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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

ERIC SUMTER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001581

APPENDIX

TIFFANY L. BUTLER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

ASHLEIGH R WILSON
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED OCTOBER 18, 2010.....	1
APPLICATION FOR POST-CONVICTION RELIEF	295
RETURN	305
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MAY 20, 2014	310
ORDER OF DISMISSAL	363
INDICTMENT	381
SENTENCE SHEET	383

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) INDICTMENT NO.: 2010-GS-10-07492

STATE OF SOUTH CAROLINA)
)
 VS.)
)
 ERIC SUMTER,)
)
 DEFENDANT.)
 _____)

**JURY TRIAL
 VOLUME 1 OF 2**

held before the Honorable Kristi L. Harrington
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Charleston County Courthouse
 Charleston, South Carolina
 on Monday, October 18, 2010, Commencing at 9:29 a.m.

SUSAN "MIA" PERRON, CVR-CM
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 31865
 Charleston, South Carolina 29417-1865
 1-706-231-6028

COPY

APPEARANCES OF COUNSEL

FOR THE STATE:

Chad Simpson, Esquire
Adam Yount, Esquire
Assistant Solicitor
9th Circuit Solicitor's Office
101 Meeting Street, Suite 400
Charleston, South Carolina 29402

FOR THE DEFENDANT:

William Runyon, Esquire
Attorney at Law
#3 Gamecock Avenue, Suite 303
Charleston, South Carolina 29407

INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	4
JURY VOIR DIRE	12
STRIKING OF THE JURY	21
OPENING STATEMENT BY MR. SIMPSON	42
OPENING STATEMENT BY MR. RUNYON	49
 MATTHEW O. EUPER	
Direct Examination by Mr. Simpson	52
Cross-Examination by Mr. Runyon	72
Redirect Examination by Mr. Simpson	81
Recross-Examination by Mr. Runyon	82
 JACK FROST	
Direct Examination by Mr. Yount	83
Cross-Examination by Mr. Runyon	87
 CERTIFICATE OF COURT REPORTER	92

EXHIBITS

[None]

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

PROCEEDINGS

THE COURT: Good morning.

MR. SIMPSON: Your Honor, do you have any indication when you want to start back after lunch? We have some witnesses here. I was going to set them free until that point.

THE COURT: I'm assuming, once we get started, selecting this jury will take less than thirty minutes, so my inclination is to have us back at 1:45, the jury back at 2:00.

MR. SIMPSON: Okay. Thank you, Your Honor.

THE COURT: That's assuming, Mr. Simpson, that this takes less than thirty minutes to pick the jury.

MR. SIMPSON: I don't see any reason why not.

MR. RUNYON: I don't see any reason why not. I think that's what it took us the last time.

THE BAILIFF: Ready for the jury so we can bring them up -- bring them in?

THE COURT: Well, we need to wait on Mr. Runyon's client. We thought he was dressed. He's not dressed.

Does your client waive formal arraignment, Mr. Runyon?

MR. RUNYON: I beg your pardon, Your Honor?

THE COURT: Does he waive formal arraignment?

MIA PERRON, CVR-CM

-4-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 MR. RUNYON: Yes, Your Honor. And we started
2 the trial previously and it was mistried, so we've been
3 through all of that.

4 And we will put that on the record, that he
5 waives formal arraignment.

6 THE COURT: Now, remind me. We tried this one
7 and what was the cause of the mistrial?

8 MR. SIMPSON: It was the witness, Tiffany Deas,
9 who's, as you'll see, a pretty key witness. She went
10 into labor early, unexpectantly. And we then, I
11 believe it was by consent, mistried the case.

12 MR. RUNYON: Mr. Simpson thought that when she
13 said that the doctor said it would be eight days, that
14 that really meant it would be eight days before the
15 baby came. He was not experienced in the way that
16 babies don't listen to the doctors.

17 THE COURT: Okay.

18 [Whereupon, a recess is taken from 11:28 a.m. to
19 11:38 a.m.]

20 THE COURT: Is he -- are they -- can you make a
21 determination: does he have anything on other than
22 jail clothes?

23 OFFICER: No, ma'am. That's it. They said he
24 can't get into these clothes, they're all -- they
25 brought down.

State v. Eric Sumter.
Jury Trial - Volume 1 of 2
October 18, 2010

1 THE COURT: That he's grown four sizes since
2 April? Is that what you're telling me?

3 OFFICER: Clothes they just brought down.

4 MR. RUNYON: No. These are apparently new
5 clothes. His clothes were sent to the PD's office by
6 the sheriff's office. We found out after our
7 conference with your clerk. So then when we went to
8 retrieve clothes, they apparently brought the wrong
9 clothes over, or clothes that were supposed to
10 substitute for those, which we would have accepted but
11 they apparently are too small.

12 THE COURT: All right. Well, he needs clothes.
13 Are you waiving his appearance for jury selection?

14 MR. RUNYON: I'll do that, Judge.

15 THE COURT: Okay. Do you need to ask him on the
16 record?

17 Can you bring him up here? Is he right there?

18 OFFICER: No, ma'am.

19 THE COURT: How long will it take to get him up
20 here?

21 OFFICER: Not long.

22 MR. RUNYON: We'll do that, Judge --

23 THE COURT: And then over the lunch hour will
24 you be able to get him some clothes, Mr. Runyon?

25 MR. RUNYON: Yes, Your Honor.

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 THE COURT: I mean, is he of an odd size?

2 MR. RUNYON: Judge, he looks pretty normal to
3 me. I mean, I don't even buy my own clothes, my wife
4 does that, so I'm not good on sizes, so I wouldn't
5 hesitate to -- I wouldn't try to estimate anybody's
6 size.

7 But what we did was we even had his mother
8 involved in the sizing when it became apparent that
9 the -- his clothes apparently could not -- they
10 couldn't lay their hands on them.

11 I'll just ask him, and we'll waive that. Maybe
12 be so kind as to make something for the record to
13 explain his absence for the jury selection and then
14 we'll get the clothes straight at the break.

15 THE COURT: Does the solicitor's office -- are
16 y'all maintaining some sort of clothing?

17 MR. SIMPSON: No, Your Honor, the defense --
18 public defenders have a pretty extensive collection
19 over there to cover a lot of different sizes. I'll be
20 happy to -- I'm pretty sure --

21 MR. RUNYON: We can -- we can get it straight.

22 MR. SIMPSON: We'll get it straight on break,
23 I'm sure. Anything I can do, I'll help.

24 MR. RUNYON: Generally what happens is the
25 sheriff's office maintains the clothes in -- since

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 we're going to be in retrial. And apparently in April
2 they decided to do a housecleaning, and they have their
3 records which clearly show that his clothes were
4 deposited with the public defender's office.

5 THE COURT: And evidently the public defender's
6 office didn't indicate that those were Mr. Sumter's
7 clothes.

8 MR. RUNYON: Apparently, Judge.

9 [Whereupon, Mr. Sumter enters the courtroom at
10 11:46 a.m.]

11 MR. RUNYON: Your Honor, Mr. Sumter -- I guess
12 we're on the record.

13 Mr. Sumter is present now. And of course we've
14 had this problem with the size in clothes that -- to
15 straighten out at the break.

16 Mr. Sumter is here. I think we can waive his
17 presence for the jury selection, obviously not for the
18 trial, and address the issue of the sizing at break.

19 We would waive his presence. Obviously, we
20 don't want him appearing before the jury in jail
21 clothes.

22 THE COURT: All right. Just for the record,
23 there was a pre-trial conference held at 8:30 this
24 morning. Defendant was advised to make sure that
25 Mr. Sumter was dressed and prepared to go.

MIA PERRON, CVR-CM

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 For the record, Mr. Sumter appears to be an
2 average-sized male and the indication that the clothes
3 are four sizes too small -- at this point I'm having
4 difficulty believing that the public defender's office
5 would have clothes four sizes too small for Mr. Sumter.

6 Out of an abundance of caution, we're going to
7 break for lunch. You're going to have your client
8 dressed and prepared to go. We'll be ready to break --
9 to begin at 1:30.

10 MR. RUNYON: Thank you, Your Honor.

11 THE COURT: Thank you. We're at ease until
12 1:30.

13 All right. Mr. Sumter, I need you to step
14 outside for just a moment so that I can get on with my
15 day. Thank you.

16 [Whereupon, Mr. Sumter exits the courtroom at
17 11:47 a.m.]

18 THE COURT: And, counsel, if you don't find any
19 other clothes, whatever he -- he does not -- he's not
20 entitled to be a fashion plate when he comes out here.
21 All right?

22 MR. RUNYON: Judge, it's not a question of being
23 a fashion plate. I --

24 THE COURT: I don't know what size they brought,
25 but that's ludicrous to think that clothes wouldn't fit

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 him. All right?

2 MR. RUNYON: I understand.

3 THE COURT: Let's bring in the jury.

4 [Whereupon, the jury panel enters the courtroom
5 at 11:47 a.m.]

6 THE COURT: Good morning, for the next few
7 minutes.

8 My name is Judge Kristi Harrington. I'm a
9 resident judge for the ninth circuit. My primary
10 office is in Berkeley County but I have the pleasure
11 this week of presiding over a term of general sessions.
12 You may realize and have already been told that that
13 means criminal court.

14 Ladies and gentlemen, due to some scheduling
15 issues, we brought you in. I'm going to go ahead and
16 release you for lunch so that you're not standing
17 outside in the hallway until we can begin our next
18 case.

19 Ladies and gentlemen, please be back in this
20 courtroom at 1:30. If you need any information
21 regarding where to go for lunch or anything of that
22 nature, if you'll speak with the bailiffs and they will
23 be of assistance. But please be back in the courtroom.
24 Have a wonderful lunch. It is beautiful outside. And
25 I will see you back in this courtroom at 1:30. Thank

MIA PERRON, CVR-CM

-10-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 you.

2 [Whereupon, the jury panel exits the courtroom
3 at 11:50 a.m.]

4 THE COURT: We're at ease. We'll begin promptly
5 at 1:30. All right? Mr. Sumter -- if they're coming
6 back in here, Mr. Sumter needs to be seated in the
7 chair by 1:15 so that they can start coming in.

8 Mr. Sumter needs to be upstairs dressed by 1:00
9 p.m. Mr. Runyon, please accomplish that.

10 MR. RUNYON: We will accomplish.

11 THE COURT: If that's a difficulty, then I need
12 to see somebody and to make sure that it's not -- that
13 it is taken care of this time.

14 Thank you. We're at ease.

15 [Whereupon, a recess is taken from 11:52 a.m. to
16 1:31 p.m.]

17 THE COURT: All right. Note for the record that
18 the defendant is dressed out, and very nicely dressed
19 at that.

20 Anything before we bring in the jury? Mr.
21 Simpson?

22 MR. SIMPSON: Nothing from the State, Your
23 Honor.

24 MR. RUNYON: That's his original clothes, Judge.

25 THE COURT: Thank you.

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

[Off the record momentarily]

[Whereupon, the jury panel enters the courtroom
at 1:32 p.m.]

JURY VOIR DIRE

THE COURT: Good afternoon, ladies and gentlemen. I hope you had a wonderful lunch break.

Ladies and gentlemen, the case that we are about to begin is the case of the State versus Eric Sumter.

Mr. Sumter has been charged with an indictment, which is just the formal document that brings us to court here today, with the offense of trafficking cocaine. The State alleges that Mr. Sumter did, in Charleston County, on or about May 7th, 2008, unlawfully and knowingly did sell, manufacture, cultivate, deliver, purchase, or bring into this state, or did provide financial assistance, or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this state, or did possess or attempt to possess, a controlled substance or controlled substance analog; to wit, cocaine, in excess of approximately 105.5 grams, in violation of 44-53-370 of the South Carolina Code of Laws, 1976 as amended. Ladies and gentlemen, Mr. Sumter has pled not guilty to this indictment.

MIA PERRON, CVR-CM

-12-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 Is there any member of the jury panel that knows
2 anything about this case, other than what I have just
3 read to you? If so, please stand.

4 [Whereupon, there is no response]

5 THE COURT: Thank you. There are none.

6 Mr. Runyon, if you would please stand, introduce
7 yourself, your client, and any persons that may be
8 assisting you throughout this week.

9 MR. RUNYON: My name is William Runyon. I've
10 practiced law here in Charleston since 1967.

11 This is my client, Eric Sumter -- please stand -
12 - the defendant in this case. Thank you.

13 THE COURT: Ladies and gentlemen, is there any
14 member of the jury panel related by blood, marriage,
15 close personal friend, ever have any business,
16 personal, or professional dealings with Mr. Sumter? If
17 so, please stand.

18 MS. O'DONNOGHUE: I was a paralegal -- we
19 interacted with him, but I've never worked for him or
20 anything.

21 THE COURT: All right. With Mr. Sumter? Or Mr.
22 Runyon?

23 MS. O'DONNOGHUE: No. We'd go in for a peace
24 warrant, Andy Savage, and we interacted with the
25 business -- but I never worked for him on anything.

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 THE COURT: Are you referring to -- my question
2 was specifically --

3 MS. O'DONNOGHUE: No.

4 THE COURT: -- to Mr. Sumter.

5 MS. O'DONNOGHUE: No, not Mr. Sumter. Mr.

6 Runyon.

7 THE COURT: Mr. Runyon. All right.

8 Ma'am, if you would please remain standing. I
9 need your jury number and your name.

10 MS. O'DONNOGHUE: My name is Leslie O'Donnoghue
11 and my jury number is 185.

12 THE COURT: All right. Ma'am, is there anything
13 about your relationship working with Mr. Runyon that
14 would affect your ability to be fair and impartial in
15 this case?

16 MS. O'DONNOGHUE: No, ma'am.

17 THE COURT: All right. Thank you.

18 Is there anyone else? Any member of the jury
19 panel related by blood, marriage, close personal
20 friend, ever have any business, personal, or
21 professional dealings with either Mr. Sumter or Mr.
22 Runyon? If so, please stand.

23 [Whereupon, there is no response]

24 THE COURT: Thank you. There are none.

25 Mr. Simpson, if you would please stand,

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 introduce yourself, any persons that will be assisting
2 you at your table, as well as a little bit about the
3 office with which you work.

4 MR. SIMPSON: Thank you, Your Honor.

5 My name is Chad Simpson. I'm assistant
6 solicitor here in Charleston County. It falls under
7 the ninth circuit. Our elected solicitor, and my boss,
8 is Scarlett Wilson.

9 Assisting me in this trial is Adam Yount, also
10 an assistant solicitor for the ninth judicial circuit.

11 THE COURT: Is there any member of the jury
12 panel related by blood, marriage, close personal
13 friend, ever have any business, personal, or
14 professional dealings with either Mr. Simpson or
15 Mr. Yount of the solicitor's office? If so, please
16 stand.

17 [Whereupon, there is no response]

18 THE COURT: Thank you. There are none.

19 Is there any member of the jury panel who has
20 ever had any business handled by the solicitor's office
21 either in Berkeley or in Charleston County? If so,
22 please stand.

23 [Whereupon, there is no response]

24 THE COURT: Thank you. There are none.

25 Ladies and gentlemen, I remind you that some of

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 these questions as -- now that we go forward may be
2 somewhat personal. I will give you an opportunity to
3 speak with me in private concerning any of your
4 answers, but it is important, as Judge Dennis
5 instructed you during his general qualification, that
6 we have your complete and truthful responses. So if
7 you feel the need to answer a question but you don't
8 feel comfortable standing up in front of everyone,
9 please remember that I will give you an opportunity to
10 speak with me in private concerning any of your
11 answers.

12 Ladies and gentlemen, I am now going to call a
13 list of potential witnesses who may be called to
14 testify in this case. If you are related by blood,
15 marriage, close personal friend, ever have any
16 business, personal, or professional dealings with any
17 of these individuals, please stand. Tiffany Ceara
18 Deas; Officer Andrew Miller, Charleston County
19 Sheriff's Office; Officer Tom Costanzo, Charleston
20 County Sheriff's Office; Officer Matthew Euper,
21 Charleston County Sheriff's Office; Officer Jack Frost,
22 Charleston County Sheriff's Office; Sargent Eachues,
23 Charleston Detention Center; jail tape custodian,
24 Charleston County Sheriff's Office; Lynn Black, South
25 Carolina Law Enforcement Division.

MIA PERRON, CVR-CM

-16-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 If you are related by blood, marriage, close
2 personal friend, to any of those individuals, please
3 stand.

4 [Whereupon, there is no response]

5 THE COURT: Thank you. There are none.

6 MR. SIMPSON: Your Honor, I just wanted to
7 inform the Court that the jail tape custodian will be
8 Marvin Hancock, with the Charleston County Sheriff's
9 Office.

10 THE COURT: Thank you.

11 Ladies and gentlemen, is there any member of the
12 jury panel related by blood, marriage, close personal
13 friend, ever have any business, personal, professional
14 dealings, with Mr. Marvin Hancock? If so, please
15 stand.

16 [Whereupon, there is no response]

17 THE COURT: Thank you. There are none.

18 Any member of the jury panel ever been employed
19 by, or a close member of your immediate family employed
20 by, the Charleston County Sheriff's Office, Charleston
21 County Detention Center, or State Law Enforcement
22 Division? If so, please stand.

23 Yes, ma'am. Your jury number and name.

24 MS. GAILLIARD: My name is Evette Gailliard. My
25 jury number is 81.

MIA PERRON, CVR-CM

-17-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 My husband is a former deputy at Dorchester
2 County and used to work in Charleston County.

3 THE COURT: Tell me a little bit about that.
4 How long ago? He no longer works with Dorchester
5 County; is that correct?

6 MS. GAILLIARD: About two years ago.

7 THE COURT: All right. Is there anything about
8 your husband being formerly employed with the
9 Dorchester County Sheriff's Office and doing some work
10 in Charleston County that would affect your ability to
11 be fair and impartial in this case?

12 MS. GAILLIARD: No, ma'am.

13 THE COURT: Thank you, Ms. Gailliard.

14 Is there anyone else?

15 [Whereupon, there is no response]

16 THE COURT: Thank you. There are none.

17 Is there any member of the jury panel that
18 believes or is a member of an organization that
19 advocates for the legalization of narcotics? If so,
20 please stand.

21 Yes, sir? Your jury number and name?

22 MR. PECKMAN: My name is David Peckman. My
23 number is 195. And I'm --

24 THE COURT: All right. And, sir, let me ask you
25 this one question.

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 MR. PECKMAN: Sure.

2 THE COURT: Is there anything about your
3 belonging to an organization, or your beliefs,
4 concerning the legalization of narcotics that would
5 affect your ability to be fair and impartial in this
6 case?

7 MR. PECKMAN: No.

8 THE COURT: Will you be able to follow the law
9 as the Court gives it, apply it to the facts as you
10 find them, and render a verdict based upon those
11 things?

12 MR. PECKMAN: Yes.

13 THE COURT: And tell me your jury number and
14 name one more time.

15 MR. PECKMAN: 195, David Peckman.

16 THE COURT: Thank you.

17 Is there anyone else?

18 [Whereupon, there is no response]

19 THE COURT: Thank you. There are none.

20 Ladies and gentlemen, that completes all of the
21 questions that I have for you at this time. Is there
22 any member of the jury panel, based upon the questions
23 that I have asked or anything that we have discussed
24 here today, that you believe that you would not be able
25 to sit as a juror in this matter for whatever reason --

MIA PERRON, CVR-CM

-19-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 for whatever political, social, moral belief, that you
2 do not think that you would be able to be fair and
3 impartial in this matter -- that you would be able to
4 listen to the facts from the witness stand, apply the
5 law as the Court gives it, and render a verdict based
6 upon those things?

7 If you need to speak with me in private
8 concerning any of the questions that I've asked before,
9 or you feel that this is not a case that you can sit as
10 a fair and impartial juror, please move to the center
11 and the bailiffs will assist you.

12 THE BAILIFF: 301.

13 [Whereupon, Ms. Avant comes forward]

14 [Whereupon, the Court, Ms. Avant, and counsel
15 confer]

16 THE COURT: Juror 301 is excused from the trial
17 of this case.

18 You need to stay with us. You'll get further
19 instructions, but you don't have to answer anymore
20 questions.

21 Is there anyone else?

22 [Whereupon, there is no response]

23 THE COURT: Mr. Simpson, any further questions?

24 MR. SIMPSON: No, Your Honor.

25 THE COURT: Any further questions?

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 MR. RUNYON: No, Your Honor.

2 THE COURT: All right. Thank you.

3 - - - - -

4 STRIKING OF THE JURY

5 THE COURT: All right. Five and five, and one
6 alternate. Thank you.

7 THE CLERK OF COURT: Ladies and gentlemen, as we
8 spoke about earlier, if your name is called, please
9 gather your belongings, come to this podium here in the
10 middle of the courtroom, turn and face the attorneys,
11 please.

12 Juror number 94, Natasha Grayer.

13 [Whereupon, Ms. Grayer comes forward]

14 THE CLERK OF COURT: What say ye for the State?

15 MR. SIMPSON: Please seat this juror.

16 THE CLERK OF COURT: What say ye for the
17 defendant?

18 MR. RUNYON: Swear the juror, please, Mr. Clerk.

19 THE CLERK OF COURT: Ms. Grayer, please have a
20 seat in the jury box. You've been selected for the
21 trial of this case.

22 [Whereupon, Ms. Grayer is seated in the jury box
23 as a juror]

24 THE CLERK OF COURT: Juror number 224, Anthony
25 Sarver.

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 [Whereupon, Mr. Sarver comes forward]

2 THE CLERK OF COURT: What say ye for the State?

3 MR. SIMPSON: Please present this juror.

4 THE CLERK OF COURT: What say ye for the
5 defendant?

6 MR. RUNYON: Please excuse Mr. Sarver, Mr.

7 Clerk.

8 THE CLERK OF COURT: Mr. Sarver, you've been
9 excused from the trial of this case. Please have a
10 seat back in the audience.

11 [Whereupon, Mr. Sarver returns to the audience]

12 THE CLERK OF COURT: Juror number 172, Ronald
13 Miller.

14 [Whereupon, Mr. Miller comes forward]

15 THE CLERK OF COURT: What say ye for the State?

16 MR. SIMPSON: Please present this juror.

17 THE CLERK OF COURT: What say ye for the
18 defendant?

19 MR. RUNYON: Please excuse Mr. Miller.

20 THE CLERK OF COURT: Mr. Miller, please have a
21 seat back in the audience. You've been excused from
22 the trial of this case.

23 [Whereupon, Mr. Miller returns to the audience]

24 THE CLERK OF COURT: Juror number 14, Mary
25 Bauer.

MIA PERRON, CVR-CM

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 [Whereupon, Ms. Bauer comes forward]

2 THE CLERK OF COURT: What say ye for the State?

3 MR. SIMPSON: Please present this juror.

4 THE CLERK OF COURT: What say ye for the
5 defendant?

6 MR. RUNYON: Please swear the juror, Mr. Clerk.

7 THE CLERK OF COURT: Ms. Bauer, please have a
8 seat in the jury box. You've been selected for the
9 trial of this case.

10 [Whereupon, Ms. Bauer is seated in the jury box
11 as a juror]

12 THE CLERK OF COURT: Juror number 185, Leslie
13 O'Donnaghue.

14 [Whereupon, Ms. O'Donnaghue comes forward]

15 THE CLERK OF COURT: What say ye for the State?

16 MR. SIMPSON: Please excuse this juror.

17 THE CLERK OF COURT: Ms. O'Donnaghue, please
18 have a seat back in the audience. You've been excused
19 from the trial of this case.

20 [Whereupon, Ms. O'Donnaghue returns to the
21 audience]

22 THE CLERK OF COURT: Juror number 66, Patricia
23 Durr.

24 [Whereupon, Ms. Durr comes forward]

25 THE CLERK OF COURT: What say ye for the State?

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 MR. SIMPSON: Please seat this juror.

2 THE CLERK OF COURT: What say ye for the
3 defendant?

4 MR. RUNYON: Swear the juror, please, Mr. Clerk.

5 THE CLERK OF COURT: Ms. Durr, please have a
6 seat in the jury box. You've been selected for the
7 trial of this case.

8 [Whereupon, Ms. Durr is seated in the jury box
9 as a juror]

10 THE CLERK OF COURT: Juror number 205, Myron
11 Pstrak.

12 [Whereupon, Mr. Pstrak comes forward]

13 THE CLERK OF COURT: What say ye for the State?

14 MR. SIMPSON: Please present this juror.

15 THE CLERK OF COURT: What say ye for the
16 defendant?

17 MR. RUNYON: Swear the juror, please, Mr. Clerk.

18 THE CLERK OF COURT: Mr. Pstrak, please have a
19 seat in the jury box. You've been selected for the
20 trial of this case.

21 [Whereupon, Mr. Pstrak is seated in the jury box
22 as a juror]

23 THE CLERK OF COURT: Juror number 81, Evette
24 Gailliard.

25 [Whereupon, Ms. Gailliard comes forward]

MIA PERRON, CVR-CM

-24-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 THE CLERK OF COURT: What say ye for the State?

2 MR. SIMPSON: Please present this juror.

3 THE CLERK OF COURT: What say ye for the
4 defendant?

5 MR. RUNYON: Please excuse the juror, Mr. Clerk.

6 THE CLERK OF COURT: Ms. Gailliard, you've been
7 excused from the trial of this case. Please have a
8 seat back in the audience.

9 [Whereupon, Ms. Gailliard returns to the
10 audience]

11 THE CLERK OF COURT: The defendant has exhausted
12 three strikes. You have two strikes remaining.

13 Juror number 253, Mark Stephenson.

14 [Whereupon, Mr. Stephenson comes forward]

15 THE CLERK OF COURT: What say ye for the State?

16 MR. SIMPSON: Please present this juror.

17 THE CLERK OF COURT: What say ye for the
18 defendant?

19 MR. RUNYON: Swear the juror, please, Mr. Clerk.

20 THE CLERK OF COURT: Mr. Stephenson, please have
21 a seat in the jury box. You've been selected for the
22 trial of this case.

23 [Whereupon, Mr. Stephenson is seated in the jury
24 box as a juror]

25 THE CLERK OF COURT: Juror number 261, Amy

MIA PERRON, CVR-CM

-25-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 Thomas.

2 [Whereupon, Ms. Thomas comes forward]

3 THE CLERK OF COURT: What say ye for the State?

4 MR. SIMPSON: Please present this juror.

5 THE CLERK OF COURT: What say ye for the
6 defendant?

7 MR. RUNYON: Swear the juror, please, Mr. Clerk.

8 THE CLERK OF COURT: Ms. Thomas, please have a
9 seat in the jury box. You've been selected for the
10 trial of this case.

11 [Whereupon, Ms. Thomas is seated in the jury box
12 as a juror]

13 THE CLERK OF COURT: Juror number 97, Emuel
14 Green.

15 [Whereupon, Mr. Green comes forward]

16 THE CLERK OF COURT: What say ye for the State?

17 MR. SIMPSON: Please present this juror.

18 THE CLERK OF COURT: What say ye for the
19 defendant?

20 MR. RUNYON: Swear the juror, please, Mr. Clerk.

21 THE CLERK OF COURT: Mr. Green, please have a
22 seat in the jury box. You've been selected for the
23 trial of this case.

24 [Whereupon, Mr. Green is seated in the jury box
25 as a juror]

MIA PERRON, CVR-CM

-26-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 THE CLERK OF COURT: Juror number 306, Arlene
2 Etheridge.

3 [Whereupon, Ms. Etheridge comes forward]

4 THE CLERK OF COURT: What say ye for the State?

5 MR. SIMPSON: Please present this juror.

6 THE CLERK OF COURT: What say ye for the
7 defendant?

8 MR. RUNYON: Swear the juror, please, Mr. Clerk.

9 THE CLERK OF COURT: Ms. Etheridge, please have
10 a seat in the jury box. You've been selected for the
11 trial of this case.

