IV. The Fourth Amendment also requires an oath or affirmation before probable cause can be found by an officer of the court, and a search warrant issued. U.S. Const. amend. IV.

² "In criminal cases, the appellate court sits to review errors of law only." *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). Appellate courts are bound by the trial court's factual findings unless they are clearly erroneous. *State v. Quattlebaum*, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000). "A deferential standard of review applies in a Fourth Amendment challenge to a trial court's fact-driven affirmation of probable cause." *State v. Thompson*, 363 S.C. 192, 199, 609 S.E.2d 556, 560 (Ct. App. 2005).

The South Carolina Code mandates that a search warrant “shall be issued only upon affidavit sworn to before the magistrate, municipal judicial officer, or judge of a court of record” S.C.Code Ann. § 17-13-140 (1985). Evidence obtained in violation of the Fourth Amendment is inadmissible in both state and federal court. *See Forrester*, 343 S.C. at 643, 541 S.E.2d at 840.

“The affidavit must contain sufficient underlying facts and information upon which the magistrate may make a determination of probable cause. *State v. Dupree*, 354 S.C. 676, 684, 583 S.E.2d 437, 441 (Ct. App. 2003) (citing *State v. Philpot*, 317 S.C. 458, 454 S.E.2d 905 (Ct. App. 1995)). A magistrate may issue a search warrant only upon a finding of probable cause. *State v. Bellamy*, 336 S.C. 140, 143, 519 S.E.2d 347, 348 (1999). The magistrate should determine probable cause based on all of the information available to the magistrate at the time the warrant was issued.” *Dupree*, 354 S.C. at 684, 583 S.E.2d at 441 (citations omitted).

In terms of a court's review of the magistrate's decision, “[t]he duty of the reviewing court is to ensure the issuing magistrate had a substantial basis upon which to conclude that probable cause existed.” *State v. Baccus*, 367 S.C. 41, 50, 625 S.E.2d 216, 221 (2006). In determining whether a substantial basis exists, the crucial element is not whether the target of the search is suspected of a crime, but whether it is reasonable to believe that the items to be seized will be found in the place to be searched. *Zurcher v. Stanford Daily*, 436 U.S. 547, 556 & n. 6 (1978). “This determination requires the magistrate to make a practical, common-sense decision of whether, given the totality of the circumstances set forth in the affidavit, including the veracity and basis of knowledge of persons supplying the information, there is a fair probability that contraband or evidence of a crime will be

found in a particular place.” *State v. King*, 349 S.C. 142, 150, 561 S.E.2d 640, 644 (Ct. App. 2002).

Oral testimony may also be used in this state to supplement search warrant affidavits which are facially insufficient to establish probable cause. *See State v. Weston*, 329 S.C. 287, 494 S.E.2d 801 (1997). However, “sworn oral testimony, standing alone, does not satisfy the statute.” *State v. Jones*, 342 S.C. 121, 128, 536 S.E.2d 675, 678-79 (2000) (citing *State v. McKnight*, 291 S.C. 110, 352 S.E.2d 471 (1987)).

In this case, although the drug transaction occurred “15 yards away” from Addison’s home, without further investigation, the drug transaction alone was insufficient to establish a fair probability that drugs would be found inside Addison’s home. R. 10, l. 4 – 52, l. 19; *See State v. Gentile*, 373 S.C. 506, 515, 646 S.E.2d 171, 175, n. 2 (Ct. App. 2008) (where this Court held that the trial judge erred in denying a motion to suppress because additional investigation into residence was required to establish probable cause); *see also State v. Adams*, 13 A.3d 1162 (Del. 2008).

“[F]or analytical purposes . . . it [is] necessary to separately address each piece of evidence presented to the magistrate,” but it is also recognized that this Court’s decision will be based on the totality of the circumstances. *Gentile*, 373 S.C. at 514, 646 S.E.2d at 174.

As for the drug dealer, at no point during the drug transaction was the drug dealer seen entering or exiting Addison’s residence. R. 16, l. 4 – 17, l. 19. The officers knew that the drug dealer was most likely one of two people: (1) minor D.G., who lived “down the street” from Addison’s residence, or (2) Dontavious Jackson, who “live[d] across the street” from Addison residence. R. 16, l. 4 – 17, l. 19. Consequently, this case is even weaker than *Gentile*, where this Court suppressed the drug evidence, because the drug dealer standing on

Addison's porch does not establish a fair probability that drugs would be found inside Addison's home when he was not seen entering or leaving the residence, particularly since he is a paraplegic. *Gentile*, 373 S.C. at 515-516, 646 S.E.2d at 175-176 (noting that an affidavit in support of a search warrant for Gentile's house was not sufficient to support a finding of probable cause when the police found marijuana on a visitor who had just left Gentile's residence.); R. 16, l. 4 – 17, l. 19; 23, ll. 8-19; 57, ll. 20-21; 58, ll. 1-6.