12 [Whereupon, Ms. Etheridge is seated in the jury
13 box as a juror]

14 THE CLERK OF COURT: Juror number 230, Derrick
15 Seabrook.

16 [Whereupon, Mr. Seabrook comes forward]

17 THE CLERK OF COURT: What say ye for the State?

18 MR. SIMPSON: Please excuse this juror.

19 THE CLERK OF COURT: Mr. Seabrook, you've been
20 excused from the trial of this case. Please have a
21 seat back in the audience.

22 [Whereupon, Mr. Seabrook returns to the
23 audience]

24 THE CLERK OF COURT: Juror number 138, Henry
25 Laurens.

MIA PERRON, CVR-CM

-27-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 [Whereupon, Mr. Laurens comes forward]

2 THE CLERK OF COURT: What say ye for the State?

3 MR. SIMPSON: Please present this juror.

4 THE CLERK OF COURT: What say ye for the
5 defendant?

6 MR. RUNYON: Please swear the juror, Mr. Clerk.

7 THE CLERK OF COURT: Mr. Laurens, please have a
8 seat in the jury box. You've been selected for the
9 trial of this case.

10 [Whereupon, Mr. Laurens is seated in the jury
11 box as a juror]

12 THE CLERK OF COURT: Juror number 6, Meaghan
13 Askea.

14 [Whereupon, Ms. Askea comes forward]

15 THE CLERK OF COURT: What say ye for the State?

16 MR. SIMPSON: Please present this juror.

17 THE CLERK OF COURT: What say ye for the
18 defendant?

19 MR. RUNYON: Swear the juror, please, Mr. Clerk.

20 THE CLERK OF COURT: Ms. Askea, please have a
21 seat in the jury box. You've been selected for the
22 trial of this case.

23 [Whereupon, Ms. Askea is seated in the jury box
24 as a juror]

25 THE CLERK OF COURT: Juror number 92, William

MIA PERRON, CVR-CM

-28-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 Gotell.

2 [Whereupon, Mr. Gotell comes forward]

3 THE CLERK OF COURT: What say ye for the State?

4 MR. SIMPSON: Please present this juror.

5 THE CLERK OF COURT: What say ye for the
6 defendant?

7 MR. RUNYON: Swear the juror, please, Mr. Clerk.

8 THE CLERK OF COURT: Mr. Gotell, please have a
9 seat in the jury box. You've been selected for the
10 trial of this case.

11 [Whereupon, Mr. Gotell is seated in the jury box
12 as a juror]

13 THE CLERK OF COURT: Juror number 166, Adolph
14 Meggett.

15 [Whereupon, Mr. Meggett comes forward]

16 THE CLERK OF COURT: What say ye for the State?

17 MR. SIMPSON: Please excuse this juror.

18 THE CLERK OF COURT: Mr. Meggett, you've been
19 excused from the trial of this case. Please have a
20 seat back in the audience.

21 [Whereupon, Mr. Meggett returns to the audience]

22 THE CLERK OF COURT: The State has exhausted
23 three strikes.

24 ~~Juror number 212, Barbara Rivers.~~

25 [Whereupon, Ms. Rivers comes forward]

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 THE CLERK OF COURT: What say ye for the State?

2 MR. SIMPSON: Please present this juror.

3 THE CLERK OF COURT: What say ye for the
4 defendant?

5 MR. RUNYON: Please swear the juror, Mr. Clerk.

6 THE CLERK OF COURT: Ms. Rivers, please have a
7 seat in the jury box. You've been selected for the
8 trial of this case.

9 [Whereupon, Ms. Rivers is seated in the jury box
10 as a juror]

11 THE CLERK OF COURT: One alternate, Your Honor?

12 THE COURT: Yes.

13 THE CLERK OF COURT: Selecting alternate.

14 Strikes are one and two.

15 Juror number 194, William Payzant.

16 [Whereupon, Mr. Payzant comes forward]

17 THE CLERK OF COURT: What say ye for the State?

18 MR. SIMPSON: Please present this juror.

19 THE CLERK OF COURT: What say ye for the
20 defendant?

21 MR. RUNYON: Swear the juror, Mr. Clerk.

22 THE CLERK OF COURT: Mr. Payzant, please have a
23 seat in the jury box. You've been selected for the
24 trial of this case.

25 [Whereupon, Mr. Payzant is seated in the jury

MIA PERRON, CVR-CM

-30-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 box as an alternate juror]

2 THE CLERK OF COURT: The jury is selected, Your
3 Honor.

4 THE COURT: Any motions or matters pertaining to
5 the jury as selected? From the State?

6 MR. SIMPSON: None from the State, Your Honor.

7 THE COURT: From the defendant?

8 MR. RUNYON: None from the defendant, Your
9 Honor.

10 THE COURT: Ladies and gentlemen, you have been
11 selected as the jury for this case.

12 If you would be escorted to your jury room by
13 the bailiff, we'll receive you back in the courtroom in
14 just a few moments. You are excused momentarily.

15 [Whereupon, the jury exits the courtroom at
16 1:53 p.m.]

17 THE COURT: Any motions or matters outside of
18 the presence of the jury? From the State?

19 MR. SIMPSON: None from the State, Your Honor.

20 THE COURT: From the defendant?

21 MR. RUNYON: None, Your Honor.

22 We move to sequester the State's witnesses, all
23 witnesses, even if there are defense -- although we're
24 not anticipating any.

25 Obviously, the prosecution may -- it's all right

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 to have a case agent and if they desire to designate
2 that case agent, then our motion would not go to
3 sequestering a case agent if they want --

4 THE COURT: I grant your motion to sequester.

5 As to the jury as selected, outside of the
6 presence, anything further?

7 MR. RUNYON: No. No, Your Honor.

8 THE COURT: Thank you.

9 All right. Ladies and gentlemen, you now -- you
10 are excused from my courtroom. Please call back after
11 6:00 p.m. this evening.

12 Ladies and gentlemen, you are on call for the
13 remainder of the week unless you get further
14 instructions. Your jury service is for the week. And
15 so we have set up this call hotline to prevent you from
16 having to come back every morning and sit here. So it
17 is imperative that you call back after 6:00 p.m. so
18 that you can receive further instructions for the
19 remainder of your week.

20 Thank you for your service to Charleston County.
21 It was a pleasure having you in my courtroom. You are
22 excused.

23 [Whereupon, the jury panel exits the courtroom
24 at 1:55 p.m.]

25 MR. RUNYON: Your Honor, for the record, the

MIA PERRON, CVR-CM

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 solicitor informed me that their first witness, Mr.
2 Euper, is the case agent, and obviously the terms of
3 my motion would not go to exclude him from the
4 courtroom, particularly once he's testified.

5 THE COURT: All right. Thank you.

6 MR. RUNYON: And it would not exclude him from
7 being re-called as a witness, either in chief or
8 rebuttal. He remains in the courtroom.

9 THE COURT: All right. Anything before we bring
10 in the jury?

11 MR. SIMPSON: Nothing from the State, Your
12 Honor.

13 THE COURT: Anything from the defendant?

14 MR. RUNYON: No, Your Honor.

15 THE COURT: Ms. Bauer has been selected as the
16 foreperson.

17 [Off the record momentarily]

18 THE COURT: Please rise for the jury.

19 [Whereupon, the jury enters the courtroom at
20 2:01 p.m.]

21 THE BAILIFF: The jurors are present, Your
22 Honor.

23 THE COURT: Thank you. You may be seated.

24 ~~Ladies and gentlemen of the jury, we are passing~~
25 out note pads. As such, that means that you may take

1 notes during the progression of this trial.

2 I always caution jurors some of us were much
3 better note-takers than others in school. Those notes
4 are for your own use. One juror's notes are no more
5 correct or accurate than another juror's notes. They
6 are merely for your own personal use. We will collect
7 the notepads at the end of each day and return them
8 back to you at the beginning of each day.

9 I also caution you is when you are taking notes,
10 I know I have a tendency to look down. You may miss
11 what is happening in front of you.

12 So with those caveats, please understand you are
13 allowed to take notes.

14 Ms. Bauer, you have been selected as the
15 foreperson of this case and, as such, you are the
16 jury spokesperson here in court. You will also be
17 required to write the verdict but I will give you
18 further instructions on that task later in the -- as we
19 progress through the trial.

20 If at any time you-all need an extra break or if
21 there's anything, you cannot hear me or any of the
22 witnesses, if you will alert your foreperson and she
23 will alert the bailiffs and we will take care of that
24 matter as quickly as we can.

25 Ladies and gentlemen, you may have noticed when

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 you walked in this time, all of the attorneys and the
2 parties involved in this case, as well as the audience
3 members, were standing. This is out of respect for
4 your new position as judges of the facts. Just as when
5 you stand when a judge walks into a room, the attorneys
6 and all the members of the audience will stand and
7 remain standing until all thirteen of you are seated.
8 So please come in and take your seats as quickly as you
9 can because everyone will remain standing until all of
10 you are seated.

11 Ladies and gentlemen, you have been selected as
12 fair and impartial jurors to try this matter, and, as
13 such, I must now administer an oath to you.

14 Madam Clerk.

15 THE CLERK OF COURT: Ladies and gentlemen, if
16 you'll please stand and raise your right hand.

17 [Whereupon, the jury is duly sworn by the clerk
18 of court as follows: do you swear or affirm that you
19 shall well and truly try and true deliverance make
20 between the State of South Carolina and the defendant
21 at the bar, whom you shall have at charge, and a true
22 verdict render according to the evidence and the laws,
23 so help you God]

24 THE CLERK OF COURT: Thank you. You may be
25 seated.

MIA PERRON, CVR-CM

-35-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 THE COURT: Ladies and gentlemen, what I now say
2 to you is meant to serve as an introduction to the
3 trial of this case. These remarks are not a charge on
4 the law in this case. I will instruct you on the law
5 at the end of this trial before you retire to decide
6 this case. Before the trial begins, I simply want to
7 take this opportunity to explain to you the procedure
8 that we will follow so you can better understand what
9 is happening.

10 You have been selected as fair and impartial
11 jurors, whose purpose is to find and determine the
12 facts. You are the sole judge of the facts in this
13 case and if at any time I, as the trial judge, make any
14 comment regarding the facts, you must disregard it.
15 You are to determine the facts from the evidence you
16 hear, from the testimony, as well as any other exhibits
17 that may be introduced. You should not be influenced
18 by any opinions or statements you may have heard
19 outside of the courtroom. It is especially important
20 that you perform your duty of determining the facts
21 diligently and conscientiously because ordinarily there
22 is no way to correct an erroneous determination of the
23 facts by a jury. When you comply with your oath to
24 impartially determine the facts of this case, you will
25 have fulfilled your duty as jurors and no one will have

MIA PERRON, CVR-CM

-36-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 the right to criticize you for your verdict.

2 Ladies and gentlemen, it is important: until
3 you have been discharged from service in this case, you
4 may not perform any investigation, research, or
5 experiment on your own, whether individually or as a
6 group. You may not consult any dictionaries for the
7 meaning of words, or encyclopedias for general
8 information on the subjects of this trial. Do not look
9 up anything on the internet concerning this case, or
10 any of the people involved, and that includes the
11 defendant, the witnesses, the lawyers, as well as the
12 judge. Do not go to the scene where any of the events
13 that are the subject of this trial are alleged to have
14 taken place, or use any internet maps or Google Earth
15 or any other program or device to search for or view
16 any place discussed during this case.

17 Ladies and gentlemen, until you are discharged,
18 you must not have any discussions about this case or
19 make any entry on FaceBook, My Space, Linked In, or any
20 other internet social media site. That includes all
21 forms of oral, written, or electronic communication,
22 including but not limited to Twitter, e-mail, blogging,
23 and texting.

24 Please understand, ladies and gentlemen, that
25 I have given these instructions as part of my

MIA PERRON, CVR-CM

-37-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 responsibility to ensure fairness to all parties in
2 this case. That fairness would be compromised and your
3 actions could jeopardize the result of this trial if
4 you violate these instructions.

5 Ladies and gentlemen, as I have indicated to
6 you, the defendant is charged by an indictment filed in
7 this court with the crime of trafficking cocaine, the
8 elements of which will be explained to you later. As I
9 indicated earlier, the indictment is simply the charge
10 by which this case is brought into court and is not in
11 any sense evidence of the allegations that it contains.

12 The defendant has pled not guilty to this
13 indictment and the State therefore has the burden of
14 proving each of the elements of the indictment beyond a
15 reasonable doubt. It will be your duty, ladies and
16 gentlemen, to decide whether the State has met its
17 burden.

18 Your purpose as jurors is to find and determine
19 the facts. You are the sole judge of the facts in this
20 case, as I have indicated to you. You are to determine
21 the facts from the testimony you hear and the other
22 evidence introduced in court. It is especially
23 important that you perform your duty of determining the
24 facts diligently and conscientiously. Please do not
25 let your thoughts wander, but give strict attention to

MIA PERRON, CVR-CM

-38-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 the facts.

2 With equal emphasis, the same law that makes you
3 the judges of the facts in this case makes me the judge
4 of the law. The law as given by this Court is the only
5 law that you may consider. You must accept it and
6 follow it, even though you may disagree with it. I
7 cannot tell you what I think the facts are, and you
8 cannot disagree with me about what the law is or what
9 the law should be. Your job is to take the facts as
10 you find them, apply the law as I give it to you, and
11 render a verdict based under the solemn oath that you
12 just took as jurors.

13 Ladies and gentlemen, it is important that you
14 keep an open mind. It is important that you read -- do
15 not read, watch, listen to, any news accounts regarding
16 this case should there be any. It is your solemn
17 responsibility to determine the guilt or innocence of
18 the defendant, and your verdict must be based solely on
19 the evidence as it is presented to you during this
20 trial.

21 In just a moment the solicitor will make what is
22 called an opening statement in which the solicitor will
23 explain to you the issues in this case, or at least
24 what the issues -- the solicitor thinks the issues are.

25 The attorney for the defendant may also make an opening

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 statement, although he is not required to do so. What
2 the attorneys tell you in their opening statements is
3 not evidence in this case. It is only their contention
4 as to what the issues are. The evidence in this case
5 will be presented to you by the testimony of sworn
6 witnesses from the witness stand, as well by exhibits
7 that may be introduced into evidence.

8 From time to time you may hear one of the
9 lawyers say, Your Honor, I believe we have a question
10 of law, may we approach. Or I might find it necessary
11 to excuse you from the courtroom for a short period of
12 time. The reason for this is we are not hiding
13 anything from you but, as I indicated to you, I cannot
14 make any comment regarding the facts of this case.
15 Sometimes it is necessary for me to make a comment
16 regarding the facts when I make a decision regarding
17 the law and so in order not to influence you by
18 anything that I say in connection with the facts, I may
19 excuse you from the courtroom.

20 Ladies and gentlemen, in determining what the
21 true facts are in this case, you must decide whether or
22 not the testimony that you hear is believable. It will
23 be my responsibility to rule as a matter of law whether
24 or not certain testimony is admissible or not at all
25 but once the testimony is admitted, whether or not you

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 believe it is solely for you to determine.

2 In deciding whether to believe a witness, you
3 have the right to consider the interest of any witness,
4 the bias of any witness, the prejudice of any witness,
5 as well as the way the witness acts on the witness
6 stand, the opportunity for the witness to have seen and
7 heard the things about which the witness may testify.
8 You have a right to consider anything that is in the
9 record that will help you evaluate the testimony of the
10 witnesses.

11 Ladies and gentlemen, as I indicated, please do
12 not let your thoughts wander but give strict attention
13 so at the end of this case, after the arguments of
14 counsel and I have instructed you on the law applicable
15 to this case, you will be in a position to determine
16 what the true facts are and to render a true and just
17 verdict.

18 Ladies and gentlemen, please give strict
19 attention.

20 Mr. Simpson.

21 MR. SIMPSON: Thank you, Your Honor.

22

23

24

25

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

OPENING STATEMENT

MR. SIMPSON: Ladies and gentlemen, good afternoon. We met briefly earlier. My name is Chad Simpson. I'm an assistant solicitor here in the ninth circuit. Assisting me in the trial will be Adam Yount.

This is a case against Eric Sumter in the charge of trafficking in cocaine. I don't think it's necessary for me to tell any of you that cocaine is a narcotic and it is illegal to have in South Carolina. It's illegal to possess, it is a violation of law to purchase it, to sell it. And if that cocaine is over a certain quantity, it's a crime we call trafficking in cocaine.

Now, I'm mindful that there's a diverse subset from the community, that people have different attitudes about narcotics laws and what we think the law should or shouldn't be. But as the judge just told you, and as you just promised to do, your job in this trial will be to apply the law as it is, aside from any opinion that you may have. Regarding opinions -- at least in my life and my experience, I get feedback from the public and their main criticism really of drugs cases is this: why do we waste the state's resources in both law enforcement, your time here, and in trial weeks, going after, you know, addicts and users.

MIA PERRON, CVR-CM

-42-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 Well, that concern has been answered by your --
2 been answered by law enforcement. And it was answered
3 in forming several years ago what we call the
4 Charleston County Metro Narcotics Units, a law
5 enforcement unit whose purpose, whose mission, is to go
6 after high level narcotics arrests, narcotics suspects.
7 It's their work that brings us here today. It was
8 their work that led to the arrest of Mr. Eric Sumter.
9 And that's why we're here. That's the work you are
10 here to hear about.

11 Acting on intelligence information, you'll hear
12 that the metro narcotics unit placed an apartment in an
13 apartment complex under surveillance, under
14 surveillance, acting on tips, to see what was going on
15 at this suspected location. They didn't roll up for
16 fifteen minutes and jump to conclusions. They stayed
17 on that house for several hours for four days. And you
18 will hear the testimony from the people that were there
19 about what they observed during the course of those
20 four days. And what they observed over the course of
21 those four days didn't belie their concerns and
22 supported their concerns about the fact that they
23 believed narcotics sales were taking place at this
24 location. And so on day five they made a decision to
25 act on these suspicions. And on day five they set up,

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 just as they had the previous four days, by placing
2 this location under surveillance.

3 Shortly thereafter, on the fifth day, May 7th,
4 2008, what they observed was a red Mitsubishi Montero
5 -- they noted the license tag number -- pull up to this
6 apartment in the apartment complex. There were two
7 people in this red Mitsubishi. It was driven by a
8 female named Tiffany Deas. And you'll hear from her.
9 She's going to be a very important witness. In the
10 passenger seat was Eric Sumter, the defendant seated
11 here.

12 Tiffany Deas stayed in the car. Eric Sumter got
13 out and went into the apartment. A short time later he
14 came out and got back in the passenger seat of that red
15 Mitsubishi and there they sat for a few minutes.

16 You'll hear from the officers, who then observed
17 Eric Sumter get back out of the car and have further
18 interaction with the individuals at this location. He
19 then got back in the car and they left. That's the
20 perspective, the observations, you'll hear from the law
21 enforcement officers.

22 But you'll also hear, as I stated, from Tiffany
23 Deas. Tiffany Deas is going to tell you that Eric
24 called her. They had a romantic relationship. He
25 said, I need you to take me somewhere. She drove him

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 to a place where she hadn't been before but where he
2 directed her to go. Once they were there -- just like
3 an officer stated -- you'll hear that he did get out --
4 he had some interactions with the people at this
5 residence. Then he came out with a large amount of
6 what appeared to her to be cocaine. He sat in that
7 passenger seat. He weighed it on a digital scale in
8 his lap. Unhappy with what that scale was telling him,
9 he got out, had further interactions, his problems were
10 taken care of, and he got back in the car with that
11 cocaine.

12 Now, as I told you, May 7th, though, from the
13 metro narcotics unit, was the day that they were going
14 to act on their suspicions. And so when the red
15 Mitsubishi leaves the apartment, it's followed. You'll
16 hear from the officer that followed him. Followed down
17 17 onto 526 toward North Charleston. That officer
18 following the Mitsubishi notes some traffic violations.
19 And you'll actually see, ironically, that Mr. Sumter in
20 the car was making fun of Tiffany's driving, saying,
21 why are you driving like that when you know what I've
22 got in this car.

23 Acting on those traffic violations, Detective
24 Frost, who you'll hear from, calls to Detectives
25 Costanzo and Miller to make a traffic stop, a lawful

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 traffic stop, based on those violations. They pulled
2 the car over. You'll hear Detective Miller goes up, he
3 deals with the driver, Tiffany. As it would turn out,
4 Tiffany had a warrant for her arrest. It was a
5 relatively minor warrant for not paying a traffic
6 ticket. So she was placed under arrest. She also gave
7 consent to the officers to search the vehicle.

8 When they came up to Eric Sumter in the
9 passenger seat of the vehicle and asked him out of
10 the car, instantly they see something. And what they
11 see and what they -- they know what this is, they're
12 experienced law enforcement officers -- was a digital
13 scale, the digital scale that Tiffany will tell you
14 Eric had weighed the narcotics. And that digital scale
15 had cocaine residue on it, field-tested at that point,
16 and so Mr. Sumter is arrested, as well.

17 Now, again, that's the -- you'll hear the
18 observation of law enforcement officers. But let me
19 tell you about Tiffany's observations about what
20 happened at that traffic stop. You'll hear from
21 Tiffany Deas, on this witness stand, they're caught
22 between blue lights behind them, caught between a rock
23 and a hard place.

24 Eric Sumter made a decision. He made a
25 decision, probably one that's a little lower than most.

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 people would make, and that's, what's my out here,
2 what's my out, caught between a rock and a hard place?
3 My girlfriend, Tiffany. You'll hear what he says to
4 her. You'll hear that he takes this bag of cocaine, he
5 puts it in her lap and he says, this is yours now;
6 you'll get probation.

7 Tiffany is not perfect. You're going to hear
8 about a lot of mistakes she made -- there stuck between
9 an angry boyfriend, blue lights and officers coming,
10 she took that cocaine and she stuck it in her pants.
11 She works at a medical clinic. She was wearing medical
12 scrubs with spandex under them. So this is not
13 physically a hard thing to do. She stuck it down in
14 her pants to hide it from what they thought would be
15 the inevitable search of the car.

16 That bench warrant then becomes important,
17 because the drugs weren't found so she was booked in
18 jail on that bench warrant. You'll hear from Officer
19 Eachues, the detention-center officer who performed
20 that search. I call it a search, but it wasn't really.
21 You'll hear they brought her into a room and said,
22 we're about to search you and she said, let me -- you
23 know, stop, let me show you what I've got, and gave it
24 to them. Tearful, she later met with the detective and
25 told him the truth, everything I just told you about

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 what happened.

2 But you'll also hear that Mr. Sumter's
3 manipulation of Tiffany Deas wasn't over. His idea
4 to blame this on his girlfriend is manipulate her, get
5 her to say things that help him. He continued it. He
6 continued it for a couple of months until she wised up.
7 I'll leave that to the witness stand. We'll be talking
8 about that in our closing arguments. But the
9 manipulation continued, and it's going to continue over
10 the next couple of days, to point to Tiffany.

11 When you've heard the evidence -- and as I'm
12 sure if you've never been on a jury before, you've seen
13 it on television -- we're going to have an opportunity
14 to address you, in my opinion in a more important way,
15 after you've heard everything.

16 But that's how I expect the trial to go. And
17 I'm fully confident that after you've heard all the
18 evidence, and especially from Tiffany Deas, you will
19 have no problem. You'll be firmly convinced of Mr.
20 Sumter's guilt and you'll find him guilty. Thank you.

21 THE COURT: Mr. Runyon.

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State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

OPENING STATEMENT

1
2 MR. RUNYON: Well, I guess we had better give
3 up. Now is just a good of time as any to give up. No
4 sense taking up your time, because the solicitor's
5 already testified. He's told you that Mr. Sumter is
6 guilty, and so your services aren't even necessary.
7 But that's not so, because that's not what a trial is
8 about.

9 He's told you a lot of things that they're going
10 to prove and they're going to say and what-have-you,
11 but the simple fact is you've got to listen to the
12 evidence. All we can ask of you is that you listen to
13 the evidence and give it your undivided attention and
14 then you make a decision about what that evidence
15 means. Not what I said it means, not what Mr. Simpson,
16 my young friend over here, says it means, but what you
17 say it means.

18 And I just want you to listen as you go through,
19 and the story as we -- about Mr. Sumter and Ms. Deas,
20 and find out who's car it is and where the drugs were.
21 And this is a nice scenario about who had drugs and who
22 didn't have drugs. But you're going to have to make
23 the decision after you hear the evidence from the
24 stand, and then we'll be able to more intelligently
25 discuss this matter with you.

MIA PERRON, CVR-CM

-49-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 Like I said, I'm convinced. Mr. Simpson had me
2 convinced, you know, of all this stuff. But listen and
3 find out whose car was it, who had the drugs, and
4 whether or not Mr. Sumter was just what he said, which
5 was a passenger in the car, and just what Ms. Deas is
6 going to try to do is convince you that she ain't got
7 no problems with this case, her boyfriend has.

8 And we'll get into the details of who put what
9 where, when, and how, as you hear it from the stand,
10 and then we'll be able to discuss it with you more
11 intelligently. Otherwise, you know, the case would be
12 over. But it's not over. It's just beginning. And we
13 ask you to give us your consideration, both sides, and
14 at the end we'll be able to talk to you about whether
15 or not they've proven their case and whether or not you
16 should find Mr. Sumter guilty of the charge.

17 By the way, it's not illegal to have cocaine.
18 It is illegal to have cocaine if you don't have a
19 prescription and if you don't follow the law. And
20 we're not going to even pretend right now that this was
21 any kind of medicinal cocaine or that there was a
22 prescription involved. But let's just understand it's
23 not totally illegal to have certain drugs in this
24 state. But you've got to have them under certain
25 conditions, and the possession in this case certainly

MIA PERRON, CVR-CM

-50-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 wasn't under those conditions. Thank you.

2 THE COURT: Call your first witness.

3 MR. SIMPSON: Thank you, Your Honor. The State
4 calls Matthew Euper.

5 [Whereupon, Mr. Euper comes forward]

6 THE CLERK OF COURT: Place your right hand --

7 [Whereupon, Mr. Euper is duly sworn by the clerk
8 of court as follows: do you swear or affirm the
9 testimony you're about to give shall be the truth, the
10 whole truth, and nothing but the truth, so help you
11 God]

12 THE WITNESS: I swear.

13 THE CLERK OF COURT: Thank you. You may have a
14 seat.

15 [Whereupon, the witness takes the witness stand]

16 THE CLERK OF COURT: And for the record if
17 you'll please state your full name, spelling your last.

18 THE WITNESS: Matthew Owen Euper. E-U-P-E-R.

19 MR. SIMPSON: Good afternoon, Mr. Euper.
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State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 MATTHEW O. EUPER,
2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. SIMPSON:

6 Q. What agency are you employed with?

7 A. With the Charleston County Sheriff's Office.

8 Q. And in what unit?

9 A. I'm currently assigned to the DEA task force.

10 Q. Were you ever with the metro narcotics unit?

11 A. Yes.

12 Q. And how long were you with that unit?

13 A. Approximately six years.

14 Q. And what is the mission of the metro narcotics
15 unit?

16 A. To investigate, like you said earlier, high-drug
17 traffickers and organized crime.

18 Q. And, in general, how long have you been working
19 in narcotics cases?

20 A. Since around 2000.

21 Q. Do you have any special training in that area?

22 A. I've been to several courses. I can go into
23 them if you would like.

24 Q. Yeah. If you would give us some examples.

25 A. I've been to several interdiction courses,

MIA PERRON, CVR-CM

-52-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 including street-level interdiction. I've been to
2 interview and interrogation courses, courses involving
3 marijuana grows, methamphetamine, include meth lab
4 cleanup, outlaw motorcycle gangs. I can go on and on.