With regard to the CI, he was never inside the home and was in his car "15 yards" away from the home when the drug transaction occurred. R. 15, ll. 11-21; 22, ll. 18-20. The CI never spoke directly or indirectly to Addison or anyone inside the home. R. 15, ll. 11-21. The CI was also never searched after the drug transaction. R. 36, ll. 22-25. Thus, this case is easily distinguished from *State v. Dupree*, 354 S.C. 676, 583 S.E.2d 437 (Ct. App. 2003); *State v. Keith*, 356 S.C. 219, 588 S.E.2d 145 (Ct. App. 2003); and *State v. Scott*, 303 S.C. 360, 400 S.E.2d 784 (Ct. App. 1991), because neither the CI nor the drug dealer were inside Addison's residence and the drug dealer was not arrested after leaving the residence.³

Again, as for Addison and his residence, he is a paraplegic who was not present or seen during the drug transaction. R. 23, ll. 8-19; 57, ll. 20-21; 58, ll. 1-6. The drug transaction did not occur inside his residence and his address was never referenced in the video. R. 22, ll. 6-20. Therefore, without additional investigation, the only shred of circumstantial evidence that linked criminal activity to Addison's residence was the "complaints from citizens" and drug transaction that occurred on the periphery of Addison's premises. R. 21, ll. 2-8; *See Gentile*, 373 S.C. at 514, 646 S.E.2d at 175 (referencing *State*

³ The defendants in both cases were arrested after leaving their residences. R. 15, l. 11 – 17, l. 19.

v. Hunt, 150 N.C.App. 101, 562 S.E.2d 597, 601-02 (2002) (reversed trial court's decision to deny defendant's motion to suppress drug evidence: “[a]ll that the affidavit offers are complaints from citizens suspicious of drug activity in a nearby house. There is no mention of anyone ever seeing drugs on the premises)).

The Fourth Circuit Court of Appeals has upheld “residential searches . . . only where some information links the criminal activity to the defendant’s residence.” *United States v. Lator*, 996 F.2d 1578 (4th Cir. 1993); *see United States v. Williams*, 974 F.2d 480, 481–82 (4th Cir. 1992) (totality of facts establishes fair probability that drug paraphernalia will be found in drug dealer's motel room: police found drug paraphernalia in defendant's residence); *see also United States v. Hawkins*, 788 F.2d 200, 204 (4th Cir.) (noting that surveillance connected drug activity to defendant's residence), *cert. denied*, 479 U.S. 850 (1986). Consequently, the search and seizure were conducted under an invalid search warrant because the “totality of facts” did not establish a fair probability that drugs would be found in Addison’s residence.

Similar to facts in this case, in *State v. Adams*, 13 A.3d 1162 (Del. 2008), the Delaware Superior Court granted the motion to suppress because the search warrant affidavit did not establish nexus between police officers' surveillance of address where defendant lived and the belief that drugs would be found there where: (1) the CI provided a tip that a black male was known to sell cocaine at the residence; (2) the seller described by informant was not defendant; (3) there were no drug transactions observed in which defendant participated; and (4) defendant was never seen transporting anything that could be considered as containing drugs from residence.

In reviewing the validity of the search warrant, Magistrate Thomas “was misled by information in [the] affidavit that [Officer Lawson] knew was false or would have known was false except for his reckless disregard of the truth.” R. 92; R. 19, ll. 12-20; *United States v. Leon*, 468 U.S. 897, 923 (1984) (citing *Franks v. Delaware*, 438 U.S. 154 (1978) (noting that suppression remains an appropriate remedy if the magistrate issuing a warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard of the truth)); *See United States v. Colkley*, 299 F.2d 297 (4th Cir. 1990); *See also State v. Missouri*, 337 S.C. 548, 524 S.E.2d 394 (1999).