5 Q. Okay. That's good.

6 And how many -- if you just had to approximate,
7 how many drug cases do you think you've worked on over the
8 course of your career?

9 A. Probably around three or four hundred.

10 Q. And do you recall being involved in a specific
11 narcotics investigation from around February to May of
12 2008?

13 A. Yes.

14 Q. And who -- at the beginning of that
15 investigation, who was the target?

16 MR. RUNYON: Your Honor, may we approach?

17 THE COURT: You may.

18 [Whereupon, an off-the-record bench conference
19 is held]

20 THE COURT: Sustained.

21 Q. [Mr. Simpson] Detective Euper, did your
22 investigation into that case lead to a location coming
23 under surveillance?

24 A. Yes, it did.

25 Q. And can you tell the jury a little bit about how

1 you guys would go about setting up and executing
2 surveillance of a certain location?

3 A. Well, we have undercover vehicles that are
4 basically everyday, ordinary vehicles. They're not
5 marked. They're not Crown Vics. And we would go to that
6 specific location. If it was an apartment complex, you
7 know, we -- I have parked in that complex and we would sit
8 in the back seat, so they couldn't see anybody in the
9 front seat, and carry binoculars and that sort of thing.

10 Q. And let's talk about this specific location.
11 What type of place are we talking about?

12 A. It was townhomes, two-story apartments.

13 Q. And that's kind of like a typical complex, you
14 said?

15 A. Yes.

16 Q. And on what day did you begin the surveillance
17 of this location?

18 A. It was April the 30th of 2008.

19 Q. And this may seem obvious, but working in the
20 metro narcotics unit, why are -- why is this location
21 under surveillance?

22 A. We received information about a drug dealer
23 on --

24 MR. RUNYON: Objection, Your Honor.

25 A. -- two occasions --

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 MR. RUNYON: Hearsay.

2 MR. SIMPSON: I'll go ahead and continue, Your
3 Honor.

4 THE COURT: All right. Sustained as to hearsay.

5 Q. [Mr. Simpson] Now, going specifically to this
6 location, what date did your surveillance begin?

7 A. April the 30th.

8 Q. And how long were you out there on April the
9 30th?

10 A. Several hours.

11 Q. Did it continue past April 30th?

12 A. It continued for several days.

13 Q. And what days were those?

14 A. The 30th, May 2nd, and the 5th through the 7th,
15 2008.

16 Q. And is this location that you had under
17 surveillance, would this have been in Charleston County?

18 A. Yes, it is.

19 Q. Could you give us just sort of a rough
20 description of where it's located?

21 A. It is off of Parkdale Drive, which is off of
22 Savannah Highway, just south of 526, in West Ashley.

23 Q. Is it relatively close to the intersection
24 between 526 and 17?

25 A. It's maybe two or three blocks.

MIA PERRON, CVR-CM

-55-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 Q. Back to your surveillance: what kind of
2 activity did you observe on those many hours you had this
3 apartment under surveillance?

4 A. We would see the occupants of the apartment
5 complex stick their head out the door on occasion and soon
6 after that they would do this, a vehicle would pull up and
7 they would either -- someone from the apartment would go
8 to that car and deal with them or they would go inside for
9 a brief few minutes, five, ten minutes max, and then they
10 would get back in their vehicle and leave.

11 Q. And how many individuals had you observed at the
12 apartment participating in this kind of thing?

13 A. Approximately five. Which we knew one for sure.
14 He was the one we received information on.

15 Q. Now, during your surveillance on May 2nd -- you
16 said this went I believe four days, several hours a day?

17 A. Correct.

18 Q. Did you see -- particularly one stark example of
19 the kind of behavior you're talking about.

20 A. On that date, May 2nd, it was myself and
21 Detective Cross were sitting in his vehicle inside the
22 parking lot of the apartment complex and approximately six
23 or seven vehicles all came in at the same time. And I
24 mean, from my experience, they're typical vehicles you
25 would expect a drug dealer to be in.

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 MR. RUNYON: Objection, Your Honor. 701. May
2 we approach?

3 THE COURT: You may.

4 [Whereupon, an off-the-record bench conference
5 is held]

6 THE COURT: Overruled.

7 MR. RUNYON: Thank you, Your Honor.

8 THE COURT: You may answer, Detective Euper.

9 Q. [Mr. Simpson] Back to May 2nd and what you were
10 talking about: you saw six to seven vehicles pull in at
11 the --

12 A. Correct.

13 Q. -- same time?

14 A. Correct.

15 And loud music coming out of the vehicles.
16 Some of the vehicles had the big flashy rims. From my
17 training, those are indicators of drug dealers typical
18 of vehicles -- typically what they drive.

19 All the vehicles pulled in the parking lot. And
20 they all stayed in their vehicles, and one person came out
21 of the apartment and went to each vehicle one at a time
22 and after he went to that vehicle, that vehicle left.

23 Q. So that each vehicle would pull away separately?

24 A. Correct.

25 Q. After being visited to the window by someone

MIA PERRON, CVR-CM

-57-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 from the --

2 A. Correct.

3 Q. -- residence you had under surveillance?

4 Now, taken as a whole on what you observed on
5 these four days, and through your training and experiences
6 as a narcotics officer, what did all this kind of behavior
7 add up, in your mind, to?

8 A. They're all indicators of drug activity being
9 sold out of that residence.

10 Q. And moving ahead to May 7th of 2008, please tell
11 the jury again: at this point, about how many hours had
12 you spent with this certain apartment under surveillance?

13 A. I would guess -- I mean, the first three or four
14 days it was, I mean, three or four hours a day.

15 Q. For four days?

16 A. Correct.

17 Q. And did you set up visual surveillance again on
18 May 7th?

19 A. Yes.

20 Q. Had any tactical or strategic decisions been
21 made about May 7th?

22 A. Yes. I had two other detectives set up in the
23 area to follow any vehicles that might leave that --
24 interact with that apartment.

25 Q. And on May 7th, did you personally have a good

MIA PERRON, CVR-CM

-58-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 view of the apartment?

2 A. Yes, I did..

3 Q. And would you note for the jury -- I don't
4 believe you noted -- specifically the address of this
5 specific apartment.

6 A. [REDACTED] Parkdale Drive, Charleston, South
7 Carolina.

8 Q. And the complex is on Parkdale Drive; correct?

9 A. Yes.

10 Q. Is there a road that goes through the complex?

11 A. There's a road -- well, it's Applebee Way that
12 goes behind it.

13 Q. Okay. So you had a good view of the apartment
14 on May 7th?

15 A. Yes.

16 Q. And could you see what vehicles were coming and
17 going to that apartment?

18 A. Yes. There wasn't a whole lot of vehicles in
19 the parking lot.

20 Q. And you testified earlier that the vehicles that
21 did visit tended to not stay very long?

22 A. Correct.

23 Q. And what specifically did you observe on May
24 7th?

25 A. I observed a red Mitsubishi Montero pull up in

MIA PERRON, CVR-CM

-59-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 front of the residence. I noted that it was being driven
2 by a female, and there was a male occupant, and the male
3 occupant went into the apartment.

4 Q. Okay. Can you sort of describe the conduct of
5 the male passenger from when they pulled up until when
6 they left, if you could.

7 A. He went into the apartment. He was in there
8 maybe three or four minutes. I don't recall exactly how
9 long, but it wasn't very long. He exited and got back
10 into his vehicle. And then they stayed there momentarily,
11 at which time the guy that we were investigating exited
12 the apartment, along with a second guy, and they walked up
13 to the car, made contact with the passenger, and then he
14 went back inside the apartment with them.

15 Q. And after going back inside the apartment, did
16 he come back out?

17 A. He came back out by himself and got back in the
18 vehicle and left.

19 Q. Now, during all this -- all this time, you're
20 observing the passenger in the red Mitsubishi. What is
21 the driver doing?

22 A. She stayed in the vehicle the entire time.

23 Q. So at no time did the driver exit the vehicle?

24 A. No.

25 Q. And the passenger in the red Montero, is he

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 present in the courtroom today?

2 A. Yes, he is. It's Mr. Sumter.

3 Q. Seated here with defense counsel?

4 A. Yes.

5 Q. Did you later learn the identity of the driver
6 of that vehicle?

7 A. Yes.

8 Q. Did you note the driver's license tag of the
9 vehicle when they pulled into the apartment?

10 A. Yes, I did.

11 Q. And what was that?

12 A. I don't have a copy of it in front of me. I
13 don't remember.

14 Q. Would it refresh your recollection if you could
15 refer to your report?

16 A. Yes.

17 MR. SIMPSON: Your Honor, may I approach?

18 THE COURT: You may.

19 [Whereupon, Mr. Simpson proffers documents to
20 the witness]

21 A. It was South Carolina license plate 5238DY.

22 Q. [Mr. Simpson] Now, this activity by Mr. Sumter
23 on May 7th, was it consistent with the activity of the
24 other visitors to this apartment in the previous days?

25 A. Yes, it was.

MIA PERRON, CVR-CM

-61-

1 Q. And so when Mr. Sumter came back the second time
2 and got into the Mitsubishi, you said they left?

3 A. Yes, they did.

4 Q. And how did you respond at that time?

5 A. I relayed the information of what I had seen
6 about the vehicle, and about him exiting the vehicle and
7 going into the residence two times, to Detective Frost.

8 Q. And you talked earlier about some of the
9 tactical decisions y'all made that day. What was his role
10 in that?

11 A. He was to follow the vehicle until it got a
12 distance away from the vehicle, so he wouldn't alert the
13 apartment that we were investigating the apartment, before
14 we attempted a traffic stop.

15 Q. And do you remember where he was positioned
16 while you were making these observations?

17 A. I believe he might have been at Parkdale and 17.
18 I'm not positive. I don't remember.

19 Q. And would you have relayed to him the details of
20 the vehicle?

21 A. The description of the vehicle and the license
22 plate.

23 Q. Including the tag?

24 A. Correct.

25 Q. Detective Euper, I want to go back a little bit

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 and talk about your experience in the local narcotics
2 trade.

3 MR. SIMPSON: Your Honor, I believe the witness
4 has testified to his extensive training and I would ask
5 to move him as an expert in that area.

6 MR. RUNYON: Subject to our objections, Your
7 Honor. We object to his qualifications under 701.

8 THE COURT: All right. Ladies and gentlemen,
9 there's a matter of law that I must take up outside of
10 your presence.

11 Do not begin your deliberations. Do not discuss
12 this case amongst yourselves.

13 Please rise for the jury.

14 [Whereupon, the jury exits the courtroom at
15 2:38 p.m.]

16 THE COURT: Please be seated.

17 All right. Mr. Simpson, I'll be happy to -- you
18 had cited a case. State v. Jamison? Is that the one?

19 MR. SIMPSON: Yes, Your Honor. I have a cite
20 and a copy of the case, as well.

21 THE COURT: All right. Do you have the copy of
22 the case with you?

23 MR. SIMPSON: I do, Your Honor. Permission to
24 approach?

25 THE COURT: Please.

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 MR. RUNYON: I'm familiar with Jamison.

2 [Whereupon, Mr. Simpson proffers documents to
3 the Court]

4 MR. SIMPSON: Your Honor, I believe -- would you
5 like to hear my argument?

6 THE COURT: Yes, I would like to hear your
7 argument. Thank you.

8 MR. SIMPSON: Your Honor, I believe State v.
9 Jamison is fortunate enough that it goes directly to
10 the exact issues that we are seeking to admit today.
11 And what that is is Jamison acknowledges that, you
12 know, average members of the community, average jurors,
13 may not have a full understanding of specifics of the
14 local drug trade.

15 I simply want -- the testimony I want to elicit
16 from Detective Euper is street values of weight,
17 divisions of narcotics. In other words, what, you know
18 typically. And I'm sure the detective will acknowledge
19 that this varies with weight -- typical user would have
20 on their person at any given time as opposed to, you
21 know, what we would argue would be a dealer. I think
22 that's relevant to trafficking.

23 And also a couple of questions -- I don't know
24 that this specifically is addressed in Jamison -- but
25 as to digital scales. I'm a little concerned that, you

MIA PERRON, CVR-CM

-64-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 know, at this point in the trial the jury might not
2 know what I'm talking about, and just want to elicit a
3 couple of questions regarding digital scales and their
4 common use in the drug trade.

5 THE COURT: So specifically, Mr. Simpson, what
6 is it that you're qualifying? What areas are you
7 qualifying him?

8 MR. SIMPSON: Just as a person that through
9 their training and experience is an expert in the
10 local narcotics trade.

11 THE COURT: Local narcotics trade meaning
12 Charleston?

13 MR. SIMPSON: Charleston County, Your Honor.

14 MR. RUNYON: Your Honor, as it relates to --
15 with all due respect to Mr. Euper, I'm objecting to
16 them attempting to qualify him as an expert witness.

17 I would note for the record, Judge, that we have
18 on this jury at least two people, one a med tech and
19 one an RN, who well know about digital scales. They
20 probably use them in their everyday life or occupation.

21 So -- and not only that, but this is a common,
22 everyday item that can be purchased by anyone, it can
23 be possessed by anyone, to weigh anything they want.
24 So to suggest that the only purpose for this -- for
25 someone to possess this scale in the expert -- in the,

MIA PERRON, CVR-CM

-65-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 quote, expert's opinion, is to use in the drug trade, I
2 mean, that's -- I just don't understand how they can
3 qualify him as an expert to go to that -- to go to that
4 point.

5 MR. SIMPSON: Judge -- I'm sorry.

6 MR. RUNYON: No. Go ahead. I'm sorry.

7 THE COURT: No. Wait. One at a time.

8 Mr. Runyon, what about the issue of whether or
9 not he should be qualified as an expert in the area of
10 the street value of cocaine, crack cocaine, in the
11 local Charleston area?

12 MR. RUNYON: Judge, I think from the viewpoint
13 of a -- from his -- from his investigative experience
14 he can testify what street values are, but not
15 necessarily be an expert in the drug trade.

16 The other thing, Judge, is that the
17 circumstances of this case are it's a weight case.
18 I mean, they stopped the car and they had a certain
19 weight in it. There is no evidence of any purchase or
20 there's no evidence of any sale.

21 And, of course, the other thing, Judge, is is
22 that trafficking -- the way the statute is written,
23 trafficking, you don't have to sell a single gram. It
24 all breaks down to weight. Now, it can go to the
25 question of what the jury considers later on, because

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 we're going to request possession and distribution.
2 But the simple fact is that there's no money involved
3 in this case and there are no transactions of that
4 sort.

5 Now, I mean, what they're doing here, Judge, is
6 they're bootstrapping the case against the passenger in
7 the car by getting in as much testimony as they can
8 about a drug operation that they allege was happening
9 in the Parkdale Drive residence. And, I mean, they're
10 putting the cloak of that activity over Mr. Sumter.

11 THE COURT: All right. Your response, Mr.
12 Simpson.

13 MR. SIMPSON: Well, Your Honor, I mean, I
14 realize that this is a trafficking PWID case so we
15 don't have that element of intent to distribute.
16 However, I still think it's relevant, certainly
17 relevant, evidence to the jury to point it out -- point
18 out how much weight was found in this case.

19 I don't expect the rest of Mr. Euper's testimony
20 to be long. I just simply want to elicit the street-
21 value testimony, a couple of questions about the scale.

22 And of course I don't mean to hold out that the
23 only purpose of a digital scale is drugs. But I think
24 it's fair game that Mr. Euper testify that it is a
25 common -- commonly associated with drug scales,

MIA PERRON, CVR-CM

-67-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 especially, as they'll later hear, when it has cocaine
2 residue on the scale, Your Honor.

3 I'm just laying down a few relevant details
4 about the narcotics trade, and I believe State v.
5 Jamison makes that permissible, Your Honor.

6 THE COURT: All right. Last word, Mr. Runyon.

7 MR. RUNYON: Judge, I mean, we can go back and
8 forth all afternoon long. I think that what we're
9 dealing with here with is whether or not he was
10 trafficking, not whether or not he was part of some
11 drug operation that's bigger and all that sort of
12 stuff. And I think we're getting into irrelevant
13 material as it relates to -- particularly in the facts
14 of this case that you'll see later on with the stoppage
15 and the possession of the particular matter.

16 They're going to have an expert testify how much
17 weight was in the sample --

18 THE COURT: I'm going to allow this officer to
19 testify specifically to give the street-value testimony
20 as to what the scale would be used. I'm qualifying him
21 as an expert in local narcotics trade, with those
22 limitations.

23 MR. SIMPSON: Thank you, Your Honor.

24 THE COURT: Thank you. Your --

25 MR. RUNYON: Thank you, Your Honor.

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 THE COURT: Your exception and objection will be
2 noted for the record.

3 Anything before we bring this witness in?
4 Anyone need to take your break? Mid-afternoon break?
5 Mr. Runyon?

6 MR. RUNYON: I beg your pardon, Your Honor?

7 THE COURT: Do you need a break?

8 MR. RUNYON: We could use one, Judge.

9 THE COURT: All right. We'll take ten minutes.
10 Thank you.

11 You may stay seated, but please do not discuss
12 your testimony. The rule of sequestration has been
13 revoked -- invoked. Thank you.

14 [Whereupon, a recess is taken from 2:45 p.m. to
15 2:55 p.m.]

16 THE COURT: Anything before we bring in the
17 jury? From the State?

18 MR. SIMPSON: Nothing from the State, Your
19 Honor.

20 MR. RUNYON: Nothing from the defense, Your
21 Honor.

22 THE COURT: All right. Thank you.

23 Let's bring in the jury.

24 Detective, please be seated. I can't see
25 through you.

MIA PERRON, CVR-CM

-69-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 THE WITNESS: I'm sorry.

2 THE COURT: That's why -- thank you. And not
3 you, in particular. It has nothing to do with you,
4 just where you are located. Thank you.

5 [Off the record momentarily]

6 [Whereupon, the jury enters the courtroom at
7 2:58 p.m.]

8 THE BAILIFF: All seated. Jurors are seated,
9 Your Honor.

10 THE COURT: Thank you. Please be seated.

11 Ladies and gentlemen, normally a person cannot
12 give opinion testimony. Normally, when a person
13 testifies they must testify as to either what they saw,
14 heard, or sensed by smell or something of that nature.
15 There is an exception when someone is qualified because
16 of education or experience. They are then permitted to
17 give their opinion in certain areas, if the Court
18 qualifies them in that way.

19 The witness will be qualified in the area of
20 local narcotics trade in the Charleston area,
21 specifically as to street value of drugs and to the use
22 of digital scales, to give opinion testimony in that
23 area.

24 Ladies and gentlemen, that does not mean that
25 you must accept the opinion. It's simply evidence for

MIA PERRON, CVR-CM

-70-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 you to use in any way that you see fit.

2 Mr. Simpson.

3 MR. SIMPSON: Thank you, Your Honor.

4 Q. [Mr. Simpson] Detective Euper, going back to
5 your expertise and experience in the local narcotics
6 trade, do people who are involved in the purchasing and
7 selling of narcotics frequently carry with them some means
8 of determining the weight of narcotics?

9 A. Yes, they do.

10 Q. And what is the most -- in your experience, the
11 most frequent way they go about that?

12 A. Digital scales.

13 Q. And is there anything illegal about carrying a
14 scale?

15 A. No, they're not.

16 Q. But, nevertheless, are they sometimes disguised?

17 A. They're disguised as phones, CD cases.

18 Q. Have you ever seen a digital scale disguised to
19 look like an iPod?

20 A. An iPhone.

21 Q. iPhone.

22 And in your experience, what is the typical --
23 I'm sure it varies, but the typical amount that a user
24 would purchase cocaine?

25 A. Anywhere between a half gram and a gram, up to

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 A. Yes.

2 Q. And that description was?

3 A. The red Mitsubishi Montero.

4 Q. With the shiny wheels?

5 A. I didn't say anything about shiny wheels.

6 Q. You didn't say anything about the shiny wheels?

7 A. [No response]

8 Q. Now, but you did get the license number?

9 A. Yes.

10 Q. Okay. And after that, you stayed where you
11 were?

12 A. Briefly, yes.

13 Q. And then what did you do?

14 A. I waited to see what was going on at the
15 apartment after I relayed the information to the other
16 detectives -- to -- I was basically waiting to see if they
17 got anything out of the vehicle and if I saw anybody else
18 to go to the apartment to purchase drugs.

19 Q. Okay. Did you see anybody else go in the
20 apartment?

21 A. No.

22 Q. Okay. Did you see anybody put anything into the
23 vehicle?

24 A. No.

25 Q. Was the trunk ever opened?

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010.

1 A. The trunk?

2 Q. The trunk.

3 A. No, it was not.

4 Q. Were the back door --- is this a four-door or a
5 two-door?

6 A. It was a SUV so I believe it was a four-door.

7 Q. Okay. So were the back doors opened at any time
8 to your recollection?

9 A. Not that I recall.

10 Q. Okay... And so the only door that ever opened, to
11 your recollection, was Mr. Sumter's?

12 A. Right.

13 Q. Jumped out, went in, came back out, got in, and
14 went back in again?

15 A. Right.

16 Q. And during all this time you never saw any
17 packages or anything, you just remember a brown paper bag?

18 A. Right.

19 Q. Okay. Now, how long did you say you had this
20 place under observation?

21 A. From the 30th up until the May 7th.

22 Q. Okay. Now, during your periods of observation,
23 did you see multiple visits by the same or similar
24 vehicles?

25 A. The same vehicle, no.

MIA PERRON, CVR-CM

-79-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 Q. You never saw the same vehicle twice?

2 A. No.

3 Q. Okay. And so it was not -- would not have been
4 unusual for this red car, this red SUV, to pull up, for
5 whatever reason, and then leave? Because you had never
6 seen it before.

7 A. Right.

8 Q. All right. And you saw other people come and
9 go?

10 A. Right.

11 Q. Okay. And to your knowledge, based upon your
12 expertise in -- or the local narcotics trade, a hundred
13 grams could be a month's supply for a user?

14 A. It could be but I would say normally, no.

15 Q. It could be but you would say normally no. why
16 not?

17 A. I've never spoken to an informant or a user that
18 has bought that large a quantity.

19 Q. That doesn't mean it wouldn't happen.

20 A. Anything's possible.

21 MR. RUNYON: No further questions, Your Honor.

22 THE COURT: Redirect?

23 MR. SIMPSON: Thank you, Your Honor. Just
24 briefly.

25

- - -

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

REDIRECT EXAMINATION

BY MR. SIMPSON:

Q. Detective, Mr. Runyon asked you some specifics about what you saw Mr. Sumter do. He -- is it correct, and I believe you testified, that he went in the house when he got there?

A. Yes.

Q. Came back out, sat in the passenger seat?

A. Yes.

Q. Had some interaction with the residents?

A. Correct.

Q. Went back in the house?

A. Yeah.

Q. And then came back to the car and left?

A. That's right.

Q. What was Tiffany Deas, the driver, during during -- doing during this entire interaction?

A. She was sitting in the driver's-seat side of the vehicle the entire time.

Q. At any time did she get out of the car?

A. No.

Q. And you stated that you perhaps can't recollect the specifics but that you did see a brown paper bag?

A. Yes.

Q. And in whose possession?

MIA PERRON, CVR-CM

-81-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 A. Eric.

2 MR. SIMPSON: No further questions --

3 A. Mr. Sumter.

4 MR. SIMPSON: -- Your Honor.

5 THE COURT: Recross?

6 RECROSS-EXAMINATION

7 BY MR. RUNYON:

8 Q. As an expert in the local narcotics trade, it is
9 not unusual for, quote, the dealer to remain in the car,
10 is it?

11 A. It could go either way.

12 Q. So in other words, if someone is a passenger in
13 a car, may not be, quote, the man, so to speak; correct?

14 A. Correct.

15 MR. RUNYON: All right. No further questions,
16 Your Honor.

17 THE COURT: You may step down.

18 [Whereupon, the witness is excused and exits the
19 witness stand]

20 THE COURT: Call your next witness.

21 MR. YOUNT: Thank you, Your Honor. The State
22 calls Jack Frost.

23 [Whereupon, Mr. Frost comes forward]

24 THE CLERK OF COURT: Place your left hand, and
25 raise your right.

MIA PERRON, CVR-CM

-82-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 [Whereupon, Mr. Frost is duly sworn by the clerk
2 of court as follows: do you swear or affirm the
3 testimony you're about to give shall be the truth, the
4 whole truth, and nothing but the truth, so help you
5 God]

6 THE WITNESS: I swear.

7 THE CLERK OF COURT: If you'll please have a
8 seat.

9 [Whereupon, the witness takes the witness stand]

10 THE CLERK OF COURT: And for the record if
11 you'll please state your full name, spelling your last.

12 THE WITNESS: My name is Jack Frost. F-R-O-S-T.

13 MR. YOUNT: Thank you, Detective Frost.

14 - - - - -

15 JACK FROST,

16 Having Been First Duly Sworn,
17 was Examined and Testified as Follows:

18 DIRECT EXAMINATION

19 BY MR. YOUNT:

20 Q. Tell the jury what your occupation is.

21 A. I'm a detective with the Charleston County
22 Sheriff's Office.

23 Q. And how long have you been employed by the CCSO?

24 A. Approximately five and a half years. Since June
25 of 2005.

MIA PERRON, CVR-CM

-83-

State v. Eric Sumter.
Jury Trial - Volume 1 of 2
October 18, 2010

1 Q. Are you in a specific division at the sheriff's
2 office?

3 A. Yes, sir. I'm assigned to the metro major case
4 unit.

5 Q. Talk a little bit -- tell us what the metro
6 narcotics unit is, in your own words.

7 A. We are a multi-jurisdictional unit composed of
8 detectives from a couple of different agencies within
9 Charleston County. We investigate narcotics crimes.

10 Q. Now, do you have any previous law enforcement
11 experience at all?

12 A. I do.

13 Q. Can you tell us about that a little bit?

14 A. Prior to coming to the sheriff's office in 2005,
15 I worked for Summerville Police Department since 2000.

16 Q. Now, were you a member of the metro narcotics
17 unit in May of '08?

18 A. I was.

19 Q. Were you involved in any kind of drug
20 investigation in an apartment complex off of Parkdale
21 Drive in West Ashley?

22 A. Yes, I was.

23 Q. Could you please describe your involvement
24 leading up to the day of May 7th, 2008?

25 A. On several different occasions, Detective Euper

MIA PERRON, CVR-CM

-84-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 and I had conducted surveillance on an apartment complex
2 off of Parkdale, specifically watching cars come and go
3 from there.

4 Q. Now, on the day of May 7th, 2008: did you
5 observe any cars come and go that day?

6 A. I was positioned down the street from the
7 apartment on that day. I was told over the radio that a
8 car had come and gone from that apartment, yes.

9 Q. And who told you that?

10 A. Detective Euper.

11 Q. And what type of vehicle was that?

12 A. A red Mitsubishi SUV.

13 Q. Do you remember the license plate tag on that?

14 A. Not off the top of my head I do not.

15 Q. If I showed you a report, would that refresh
16 your memory?

17 MR. YOUNT: Judge, permission to approach the
18 witness?

19 THE COURT: You may approach.

20 [Whereupon, Mr. Yount proffers documents to the
21 witness]

22 A. Yes, sir. The license plate was a South
23 Carolina license plate of 5238DY.

24 Q. [Mr. Yount] Thank you.

25 Did you follow that Montero, the red Montero,

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 that left the residence that day?

2 A. I did. I followed the vehicle from the Parkdale
3 area.

4 Q. Were you in a marked or an unmarked vehicle?

5 A. I was in an undercover vehicle.

6 Q. Did you notice how many people were in the red
7 Montero?

8 A. Yes, I did. There was two occupants.

9 Q. Could you describe where the car went?

10 A. The car pulled off of Parkdale onto Savannah
11 Highway, which is also known as Highway 17, traveled
12 northbound to Interstate 526, and then entered the
13 interstate headed towards North Charleston.

14 Q. At this point you were still following the
15 vehicle?

16 A. I was.

17 Q. Did you observe the car making any traffic
18 violations while you were following them?

19 A. On one occasion I observed the vehicle change
20 lanes, while on 526, without using a traffic signal or a
21 turn signal. And then when the vehicle exited 526, took a
22 lefthand turn onto Dorchester Road without using a turn
23 signal, also.

24 Q. And did you communicate these traffic violations
25 to anybody?

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 A. I did. I notified Detectives Costanzo and
2 Miller, who were driving a marked police vehicle.

3 Q. And the other officers, they conducted a traffic
4 stop on the vehicle?

5 A. They did, yes.

6 MR. YOUNT: Court's indulgence, Your Honor.

7 [Whereupon, Mr. Yount and Mr. Simpson confer]

8 MR. YOUNT: Please answer any questions the
9 defense counsel may have.

10 THE COURT: Mr. Runyon.

11 CROSS-EXAMINATION

12 BY MR. RUNYON:

13 Q. So as it relates to -- and by the way, did you
14 have a ticket book with you that afternoon?

15 A. I believe I did, yes.

16 Q. It doesn't matter what division you're in,
17 you've got to carry that ridiculous ticket book with you;
18 right?

19 A. Yes, sir.

20 Q. Okay. And there was an improper change of
21 lanes. There's no signal given by the driver of the red
22 vehicle and so you notified, by radio, Officer Costanzo?

23 A. Correct.

24 Q. And that's basically all you know about this
25 case; correct?

MIA PERRON, CVR-CM

-87-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 A. Yes, sir.

2 Q. I mean, you weren't -- you aren't there
3 observing any apartments, you were -- and you didn't
4 observe the comings and goings of anyone, you -- that
5 particular day you were just down the road and you
6 followed what Mr. Euper told you?

7 A. Yes, sir.

8 Q. And you followed the car, went on the
9 interstate, and that was it?

10 A. And I observed it make the traffic infraction.
11 But that's all I did.

12 Q. Right. Ms. Deas made an improper change of
13 lanes?

14 A. Yes, sir.

15 Q. Do you remember anything else about the car
16 other than it being red?

17 A. I just remember it was an SUV.

18 Q. I beg your pardon?

19 A. An SUV.

20 Q. Okay. Anything else? Was it equipped any
21 particular way?

22 A. Not that I recall.

23 MR. RUNYON: Okay. No further questions, Judge.

24 THE COURT: Mr. Yount?

25 MR. YOUNT: No, none. No redirect, Your Honor.

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 THE COURT: Detective, you may step down.

2 THE WITNESS: Thank you.

3 [Whereupon, the witness is excused and exits the
4 witness stand]

5 THE COURT: For scheduling, approach.

6 [Whereupon, an off-the-record bench conference
7 is held]

8 THE COURT: All right. Ladies and gentlemen,
9 we're going to go ahead and recess for the evening
10 hour. There are some matters unrelated to this case
11 that I must take up outside of your presence.

12 As I reminded you on several occasions, please
13 do not read, watch, listen to, any news accounts
14 regarding this case should there be any. Do not
15 discuss this case. And as I went through the litany, I
16 have attempted to compile a list that I think covers
17 most of the communication devices that we have now.
18 But the bottom line is, ladies and gentlemen, do not do
19 any independent research. Do not discuss this case
20 whatsoever, either face-to-face communication or
21 electronically.

22 Ladies and gentlemen, please be back in your
23 jury room at 9:30. We will begin at that time. Have a
24 wonderful afternoon.

25 Please rise for the jury.

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 [Whereupon, the jury exits the courtroom at
2 3:18 p.m.]

3 THE COURT: Thank you. Be seated.
4 Anything before we break for the afternoon?

5 MR. SIMPSON: Nothing from the State, Your

6 Honor.

7 THE COURT: Mr. Simpson?

8 MR. RUNYON: Nothing from the defense, Your
9 Honor.

10 THE COURT: All right. Please have Mr. Sumter
11 dressed and ready to go no later than 9:15 in the
12 morning.

13 And how many more witnesses do you anticipate,
14 Mr. Simpson?

15 MR. SIMPSON: We have six, six more witnesses,
16 Your Honor, about half of which will be about the
17 length of Mr. Frost's testimony, and one lengthy
18 witness.

19 THE COURT: And you will begin -- you will get
20 the jail tapes, whatever situation that you need to
21 remedy?

22 MR. SIMPSON: I will do my best this evening,
23 Your Honor.

24 THE COURT: Thank you.

25 And are you -- and I will not hold you to this,

MIA PERRON, CVR-CM

-90-

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

1 but are you requesting any lesser includeds at this
2 time? I know we haven't heard much testimony.

3 MR. RUNYON: We haven't heard it but I think
4 we've already had some testimony that, together with
5 the rest, if the -- the coming testimony that probably
6 would support possession with intent to distribute,
7 Judge.

8 THE COURT: All right. Well, I will work on the
9 charges over the evening hour. If there's any special
10 charges that you think that I may not include, if
11 you'll please e-mail those to my clerk over the evening
12 hour.

13 See you back. We'll begin promptly at 9:30.
14 Thank you. We're at ease.

15 MR. SIMPSON: Thank you, Your Honor.

16 MR. RUNYON: Thank you, Your Honor.

17 [JURY TRIAL ADJOURNS AT 3:20 P.M.]
18
19
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21
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25

State v. Eric Sumter
Jury Trial - Volume 1 of 2
October 18, 2010

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Kristi L. Harrington, on Monday, October 18, 2010.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 21st day of May, 2011.

Mia Perron
Mia Perron, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM

-92-

COPY

STATE OF SOUTH CAROLINA
VS.
ERIC SUMTER,
DEFENDANT.

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Tuesday, October 19, 2010, Commencing at 9:29 a.m.

COPY

APPEARANCES OF COUNSEL

FOR THE STATE: (Chad Simpson, Esquire
Adam Yount, Esquire
Assistant Solicitor
9th Circuit Solicitor's Office
101 Meeting Street, Suite 400
Charleston, South Carolina 29402

FOR THE DEFENDANT: William Runyon, Esquire
Attorney at Law
#3 Gamecock Avenue, Suite 303
Charleston, South Carolina 29407

INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	6
ANDREW MILLER	
Direct Examination by Mr. Yount	14
Cross-Examination by Mr. Runyon	19
Redirect Examination by Mr. Yount	22
Recross-Examination by Mr. Runyon	23
THOMAS COSTANZO	
Direct Examination by Mr. Simpson	25
Cross-Examination by Mr. Runyon	44
Redirect Examination by Mr. Simpson	51
JOAN EACHUES	
Direct Examination by Mr. Simpson	55
Cross-Examination by Mr. Runyon	62
LYNN D. BLACK	
Direct Examination by Mr. Simpson	67
Cross-Examination by Mr. Runyon	78
Redirect Examination by Mr. Simpson	81
MARVIN N. HANCOCK	
Direct Examination by Mr. Simpson	83

INDEX TO PROCEEDINGS

	PAGE
TIFFANY DEAS	
Direct Examination by Mr. Simpson	89
Cross-Examination by Mr. Runyon	126
Redirect Examination by Mr. Simpson	139
Recross Examination by Mr. Runyon	141
MOTION FOR A DIRECTED VERDICT BY MR. RUNYON	142
DEFENDANT'S RIGHTS	144
CHARGE CONFERENCE	150
CLOSING ARGUMENT BY MR. SIMPSON	160
CLOSING ARGUMENT BY MR. RUNYON	171
CHARGE OF THE COURT	176
VERDICT	189
POLLING OF THE JURY	190
SENTENCING	195
POST-TRIAL MOTIONS	198
CERTIFICATE OF COURT REPORTER	201

INDEX TO EXHIBITS

[Exhibits pre-marked by counsel unless otherwise noted in the transcript]

MARKED/ADMITTED

State's Exhibit Number 1 [Letter Dated 6/12/2008] [ID Only] [Not Admitted]	
State's Exhibit Number 2 [Letter Dated 8/25/2008] [ID Only] [Not Admitted]	
State's Exhibit Number 3 [Sealed Bag Containing Exhibits 4, 5 and 6]	/ 77
State's Exhibit Number 4 [Baggie Containing Cocaine]	/ 76
State's Exhibit Number 5 [Bags Containing Cocaine]	/ 76
State's Exhibit Number 6 [Digital Scale]	/ 76
State's Exhibit Number 7 [CD of Jail Tapes]	/ 120
State's Exhibit Number 8 [Brown Paper Bag]	/ 36
State's Exhibit Number 9 [Stipulation]	6 / 66
State's Exhibit Number 10 [Subpoena] [ID Only] [Not Admitted]	6 /
State's Exhibit Number 11 [Jail Recordings] [ID Only] [Not Admitted]	

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

PROCEEDINGS

[Whereupon, State's Exhibit Number 9 is marked
by the court reporter]

[Whereupon, State's Exhibit Number 10 is marked
by the court reporter]

THE COURT: All right. We had an issue over the
evening hour. One of the jurors indicated that he is
friends with, and some sort of relation to, Detective
Costanzo. It's juror 253. I'm going to bring the
juror in and ask him on the record to indicate his
relationship, and then ask him the question.

Please bring in the juror. Please rise for the
juror.

[Whereupon, juror number 253 enters the
courtroom at 9:30 a.m.]

THE COURT: Thank you. Y'all may be seated.
Good morning, sir. How are you?

MR. STEPHENSON: Good.

THE COURT: You had indicated to the Court that
you had a relationship or a potential relationship with
one of the witnesses. Just for the record, could you
indicate for the Court who that witness is.

MR. STEPHENSON: It's Costanzo. I just know his
brother. I don't know him at all. I've never met him,
but I know his brother real well.

MIA PERRON, CVR-CM

-6-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 THE COURT: All right. And is there anything
2 about your relationship with Costanzo's brother that
3 will affect your ability to be fair and impartial in
4 this case?

5 MR. STEPHENSON: No. Not at all.

6 THE COURT: All right. Any further questions
7 required from the State or the defendant?

8 MR. SIMPSON: Your Honor, Costanzo -- Detective
9 Costanzo has a couple of brothers. I just wondered
10 which one he had a close relationship with.

11 MR. STEPHENSON: Chris Costanzo.

12 MR. SIMPSON: Chris?

13 MR. STEPHENSON: Yeah.

14 THE COURT: All right. Thank you.

15 MR. STEPHENSON: Yeah.

16 THE COURT: And what is the nature? Personal?
17 Friendship?

18 MR. STEPHENSON: Yeah. We race motorcycles
19 together, and we're personal friends.

20 THE COURT: All right. Any further questions
21 from the defendant?

22 MR. RUNYON: None from the defense, Your Honor.

23 THE COURT: All right. Thank you.

24 Thank you, sir.

25 MR. STEPHENSON: Okay. Thank you.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 [Whereupon, juror number 253 exits the courtroom
2 at 9:31 a.m.]

3 THE COURT: Based upon that questioning, the
4 Court is inclined to leave juror 253.

5 I'll be happy to hear anything further from the
6 State.

7 MR. SIMPSON: And we'll obviously be seating the
8 alternate, Your Honor, in his place?

9 THE COURT: No. I was going to leave him. He's
10 indicated that he could be fair and impartial. But
11 I'll be happy to hear from you regarding any argument.

12 MR. SIMPSON: No. I misheard, Your Honor.

13 THE COURT: All right. Thank you.

14 MR. SIMPSON: I apologize. We have nothing
15 further.

16 THE COURT: Mr. Runyon?

17 MR. RUNYON: None at this time, Your Honor.

18 THE COURT: All right. Thank you.

19 Anything before we bring in the entire panel?
20 Are they all here now?

21 THE BAILIFF: Yes, ma'am.

22 THE COURT: All right. Thank you. Anything?

23 MR. SIMPSON: Just for some housekeeping
24 matters, we did resolve that jail-tape issue. We have
25 -- the recording that we'll be seeking to admit are

MIA PERRON, CVR-CM

-8-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 pulled off on a separate CD.

2 Also, I believe Mr. Davis wanted to address you
3 about an issue. Mr. Davis represents a State's witness
4 that we'll be calling today, Your Honor.

5 MR. DAVIS: Good morning, Your Honor.

6 THE COURT: Good morning.

7 MR. DAVIS: Tiffany Deas is my client. It's my
8 understanding that she'll be the last witness by the
9 State. Certainly, I'll be present during her
10 testimony.

11 In discussions previously, I understand that
12 only on the rarest of circumstances could I make any
13 objection. However, I'll certainly be here.

14 In talking with her, she would feel more
15 comfortable -- and I've seen it happen in other court
16 proceedings -- that perhaps I could sit up near where
17 the bailiffs are sitting during her testimony.

18 That would be my request on behalf of my client.

19 THE COURT: All right. The State's position as
20 to that?

21 MR. SIMPSON: We would have no objection, Judge.

22 MR. RUNYON: I object, Judge.

23 I mean, why should she have the special
24 privilege of having her lawyer at her elbow? And,
25 I mean, it's kind of unusual. I've been in that

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 position Mr. Davis has been in but it was with regards
2 to a child that I represented in federal court.

3 And I think that as a practical matter,
4 certainly Mr. Davis, on behalf of his client, has every
5 right to bring any matter to the Court's attention or
6 what-have-you. But for her to have someone at her
7 elbow to -- you know, I just -- I just -- it's just out
8 of the ordinary. Why can't the Charleston County
9 Sheriff's Office certainly be sitting over there when
10 one of these fine detectives testifies?

11 She's a witness, she's not a party. And if my
12 client takes the stand, I've got to sit over here and
13 so I certainly have no objection and I'm not tendering
14 objection.

15 And I certainly don't mean for this to reflect
16 on my good friend Mr. Davis' services, by any means.
17 But certainly she's no different than anybody else.
18 And if he's in the courtroom and she needs to consult
19 with her lawyer, obviously that request can be made of
20 the Court and that's addressed to the Court.

21 THE COURT: Mr. Simpson, your position? You
22 have no objection, of course, to Mr. Davis?

23 MR. SIMPSON: No. No, Your Honor.

24 I would point out, also, that Tiffany is a co-
25 defendant in this case. She's charged, as well, with

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 trafficking cocaine arising from this scenario. I
2 don't know if that has any bearing on your decision on
3 this matter.

4 Really, Your Honor, we don't have a dog in this
5 fight other than, you know, Tiffany being comfortable
6 on the stand. So I have no objection to Mr. Davis
7 sitting up there.

8 But, honestly, it's within the Court's
9 discretion.

10 THE COURT: Mr. Davis, what is it that you're
11 planning -- that you anticipate would happen? Let's
12 say, for example, your client decides that she does not
13 wish to answer a question. What is it that you are
14 planning to do over there that you could not do where
15 you are standing?

16 MR. DAVIS: I can't tell you there is, Judge,
17 other than the proximity, other than quickness in
18 response. And just for the Court's knowledge,
19 basically what Mr. Runyon said: if there's any issue
20 that comes up that she's unsure, she's to look to the
21 Court for direction. Beyond that, I'll certainly -- as
22 her lawyer, if I feel that there's something that out
23 of an abundance of caution I need to object to, I'll
24 certainly object. I don't foresee that happening. I
25 don't foresee there being a question that she will

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 object to or try not to answer. I don't know that --
2 something that she turns to you for direction for.

3 But out of an abundance of caution, I appreciate
4 both parties bringing this to your attention now. I
5 believe -- I don't want to misspeak, but I believe it
6 was in a trial with Judge Jefferson that I was
7 defending and she allowed the witness' attorney to sit
8 up there. I've not seen it, other than that. I don't
9 know that it's been requested, other than that.

10 And it's simply obviously we have a young lady
11 here who was charged with a very serious offense
12 arising out of this incident. I don't believe she has
13 a prior record. And so it's just -- it's the proximity
14 and obviously -- I'm not within elbow's distance. I'll
15 be certainly farther away than that, but much closer in
16 case something arose quickly that I thought I needed to
17 bring to the Court -- involve the Court in.

18 THE COURT: All right. At this time, Mr. Davis,
19 I'll allow you to sit on the inside of the bar. I'm
20 not going to allow you to sit close to the jury. You
21 may sit behind the State's table, but at this time I'm
22 denying your request to sit in that chair next to the
23 jury.

24 MR. DAVIS: Thank you, Your Honor.

25 MR. SIMPSON: Thank you, Your Honor.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 THE COURT: Thank you.

2 MR. SIMPSON: Nothing further.

3 THE COURT: All right. Let's bring in the jury.

4 [Whereupon, the jury enters the courtroom at
5 9:37 a.m.]

6 THE COURT: All right. Call your first -- call
7 your next witness.

8 MR. YOUNT: The State calls Detective Miller.

9 [Whereupon, Mr. Miller comes forward]

10 THE CLERK OF COURT: Place your left hand, and
11 raise your right.

12 [Whereupon, Mr. Miller is duly sworn by the
13 clerk of court as follows: do you swear or affirm the
14 testimony you are about to give shall be the truth, the
15 whole truth, and nothing but the truth, so help you
16 God]

17 THE WITNESS: Yes, ma'am.

18 THE CLERK OF COURT: Thank you. You may have a
19 seat.

20 [Whereupon, the witness takes the witness stand]

21 THE CLERK OF COURT: And for the record if
22 you'll please state your full name, spelling your last.

23 THE WITNESS: Andrew Miller. M-I-L-L-E-R.

24 MR. YOUNT: Good morning, Detective Miller.

25 THE WITNESS: Good morning.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

ANDREW MILLER,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. YOUNT:

Q. Could you tell the jury what your occupation is.

A. Deputy sheriff with Charleston County Sheriff's
Office.

Q. So you're employed by the sheriff's office?

A. Yes, sir.

Q. Prior to working with the Charleston County
Sheriff's Office, did you have any previous law
enforcement experience?

A. Yes, sir. Worked for North Charleston Police
Department for three years.

Q. And with the sheriff's office now are you
presently -- what's your position? What part of the
division are you in?

A. I'm a detective in the metro narcotics division.

Q. Metro narcotics unit?

A. [Indicates affirmatively]

Q. Were you part of the metro narcotics unit on May
7th of '08?

A. Yes, sir.

Q. Can you tell the jury what you were doing on the

MIA PERRON, CVR-CM

-14-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 date of May 7th, 2008?

2 A. At the very beginning of the day, I was actually
3 doing paperwork at the office until Detective Euper gave
4 me a phone call.

5 Q. And so you received a call from Detective Euper?

6 A. Yes, sir.

7 Q. What did he -- what was this about?

8 A. He was on surveillance at a residence and he
9 needed our assistance. We jumped in the cruiser to meet
10 up with him later on.

11 THE COURT: Detective Miller, I'm going to need
12 you to --

13 THE WITNESS: Oh. I'm sorry.

14 THE COURT: -- speak loudly. If you'll lean
15 into the microphone. Thank you.

16 THE WITNESS: Yes, ma'am. Sorry.

17 Q. [Mr. Yount] So he asked you to come over to
18 the -- to a residence?

19 A. Yes, sir.

20 Q. In West Ashley?

21 A. Yes, sir.

22 Q. Did he describe a vehicle to you at all?

23 A. Yes, sir.

24 He described a red Mitsubishi Montero SUV. And
25 he also gave us the tag, which was 5238 Delta Yankee.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. Okay. At some point did you become aware
2 Detective Frost was following this vehicle?

3 A. Yes, sir.

4 Q. Were you informed by Detective Frost of a
5 traffic violation by this vehicle?

6 A. Yes, sir.

7 Q. How did you proceed after --

8 A. We actually didn't make it to the residence. We
9 actually -- they were heading back towards us on 526
10 before we actually got over there. And then we proceeded
11 to get behind the vehicle, initiate a traffic stop.

12 Q. So you located the vehicle?

13 A. Yes, sir.

14 Q. Were you in a marked -- were you in a marked or
15 unmarked car?

16 A. I was in a marked vehicle.

17 Q. Who was in the marked vehicle with you?

18 A. Detective Costanzo.

19 Q. And you said you did initiate a traffic stop?

20 A. Yes, sir.

21 Q. Okay. And what was -- do you remember what this
22 was for?

23 A. If I can remember, I believe it was making a --
24 a no-turn signal.

25 Q. Failure to use a turn signal?

MIA PERRON, CVR-CM

-16-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. Yes, sir.

2 Q. Did you notice who was driving the vehicle?

3 A. Tiffany Deas.

4 Q. And who was the passenger in the vehicle?

5 A. The defendant, Eric Sumter.

6 Q. That passenger of the vehicle is in the
7 courtroom today?

8 A. Yes, sir.

9 Q. Can you point him out for the jury, please?

10 A. [Indicates]

11 Q. Now, getting to the traffic stop. Describe for
12 the jury what you did on the traffic stop.

13 A. Once we initiated a traffic stop on Dorchester
14 Road, we pulled over near Dorchester and Maryland. Then I
15 walked up to the driver's side of the vehicle, spoke with
16 Ms. Deas, asked her for her driver's license,
17 registration, and proof of insurance.

18 After I obtained those three things, I asked her
19 to step to the rear of the vehicle so I could speak with
20 her further.

21 Q. Was she cooperative with you?

22 A. Yes, sir.

23 Q. Did, at any point, Ms. Deas give you consent to
24 search her vehicle?

25 A. Yes, sir.

MIA PERRON, CVR-CM

-17-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 I asked her once we got -- once she was at the
2 rear of the vehicle, I asked her if we could search the
3 vehicle and she said yes.

4 Q. Did you communicate that consent to Detective
5 Costanzo?

6 A. Yes, sir.

7 Q. And did you end up running Tiffany Deas'
8 driver's license for a records check?

9 A. Yes, sir, as we do with everybody we stop on a
10 traffic stop. Found out that she had a warrant for
11 driving under suspension.

12 Q. Was Ms. Deas then arrested on a bench warrant?

13 A. Yes, sir.

14 Q. Was she taken to jail on that bench warrant?

15 A. Yes, sir.

16 MR. YOUNT: The Court's indulgence, Your Honor.

17 THE COURT: Yes, sir.

18 [Whereupon, Mr. Yount and Mr. Simpson confer]

19 MR. YOUNT: Please answer any questions defense
20 counsel may have for you, Detective Miller.

21 THE COURT: Mr. Runyon.

22 MR. RUNYON: Good morning, Detective Miller.

23 THE WITNESS: Good morning.

24 MR. RUNYON: Good to see you again, sir.

25

- - -

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

CROSS-EXAMINATION

BY MR. RUNYON:

Q. Was it warm that day? It was in May; right?

A. Yes, sir.

Q. How was she dressed?

A. She had -- I believe she had jeans on and a tight shirt -- and a shirt.

Q. Jeans and a sweatshirt?

A. I'm not sure it was a sweatshirt. It was just a shirt. I'm not sure what kind of a -- what kind of a shirt it was. I believe it was a tee-shirt.

Q. Well, it was jeans and a shirt?

A. Yes, sir.

Q. Kind of how a lot of folks dress around Charleston in May and June and July?

A. Yes, sir.

Q. Okay. And you asked her to search the car. She said you could. Y'all conducted that. You arrested her on the bench warrant for a failure to pay a traffic ticket. And that's all you know about this case, isn't it?

A. Yes, sir.

Q. All right. And you of course took the steps,

necessary steps, that you thought were necessary to

protect yourself, as it relates to observing the defendant

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 and Ms. Miller [sic], as to whether or not there were any
2 weapons or anything of that sort?

3 A. Yes, sir.

4 Q. And there were none?

5 A. No, sir. Not in the car.

6 Q. Okay. And so you -- what did you do from the
7 stop -- the location of the stop? What did you do then?
8 I mean, give us your route.

9 A. I'm sorry. From before I stopped the vehicle
10 or --

11 Q. No. I mean after you stopped the vehicle and
12 found out she had a warrant. What did you do then?

13 A. Well, after we found out that she had a warrant,
14 we -- she was detained. And as I was -- as I was
15 detaining her, Detective Costanzo was searching the
16 vehicle. And then he -- that's when he found the scale,
17 so then Eric Sumter was detained shortly after that.

18 Q. Okay. But from the vehicle y'all put them in
19 the car?

20 A. Yes, sir.

21 Q. Because sometimes I'm not clear about my
22 questions. Okay? You put them in the car?

23 A. Uh-huh.

24 Q. Correct?

25 A. Yes. They sat -- they sat right outside the

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 car. We didn't have a caged unit.

2 Q. No. But what I'm saying is you put them in your
3 car?

4 A. Put who in --

5 Q. Ms. Deas and Mr. Sumter.

6 A. No, sir.

7 We did not have a caged unit, so they did not
8 sit in our car. They sat on the side of the road next to
9 our car.

10 Q. Okay. Sat on the side of the road.

11 A. Uh-huh.

12 Q. Did you ultimately transport them to the police
13 station to pick up the warrant?

14 A. The warrant -- I believe the warrant was brought
15 to us at the --

16 Q. Okay. The warrant was brought to you.

17 And who then transported them to wherever they
18 were transported?

19 A. Myself and Detective Costanzo.

20 Q. Okay. Someone brought you a caged unit?

21 A. No, sir.

22 At the -- we don't leave people alone inside the
23 vehicle unless we are inside the vehicle with them. What

24 happens is the female sits up front, seat-belted in, and
25 then the male sits in the back with the other -- with the

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 other officer.

2 Q. And once you put them in the car, where did you
3 take them?

4 A. To Leeds Avenue. The jail.

5 Q. To Leeds Avenue, which is the site of the
6 Charleston County Detention Center?

7 A. Yes, sir.

8 Q. And did you deposit them there? Book them in?

9 A. No, sir.

10 When we brought them in there, they were strip-
11 searched inside the -- inside the jail.

12 MR. RUNYON: Okay. No further questions.

13 MR. YOUNT: Judge, briefly.

14 REDIRECT EXAMINATION

15 BY MR. YOUNT:

16 Q. Detective Miller, there's nothing in your report
17 about the clothes that Tiffany was wearing that day;
18 right?

19 A. No, sir.

20 Q. And so do you want to correct that statement at
21 all about what you remember her wearing?

22 A. Yeah.

23 I'm not sure remember -- I don't remember what
24 she was wearing. I believe it was just --

25 Q. So you're not -- are you just not sure --

MIA PERRON, CVR-CM

-22-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. I'm not sure. I really don't know.

2 MR. YOUNT: Okay. That's all the questions I
3 have, Judge.

4 MR. RUNYON: I have a couple on that, Judge.

5 CROSS-EXAMINATION

6 BY MR. RUNYON:

7 Q. You just said she was wearing blue jeans and a
8 shirt.

9 A. I believe that's what I remember her wearing. I
10 mean --

11 Q. And you honestly believe --

12 A. I don't -- I can't -- I mean, the best of my
13 recollection, I --

14 Q. To the best of your recollection.

15 A. I don't know for sure.

16 Q. And in any event -- let's do it this way. Was
17 she wearing a dress?

18 A. [No response]

19 Q. Do you recall if she was wearing a dress?

20 A. I don't believe she -- I don't know. I don't
21 believe she was.

22 Q. Wearing some kind of pants?

23 A. I assume, yes.

24 Q. Okay. And some kind of shirt?

25 A. Yes, sir.

MIA PERRON, CVR-CM

-23-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 MR. RUNYON: Okay. No further questions, Judge.