The search warrant affidavit was prepared without disclosure of all facts because Officer Lawson wrote in the affidavit that “within the past seventy-two hours, a reliable confidential informant for the Darlington County Drug Unit, has ***purchased a quantity of crack-cocaine from the described residence*** located on [address] in the Hartsville area of Darlington County. This event was monitored by law enforcement agents” when the CI ***actually*** purchased the drugs “15 yards away” from the home. R. 19, ll. 12-22; *State v. Thompson*, 363 S.C. 192, 200, 609 S.E.2d 556, 560 (Ct. App. 2005) (noting that “[i]n reviewing the validity of a warrant, an appellate court may consider only information brought to the magistrate's attention.”).

Furthermore, Officer Lawson’s sworn statement and the State’s failure to address the exculpatory information demonstrates that they were “whistling past the grave yard” on this critical omission of fact. *State v. Missouri*, 337 S.C. 548, 524 S.E.2d 394 (1999) (citing *Gates*, 462 U.S. 213 (noting that when reviewing a magistrate's decision to issue a search warrant, an appellate court must consider the totality of the circumstances.)).

Accordingly, the drug evidence obtained from the search warrant should have been suppressed because the affidavit includes a misstatement of fact, which bolstered the lack of evidence presented to Magistrate Thomas, and if the omitted exculpatory information (*the drug transaction occurred "15 yards away" from the home*) would have been included in the affidavit, then Magistrate Thomas would not have issued the search warrant for lack of probable cause. R. 19, ll. 12-22; *Missouri*, 337 S.C. at 554, 524 S.E.2d at 397; *see King*, 349 S.C. at 150, 561 S.E.2d at 644.

Because Magistrate Thomas did not have a substantial basis to conclude that drugs would be found inside Addison's home, Judge King, under the totality of the circumstances, erred by refusing to suppress the drug evidence found in Addison's home because without additional investigation into the residence and the omitted data on the search warrant affidavit, there was an insufficient nexus between the events surrounding the drug transaction which did not occur inside Addison's home and probable cause to search Addison's residence. *See Baccus*, 367 S.C. at 50, 625 S.E.2d at 221 ("[t]he duty of the reviewing court is to ensure the issuing magistrate had a substantial basis upon which to conclude that probable cause existed."). Thus, the drug evidence should have been suppressed. *See* U.S. Const. amend. IV; S.C.Code Ann. § 17-13-140 (1985).

CONCLUSION

For the foregoing reasons, Addison's convictions should be reversed and this case remanded to the Darlington County Court of General Sessions for a new trial.

Respectfully submitted,


Dayne C. Phillips
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of March, 2012.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Darlington County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

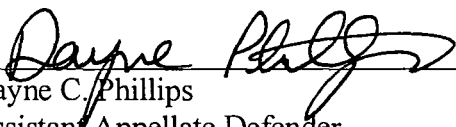
V.

MARCUS ADDISON,

APPELLANT

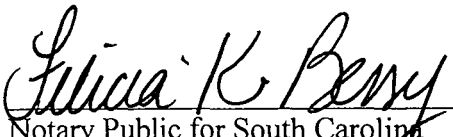
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Harold M. Coombs, Jr., Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 23rd day of March, 2012.


Dayne C. Phillips
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 23rd day of March, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: June 21, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Darlington County
Honorable Howard P. King, Judge

S.C. Supreme Court

THE STATE

Respondent

vs.

MARCUS ADDISON

Appellant

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The defendant says the search warrant was invalid since it was based upon a drug transaction not involving either the defendant or his residence, and the magistrate lacked probable cause. Items seized with the warrant should have been suppressed. (Appellant's Statement of Issue on Appeal).

STATEMENT OF THE CASE

The Darlington County Grand Jury charged the defendant with trafficking in ice, crank or crack 10 grams, or more, but less than 28 grams (08-GS-16-1502) and two counts of contributing to the delinquency of a minor (08-GS-16-1504 and 08-GS-16-1505). The defendant and his counsel came to trial on January 31, 2011 before the Honorable Howard P. King, Judge, and a jury. The jury found the defendant guilty, and the court imposed a sentence of ten years for trafficking (08-GS-16-1502) and three years consecutive for each count of contributing to the delinquency of a minor (08-GS-16-1504 and 08-GS-16-1505).

ARGUMENT

The warrant affidavit and sworn supplemental testimony supported the magistrate's finding of probable cause to search the specific residence. The motion to suppress was soundly denied.