2 THE COURT: You may step down. Thank you.

3 [Whereupon, the witness is excused and exits the
4 witness stand]

5 THE COURT: Call your next witness.

6 MR. SIMPSON: Thank you, Your Honor. The State
7 calls Tom Costanzo.

8 [Whereupon, Mr. Costanzo comes forward]

9 [Whereupon, Mr. Costanzo is duly sworn by the
10 clerk of court as follows: do you swear or affirm the
11 testimony you are about to give shall be the truth, the
12 whole truth, and nothing but the truth, so help you
13 God]

14 THE WITNESS: I do.

15 THE CLERK OF COURT: If you'll please have a
16 seat.

17 [Whereupon, the witness takes the witness stand]

18 THE CLERK OF COURT: And for the record if
19 you'll please state your full name, spelling your last.

20 THE WITNESS: Thomas Costanzo. C-O-S-T-A-N-Z-O.

21 MR. SIMPSON: Detective Costanzo, good morning.

22 THE WITNESS: Good morning. How are you?

23 - - -

24 - - -

25 - - -

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 THOMAS COSTANZO,

2 Having Been First Duly Sworn,
3 was Examined and Testified as Follows:

4 DIRECT EXAMINATION

5 BY MR. SIMPSON:

6 Q. How are you employed?

7 A. I'm employed with the Charleston County
8 Sheriff's Office.

9 Q. And in what unit in the sheriff's office do you
10 work with?

11 A. The metro major case narcotics unit.

12 Q. And what is the specialty of that unit?

13 A. We handle drug complaints throughout Charleston
14 County, targeting drug dealers, both short-term and long-
15 term cases.

16 Q. And how long have you been personally working
17 drug cases, narcotics cases?

18 A. I've been working drug cases with the narcotics
19 unit for about four years now.

20 Q. And do you recall becoming involved in a drug
21 investigation in late April, early May, of 2008?

22 A. I do.

23 Q. And what was your role in that investigation?

24 A. I was at the office of Detective Miller while
25 Detective Euper was conducting surveillance. We were to

MIA PERRON, CVR-CM

-25-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 just listen to the radio and possibly run any information
2 that they might have observed while conducting
3 surveillance.

4 Q. And how did your role in that investigation
5 proceed that day?

6 A. We -- while Detective Euper was conducting the
7 surveillance, he stated that he needed a patrol vehicle to
8 conduct a traffic stop for him so Detective Miller and I
9 obtained a marked unit. And then while Detective Frost
10 was conducting surveillance, we caught up to them and then
11 conducted a traffic stop.

12 Q. So you're communicating with Detective Frost via
13 radio?

14 A. Via telephone, actually.

15 Q. Telephone?

16 A. We're on the radio with Detective Euper, but
17 telephone with Detective Frost.

18 Q. And did detective -- were you ever made aware of
19 a traffic violation made by specific people?

20 A. I'm sorry. One more time.

21 Q. Were you and Detective Miller made aware of a
22 traffic violation by --

23 A. We were. Detective Frost had given us -- told
24 us that there was a traffic violation on the vehicle that
25 he was following.

MIA PERRON, CVR-CM

-26-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. And were you also aware, at that time, that this
2 -- this wasn't a vehicle they were following on accident?

3 A. No. Detective Euper had observed this vehicle
4 at the house that he was conducting surveillance on that
5 was -- that he had information it was a drug house.

6 Q. And what did -- was the vehicle described to you
7 with any specificity?

8 A. He said -- he said it was a red SUV. I believe
9 a Montero, I believe it was.

10 Q. Was a license tag number given to you, as well?

11 A. It was. The license tag was South Carolina
12 5238DY.

13 Q. And I see you're referring to something on the
14 witness stand there. What are you looking at?

15 A. This is reports that we have written, just so I
16 can refresh my memory.

17 Q. Did you and Detective Miller conduct a traffic
18 stop on the red Mitsubishi?

19 A. We did.

20 Q. And the license tag matched that you just told
21 the jury?

22 A. Yeah, the same vehicle that they had given us a
23 description of and that they had seen at the residence.

24 Q. And describe for the jury: you pull over the
25 Montero. First of all, where did you pull -- make the

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 stop?

2 A. We conducted the traffic stop at Dorchester Road
3 at Maryland Drive in North Charleston.

4 Q. And is this close to 526?

5 A. It is.

6 Q. Is that in Charleston County?

7 A. It is in Charleston County.

8 Q. Once the -- did the car pull over right away?

9 A. It took a little time for it to pull over, but
10 eventually it did stop.

11 Q. There was no high-speed --

12 A. No, no chase or anything like that. But it --
13 it pulled over.

14 Q. If you could just approximate for the jury from
15 when you initiated -- who was driving, you or Detective
16 Miller?

17 A. Detective Miller was driving the vehicle.

18 Q. And from when you initiate those blue lights,
19 approximately how long -- sometimes they're difficult,
20 but --

21 A. Yeah.

22 I don't know if I can specifically remember
23 exactly how long, give a distance, but it was -- it was a
24 minute, at least, before they pulled over.

25 Q. And you do remember that it wasn't an instant

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 situation --

2 A. Correct. Yeah.

3 It took a little bit of time from the point of
4 us initiating our blue lights for them to pull over.
5 Longer than what a normal stop would take.

6 Q. And how do you -- there's two officers in the
7 vehicle, yourself and --

8 A. Detective Miller.

9 Q. -- Detective Miller?

10 A. Uh-huh.

11 Q. Once the Mitsubishi pulls over, how do you
12 proceed from that point?

13 A. Once the Mitsubishi pulls over, we approached
14 the vehicle. Detective Miller approached the driver's
15 side; I approached the passenger side.

16 Q. And why do you do that with two?

17 A. Safety reasons. We can both see -- he can see
18 more of the passenger's side and I can see more of the
19 driver's side. We approach from -- approach from both
20 angles. It's just a safer way for us to conduct traffic
21 stops.

22 Q. Okay. But in this case you testified that you
23 were assigned to the passenger side; correct?

24 A. Correct. I was.

25 Q. Okay. How many occupants were in that vehicle?

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. There was two occupants in the vehicle.

2 Q. Who was the driver?

3 A. The driver was Tiffany Deas.

4 Q. Okay. And the passenger?

5 A. Eric Sumter.

6 Q. And is Mr. Sumter in the courtroom today?

7 A. He is here today. Correct.

8 Q. And can you point him out to the jury?

9 A. He's over there wearing the blue shirt.

10 Q. And so I believe you testified that your role in
11 this traffic stop is to handle the passenger; correct?

12 A. Correct.

13 Q. And how did that proceed?

14 A. When we approached the vehicle, Detective Miller
15 had asked Tiffany to step out of the vehicle to the rear,
16 again, just for safety reasons. While he had done that, I
17 was -- started to speak to Mr. Sumter.

18 Q. And what was Mr. Sumter's demeanor when you were
19 speaking to him?

20 A. He was very nervous, he was avoiding eye
21 contact, he was sweating profusely and shaking a little
22 bit.

23 Q. And as you testified before, you were -- you had
24 been made aware of Mr. Sumter's -- some of Mr. Sumter's
25 activities previously?

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. Correct. We were.

2 Q. Now, a short while later, did you learn from
3 Detective Miller that Tiffany Deas had given consent to
4 search the vehicle?

5 A. I did.

6 Q. And how did you proceed, once that consent was
7 given?

8 A. Once he had told me that he gave consent, I
9 asked Mr. Sumter to step out of the vehicle.

10 Q. And what was the purpose of having Mr. Sumter
11 step out of the vehicle?

12 A. Again, for officer safety reasons. When we like
13 -- when we search vehicles, we want to have both of them
14 out of the vehicle, one detective searching while the
15 other detective makes sure that the passenger -- or the
16 occupants of the vehicle stay a safe distance away from
17 the officers.

18 Q. And Detective Costanzo, did it take long before
19 you located something in the vehicle of interest to you?

20 A. No.

21 Right as I pulled Mr. Sumter out of the vehicle
22 I saw on the passenger seat, where he was sitting, was a
23 digital scale with a white powder residue.

24 Q. And you said that was on the seat where Mr.
25 Sumter had moments before been sitting?

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. As soon as I pulled him out, right under his
2 seat. Well, right on his seat where he was sitting was
3 where the digital scales were located.

4 Q. And was there anything particular about this
5 digital scale? I won't use the word unique, but made it
6 interesting?

7 A. Yeah. It was actually masqueraded as an iPod.

8 MR. SIMPSON: Court's indulgence.

9 THE COURT: Yes, sir.

10 Q. [Mr. Simpson] Detective, I'm showing you what's
11 been marked, for identification only, as State's Exhibit
12 3. This is a clear plastic bag that contains a few items.
13 You can't see in the bag. I want you to please -- so they
14 can see the scale that you're discussing. Is that in that
15 bag marked State's Exhibit 3?

16 A. I do. I do see that scale in the bag.

17 Q. Okay. Now, when you saw this item that looked
18 like an iPod, did you recognize it fairly quickly as a
19 digital scale?

20 A. I did.

21 I had seen them before, seen these types of
22 digital scales before.

23 Q. And you testified that it had a powdery residue
24 on it?

25 A. Yes. Yes, sir. Yeah.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. And what did you suspect, as a narcotics
2 officer, that that might be?

3 A. It -- there was -- to me it looked like cocaine.

4 Q. And how does an officer proceed in a situation
5 like that when they have a substance they think might be
6 narcotics?

7 A. We use a field-testing kit, which we'll -- it's
8 a swipe. And we'll swipe the substance and then if it
9 reacts to a blue, a light blue, then it shows that it has
10 field-tested presumptive for cocaine.

11 Q. So it's a chemical test that you can use quickly
12 on the scene?

13 A. Exactly.

14 Q. And do you call that presumptive cocaine?

15 A. Yes.

16 Q. Because is that the final test?

17 A. That is not the final test, no.

18 Q. And how would evidence of interest like that be
19 handled to determine with some finality what that
20 substance is?

21 A. Right.

22 We would put it into what we call a best kit,
23 which is a state-issued kit that you fill out, you put the
24 evidence in it, you seal it, and then you send it to SLED.

25 Q. And what does SLED stand for?

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. And what did you suspect, as a narcotics
2 officer, that that might be?

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19 handled to determine with some finality what that
20 substance is?

21 A. Right.

22 We would put it into what we call a best kit,
23 which is a state-issued kit that you fill out, you put the
24 evidence in it, you seal it, and then you send it to SLED.

25 Q. And what does SLED stand for?

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. South Carolina Law Enforcement Division.

2 Q. And do they have a forensics lab with, to your
3 understanding, technicians whose job it is to --

4 A. Yes, they do.

5 They will test it, and then they will send you
6 back a final analysis of what the substance was that you
7 have submitted.

8 Q. And where is that laboratory located?

9 A. That is in Columbia, South Carolina.

10 Q. After you located the digital scale in the seat
11 where Mr. Sumter was sitting, how did your search then
12 proceed?

13 A. After we had -- we searched the rest of the
14 vehicle. We had secured the iPod, and then we had --
15 well, also, I searched -- I had searched the defendant, as
16 well, and --

17 Q. Now, let's go back to that. You said it was
18 just kind of a powder residue?

19 A. Correct.

20 Q. But it had tested presumptive for cocaine?

21 A. It field-tested presumptive for cocaine, yeah.

22 Q. So at this point in relation to Mr. Sumter, in
23 your experience as a narcotics officer, do you have a
24 criminal offense occurring?

25 A. Yes, we did.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. And what is that?

2 A. It was possession of cocaine.

3 Q. And is there any -- to your knowledge, any
4 amount of cocaine would be a criminal offense?

5 A. Yes. Absolutely.

6 Q. Even the powder on the scale?

7 A. Even the powder on the scale.

8 Q. Okay. When you arrest someone for any offense,
9 how do you proceed, vis-a-vis, the person's body?

10 A. Well, we search the rest of his person to make
11 sure that there's nothing else on him.

12 Q. Okay. And you said you -- you did, in fact,
13 search the person of Mr. Sumter?

14 A. I did.

15 Q. And what did that search locate?

16 A. In his back pocket we located another digital
17 scale and a paper bag, a brown paper bag.

18 MR. SIMPSON: Your Honor, may I approach the
19 witness?

20 THE COURT: You may.

21 Q. [Mr. Simpson] Detective Costanzo, I'm handing
22 you what's been marked, for identification only, as
23 State's Exhibit 8. Could you first identify -- first of
24 all, do you recognize that outer bag?

25 A. Yes.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 This is a evidence bag that we use to place
2 evidence in before we place it into the evidence locker.

3 Q. And what's the purpose of using an evidence bag?

4 A. It's just to hold the contents of what's in the
5 bag and so that way it's secured when we submit it.

6 Q. And it does have -- do you also put some
7 information on the outside of the bag?

8 A. Yes, we will.

9 Q. And what is inside that evidence bag? And I
10 know this is kind of funny, but it's --

11 A. Inside this bag it says -- the -- do you want me
12 to take it out or --

13 Q. Sure.

14 A. It's the brown paper bag that I found in
15 Mr. Sumter's back pocket.

16 MR. SIMPSON: Your Honor, at this point we would
17 move State's Exhibit 8 into evidence.

18 MR. RUNYON: No objection, Judge.

19 THE COURT: State's 8 into evidence without
20 objection.

21 [Whereupon, State's Exhibit Number 8 is admitted
22 into evidence by the Court]

23 Q. [Mr. Simpson] And so on the person of Mr.
24 Sumter, on the day you made an arrest, was an additional
25 scale --

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. Uh-huh.

2 Q. -- and the brown paper bag that you just
3 identified?

4 A. Correct.

5 Q. So once you've determined that there will be a
6 criminal charge on Mr. Sumter -- and was Ms. Deas also
7 placed under arrest at that time?

8 A. She was. She had an active bench warrant for
9 her arrest so we placed her under arrest, as well.

10 Q. And how did the -- those arrests proceed?

11 A. We -- after we placed them under arrest, we
12 searched the rest of the vehicle. And then --

13 Q. Did that search reveal any other items of
14 evidence?

15 A. It did not.

16 Q. And who -- did you determine at the scene who
17 the vehicle belonged to?

18 A. We did, and I'm not exactly sure -- cannot
19 remember exactly who it belonged to. But, I mean, that's
20 just a standard operating procedure, who the vehicle
21 belongs to and find out as much information as we can, get
22 information back. That's how we also found out that she
23 was -- had an active bench warrant, running her through
24 our NCIC or -- at headquarters.

25 Q. And were the two, Mr. Sumter and Ms. Deas, taken

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 -- where were they taken?

2 A. They were taken to the -- our office at metro
3 to -- I'm sorry. They were taken to the Charleston County
4 Detention Center.

5 Q. That's, in laymen's terms, the jail?

6 A. The jail. Exactly.

7 Q. And what happened once you got them to the jail?

8 A. Once we got them to the jail -- because there
9 was drugs involved, standard operating procedure, we have
10 them strip-searched at the jail.

11 Q. Okay. Now, who would be performing a strip --
12 these searches?

13 A. The detention -- well, if it's a male, it's one
14 of the officers and one detention officer. And then for
15 the females, it's going to be two detention -- two female
16 detention officers if a female officer is not available.
17 In this particular case it was two female detention
18 officers for Ms. Deas.

19 Q. Do you know a Sargent Eachues?

20 A. I do.

21 Q. And was she involved in that?

22 A. She was. She was the detention officer that --
23 one of the detention officers that searched Tiffany Deas.

24 Q. And this -- would this take place in a private
25 room?

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. This would, yes.

2 Q. Would you be -- at this time are you in close
3 proximity to this room?

4 A. Yeah.

5 I was -- the door was shut, but I was just
6 outside of the door while she was being searched.

7 Q. And were you made aware of anything of interest
8 that occurred during the search of Tiffany Deas?

9 A. Yes.

10 The detention officer, she stepped outside and
11 stated that they had found cocaine on her.

12 Q. I'm going to -- I'm going to direct your
13 attention once again to State's Exhibit 3, which as we
14 said is a clear plastic bag that contains a few items.
15 Does that appear to you from the markings to be the
16 narcotics found on Tiffany Deas?

17 A. Yes, it is.

18 Q. So these were handed over to you by Sargent
19 Eachues, a detention officer at the jail?

20 A. I believe that Detective Miller actually --
21 handed it over to him, who was with me outside the jail.
22 We were both right outside.

23 Q. Okay. And how were -- how was the suspected
24 narcotics packaged when it was given over to you?

25 A. It was one large plastic bag containing what I

MIA PERRON, CVR-CM

-39-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 believed to be cocaine, and then three smaller plastic bag
2 -- plastic bags containing the same thing.

3 Q. When you described earlier what's done with
4 evidence, especially when it's got some suspected
5 narcotics, did you go through the same procedures in
6 relation to these narcotics?

7 A. We did.

8 Q. And that would be -- if you would just say it
9 one more time for the jury what -- how that process would
10 work.

11 A. Yeah.

12 We secured the cocaine, placed it into a best
13 kit, which, again, is provided to us by SLED, filled out
14 the proper forms, and then entered it into the evidence
15 locker to be submitted to SLED for further analysis.

16 Q. Now, once you learned that this amount of what
17 you believed at that time, at least presumptively, was
18 cocaine was found on Tiffany Deas, how did your
19 investigation proceed at that point?

20 A. At that point we took Ms. Deas and Mr. Sumter
21 over to our office at metro to be interviewed.

22 Q. And is that far from the jail?

23 A. It's not. It's pretty much right next door to
24 it.

25 Q. And the purpose of bringing them over there you

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 said was to interview them?

2 A. Correct.

3 Q. Is that a -- once you got there, who were you in
4 charge of?

5 A. I was in charge of interviewing Ms. Deas.

6 Q. And did these take place in separate --

7 A. Yeah, they're in separate rooms.

8 Q. And being careful, Detective Costanzo, to not
9 refer to anything actually said by Tiffany Deas -- that
10 would be hearsay --

11 A. Uh-huh.

12 Q. -- describe for the jury how that interview with
13 Ms. Deas proceeded.

14 A. At first she was being deceptive what she was --
15 of what she was saying. And then it became clear that she
16 became very scared, very upset, you know, at one point
17 began to cry.

18 Q. And so at a point during your interview, she's
19 visibly upset?

20 A. To the point where she's crying profusely, and
21 shaking.

22 Q. And at that point did she tell you her story of
23 what --

24 A. She did --

25 Q. -- had transpired that day?

MIA PERRON, CVR-CM

-41-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. -- she then began to become truthful. Things
2 that she was saying was matching up with the surveillance
3 that we had -- that Detective Euper had conducted earlier.

4 Q. And did she give a written statement as a result
5 of this interview?

6 A. She did give a written statement.

7 Q. And that was signed by Ms. Deas?

8 A. It is.

9 Q. Prior to this interview, were the standard
10 Miranda warnings given? Was Ms. Deas apprized of her
11 rights?

12 A. They were. They were given the very first
13 thing, before I even asked any questions.

14 Q. And would that be the procedure you go through
15 all the time?

16 A. That's what we do every single time.

17 Q. And just briefly -- we've all heard it on
18 television, but explain to the jury what you explained to
19 Ms. Deas before she gave this statement and this
20 interview.

21 A. I actually have a card that I read from every
22 time so that the defendant knows what their rights are.
23 Basically explain to them that they don't have to speak to
24 us; that if they wish to speak with us, that they can have
25 an attorney present.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 She had stated to me that she wished to waive
2 all of her rights and wanted to speak to us about the
3 incident that had occurred.

4 Q. As a result of her -- what -- the intelligence
5 your unit had gathered all that day, including what Ms.
6 Deas told you, was Eric Sumter charged with trafficking
7 cocaine?

8 A. He was.

9 Q. Was Ms. Deas also charged with trafficking
10 cocaine?

11 A. She was also charged with trafficking cocaine.

12 Q. And why was Ms. Deas charged, as well?

13 A. Because it was located -- the cocaine was
14 located on her person.

15 MR. SIMPSON: Court's indulgence.

16 THE COURT: Yes, sir.

17 [Whereupon, Mr. Simpson and Mr. Yount confer]

18 MR. SIMPSON: Detective Costanzo, please answer
19 any questions Mr. Runyon may have for you.

20 THE WITNESS: Will do.

21 MR. RUNYON: Detective Costanzo, good seeing you
22 again, sir.

23 THE WITNESS: Yes, sir. It's good to see you,
24 as well.

25

- - -

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

CROSS-EXAMINATION

BY MR. RUNYON:

Q. You did a test, there at the traffic stop, of the scale residue?

A. Yes, sir.

Q. And the test that you do indicates the presence of a chemical found; correct?

A. I suppose so, yes. I don't -- it tells me that there's cocaine possibly present.

Q. Possibly cocaine?

A. Uh-huh.

Q. Or lidacaine, or novocaine, or procaine? Any member of the caine family; right?

A. I'm not sure, sir. I just know that --

Q. Okay. But it's enough to give you some suspicion that you've got something that needs to be tested?

A. Yes, sir.

Q. Okay. Now, after you took these folks to the jail and there was a strip search, both were re-dressed; correct?

A. Correct. Yes, sir.

Q. All right. And Ms. Deas was -- put her blue jeans back on, and her shirt and what-have-you, and y'all took -- Mr. Sumter put his blue jeans back on and what-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 have-you, and you took them to the police station?

2 A. Yes, sir.

3 Q. Okay. Now, as it relates to this famous brown
4 bag --

5 Kind of a routine lunch-bag type?

6 A. Yes, sir.

7 Q. Okay. Anything on that that roused your
8 suspicions?

9 A. Not specifically. I mean, it's --

10 Q. Okay. Now, as it relates to charges, both were
11 charged with trafficking; is that correct?

12 A. Yes, sir, that's correct.

13 Q. And that was based upon the -- what you think --
14 or what you thought at that time was the weight of the
15 drugs; correct?

16 A. Yes, sir.

17 MR. RUNYON: Pardon me. Got a little bit of an
18 allergy.

19 Q. [Mr. Runyon] And so you charged her with
20 trafficking, and then you put her back in jail?

21 A. Yes, sir.

22 Q. Okay. Now, you weren't present at the search of
23 Ms. Deas?

24 A. No, I was not.

25 I mean, I was in -- I was at the detention

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 center when she was being searched, but she was in a
2 private room.

3 Q. I should have clarified that. I apologize.

4 You weren't in the room where she was searched,
5 but you were there?

6 A. Correct. Yes, sir.

7 Q. Okay. Now, as it relates to both of these
8 people at the scene of the stop --

9 A. Uh-huh.

10 Q. -- as police officers have every right to do,
11 you took the steps necessary to ensure that both of you
12 would be safe, vis-a-vis, checking these folks the best
13 you could, considering gender and what-have-you, that they
14 didn't have any weapons?

15 A. Correct. Yes, sir.

16 Q. Okay. And there were no noticeable bulges or
17 anything in anyone's clothing?

18 A. No, sir, not that we could -- not that we
19 noticed.

20 Q. All right. And of course with Mr. Sumter being
21 male, you were able to pat him down and make sure he
22 didn't have any weapons?

23 A. Correct.

24 Q. And as it relates to Ms. Deas, you were able to
25 take those steps, within bounds, to ensure that she didn't

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 have a weapon?

2 A. Yes, sir.

3 Q. And she didn't have any type of items bulging,
4 or anything of that sort, which would indicate to you that
5 she had any kind of weapon or any kind of suspicious
6 packages or anything?

7 A. No, sir.

8 But I was not -- I don't believe I was the
9 one that searched Ms. Deas. I was the one that searched
10 Mr. Sumter. I was in control of him.

11 Q. Okay. But that's the standard operating
12 procedure?

13 A. It is. Yes, sir.

14 Q. And you do that -- and you have certain
15 protocols that you follow, you and Detective Miller
16 followed, considering you had different genders, of
17 course?

18 A. Right.

19 Q. And you did that within bounds and within -- and
20 within good taste?

21 A. Yes, sir.

22 Q. Okay. Now, did Mr. Sumter own the car?

23 A. Again, I don't specifically know. I know that
24 is something that we do. We do run the tags. And I don't
25 specifically remember what the vehicle came back to.

MIA PERRON, CVR-CM

-47-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. Okay. So you don't know that he owned -- ever
2 owned a car?

3 A. Again, I don't remember. At some point I'm sure
4 that I did know, but today I don't.

5 Q. Okay. Now, as it relates to the paper bag, did
6 you have that tested in any way?

7 A. No, sir, I don't believe that we did.

8 Q. Okay. Because there was nothing suspicious
9 about the bag?

10 A. Correct.

11 Q. No powder or no nothing; right?

12 A. No, sir.

13 Q. Okay. And you searched the car?

14 A. [Indicates affirmatively]

15 MR. RUNYON: And you have to speak up, because
16 she can't take a nod.

17 A. Yes.

18 THE WITNESS: I'm sorry.

19 A. Yes, we did search the car. Yes.

20 MR. RUNYON: I'm sorry. I wasn't --

21 THE WITNESS: No. I understand --

22 MR. RUNYON: -- trying to --

23 THE WITNESS: -- you're absolutely right.

24 MR. RUNYON: -- I wasn't trying to be a nag, I
25 was just trying to --

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 THE WITNESS: Right.

2 MR. RUNYON: Because you and I are having a
3 conversation here. And we've talked before and so we
4 understand what we're talking about --

5 THE WITNESS: Yes, sir.

6 MR. RUNYON: -- but the record doesn't.

7 THE WITNESS: Absolutely. I apologize for that.

8 Q. [Mr. Runyon] And insofar as the car was
9 concerned, was it particularly clean inside, or messy or
10 what-have-you?

11 A. I don't remember it being especially clean or
12 dirty.

13 Q. Okay. Just a standard routine car?

14 A. Standard, yes, sir.

15 I'm sure it had some things around it but I
16 don't remember it, you know, being specifically either
17 way --

18 Q. Now, when you fill out the -- when you send
19 things to SLED, you basically send things up there with a
20 sheet of paper to maintain chain of custody. And y'all
21 maintain chain of custody?

22 A. Yes, sir.

23 Q. But you also tell them what you want to check
24 for, don't you?

25 A. Correct.

MIA PERRON, CVR-CM

-49-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. And so there are any number of tests that could
2 be run. And y'all request the tests; correct?

3 A. Yes, sir.

4 Q. Okay. I mean, SLED doesn't just take an item
5 and do every test that they possibly can?

6 A. I don't know exactly what they do up there.
7 I've never even been up there before.

8 Q. But in your experience -- and when you send
9 things off, you send things off for a specific tell us
10 what this is or whatever?

11 A. A drug analysis or a -- an analysis.

12 Q. Right.

13 A. Yeah.

14 Q. Okay. And by the way, after you -- strike that.

15 Did Ms. Deas have -- did either of these
16 defendants have a separate change of clothes or anything
17 with them?

18 A. No, sir, not that I --

19 Q. Just the clothes they had on?

20 A. Yes. I suppose so, yes, sir.

21 Q. And to the best of your recollection, both were
22 wearing blue jeans?

23 A. That I cannot -- I don't remember. Possibly.

24 Q. Possibly?

25 A. Yeah.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 I do not remember exactly what they were wearing
2 on that specific day, if they both had blue jeans on or --

3 Q. What time of the day was this?

4 A. I remember it being in the afternoon sometime.

5 Q. In the afternoon. What day of the week was
6 this? Weekday? Friday? Saturday?

7 A. I -- weekday. It was a weekday.

8 Q. Well, I don't know. You've got the notes.

9 A. Yes, sir, I do have the notes, and it has the
10 date on here but it doesn't say exactly what day it is.

11 Q. Okay. It doesn't say --

12 A. It just says --

13 Q. -- what day.

14 A. -- the 7th.

15 MR. RUNYON: No further questions, Your Honor.

16 MR. SIMPSON: Briefly. Thank you, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. SIMPSON:

19 Q. Detective Costanzo, Mr. Runyon pointed out the
20 test you do on the scene for cocaine. And you acknowledge
21 it's a preliminary test; correct?

22 A. Correct.

23 Q. And it's sent to SLED for a final test?

24 A. Exactly.

25 Q. Mr. Runyon also about -- asked you about

MIA PERRON, CVR-CM

-51-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 procedures and patting a person down. We talked about how
2 you did that with Eric Sumter on your direct.

3 A. Uh-huh.

4 Q. You want to do a really thorough job.

5 A. Absolutely.

6 Q. In your experience -- you testified to that --
7 when a male law enforcement officer is patting down a
8 female suspect, might there be some perhaps more
9 deferential around the private areas of the female body?

10 A. Absolutely. Yes. We're very cautious about
11 patting down females.

12 Q. As a male officer, are you scared of any
13 allegations that perhaps you would be going outside the
14 bounds of a reasonable and --

15 A. Yes. Absolutely.

16 Q. And with a male, is that less of a concern?

17 A. It's much less of a concern. In general,
18 officers -- I know myself -- feel much more comfortable
19 patting down males more thoroughly, as opposed to females.

20 Q. And as you testified in your direct, you knew at
21 the scene that Ms. Deas was -- had a bench warrant for her
22 arrest?

23 A. I did.

24 Q. And at that point were you aware that, as an
25 eventuality, she would be stripped-searched at the jail?

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. I did.

2 Q. So what's really your only concern, really, at
3 the scene?

4 A. At that point is weapons. Want to make sure
5 that we don't have any blatant knives or guns or anything
6 like that. Knowing that they're both being placed under
7 arrest, we will get a strip search at the jail and we know
8 that any other contraband will be searched thoroughly --
9 or will be found through a thorough search by an
10 appropriate gender officer, detention officer.

11 Q. Okay. I believe you acknowledged in cross-
12 examination that, you know, this was 2008 in May and that
13 the specific clothing worn by either suspect is something
14 that you just don't remember?

15 A. Right. That wasn't something that just stuck in
16 my memory --

17 Q. And had, in your mind at the time, that had been
18 a relevant observation, what would you have done?

19 A. Noted it in the report.

20 Q. But you didn't?

21 A. Right. I did not.

22 Q. At the time, you didn't feel that their specific
23 clothing was relevant?

24 A. No, I didn't.

25 And if we did, again, we would have put it in

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 the report to make sure that we would remember, because we
2 do realize that it takes a significant amount of time for
3 things to go to trial.

4 Q. Okay. And is it a fair summation of your
5 testimony that you just don't remember? It was a good
6 while ago?

7 A. Right.

8 MR. SIMPSON: No further questions.

9 THE COURT: Mr. Runyon?

10 MR. RUNYON: No further questions.

11 THE COURT: Detective, you may step down.

12 THE WITNESS: Thank you.

13 THE COURT: Call your next witness.

14 MR. SIMPSON: The State calls Sargent Eachues,
15 from the Charleston County Detention Center.

16 [Whereupon, Ms. Eachues comes forward]

17 [Whereupon, Ms. Eachues is duly sworn by the
18 clerk of court as follows: do you swear or affirm the
19 testimony you're about to give shall be the truth, the
20 whole truth, and nothing but the truth, so help you
21 God]

22 THE WITNESS: Yes.

23 THE CLERK OF COURT: Thank you. You may have a
24 seat.

25 THE WITNESS: Thank you.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 [Whereupon, the witness takes the witness stand]
2 THE CLERK OF COURT: And for the record if
3 you'll please state your full name, spelling your last.

4 THE WITNESS: Joan Eachues. E-A-C-H-U-E-S.

5 MR. SIMPSON: Good morning, Sargent Eachues.
6 How are you?

7 THE WITNESS: Good morning.
8 - - - - -

9 JOAN EACHUES,
10 Having Been First Duly Sworn,
11 was Examined and Testified as Follows:

12 DIRECT EXAMINATION

13 BY MR. SIMPSON:

14 Q. Where are you employed?

15 A. Charleston County Detention Center.

16 Q. And what agency runs the Charleston County
17 Detention Center?

18 A. Charleston County Sheriff's Office.

19 Q. How long have you worked there?

20 A. Seven years.

21 Q. And what are some of -- what's your position
22 there at the detention center?

23 A. Currently, I'm an environmental officer. That's
24 my new position.

25 Q. And what kind of duties do you do as an

MIA PERRON, CVR-CM

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 environmental officer?

2 A. We supervise inmate-work crews, supply the units
3 with the supplies that they need, the housing units, as
4 well as the supervisors, and outside work crews.

5 Q. And did you have different duties at the jail in
6 May of 2008?

7 A. Yes, sir.

8 Q. And what were some of those duties?

9 A. I was a booking intake officer. And what we do
10 is whenever somebody is brought into the facility, we
11 accept them in. We search them, their property, intake
12 them into the system, and give them a number.

13 Q. Okay. And when you say give them a number,
14 would that be the inmate number?

15 A. Yes, sir.

16 Q. Is that just an identification number --

17 A. Yes, sir.

18 Q. -- for you?

19 In your role as a booking officer at the
20 Charleston County Detention Center, specifically a female
21 booking officer, did you also have -- from time to time
22 have the opportunity to perform strip searches on female
23 suspects being booking into the jail?

24 A. Yes, sir.

25 Anytime anybody comes into the facility with a

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 drug charge, a weapons charge, or a strip search is
2 requested by the arresting officer, then a strip search is
3 done.

4 Q. Do you remember such a situation taking place on
5 May 7th --

6 A. Yes, sir.

7 Q. And what -- who was the individual that you were
8 asked to search?

9 A. Tiffany Deas.

10 Q. And who requested that strip search?

11 A. Deputy Costanzo.

12 Q. And tell the jury a little bit about the steps
13 you follow when you're performing a strip search on a
14 female suspect.

15 A. Since Ms. Deas had never been inside our
16 facility before, I took her into the strip search room
17 with my other female partner, which was Officer Muzon
18 [phonetic], and I explained to Ms. Deas step by step what
19 was going to happen.

20 If you've never been in that situation before,
21 it's a little shocking to you because you have to remove
22 each piece of clothing one at a time and you hand it to
23 the officers for us to inspect, and then there are some
24 other things that you have to do. That way we can
25 visually see the front, sides, and back of the body to

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 make sure there's no contraband on you.

2 Q. So it's a rather intrusive procedure. It's a
3 strip search.

4 A. Yes, sir.

5 Q. And so you make a determination, in your
6 experience, that it's a better policy to first explain to
7 the person exactly what steps you're about to go through
8 so they know what's coming?

9 A. Yes, sir.

10 Q. In this specific instance with Ms. Deas, can
11 you explain to the jury how this process worked out with
12 Ms. Deas specifically?

13 A. When I took her into the strip-search room with
14 my partner and I explained to her that a strip search had
15 been requested by the arresting officer and that we were
16 going to be performing a strip search, at no time would
17 she be touched, I just needed her to remove each piece of
18 clothing and hand it to me and my partner one piece at a
19 time so the clothing could be inspected, and that's when
20 she stopped me and she said --

21 Q. Without saying anything that Ms. Deas actually
22 told you --

23 A. Yes.

24 Q. -- what was Ms. Deas' demeanor as you're
25 explaining to her what's about to happen?

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. Nervous. She was nervous.

2 Q. And you said she did stop and say something to
3 you while you were explaining the procedure?

4 A. Yes, sir.

5 Q. And what did Ms. Deas do?

6 A. She reached into her pants, she pulled out a
7 large bag, and she handed that to me. And then she
8 reached into the left side of her bra, and she handed me
9 another bag.

10 Q. Okay. And with these items that were handed to
11 you by Ms. Deas, what did you do with that -- with those?

12 A. I handed those to Deputy Costanzo.

13 Q. And were -- they obviously weren't in the room
14 with you, were they?

15 A. No, sir.

16 The setup is if this was enclosed, if I was to
17 come out of -- if there was a doorway here, right in front
18 of that bench would be where Deputy Costanzo was.

19 Q. Essentially just waiting right outside?

20 A. Yes, sir.

21 Q. And so the suspected contraband -- is that a
22 fair terminology?

23 A. [Indicates affirmatively]

24 Q. -- you handed it over to the investigating
25 officer?

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. Yes, sir.

2 They have to be removed from our facility. That
3 can't be kept there.

4 Q. Totally understandable.

5 So this was handed -- in other words, these
6 items weren't revealed in the strip search, they were
7 handed to you by Ms. Deas once you explained what was
8 about to happen?

9 A. Yes, sir.

10 They were actually handed to me before any
11 clothing was removed.

12 Q. Okay. How many of these strip-searches would
13 you say you've done before? Just approximately.

14 A. 1500.

15 Q. Okay. Do you -- that's quite a few.

16 Do you remember what Ms. Deas was wearing on the
17 day that you performed this strip search?

18 A. She had on a shirt and a pair of pants.

19 Q. Okay. Any other details that you can recall
20 about the clothing?

21 A. I mean, she had on a pair of blue jeans. I
22 can't remember the color of the shirt, but it was
23 basically made like a tee-shirt.

24 Q. Okay. But she handed you over this contraband
25 willingly?

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. Yes.

2 Q. And you immediately took it and handed it to the
3 investigating officer?

4 A. Yes, sir.

5 Q. And, again, can you just describe for the jury
6 throughout this process anything you remember about Ms.
7 Deas's demeanor?

8 A. She was very nervous.

9 Q. Very nervous?

10 A. Yes, sir.

11 Q. Did she appear frightened?

12 A. Yes. Especially afterwards.

13 Q. Did Ms. Deas ever cry when she was in the room
14 with you?

15 A. Yes. Inside the room and outside the room.

16 MR. SIMPSON: No further questions. Please
17 answer any questions Mr. Runyon has for you.

18 THE COURT: Mr. Runyon.

19 MR. RUNYON: Good morning. Good to see you,
20 Sargent.

21 THE WITNESS: Good morning.
22
23
24
25

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

CROSS-EXAMINATION

BY MR. RUNYON:

Q. So Ms. Deas, after you explained the process, she reached into her blue jeans, pulled out a bag from somewhere in her blue jeans, interior, inside, next to her body?

A. Yes.

Q. And then she reached into her bra and got a bag and gave both these bags to you?

A. Yes, sir.

Q. And she was standing up at the time, wasn't she?

A. Yes, sir.

Q. So it was relatively easy for her to reach into her blue jeans, and to reach up under her shirt, because she was standing?

A. Yes, sir.

Q. Okay. Now, as a practical matter, you then took those. You were part of the chain of custody. You were the first one. You took them from Ms. Deas and you took them to mister -- Deputy Costanzo?

A. Yes, sir.

Q. And that's what you're here testifying about?

A. Yes, sir.

Q. And you did your job, and then you moved on to the next of the hundreds of searches that you have to do

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 as part of your job at the Charleston County Detention
2 Center?

3 A. Yes, sir.

4 MR. RUNYON: No further questions, judge.

5 MR. SIMPSON: No redirect, Your Honor.

6 THE COURT: Sargent, you may step down.

7 THE WITNESS: Thank you.

8 [Whereupon, the witness is excused and exits the
9 witness stand]

10 THE COURT: Are you ready for your mid-morning
11 break?

12 [Whereupon, jurors respond]

13 THE COURT: Ladies and gentlemen, do not discuss
14 this case amongst yourselves. Do not begin your
15 deliberations.

16 Please rise for the jury.

17 [Whereupon, the jury exits the courtroom at
18 10:29 a.m.]

19 THE COURT: Thank you. Be seated.

20 Anything before we take our midmorning break?

21 MR. SIMPSON: Nothing from the State, Your
22 Honor.

23 MR. RUNYON: Nothing from the defense, Your
24 Honor.

25 THE COURT: All right. Ten minutes.

MIA PERRON, CVR-CM

-63-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 [Whereupon, a recess is taken from 10:32 a.m. to
2 10:40 a.m.]

3 THE COURT: Anything before we bring in the
4 jury?

5 MR. SIMPSON: Nothing from the State, Your
6 Honor.

7 THE COURT: Have you entered into a written
8 stipulation?

9 MR. RUNYON: Yes, Your Honor.

10 MR. SIMPSON: We have, Your Honor.

11 THE COURT: All right. And who is going to read
12 it?

13 MR. SIMPSON: I will, if that's --

14 THE COURT: All right. Let's bring in the jury.
15 And the basis of the stipulation?

16 MR. SIMPSON: It's a stipulation to chain, Your
17 Honor, between the detention center and Lynn Black --

18 MR. RUNYON: Your Honor, just for the record,
19 just so it's clear for the record, we've entered into a
20 stipulation because during the course of handling this
21 case we have had access to the entire chain of custody.
22 We've been able to examine the documents.

23 The record appears to be very clear that it was
24 handled in the ordinary course of the business of
25 handling custody. Evidence that's in custody was with

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 the Charleston County Sheriff's Department so,
2 therefore, that's the basis for entering into this
3 stipulation with the State.

4 THE COURT: Thank you.

5 MR. RUNYON: And saving the Court a lot of time,
6 I think.

7 [Off the record momentarily]

8 THE COURT: Please rise.

9 [Whereupon, the jury enters the courtroom at
10 10:42 a.m.]

11 THE BAILIFF: The jurors are present, Your
12 Honor.

13 THE COURT: Thank you. Please be seated.

14 Ladies and gentlemen, the attorneys for the
15 State and the defendant have entered into a
16 stipulation. A stipulation is simply an agreement
17 between the two parties. And Mr. Simpson will read the
18 stipulation into the record.

19 MR. SIMPSON: Thank you, Your Honor.

20 The State and the defense agree that on May 7th,
21 2008, Officer Eachues, of the Charleston County
22 Detention Center, located an amount of suspected
23 narcotics on the person of Tiffany Deas. This evidence
24 was properly secured, given to members of the
25 Charleston County Sheriff's Office, and sent to the

MIA PERRON, CVR-CM

-65-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 South Carolina Law Enforcement Division, also known as
2 SLED, forensics lab in Columbia.

3 From the recovery by Officer Eachues to
4 submission to Lynn Black, a chemical analyst at SLED
5 forensic services lab, all requisite legal procedures
6 regarding the proper chain of custody were adhered to.

7 Your Honor, at this point we would move State's
8 Exhibit 9 into evidence, the stipulation between the
9 State and defense counsel.

10 MR. RUNYON: That's correct, Your Honor.

11 THE COURT: All right.

12 MR. RUNYON: We signed it.

13 THE COURT: State's 9, which is the stipulation,
14 into evidence without objection.

15 [Whereupon, State's Exhibit Number 9 is admitted
16 into evidence by the Court]

17 MR. SIMPSON: May I approach the court reporter?

18 THE COURT: You may.

19 Mr. Simpson, call your next witness.

20 MR. SIMPSON: Thank you, Your Honor. The State
21 calls Lynn Black.

22 [Whereupon, Ms. Black comes forward]

23 [Whereupon, Ms. Black is duly sworn by the clerk
24 of court as follows: do you swear or affirm the
25 testimony you're about to give shall be the truth, the

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 whole truth, and nothing but the truth, so help you
2 God]

3 THE WITNESS: I do.

4 THE CLERK OF COURT: Thank you. You may have a
5 seat.

6 [Whereupon, the witness takes the witness stand]

7 THE CLERK OF COURT: And for the record if
8 you'll please state your full name, spelling your last.

9 THE WITNESS: It's Lynn Black. B-L-A-C-K-.

10 MR. SIMPSON: Good morning, Ms. Black.

11 THE WITNESS: Good morning.

12 - - - - -

13 LYNN BLACK,

14 Having Been First Duly Sworn,
15 was Examined and Testified as Follows:

16 DIRECT EXAMINATION

17 BY MR. SIMPSON:

18 Q. What is your profession?

19 A. I'm a forensic chemist and I currently work for
20 the South Carolina Law Enforcement Division, commonly
21 known as SLED. I work in the forensic laboratory.

22 Q. And what kind of training and education does one
23 have to have to become a forensic chemist?

24 A. I can tell you what my background is, if that
25 would --

MIA PERRON, CVR-CM

-67-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. Yes, it would help.

2 MR. RUNYON: Excuse me, Your Honor. I don't
3 mean to interrupt Ms. Black, but we're willing to --
4 not to cut off her testimony, but we're willing to
5 stipulate that Ms. Black is a forensic chemist, that
6 she has been qualified as such by the courts of this
7 state, and she's testified on previous occasions. We
8 have no objection to her qualifications.

9 MR. SIMPSON: Your Honor, I would just correct
10 one small detail. Ms. Black was employed in Georgia by
11 the Georgia equivalent of SLED and has testified
12 several times in Georgia as an expert. It's actually
13 her first testimony in South Carolina. I don't think
14 that matters, but --

15 MR. RUNYON: She's testified before in court,
16 Judge.

17 THE COURT: Mr. Simpson, you're requesting that
18 she be qualified as an expert --

19 MR. SIMPSON: As a forensic chemist expert.
20 Yes, ma'am.

21 THE COURT: All right. And this witness will be
22 qualified in the area -- as an expert in the area of
23 forensic chemistry to give an opinion in that.

24 Ladies and gentlemen, as I indicated to you
25 yesterday, that is simply evidence for you to use in

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 any way that you see fit.

2 Mr. Simpson, your witness. Thank you.

3 MR. SIMPSON: Thank you, Your Honor.

4 Q. [Mr. Simpson] Ms. Black, as part of your job at
5 SLED as a forensic chemist, is it to chemically analyze
6 questioned substances to determine if they are, in fact,
7 narcotics?

8 A. That's correct.

9 Q. And could you explain to the jury a little bit,
10 scientifically, about the type of tests you do and how you
11 make your determination?

12 A. Generally when we get in substances that we're
13 trying to determine whether they are controlled substances
14 or not, we'll do -- initially we'll weigh the substance,
15 just substance only, not what it's in, the bag or
16 container, and then we generally do a chemical test and
17 that's -- it's also called a color test. And that's just
18 a preliminary test where we take a very small amount of
19 the substance and expose it to certain chemicals and then
20 we look for reactions. It's usually a color change or
21 something like that. And that will give us an indication
22 of what that substance may be. Kind of give us a
23 direction to go into.

24 And then we have a couple of other tests that we
25 can choose to do, depending on what we think the substance

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 may or may not be, and that's infrared spectroscopy. And
2 the other test is called gas chromatography mass
3 spectrometry. So both of those tests are what we call
4 confirmatory tests. They will confirm more what -- the
5 other preliminary test indicated, they will tell us more
6 exactly what that substance is.

7 I can go into detail, but that's just the
8 basics.

9 Q. I think that will suffice.

10 And what about are items typically brought to
11 SLED by a law enforcement agency?

12 A. That's correct.

13 Q. With a request?

14 A. Yes, sir. That's --

15 Q. And just a basic -- how are evidentiary items
16 handled in-house once they arrive at SLED?

17 A. Well, once the law enforcement personnel brings
18 the evidence in, they go to our first floor where we have
19 what we call a log-in department. And that's just
20 personnel who take the evidence and the paperwork that
21 they bring with it that has all the information, the
22 suspect's name, case numbers, all that information, and
23 they enter it into our computer system. And then a unique
24 crime lab case number is generated and they -- they get a
25 bar-code sticker that they place on the evidence. And

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 that's what we use at SLED to track that evidence from
2 then on. That's basically our chain of custody once that
3 sticker is affixed to the evidence.

4 Once they enter all the info and, you know,
5 place that sticker on there, then the evidence is scanned
6 to the evidence vault which is on that first floor at
7 SLED. Generally, it'll stay there -- it depends on whose
8 evidence it is and how often they come and pick up
9 evidence, how often they're doing their testing. In my
10 particular case I don't let it sit down very long. I'll
11 go down and get my evidence pretty quickly, once it --
12 once I get a couple of pieces of it.

13 And I will go down and they will bar code that
14 evidence to me, scan it to my possession, and I'll take it
15 upstairs to my laboratory. And if I'm ready to start
16 testing cases, then I'll take it to my area and start
17 testing. But if I'm not, we also have a vault up in the
18 drug-analysis department, which is the department I work
19 in, and I can place it in there and it is safe and secure
20 until I'm ready to test the evidence.

21 Q. And so each exhibit or each piece of evidence
22 submitted is easily identifiable by the numbers that
23 you've just discussed?

24 A. That's correct.

25 That's -- we can -- you can find out where any

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 piece of evidence is in the entire agency by, you know,
2 looking at that bar code, which is a laboratory case
3 number. And you can look up and look at the custody tab
4 and find out exactly where it is.

5 Q. And following the chemical analysis you've
6 already discussed, would you generate a report?

7 A. Yes, sir.

8 Once I've done the two tests that I perform and
9 I get the results back and I analyze those results --
10 excuse me -- those results, I would write up a report in
11 the computer system. Then that report is reviewed by
12 another scientist, in what we call purity, and they --
13 they're just checking over and making sure, you know, they
14 agree with my conclusions. And then once that is
15 reviewed, then the case is released and sent out to the
16 law enforcement agency so they can see their report.

17 MR. SIMPSON: Your Honor, may I approach the
18 witness?

19 THE COURT: You may.

20 Q. [Mr. Simpson] Ms. Black, I'm handing you what's
21 been marked, for ID only, as State's Exhibit 3. Do you
22 recognize that item?

23 A. Yes, sir, I do.

24 Q. Is that a report -- is that -- are those some
25 items that you analyzed that you've already discussed with

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 this specific case?

2 A. Yes, sir.

3 These are -- my initials are on several of these
4 bags in here, and also on this seal at the bottom of the
5 bag.

6 Q. Now, you noted that's a sealed bag, correct?

7 A. Correct.

8 Q. And would you have sealed that following your
9 chemical analysis of those substances?

10 A. Yes, I did.

11 MR. SIMPSON: Your Honor, the Court's
12 indulgence. At this point I'm going to ask the witness
13 if she could open the bag.

14 THE COURT: All right.

15 MR. SIMPSON: Do you need gloves?

16 THE WITNESS: I would prefer them, yeah, because
17 I carry them, also.

18 MR. SIMPSON: May I approach? I believe --

19 THE COURT: You may.

20 THE WITNESS: You've got some? Okay. That'll
21 be great.

22 [Off the record momentarily]

23 THE WITNESS: Do you want me to go ahead?

24 MR. SIMPSON: Yes.

25 Q. [Mr. Simpson] Ms. Black, if you could remove

MIA PERRON, CVR-CM

-73-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 those items.

2 A. Is it okay just to --

3 Q. Yes.

4 A. -- sit them there?

5 [Whereupon, State's Exhibit Number 4 is marked
6 by Mr. Simpson]

7 [Whereupon, State's Exhibit Number 5 is marked
8 by Mr. Simpson]

9 [Whereupon, State's Exhibit Number 6 is marked
10 by Mr. Simpson]

11 Q. [Mr. Simpson] Thank you, Ms. Black.

12 I'm going to refer you first to what I just
13 marked as State's Exhibit 4.

14 A. Uh-huh.

15 Q. Is that -- is that an item you analyzed in the
16 course of this case?

17 A. Yes, it is.

18 Q. And please repeat for the jury. You say that
19 one of the first steps you take is to weigh the substance?

20 A. That's correct.

21 Q. And you said something interesting today. You
22 said your determinations on the weight of a substance,
23 scientifically, the weight of whatever the substance is in
24 is not a factor in that weight?

25 A. When my -- when I weigh a substance such as

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 this, it actually came in this bag. And this is the bag
2 that I placed it in. I take it out of the bag. So I'm
3 only weighing this material. I'm not weighing this bag.
4 So, yeah, the weight that I report is substance only.

5 Q. And what were the results of your chemical
6 analysis of what's been marked as State's 4?

7 A. State's Exhibit 4, which in my report is item
8 1.1, is cocaine found, 102 grams -- excuse me -- 102.85
9 grams.

10 Q. And I kind of labeled a few items State's
11 exhibit -- known collectively as State's Exhibit 5. Did
12 you also do an analysis on those items?

13 A. Yes, sir, I did.

14 Q. And what were your results?

15 A. This was three plastic bags containing powder
16 substance. And, again, cocaine found. And this time it
17 was a combined weight, of all three bags, of 1.73 grams.

18 Q. And finally, moving to what's been marked for ID
19 only as State's Exhibit I believe 6, did you perform any
20 analysis of that item?

21 A. I did. This was a little digital scale that's
22 kind of made to look like an iPod or something. And this
23 was -- again, cocaine was found, and 0.01 grams.

24 Q. Would that be what we commonly refer to as
25 cocaine residue, that small of an amount?

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. I would not consider that residue, because I
2 could actually see powder.

3 But if I didn't see anything and I just -- if I
4 don't see anything on a substance -- you know, something
5 such as this, and I might use a swab or something, that
6 would -- I would consider that residue.

7 This, I mean, I could actually see it and
8 actually weighed it, so I don't consider that residue.
9 But some people might.

10 MR. SIMPSON: Your Honor, at this point the
11 State would present State's Exhibit 4, 5 and 6 to be
12 entered into evidence in this case.

13 THE COURT: Any objection?

14 MR. RUNYON: May we approach, Your Honor?

15 THE COURT: You may.

16 [Whereupon, an off-the-record bench conference
17 is held]

18 THE COURT: Your objection is overruled.
19 State's 4, 5 and 6 into evidence over your objection.

20 [Whereupon, State's Exhibit Number 4 is admitted
21 into evidence by the Court]

22 [Whereupon, State's Exhibit Number 5 is admitted
23 into evidence by the Court]

24 [Whereupon, State's Exhibit Number 6 is admitted
25 into evidence by the Court]

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 MR. SIMPSON: Your Honor, may I approach the
2 witness?

3 THE COURT: You may.

4 MR. SIMPSON: If you could just -- since you
5 have two hands, if you could kind of put it back
6 together.

7 THE WITNESS: Sure.

8 MR. SIMPSON: Your Honor, Ms. Black is placing
9 those items back in what's been marked as State's
10 Exhibit 3, which is just a bag, just for the purposes
11 of keeping all those together.

12 And we would have no further questions of this
13 witness.

14 THE COURT: All right. Did you move State's 3
15 into evidence?

16 MR. SIMPSON: I will so move.

17 THE COURT: Any objection to State's 3 --

18 MR. RUNYON: We have no objection --

19 THE COURT: -- which is the bag?

20 MR. RUNYON: -- to the bag.

21 THE COURT: State's 3 into evidence without
22 objection.

23 [Whereupon, State's Exhibit Number 3 is admitted
24 into evidence by the Court]

25 THE COURT: Mr. Runyon, your witness.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

CROSS-EXAMINATION

MR. RUNYON:

Q. Ms. Black, you do an initial kind of chemical test to kind of point you in a particular direction; correct?

A. That's correct.

Q. And basically it's kind of like a field-test kit?

A. It's similar, yes, sir.

Q. Similar.

And that shows you the presence of chemical families?

A. That's correct.

Q. So that if you put something in there and it comes up a particular color, in this case a blue --

A. Yes, sir.

Q. -- that would indicate the presence of what I term the caine family?

A. That's correct.

Q. All right. So -- and the caine family is kind of a broad family, isn't it? You've got lidacaine, novocaine, procaine, cocaine --

A. Yes, sir.

Q. -- and a couple of others in there; right?

A. Yes, sir.

MIA PERRON, CVR-CM

-78-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. And then you do the first test to make sure that
2 it's -- strike that.

3 All of which are controlled substances, correct,
4 to your knowledge? Or do you know?

5 A. Lidacaine, benzocaine, no, sir, those are not
6 controlled.

7 Q. Okay. And then you narrow it down to whether or
8 not it's one of the controlled caine family members, or in
9 this case you narrow it down to cocaine through these
10 other more specific tests which are, in fact, chemical
11 specific?