The defendant moved to suppress the search warrant on the ground that it was issued on insufficient evidence. Probable cause to enter and to search a residence required [1] actual entry into the residence and [2] searching the confidential informant before and after a controlled buy. (ROA. p. 10; p. 36). There was no evidence that the person delivering the substance got it from inside the residence. Rather, visual evidence showed that the person on the property lived two doors down, and his residence would have been a more appropriate place to search. (ROA. pp. 39 - 40, line 12).

The search warrant affidavit for the specified residence, and its associated vehicles and outbuildings, stated, in part, that a reliable informant had within the past seventy-two hours purchased a quantity of crack cocaine from a described residence at a named, specific address. (Search Warrant Affidavit; ROA p. 90 - 92).

Officer Brad Lawson testified in camera about his sworn testimony to the magistrate. (ROA. p. 19, line 12 - p. 20). The police had used the informant previously and found him to be reliable. The police searched the informant, wired him with audio and video, and gave him county money to purchase crack cocaine. The informant went to the specific address identified in the search warrant. The video showed that the crack cocaine seller came "off of the porch at the front door," and walked to the informant's vehicle. (ROA. p. 21, lines 2 - 14).

The court ruled on the motion to suppress after it observed the defendant's position: establishing probable cause required the state to show [1] the confidential informant went into the house and [2] searching the confidential informant before and after. The court disagreed and denied the motion. In fine, the court observed the officer's sworn supplemental testimony to the magistrate about [1] the seller's coming from the house and [2] initially searching the informant and confirming the crack cocaine transaction on the video was sufficient in context of the totality of the circumstances. Probable cause is established by the totality of the circumstances, and a magistrate could conclude on a practical common sense analysis, based upon the affidavit and supplemental sworn oral testimony, there was a probability that contraband would be found at this particular residence - regardless of who owned it. (ROA. p. 48, line 25 - p. 52, line 19).

There was no error. "The magistrate's task in determining whether to issue a search warrant is to make a practical, common sense decision concerning whether, under the totality of the circumstances set forth in the affidavit, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in the particular place to be searched." State v. Dupree, 354 S.C. 676, 583 S.E.2d 437 (Ct.App. 2003), citing Illinois v. Gates, 462 U.S. 213, 238, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983). The trial court's review of the magistrate's decision is to ensure the issuing magistrate had a substantial basis upon which to conclude that probable cause existed. In reviewing the validity of a warrant, an appellate court may consider only information brought to the magistrate's attention. State v. Rutledge, 373 S.C. 312, 644 S.E.2d 789 (Ct. App. 2007)(appellate review of issuance of search warrant addresses whether magistrate had a substantial basis for finding probable cause). The appellate court is bound

by the trial court's factual findings unless they are clearly erroneous. State v. Gentile, 373 S.C. 506, 646 S.E.2d 171 (Ct. App. 2007). The warrant affidavit stated that the reliable informant had purchased crack cocaine from the described specific residence, and the sale was monitored by law enforcement. (Search Warrant Affidavit; ROA p.90 - 92). Additionally, Officer Lawson testified in camera about his sworn testimony to the magistrate that corroborated the affidavit: The informant went to the specific address identified in the search warrant. The video showed that the crack cocaine seller came "off of the porch at the front door," and walked to the informant's vehicle. (ROA. p. 19, line 12 - p. 21, line 14). The trial court's review ensured that the magistrate had a substantial basis to conclude that probable cause existed to search the residence. The affidavit and testimony to the magistrate showed that as a matter of practical, common sense there was a fair probability that the residence was involved with the sale of the crack cocaine, and crack cocaine would be found inside. On the second point, the trial court soundly found that the warrant affidavit and the additional sworn testimony showed there was a fair probability that the informant had purchased crack cocaine from the residence - without the purported desirability of searching the informant both before and after. To wit, the officer's sworn additional testimony of viewing the video and seeing the sale of the crack cocaine supported the affidavit's declaration that the informant had purchased crack cocaine. Further, the court noted that the contemporaneous exchange of money and substance was shown in the video. (ROA. p. 37 - p. 38, line 7).

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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February 22, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Darlington County
Honorable Howard P. King, Judge

THE STATE,

Respondent,

vs.

MARCUS ADDISON,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule
211(b), SCACR.

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PROOF OF SERVICE

I, Harold M. Coombs, Jr., certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Danye C. Phillips, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211.

I further certify that all parties required by Rule to be served have been served.

This 22nd day of February, 2012.

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