12 A. In a way. The other test that I performed
13 specifically with these -- with this case was the gas --
14 excuse me -- gas chromatography mass spectrometry, and
15 that's an instrument that's actually kind of two chemical
16 analyzers where, yes, the substance goes in and I'm able
17 to -- the way it goes through the instrument gives me kind
18 of a picture of what the actual chemical or the substance
19 looks like and I'm able to compare that, the results I get
20 from that test, to known drug standards.

21 In this case I had a cocaine standard that I
22 ran, as well, so I was able to compare those two. And
23 based on that, plus my preliminary test, which was the
24 chemical test, and I can make a positive identification of
25 a substance.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. And what those machines do, basically -- and
2 you've got to bear with me because it took me three
3 semesters to get two-semester credit for freshman biology
4 in college fifty-some-odd years ago. Okay?

5 But basically, and to simplify it, what those
6 machines do is they look at the actual molecular breakdown
7 of the item that they're testing?

8 A. That's correct.

9 The instrument is breaking down the substance
10 into its components, the first part of the analyzer, the
11 gas chromatograph part, and then it sends each of those
12 components into the second part, which is the mass
13 spectrometer. And there it's broken down into even
14 smaller fragments, ions, and it kind of gives you what I
15 call like a bar graft. And what you're able to do is
16 compare that to the known drug standards, and you can
17 compare those two and see if they're -- you know, that
18 they're the same. And based on that, plus, again, the
19 chemical test, and I'm able to positively identify that.
20 And in this case it was positively identified as cocaine.

21 Q. Now, the procedure at SLED is that y'all do what
22 you're requested to do; correct?

23 A. Can you be a little more specific?

24 Q. Well, if I'm a police officer and I send an item
25 up there and I ask for a chemical analysis only, you'll do

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 the chemical analysis?

2 A. That's correct.

3 Q. But if I send an item up there and I say I
4 want a chemical analysis and -- you'll do the chemical
5 analysis. And if I also say that I want, in a given
6 situation, a tool-mark examination to see if there are any
7 tool marks involved with the sample, you pass that on to
8 somebody else?

9 A. That would be correct. Yes, sir.

10 Q. So you do what you're ask to do?

11 A. That's correct.

12 Q. And you do it very well.

13 A. Thank you.

14 MR. RUNYON: Thank you, Your Honor. No further
15 questions.

16 REDIRECT EXAMINATION

17 BY MR. SIMPSON:

18 Q. Ms. Black, on cross Mr. Runyon talked about the
19 cocaine family, different substances that may be under the
20 same chemical family. But you determined, in your expert
21 opinion, that this is cocaine?

22 A. That's correct.

23 Q. Not any of those other substances; right?

24 A. That's correct.

25 Q. And, in fact -- and also determined the weight

MIA PERRON, CVR-CM

-81-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 is I believe 102.85 grams of -- containing cocaine?

2 A. That's correct. In my item 1.1, which was
3 State's Exhibit 4, I believe.

4 Q. And an additional 1.73 grams in the smaller bag?

5 A. That's correct.

6 MR. SIMPSON: No further questions, Your Honor.

7 THE COURT: Ms. Black, you may step down. Thank
8 you.

9 [Whereupon, the witness is excused and exits the
10 witness stand]

11 THE COURT: Call your next witness.

12 MR. SIMPSON: The State calls Marvin Hancock.

13 [Whereupon, Mr. Hancock comes forward]

14 [Whereupon, Mr. Hancock is duly sworn by the
15 clerk of court as follows: do you swear or affirm the
16 testimony you're about to give shall be the truth, the
17 whole truth, and nothing but the truth, so help you
18 God?

19 THE WITNESS: I do.

20 THE CLERK OF COURT: Thank you. You may have a
21 seat.

22 [Whereupon, the witness takes the witness stand]

23 THE CLERK OF COURT: And for the record if
24 you'll please state your full name, spelling your last.

25 THE WITNESS: Marvin N. Hancock. H-A-N-C-O-C-K.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 MR. SIMPSON: Good afternoon, Mr. Hancock. How
2 are you?

3 THE WITNESS: Good.
4 - - - - -

5 MARVIN N. HANCOCK,
6 Having Been First Duly Sworn,
7 was Examined and Testified as Follows:

8 DIRECT EXAMINATION

9 BY MR. SIMPSON:

10 Q. What agency are you currently employed by?

11 A. The Charleston County Detention Center.

12 Q. And what's your current rank and position at the
13 Charleston County Detention Center?

14 A. I'm a field-training instructor and I'm working
15 on the Team 4 with housing operations.

16 Q. Prior to that position, did you have another
17 position at the Charleston County Detention Center?

18 A. Yes. I was the head cashier for three years.

19 Q. Did you ever hold a position relating to the
20 jail phone recordings at the detention center?

21 A. Yes, sir.

22 One of my duties as head cashier was the
23 custodian of the telephone recording system.

24 Q. And what kind of duties would fall on your plate
25 in that role as a custodian of the recording system?

MIA PERRON, CVR-CM

-83-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. I would receive subpoenas and search warrants
2 asking for the telephone logs and recordings of telephone
3 calls made by inmates. I would receive the subpoena. I
4 would verify it was valid. I would use the telephone
5 system to pull up the data from the telephone calls and
6 create a CD ROM with the recordings on it, and a hard copy
7 of the logs, and then make sure that they got to the
8 requesting authority.

9 Q. And was that your position at the detention
10 center in January of 2009?

11 A. Yes.

12 Q. Let's kind of back up a second. I would like
13 you to explain a little bit for the jury about --
14 especially as it relates to the phone system at the jail,
15 what an inmate would be told what he goes through in the
16 booking process in regard to the telephone system.

17 A. Well, when an inmate is booked in, part of the
18 process of booking in is identification. They get their
19 fingerprints and their picture done as part of that
20 process. After that's done, they are activated on the
21 phone system. They're given a slip of paper with a pin
22 number that is unique for them in that trip to the jail.
23 Among the people in the jail at that time, that's a unique
24 pin number.

25 Q. And would a person have to have a pin number to

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 make a call through that jail system?

2 A. Yes.

3 Once you're activated on the phone system,
4 you're given the pin. Part of the instructions includes a
5 warning that your phone calls will be recorded and may be
6 monitored. Once you're activated on the phone system, you
7 can use your pin number to dial out on the payphones that
8 are available to you in booking or whatever housing unit
9 you're assigned to.

10 Q. So in what ways is the inmate notified that the
11 calls may be recorded that he makes?

12 A. Well, on that sheet of paper with the pin number
13 there's a -- right above the pin number it says that
14 they're going to be recorded. There's a set of rules that
15 they sign for when they have their classification
16 interview with a classification officer, and that also
17 includes a warning that the phone calls are recorded.
18 There are signs in the units right near or right there at
19 the phone that says that phone calls can be recorded.

20 And during the phone call itself, at the very
21 beginning and about seven and a half minutes through the
22 phone call it comes on and it says, this phone call is in
23 the Charleston County Detention Center, among other
24 things; this call may be monitored and is -- and recorded.

25 Q. So it even reminds them again during the --

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 before the phone call is made and during the phone call
2 that --

3 A. Yes, sir.

4 Q. -- they may be recorded?

5 Okay. And when you receive a subpoena for a
6 specific inmate's phone conversations, would you just look
7 up that inmate's pin number?

8 A. Well, actually, it goes by their inmate number.
9 The pin number changes every time they're at the jail, but
10 their inmate number is the same for every trip. That's a
11 number that's assigned to them. And the data base is
12 keyed on their inmate number, as well as their name.

13 MR. SIMPSON: Permission to approach, Your
14 Honor?

15 THE COURT: You may.

16 Q. [Mr. Simpson] Officer Hancock, I'm showing you
17 what's been marked, for ID only, as State's Exhibit 10.
18 Can you identify that exhibit?

19 A. This is a subpoena that I received from your
20 office asking for phone calls for Eric Sumter from May 8th
21 of '08 to February 2nd of '09.

22 Q. And how would you have responded to such a
23 subpoena in your role as a jail recording custodian?

24 A. Well, I would verify who the inmate was, that he
25 was here during that time -- that he was at the jail at

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 that time. Excuse me. I would go into the telephone
2 system. In this case I would have waited a couple of
3 days. I got it before the date you wanted.

4 I would have gone into the telephone system. I
5 log in. I have -- it's a secure system. I have an ID and
6 a password that I would log in. I give the -- I tell the
7 telephone system -- I give it the inmate number and the
8 date period that I'm looking for the phone calls from, and
9 the database comes up with a log. And then I tell it to
10 download the telephone calls.

11 Q. And do we ask -- make any specific requests
12 regarding phone calls in the subpoena?

13 A. Uh-huh.

14 Q. Regarding any specific phone numbers?

15 A. Well, you do say that he's represented by Bill
16 Runyon, Jr., and to omit calls made to his attorney. And
17 Mr. Runyon's phone number is in the telephone system as a
18 do not record. It logs that a phone call was made, but
19 the phone call is not recorded and it does not receive
20 that warning at the beginning and during the phone call
21 saying that it's being recorded.

22 MR. SIMPSON: Your Honor, may I approach the
23 court reporter?

24 MR. SIMPSON: You may.

25 Q. [Mr. Simpson] Officer, I'm handing you what's

MIA PERRON, CVR-CM

-87-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 been marked as State's Exhibit 11 for ID purposes only.

2 A. Uh-huh.

3 Q. Does that look familiar to you?

4 A. Yes.

5 This is the disk that I made for the subpoena.

6 Q. Okay. And would that disk have been submitted
7 to the Ninth Circuit Solicitor's Office upon request by a
8 subpoena?

9 A. Yes.

10 MR. SIMPSON: Your Honor, the State has no
11 further questions of this witness.

12 Please answer any questions that Mr. Runyon may
13 have for you.

14 MR. RUNYON: I have no questions of this
15 witness, Your Honor.

16 THE COURT: You may step down. Thank you.

17 THE WITNESS: All right.

18 [Whereupon, the witness is excused and exits the
19 witness stand]

20 MR. SIMPSON: Your Honor, may I approach to
21 gather the items?

22 THE COURT: You may. Call your next witness.

23 MR. SIMPSON: Your Honor, the State calls

24 Tiffany Deas.

25 [Whereupon, Ms. Deas comes forward]

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 [Whereupon, Ms. Deas is duly sworn by the clerk
2 of court as follows: do you swear or affirm that the
3 testimony you're about to give shall be the truth, the
4 whole truth, and nothing but the truth, so help you
5 God]

6 THE WITNESS: I do.

7 THE CLERK OF COURT: Thank you. You may have a
8 seat.

9 [Whereupon, the witness takes the witness stand]

10 THE CLERK OF COURT: And for the record if
11 you'll please state your full name, spelling your last.

12 THE WITNESS: Tiffany Ceara Deas. D-E-A-S.

13 MR. SIMPSON: Tiffany, good morning.

14 THE WITNESS: Good morning.

15 - - - - -

16 TIFFANY DEAS,

17 Having Been First Duly Sworn,

18 was Examined and Testified as Follows:

19 DIRECT EXAMINATION

20 BY MR. SIMPSON:

21 Q. As a preliminary matter, let me ask you: are
22 you happy to be here today?

23 A. No.

24 Q. Are you here today in any way to hurt Mr.
25 Sumter?

MIA PERRON, CVR-CM

-89-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. No.

2 Q. Did you receive a subpoena in this case?

3 A. Yes. From his attorney.

4 Q. And from the solicitor's office, as well?

5 A. Yes.

6 Q. And what is your understanding of what that
7 subpoena means?

8 A. Basically, they want me to come in and testify
9 saying what happened from my behalf.

10 THE COURT: Ms. Deas, I'm going to need you to
11 speak loudly into that microphone. Thank you.

12 THE WITNESS: Okay.

13 Q. [Mr. Simpson] And is your -- and is your motive
14 here today to hurt or harm anybody?

15 A. No.

16 Q. Is it to tell the story of May 7th, 2008?

17 A. Yes.

18 Q. Tiffany, how old are you?

19 A. Twenty-three.

20 Q. Do you have any children?

21 A. Two.

22 Q. Did you grow up here in Charleston?

23 A. Yes.

24 Q. And do you know the gentlemen sitting at defense
25 table over here?

MIA PERRON, CVR-CM

-90-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. Yes.

2 Q. And who is that?

3 A. Eric Sumter.

4 Q. And how do you know Eric?

5 A. From previous. About two years ago I met him
6 through a friend.

7 Q. And tell the jury a little bit about your
8 relationship back in 2008. Was it a friendship?

9 A. It was more of a relationship.

10 Q. Okay. Was it a romantic relationship?

11 A. Yes.

12 Q. And how long did this relationship last prior to
13 May 7th, 2008?

14 A. About six, seven months.

15 Q. Six or seven months.

16 Did you spend a lot of time together during that
17 six or seven months?

18 A. Not really. I worked most of the time.

19 Q. Okay. What were you working -- where were you
20 working back then?

21 A. Twin Oaks Assisted Living as a CNA.

22 Q. As a what?

23 A. CNA.

24 Q. And what does a CNA do?

25 A. Certified nursing assistant.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. So you had obtained certification as a nursing
2 assistant?

3 A. Yes, sir.

4 Q. And you said back in '08 you were working most
5 of the time?

6 A. Yes, sir.

7 Q. Is that long hours?

8 A. From 6:00 a.m. to 3:00 p.m. And if I did a
9 split shift I worked from 6:00 to 3:00 and then come back
10 from 5:00 to 11:00.

11 Q. Okay. So during this time in early 2008, were
12 you working a lot? Is that a fair statement to make?

13 A. Yes.

14 Q. During your relationship with Mr. Sumter, did he
15 go to work a lot?

16 A. Primarily.

17 Q. And what -- where did he work?

18 A. Like his music industry. He like wrote music
19 and produced his own music.

20 Q. Okay. So self-employed in the music industry?

21 A. Yes, sir.

22 Q. Okay. He didn't work for anybody -- work
23 somewhere else where he got a -- clocked in or clocked out
24 or got a paycheck or anything like that?

25 A. Not that I know of.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. Okay. When you said he was working a lot, he
2 was working -- working, correct; making his own music?

3 A. Uh-huh.

4 Q. Was that lucrative for Mr. Sumter?

5 A. Yes.

6 Q. Okay. Now, Tiffany, let's get directly to why
7 we're here today. What I would like you to do for the
8 jury is, as well as you can remember, is give them -- and
9 I'll probably stop you from time to time and maybe ask
10 some questions. But just tell the jury the story from
11 when you woke up in the morning of May 7th, 2008.

12 A. On May 7th I went to work that morning about
13 6:00 a.m. I did a split shift so I got off at 3:00 and
14 was supposed to return at 5:00. Eric met me at my house
15 because he needed a ride to go to one of his friends'
16 house. So I met him at my house. We -- after I got off
17 and went --

18 THE COURT: Could you slow down just a little
19 bit? Thank you.

20 A. I met him at my house. When I left from there,
21 I picked him up. We went to West Ashley. He went inside.
22 Before we got to West Ashley --

23 MR. SIMPSON: Well, Tiffany, let's stop. And,
24 again, we have this lady here that has to record --

25 THE WITNESS: Record.

MIA PERRON, CVR-CM

-93-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 MR. SIMPSON: -- record everything you say, and
2 I know you talk pretty quickly.

3 Q. [Mr. Simpson] But I want to back you up anyway.

4 You said you were working a split shift. So
5 what time did you get off?

6 A. I get off at 3:00 but I have to return in two
7 hours at 5:00.

8 Q. Okay. Did you have some things, some business
9 of your own, you wanted to accomplish on your two hours
10 off?

11 A. Yes.

12 Q. When did Eric call you that day?

13 A. It was about an hour or two before I got off.

14 Q. Okay. And he wanted to ask you a favor; right?

15 A. Yes.

16 Q. And what was that favor?

17 A. To take him by his friend's house.

18 Q. Take him by -- did he tell you what friend?

19 A. Not at the time.

20 Q. Okay. And so you said that you guys met. And
21 where did y'all meet?

22 A. At my apartment.

23 Q. Okay. How did he get there?

24 A. He was already there when I arrived there from
25 work, so I didn't question him.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. Did you guys share that apartment at the time,
2 or was it your apartment?

3 A. It was my apartment but he came by off and on.

4 Q. And he stayed there sometimes?

5 A. Yeah.

6 Q. Okay. So Eric's there. And does he give you --
7 where's the first place you go?

8 A. The gas station.

9 Q. Okay. And after the gas station, where did you
10 go?

11 A. West Ashley.

12 Q. And is this -- who's telling you where to go?
13 Are you doing this favor for Eric at this point?

14 A. Yes, sir.

15 Q. And is he giving you directions?

16 A. I primarily knowed where I was going when he
17 said West Ashley and Acura dealership because I'm
18 primarily from West Ashley. So I know where I was going
19 at, but not until he told me exactly where.

20 Q. Okay. So you say he just said, you know, the
21 Acura dealership. Is that on 17?

22 A. Yes, sir.

23 Q. And you knew where to go from there?

24 A. Yes, sir.

25 Q. So once you got to the Acura dealership, what

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 happened?

2 A. Once we got there, Eric got out of the car to go
3 see one of his friends.

4 Q. So you got to the specific apartment; right?

5 A. Yes, sir.

6 Q. Had you ever been to that apartment before?

7 A. Previously, but not with him, because I have
8 relatives that stayed there so --

9 Q. You had been to that --

10 A. Complex.

11 Q. -- complex before?

12 A. Yes, sir.

13 Q. Had you ever been to that specific apartment,
14 specifically, before?

15 A. No, sir.

16 Q. Did you know who lived there?

17 A. No, sir.

18 Q. Did you see anybody there when you pulled up?

19 A. I recognized one face, just from passing in the
20 streets, but I really did not know him.

21 Q. So were there people out front when you guys
22 pulled up?

23 A. No.

24 Q. Okay. At any time from when you met Eric at
25 the -- at your apartment --

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. Uh-huh.

2 Q. -- to when you got to the apartment complex
3 behind the Acura dealership, did you see any narcotics?

4 A. No.

5 Q. Did you have narcotics on your person?

6 A. No.

7 Q. You didn't have narcotics in your pants?

8 A. No.

9 Q. Okay. Did you know why Eric wanted to go to
10 this apartment complex?

11 A. No.

12 Q. So when you pulled up -- you said a second
13 ago -- Eric got out of the car?

14 A. Yes, sir.

15 Q. And then what did Eric do?

16 A. He got out of the car and he went into the
17 apartment where his friend was. He stayed there for about
18 three to five minutes. It wasn't long. Then he came back
19 out.

20 Q. Okay. I've got to stop you so she can catch up.
21 So he came back out. What did he do when he
22 come back -- came back out?

23 A. When he came back out, that's when I noticed
24 that he had narcotics and he asked did he drop something.

25 Q. Let me slow you down. When he came back out,

MIA PERRON, CVR-CM

-97-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 did he sit in the passenger seat?

2 A. Yes.

3 Q. And I got ahead of myself. Were you in your car
4 that day?

5 A. Yes, sir.

6 Q. And what type of car was that?

7 A. 1997 Mitsubishi Sports Montero.

8 Q. And what color was it?

9 A. Red and black.

10 Q. Okay. And that's your car?

11 A. Yes, sir.

12 Q. Okay. So Eric sits down in the passenger seat?

13 A. Yes, sir.

14 Q. And, you know, I know you tend to go -- talk
15 fast. But what is he -- what is he doing when he sits
16 down in the passenger seat?

17 A. He reached into his pocket. He pulled out the
18 bag and --

19 Q. Now, when you say the bag, what bag?

20 A. Brown bag.

21 Q. Did it just look like a run-of-the-mill lunch
22 brown bag?

23 A. Yeah.

24 Q. Okay. And he took that brown bag out of his
25 pocket?

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. Yes, sir.

2 Q. And what did he do?

3 A. After he did that, that's when I noticed the
4 narcotics. I still didn't say anything to him at the
5 time. And he asked me did he drop anything --

6 Q. You said you noticed the narcotics. What did
7 you notice, specifically?

8 A. I just know --

9 Q. What did it look like?

10 A. I just know it was white. I really didn't stare
11 at it because I was busy texting at the time when he got
12 back in the car. Besides when he asked me did he drop
13 something -- and me and him communicated before he got
14 back out of the car.

15 Q. Okay. So he said -- did he do anything with the
16 narcotics once he took it out of the bag?

17 A. Weighed it.

18 Q. And what did he weigh it on?

19 A. Scale.

20 Q. What kind of scale?

21 A. I didn't go into details. All I know, it was a
22 scale.

23 Q. Okay. And then after he waited, is that when he
24 asked you, did I drop something?

25 A. Yes, sir.

MIA PERRON, CVR-CM

-99-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. What did you take him to mean by that?

2 A. If anything had fell; did I notice something
3 come out of his pocket or anything.

4 Q. Okay. And what did you say to him when he asked
5 you that?

6 A. No.

7 Q. And then what did he do?

8 A. He got back out of the truck.

9 Q. Okay. What's he doing?

10 A. When he got back out of the truck, he went back
11 into the apartment.

12 Q. How long was he back in the apartment?

13 A. Say about two or three minutes. It wasn't long.

14 Q. Okay. Did he come back out with anybody?

15 A. Yes.

16 Q. Did you know these guys that he was messing
17 with?

18 A. I didn't know them. I have seen their face
19 before, but I don't know them.

20 Q. Okay. So did it seem to you that Eric had taken
21 care of his concerns about something that were [phonetic]
22 dropped or something that was missing?

23 A. Yes, sir.

24 Q. And did he get back in the car?

25 A. Yes, sir.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. Did he still have -- the white powder that you
2 thought to be narcotics, did he still have it with him?

3 A. Yes, sir.

4 Q. Where was it when he sat in the car?

5 A. In his pocket.

6 Q. In his pocket?

7 A. Yes, sir.

8 Q. What did he say to you once he got back in the
9 car that second time?

10 A. That was it. And that he was going back home.

11 Q. That you were going to take him home?

12 A. Yes, sir.

13 Q. Okay. Did you leave?

14 A. Yes, sir.

15 Q. And what route did you take when you left the
16 apartment complex?

17 A. I took 17 to get onto 526. When I got onto 526,
18 I wrote that down and got off on Paramount Drive. But in
19 between getting on 526 and Paramount -- getting off of
20 Paramount Drive, I noticed the police had blue-light me.

21 Q. Okay. Let's back up a little bit. You're
22 pulling out of this apartment --

23 A. Uh-huh.

24 Q. -- and you saw what you thought to be cocaine;
25 correct?

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. Yes, sir.

2 Q. Do you have any conversations regarding that?
3 Do you understand cocaine is illegal?

4 A. Yes, sir.

5 Q. And what's your attitude at this point? I mean,
6 what are you thinking?

7 A. Nervous, real precautions [phonetic] like
8 thinking about everything that could possibly go wrong.

9 Q. Okay. Does Eric say anything to you about what
10 he's got on him?

11 A. We were joking, because at the time we were
12 looking for a song that actually was in regards to
13 cocaine. And what he said, the conversation was like,
14 this carry -- I forgot exactly how much time he said. He
15 was like, this your shit now. We were just joking about
16 it like in reference, but it wasn't nothing serious.

17 Q. So you're joking about how -- you don't know
18 you're being followed at this point, do you?

19 A. No, sir.

20 Q. And you joke about if something happens, it's
21 going to be yours?

22 A. Yes, sir.

23 Q. Well, what did you think about that?

24 A. I didn't pay it any attention because me, I'm
25 like, okay, I've never deal with drugs, I don't do drugs,

MIA PERRON, CVR-CM

-102-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 so what could possibly happen.

2 Q. And you're -- are you concerned at all that
3 you're riding around with a bunch of narcotics in the car?

4 A. Yes.

5 My main thing was to get him where he was going
6 so I could do what I had to do before going back to work.

7 Q. Because you had some personal errands to run;
8 right?

9 A. Yes, sir.

10 Q. So your attitude is just take him where he wants
11 to go, get him out of the car, and not be a problem?

12 A. Yes.

13 Q. At what point -- you said you got off at 526 on
14 Paramount?

15 A. Yes.

16 Q. At what point do you know you're being pulled
17 over?

18 A. When I passed the club we call Alley Cats in
19 that subdivision. As I passed that subdivision coming, I
20 took a light by Glen Terrace.

21 Q. Now, I want -- and, again, speak slowly.

22 I want you to explain to the jury what happened
23 between you and Eric from the moment that you guys noticed
24 those blue lights, from when the officers asked you to get
25 out of the car.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. When I noticed I was being blue-light, I pulled
2 into the far right lane. They pulled behind me. So in
3 between the light by the first entrance of the Glen
4 Terrace subdivision, that's when Eric handed it to me. At
5 that time, I just have it in my hand because I don't know
6 for sure that they are pulling me over or unless they
7 wanted me to move. But as I turned --

8 Q. Let me stop you there. He just handed it to you
9 and you took it?

10 A. Yes. After he was like, this your shit now.
11 And we were still --

12 Q. And was the tone still joking at this point?

13 A. No. It was serious, like serious.

14 Q. He said -- what did he say?

15 A. This is your shit now.

16 Q. And even at that point did he tell you anything
17 about why it was your shit now?

18 A. No.

19 Q. What might happen to you?

20 A. No.

21 Q. Okay. And so keep going.

22 A. And after he handed it to me, at that time I put
23 it -- I was still driving. And I put it inside my pants
24 as I'm driving and pulling over at the same time. I pull
25 over. The officer came up to the car.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. I'm sorry. I don't mean to keep interrupting
2 you, but I just need to go over some things.

3 You said you put it in your pants?

4 A. Yes.

5 Q. What kind of pants were you wearing?

6 A. Jeans scrub pants with leggings underneath.

7 Q. Okay. So explain a little bit to the jury. You
8 said jeans scrub pants. You said you worked as a
9 certified --

10 A. Uh-huh.

11 Q. -- nursing assistant?

12 A. Yes, sir.

13 Q. What are scrub pants?

14 A. They're like nursing pants that you have on.

15 But they come in different materials with elastic in the
16 waist, so it's not like a buckle or anything. And the
17 leggings I had on are like spandex underneath.

18 Q. So scrub pants are loose-fitting pants; correct?

19 A. Mines weren't loose, loose-fitting pants, but
20 they were fitted pants.

21 Q. Okay. And you said your scrub pants were jean
22 scrub pants.

23 A. Yes.

24 Q. What does that mean?

25 A. They were jeans material, but stretch.

MIA PERRON, CVR-CM

-105-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. And since they're somewhat loose, you had some
2 pants underneath?

3 A. Well, it's not pants. It was more like spandex.

4 Q. Like a spandex under --

5 A. Yes.

6 Q. -- under those scrubs?

7 A. Uh-huh.

8 Q. Okay. So was it hard to -- you said you put the
9 drugs in your pants. Was that hard -- difficult to do
10 wearing those --

11 A. Not really.

12 Q. With the spandex, could you kind of just stick
13 them in -- put the narcotics wherever you wanted?

14 A. Yes, sir.

15 Q. And where on your body, what region, did you
16 stick the narcotics that Eric Sumter handed to you?

17 A. In between my legs, like more closer to my
18 vagina area.

19 Q. Now, once you pulled over -- and just tell me,
20 what are you thinking right now? What are you thinking
21 with the police officer pulling you over and Eric had just
22 handed you all this stuff?

23 A. First thing I was thinking, okay, it's not
24 nothing really happening because I had a driver's license,
25 don't have no warrants or anything; let me just get

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 through this and let it be done with.

2 Q. Are you mad at Eric at this point?

3 A. No.

4 Q. You just think you're going to get out of the
5 situation?

6 A. Yeah.

7 Q. Okay. And you think that because why? I didn't
8 mean to interrupt. Go ahead. Why did you think you were
9 just going to get out of this situation?

10 A. Because of me not having no prior like history
11 or record or even have warrants or anything at the time;
12 the most that could happen is they would search the car
13 and not find anything and I would go.

14 Q. Okay. Now, you just mentioned something about
15 no record. Have you ever been arrested for drugs before?

16 A. No.

17 Q. Have you ever been arrested for anything before?

18 A. Breach of trust once, but it was dropped.

19 Q. Okay. And was that a misdemeanor?

20 A. Yes, sir.

21 Q. City court?

22 A. Yes, sir.

23 Q. Never even so much as been arrested for drugs
24 before; right?

25 A. No, sir.

MIA PERRON, CVR-CM

-107-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. Okay. So how did the stop proceed when you were
2 pulled over, then?

3 A. When I pulled over, the officer came to the
4 window. He asked for my registration and I gave him my
5 registration, driver's license. When he came back to the
6 car, he asked me to step out of the car if I didn't mind.
7 So I stepped out of the car. He pulled me back to his
8 police cruiser and as he pulled me back to the cruiser he
9 was talking to me, just telling me he was running my
10 driver's license and asking me how was my day. Just a
11 general conversation in between while waiting.

12 After that, two other cops came on, a K-9 unit
13 and another unit. Which was one of them was Detective
14 Euper. And he went around to the passenger side of the
15 car. He questioned Eric and I believe he searched the car
16 and searched Eric and --

17 Q. Now, you said that was Detective Euper. Might
18 you be confused about that person's name?

19 A. Either it was Detective Euper or Detective
20 Costanzo was the only two of them that were mainly
21 handling everything.

22 Q. Okay.

23 A. And he questioned Eric and --

24 Q. At any point did they ask you if it was okay if
25 they could search the car?

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. Yes. After questioning Eric.

2 Q. And what did they say? What did you say?

3 A. Yes.

4 Q. Okay. At any point did the officers inform you
5 that there was a bench warrant out for your arrest?

6 A. Yes. After he ran my driver's license and he
7 told me -- after searching the vehicle, he said I had a
8 bench warrant for failure to pay a traffic ticket.

9 Q. Okay. What's your attitude like now? What's
10 your emotions?

11 A. I got more nervous because I was trying to
12 explain to him that the traffic ticket he was telling me I
13 had a bench warrant for, I had paid the ticket previously,
14 like a couple of weeks before, that I had on me at the
15 time. But he was like it was just a matter I would have
16 to take up with the courts, there's nothing he could do.

17 Q. And did they inform you at that point that you
18 were going to be taken to the jail?

19 A. Yes, sir.

20 Q. And how did your day proceed from there?

21 A. After being arrested, he took me to go and get
22 the warrant from the police station. We got to the
23 jailhouse. Eric was strip-searched, and then they pulled
24 me in and strip-searched me. And the lady correction --

25 Q. Stop you right there.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 When they took you in that room and said we're
2 going to strip search you, what did you do?

3 A. At that time, before her even telling me what to
4 do, we discussed it and she was like is there anything you
5 want to give to me now willingly before I actually strip
6 search you.

7 Q. And how did you respond to that?

8 A. Yes.

9 Q. And what did you do?

10 A. I willingly gave it to her.

11 Q. And when you reached in your pants and handed
12 that to the detention center officer, what are you
13 thinking at that point?

14 A. Like, I know I'm about to get in trouble and it
15 was more than what it had appeared to be.

16 Q. Following -- what happened following you giving
17 that to the detention officer?

18 A. They pulled me -- well, they pulled me back out
19 of the room after me getting dressed. We went over to the
20 metro unit where I was questioned. At first they just had
21 me sitting in a room. The officers came in and out,
22 asking me if I was okay. And then they asked me to write
23 a statement saying what happened. I --

24 Q. Now --

25 A. -- cooperated.

State v. Eric Sumter
Jury Trial -- Volume 2 of 2
October 19, 2010

1 Q. -- were you pulled into a separate room from
2 Eric?

3 A. Yes.

4 Q. Right off the bat were you forthcoming with the
5 officers about what you had been doing that day?

6 A. No.

7 Q. All right. Do you kind of say a few things to
8 try to minimize what had just occurred?

9 A. Yes, sir.

10 Q. But eventually were you truthful with the
11 officers?

12 A. Yes, sir.

13 Q. Were you upset?

14 A. Yes.

15 Q. Were you crying?

16 A. Yes.

17 Q. Did you tell them what you have just told this
18 jury about what had happened, especially regarding Eric?

19 A. Partially, but not everything.

20 Q. But you told -- what did you tell them?

21 A. Just the basics: that I took him to a friend
22 house; there was narcotics in the car; I had them on my
23 possession; after me being blue-lighted -- I basically
24 talked very briefly with them by telling them what
25 happened, but not in the details as opposed to it was --

MIA PERRON, CVR-CM

-111-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. And you said you gave a written statement to
2 that effect --

3 A. Yes, sir.

4 Q. -- to the officers? Were you then charged?

5 A. Yes, sir.

6 Q. With what?

7 A. Trafficking cocaine.

8 Q. Were you then booked into the Charleston County
9 Detention Center?

10 A. Yes, sir.

11 Q. And how long did you stay in the Charleston
12 County Detention Center before you were bonded out,
13 approximately?

14 A. About two or three days.

15 Q. About two or three days?

16 A. Uh-huh.

17 Q. Were you upset about being in the detention
18 center?

19 A. Yes.

20 Q. Were you crying?

21 A. Yes.

22 Q. Did you make any phone calls from the detention
23 center while you were there?

24 A. Yes.

25 Q. Who did you call?

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. Eric's mother.

2 Q. Eric's mother?

3 A. Yes.

4 Q. Okay. Why Eric's mother and not your own
5 mother?

6 A. Being we were not on talking terms at the time
7 when all of this happened, so my first instinct would have
8 been to call her.

9 Q. Because Eric's mom was going to take care of
10 you?

11 A. Not per se. I wanted to aware her of what was
12 going on -- that way she could get in contact with whoever
13 she needed to get in contact with -- and tell her who I
14 wanted her to call.

15 Q. What happened after the two or three days that
16 you were in jail? What happened once you got out?

17 A. Once I got out, I went to stay with Ms. Sumter
18 because I had already forfeited my apartment after
19 speaking with my landlord. And I stayed with her for a
20 couple of months and then I moved out into my parents'
21 house.

22 Q. Okay. So you smoothed the water with your own
23 parents, I guess, a few months after this happened?

24 A. Yes, sir.

25 Q. Now, once you're out, do you -- are you

MIA PERRON, CVR-CM

-113-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 continuing to communicate with Mr. Sumter?

2 A. Yes.

3 Q. And you're living with Mr. Sumter's mother;
4 correct?

5 A. Yes.

6 Q. What kind of things are you talking about?

7 A. Basically the whole situation, the case and what
8 happened, and the fact that it was filed on me and I
9 claimed responsibility for it in the beginning.

10 Q. Well, what -- whose idea was that, you claiming
11 responsibility for it?

12 A. Mine's after I took it from Eric not knowing the
13 situation and the seriousness of it.

14 Q. I'm sorry. I didn't catch that.

15 A. It was mine.

16 Q. Your idea?

17 A. Yes, sir.

18 Q. Okay. Was Eric happy about this idea?

19 A. He really didn't have too much to say about it.

20 Q. He didn't? Did he tell you what was going to
21 happen to you if you would just accept responsibility for
22 this?

23 A. The most that would happen -- we discussed it
24 together that I could get probation, being I didn't have a
25 record, or little to no time at all.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. So he told you the most that would happen to you
2 would be probation if you just owned up to it?

3 A. Uh-huh.

4 Q. At any time did you write letters?

5 A. Yes, sir.

6 Q. And what was the gist of these letters?

7 A. Basically saying that it was mine, it was found
8 on me, and I claimed responsibility for it at the time.

9 Q. Is that the truth?

10 A. No, sir.

11 Q. Is the truth what you've told us here today
12 about what happened that day?

13 A. Yes, sir.

14 MR. SIMPSON: May I approach the witness, Your
15 Honor?

16 THE COURT: You may.

17 Q. [Mr. Simpson] I'm going to hand you what's been
18 marked, for ID only, as State's Exhibit 1 and 2.

19 A. Okay.

20 Q. Do you recognize those?

21 A. Yes, sir.

22 Q. And what are those?

23 A. Letters that I had written. Well, typed.

24 Q. And you said the gist of those letters is that
25 this is all on you and Eric has --

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. Nothing to do with it.

2 Q. -- nothing to do with it?

3 A. Yes, sir.

4 Q. Did there come a point where you decided that
5 this idea of you accepting the blame for all this was not
6 a good idea?

7 A. Yes.

8 Q. And tell the jury a little bit about that
9 process.

10 A. After moving out from Eric's mom's house, I went
11 to stay at my relatives, and was consulting with different
12 officers that I had knew personally and with my lawyer at
13 the time, and it was advised to me what this crime -- like
14 the time that it held, the consequences behind it, what
15 I'm forfeiting. And at that time I realized that I had
16 too much to lose and what I really was getting myself
17 into, started asking [phonetic] everything for myself,
18 what I needed to do.

19 Q. Was your motivation to accept responsibility?
20 Was this caring for Eric?

21 A. Yes. At the time.

22 Q. Did you want to do whatever you could do to get
23 him out of jail?

24 A. Yes, sir.

25 Q. Part of -- was writing those letters a part of

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 that plan?

2 A. Yes, sir.

3 Q. Were you continually speaking with Eric from on
4 the phone?

5 A. Yes, sir.

6 Q. And what kind of things was he saying to you
7 about what you needed to do in relation to this case?

8 A. He didn't give quotations of telling me what to
9 do. It was more of we talking about, okay, it was found
10 in your possession; you know, you need to get a lawyer,
11 you need to do this or you need to seek legal action as
12 far as like what was going, the charges they were charging
13 him with versus what they found on him and what they found
14 on me.

15 Q. And who were you -- in the first few months out
16 of jail, who were you depending on for shelter, for a
17 place a live?

18 A. His mother.

19 Q. And so when you got out of jail did you tell
20 Eric and his mom, I told them the truth, I told them -- I
21 gave them a statement?

22 A. No, sir.

23 Q. Why didn't you tell them that?

24 A. Because after speaking with my attorney he
25 advised me I needed to speak with no one, even those in my

MIA PERRON, CVR-CM

-117-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 household.

2 Q. Okay. Tiffany, you told us today you had never
3 been to these apartments.

4 A. No.

5 Q. And Eric is the one that knew the people there?

6 A. Yes.

7 Q. You also talked about how you continued to talk
8 to Eric on the phone --

9 A. Yes.

10 Q. -- while he was in jail?

11 A. Yes.

12 Q. You said he wouldn't come right out and so --
13 you said direct quotations. Were you aware that those
14 phone calls might be recorded?

15 A. They say them [phonetic] in the beginning, but I
16 didn't take it too like seriously.

17 Q. Okay. Do you remember listening to some phone
18 calls in my office?

19 A. Yes. A while back, in the beginning.

20 Q. Okay. Did you recognize the voices on those
21 phone calls?

22 A. Yes, sir.

23 Q. And in the first conversation that we played, it
24 was a conversation from May 8th. Do you remember who was
25 on that phone?

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. In one of the conversation was where Eric had
2 called me and I was communicating with him, and in another
3 conversation is where I had called his mother and she was
4 on the line with him the same time I call her at the day
5 of the arrest.

6 Q. Okay. And any doubt in your mind -- you know
7 Eric; correct?

8 A. Yes.

9 Q. You know his mother; correct?

10 A. Yes.

11 Q. Any doubt in your mind as to the voices on that
12 phone call?

13 A. No, sir.

14 Q. Okay. And you said in one of the conversation
15 you called his mom?

16 A. Yes.

17 Q. And she's on another phone with Eric?

18 A. Yes.

19 Because when I called her was the free phone
20 call that I could have call, and the only number I
21 remembered at the time was her cell phone.

22 Q. And was that call in pretty close proximity to
23 your arrest?

24 A. Yes.

25 Q. Were you -- where were you calling from?

MIA PERRON, CVR-CM

-119-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. The detention center.

2 Q. And then you said and another conversation was
3 between just you and Eric?

4 A. Yes.

5 Q. And where were you? Were you still in jail when
6 that conversation took place?

7 A. No.

8 Q. Where was Eric?

9 A. He was still in jail.

10 Q. And he was calling you?

11 A. Yes, sir.

12 MR. SIMPSON: Court's indulgence.

13 THE COURT: Yes, sir.

14 [Whereupon, Mr. Simpson and Mr. Yount confer]

15 MR. SIMPSON: Your Honor, at this point we would
16 move -- ask to move State's Exhibit 7 into evidence.

17 THE COURT: Mr. Runyon?

18 MR. RUNYON: No objection, Judge.

19 MR. SIMPSON: And seek permission to publish to
20 the jury.

21 THE COURT: State's 7 into evidence without
22 objection.

23 [Whereupon, State's Exhibit Number 7 is admitted
24 into evidence by the Court]

25 THE COURT: You may publish.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 MR. SIMPSON: And for the record, State's
2 Exhibit 7 is the CD that we -- there was an earlier CD
3 identified by Officer Hancock. At the, you know,
4 Court's direction, we've removed some phone calls from
5 that CD to place on State's 7.

6 [Whereupon, State's Exhibit Number 7 is played,
7 with questions asked by Mr. Simpson]

8 Q. [Mr. Simpson] Ms. Deas, if you could, whose
9 voice is that?

10 A. That was Eric and I want to believe either his
11 mother or sister that answered.

12 Q. Okay. Who just came to the phone?

13 A. His mother.

14 [Whereupon, CD continues]

15 Q. [Mr. Simpson] Now, in this conversation we're
16 going to jump around a little bit. Just if you want me to
17 stop it to make a comment about who's talking or to add
18 anything to it, just let me know.

19 A. Okay.

20 [Whereupon, CD continues]

21 Q. [Mr. Simpson] Now, you described earlier you
22 called his mother from the detention center?

23 A. Yes, sir.

24 Q. On her cell phone?

25 A. Yes, sir.

MIA PERRON, CVR-CM

-121-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 [Whereupon, CD continues]

2 Q. [Mr. Simpson] Now, Tiffany, in that
3 conversation you said you called Eric's mother. And
4 it's kind of back and forth between Eric on the phone
5 with his mom and you on the phone with his mom?

6 A. Yes, sir.

7 Q. Did she convey that message to you that, you
8 know, as long as you played along, you guys would be
9 getting married?

10 A. No.

11 Q. No? What about the: tell her I'm sorry, tell
12 her I'll quit, tell her I won't do this again.

13 A. Yes.

14 Q. Okay. So what promise -- did Eric make that
15 promise to you that this was the last time?

16 A. Yes.

17 Q. Now, in the phone call we just listened to is he
18 says, I love you, things of that nature, to you?

19 A. Yes.

20 Q. Were there other instances where he wasn't so
21 loving towards you on the phone?

22 A. Yes.

23 Q. How would Eric respond when you weren't going
24 along with the letters to accept all the responsibility?

25 A. It wasn't so much as a response. Like his

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 attitude just changed about the whole situation and how we
2 needed to go about it.

3 Q. And would he discuss that on the phone with you,
4 as well?

5 A. Not in detail. He'll just say, well, did you do
6 this or did you do that. But it was not in details as to,
7 well, I told you to do this and you didn't do it.

8 MR. SIMPSON: Your Honor, permission to publish
9 State's Exhibit 7, more of it.

10 THE COURT: Yes, sir.

11 [Whereupon, CD continues]

12 Q. [Mr. Simpson] Is that you responding to him?

13 A. Yes.

14 [Whereupon, CD concludes]

15 Q. [Mr. Simpson] Tiffany, when Eric makes the
16 statement --

17 What does mixing mean? What does it mean to be
18 out there mixing?

19 A. It could mean a lot of things. Like say, you in
20 the mix of something, that means you around it or you
21 involved in it or you got something to do with it.

22 Q. So when Eric says to you, you know, it's not
23 like you're out there mixing --

24 A. It's not like I'm out in the street like a
25 street-running person.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. Okay. So we heard a little bit on this tape.
2 Did Eric ever tell you what you could expect if you would
3 just own up to this and claim responsibility for it?

4 A. Yes.

5 Q. And what was that?

6 A. Probation.

7 Q. When you seemed to not be going along with that
8 plan, was that him on the phone getting upset with you
9 about that?

10 A. Yes.

11 Q. Did you have your own lawyer in the first few
12 months after this incident happened?

13 A. No.

14 Q. And where were you living again?

15 A. With Eric's mother.

16 Q. Tiffany, do you sell drugs?

17 A. No.

18 Q. Do you do drugs?

19 A. No.

20 Q. Did you know anybody at that house you went to
21 that morning?

22 A. No.

23 Q. Did you have drugs in your pants that day before
24 you got pulled over by the police?

25 A. No.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. What did Eric do at that house on Applebee Way?
2 That apartment.

3 A. I didn't go inside with him so I was not sure of
4 what went on.

5 Q. Did you see any narcotics before he went in that
6 house?

7 A. No.

8 Q. Did he have narcotics in his lap when he came
9 back to the car after that house?

10 A. Yes.

11 Q. Were those narcotics in his pocket up until the
12 point where the traffic stop occurred?

13 A. Yes.

14 Q. Were those narcotics in his possession until the
15 point where he put them in your lap and said, this shit is
16 yours now?

17 A. Yes.

18 MR. SIMPSON: The State has no further
19 questions, Your Honor.

20 THE COURT: Mr. Runyon.

21 MR. RUNYON: Good morning, Ms. Deas.

22 THE WITNESS: Good morning.

23 - - -
24 - - -
25 - - -

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

CROSS-EXAMINATION

1
2 BY MR. RUNYON:

3 Q. Ms. Deas, you put all the drugs into your pants;
4 correct?

5 A. Yes.

6 Q. And when the officer at the jail explained what
7 she was going to do, you took all of the drugs out of your
8 pants and handed it to her?

9 A. Yes.

10 Q. And then you took some drugs out of your bra and
11 handed it to her?

12 A. Yes.

13 Q. Okay. Where did the drugs that you had in your
14 bra come from?

15 A. That was drugs I had at the time, while we was
16 being stopped, that was just sitting in the middle
17 console.

18 Q. Wait a minute. That was stuff what, now?

19 A. That was sitting in the middle console, as I was
20 being stopped, and that's how that got there.

21 Q. Okay. That wasn't Eric's drugs?

22 A. Yes.

23 Q. Okay. But I thought you said that you put all
24 of the drugs he gave you in your pants.

25 A. All of the drugs that he had in his pocket.

MIA PERRON, CVR-CM

-126-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 That was not in his pocket. That was inside my car in the
2 middle console.

3 Q. Okay. But that was Eric's drugs?

4 A. Yes.

5 Q. Okay. So you didn't put all the drugs in your
6 pants?

7 A. No, sir.

8 Q. Okay. You put some drugs in your bra?

9 A. Yes.

10 Q. And so when you told Mr. Simpson that you gave
11 all the drugs out of your pants to the sheriff's office --
12 I mean, to the detention officers, detention sargent, you
13 just forgot about those drugs that you had in your bra?

14 A. At the time.

15 Q. At the time.

16 A. Yes, sir.

17 Q. Now, as it relates to --

18 MR. RUNYON: Pardon me. May I approach, Your
19 Honor, just the exhibits?

20 THE COURT: You may.

21 Q. [Mr. Runyon] As it relates to Exhibits 1 and 2,
22 okay, you made those -- those are your signatures?

23 A. Yes.

24 Q. Number 1 is just a letter; right?

25 A. Yes.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. And that's a lie; right?

2 A. Yes.

3 Q. And Number 2 is a notarized statement where you
4 took an oath; right?

5 A. Yes.

6 Q. And that's a lie?

7 A. Partially.

8 Q. Partially?

9 A. Yes.

10 Q. So part of it's a lie and part of it's the
11 truth?

12 A. Part of it's a lie, but it's not a lie in
13 detail. It's more of me not explaining to a full extent.

14 Q. Oh. So now it's not a lie, it's just you just
15 didn't explain it?

16 A. The way how it was worded when I typed it wasn't
17 fully an explanation to tell the truth, but it's like
18 getting around it.

19 Q. Okay. Let me get this straight, now. Exhibit
20 Number 2, you typed it; correct?

21 A. Yes.

22 Q. I mean, it wasn't someone else making this up
23 for you? You did that?

24 A. Yes.

25 Q. All right. Now, Eric, did he use drugs at the

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 time?

2 A. Not that I know of.

3 Q. Not that you know of?

4 A. Yes.

5 Q. And so what was he going to do with these drugs
6 that you put in your pants?

7 A. I could not say, because I don't know.

8 Q. And did he own the car at the time?

9 A. No. It was joint ownership between me and one
10 of his cousins.

11 Q. Beg your pardon?

12 A. It was joint ownership between me and a relative
13 of his.

14 Q. And so he didn't own a car --

15 A. No, sir.

16 Q. -- but the car you owned was owned with one of
17 his cousins?

18 A. Yes.

19 Q. All right. And so y'all had gotten serious in
20 your relationship?

21 A. It wasn't serious-serious, but it was a serious
22 relationship to where I needed transportation to get back
23 and forth. So that was the means of his cousin being on
24 it because I didn't have insurance or anything and he
25 helped me out at the time.

MIA PERRON, CVR-CM

-129-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. Okay. How did he get around?

2 A. Primarily if I gave him a ride. But that's
3 about it, that I knew of.

4 Q. Okay. And where did he live?

5 A. On -- in Glen Terrace.

6 Q. Which was?

7 A. With his mother. Besides some nights that he
8 was at my apartment.

9 Q. So he didn't have a big fancy house or anything
10 like that?

11 A. No, sir.

12 Q. And there were times that y'all cohabited
13 together?

14 A. Yes.

15 Q. Now, did you complain about your treatment at
16 the hands of the sheriff's office?

17 A. Yes.

18 Q. And what did you complain about your treatment
19 for? I mean, what happened?

20 A. That was in the two letters that I originally
21 wrote when all of this happened -- which I was not
22 truthful in the beginning based on the fact that it was
23 found on me and I knew that it was me versus him -- to
24 explain how things happened the way they did.

25 Q. Okay. Let me ask you something.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 MR. RUNYON: Excuse me a second. Going to come
2 up again and --

3 Q. [Mr. Runyon] All right. Now, did the detention
4 officers abuse you in any way?

5 A. No.

6 Q. All right. So when you said they did, that was
7 a lie?

8 A. Yes.

9 Q. And did the deputy who stopped you and -- on the
10 side of the road, did he abuse you in any way?

11 A. No. But he did perform an illegal procedure
12 because he was not supposed to have patted me down without
13 a female officer being there.

14 Q. Okay. So, now, this is your interpretation of
15 what the legal procedures were; correct?

16 A. Yes, sir, based on what I knew and found out
17 after the fact from my lawyer and other deputies, as well.

18 Q. Ms. Deas, did you ever go with Eric to parties?

19 A. Yes, when he had like music promotions.

20 Q. Okay. What kind of parties would they be?

21 A. Just parties where either friends and family
22 members get together and he's promoting either a new song
23 that he produced or an album.

24 Q. Okay. And did you ever see cocaine there?

25 A. No.

MIA PERRON, CVR-CM

-131-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. Never saw cocaine?

2 A. No.

3 Q. The only time you ever saw cocaine was on this
4 particular day?

5 A. Yes, sir.

6 Q. And so it was totally a shock to you that
7 cocaine would come up in your relationship?

8 A. No.

9 Q. It wasn't?

10 A. No.

11 Q. But you had never seen it before?

12 A. No.

13 Q. Okay. Now, you had been to that apartment
14 complex, as you said, didn't you?

15 A. Yes.

16 Q. All right. And you visited other people. So
17 you knew where it was?

18 A. Yes.

19 Q. All right. What else did Eric supply for you
20 other than a car?

21 A. That's about it. Like off and on he would help
22 me as far as with expenses with my apartment if I fell
23 short. But other than that, it was nothing else.

24 Q. Okay. And his business was the music business,
25 was it not?

MIA PERRON, CVR-CM

-132-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. Yes.

2 Q. And that's how he earned his living?

3 A. Yes.

4 Q. And you saw him earn his living in that
5 particular business, didn't you?

6 A. Yes.

7 Q. And as it relates to this situation, you talked
8 -- you never talked to me about your situation, did you?

9 A. No.

10 Q. Okay. So when you said you talked to a lawyer,
11 you didn't talk to me?

12 A. No, sir.

13 Q. Now, I need to go into these two conversations.
14 I listened real hard. What was the point of those
15 conversations? I mean, y'all had a spat in the second
16 one?

17 A. Yes.

18 Q. Okay. And Eric was upset?

19 A. Yes.

20 Q. And Eric had been in jail?

21 A. Yes.

22 Q. All right. And you were out of jail?

23 A. Yes.

24 Q. Okay. And so, matter of fact, he had been in
25 jail for two years, hadn't he?

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. Not in those conversations. Those were in the
2 beginning.

3 Q. Beg your pardon?

4 A. Those conversations he was incarcerated in the
5 beginning. That was not after two years.

6 Q. No, no. That was not after two years. But, I
7 mean, up until today he's been in jail?

8 A. Yes.

9 Q. And you've been out walking around?

10 A. Yes.

11 Q. And you got out to walk around because of what
12 you told the police and Mr. Simpson?

13 A. Yes.

14 Q. Where do you work now?

15 A. I'm currently not working.

16 Q. You're currently not working.

17 Did you get to return to your job after you got
18 out of jail a couple of years ago?

19 A. No.

20 Q. Okay. And there's no question about the fact
21 that the drugs were in a very private area of your
22 clothing?

23 A. Yes.

24 Q. Okay. And they weren't visible, were they?

25 A. No.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. Okay. And you had never -- how did you know to
2 put the drugs there?

3 A. At the time I'm thinking if I put it in my
4 pocket, being pat-searched they could have found it. So
5 the only thing is to either put it within my clothes and
6 not on the outside where I would have to empty my pockets
7 or take off my jacket or something.

8 Q. Okay. So this came to you like a bright light,
9 just to put --

10 A. No. I puzzled at first.

11 Q. -- do that?

12 A. No.

13 Q. Well, how did it -- how did it come to you to
14 place it where you placed it?

15 A. As I was being pulled over, I'm thinking like
16 what are all the odds that I could do at the time: either
17 leave it in the inside of the car and they search the car
18 and find it, or put it within my clothing and they not
19 strip search me like right there on the scene so if my
20 license is cleared, I have no warrants, there's no reason
21 for them to have to strip search me or me even go to the
22 detention center.

23 Q. Okay. And so you didn't realize that your
24 license wasn't clear?

25 A. My license was actually cleared. It was a

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 misunderstanding with the clerk of court.

2 Q. Okay. And that little packet that was in the
3 bra, that just was an afterthought?

4 A. Yes.

5 Q. All right. Now, after you left Eric's mom's
6 house and returned to your parents' house --

7 A. Uh-huh.

8 Q. -- did you go back to work then?

9 A. No.

10 Q. Okay. And did you look for work?

11 A. Yes.

12 Q. Okay. Just haven't been able to find work?

13 A. Based on every time when I got drug -- not drug
14 tested -- when I got my background check it showed
15 trafficking cocaine as a arrest on my record, but not a
16 conviction, and with the type of work that I was seeking
17 as far as like with elderly patients, nursing, and with
18 children, I could not work under those circumstances.

19 Q. And, Ms. Deas, what's your deal?

20 A. Deal? As?

21 Q. With the State. I mean --

22 A. I have no deal.

23 Q. Well, you got out of jail, didn't you?

24 A. Yes. That's based on bond. I was bonded out.

25 Q. What kind of bond did you get?

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. Originally it was 300,000, and it got reduced to
2 100,000.

3 Q. Okay. And you posted a 100,000-dollar bond?

4 A. Yes.

5 Q. All right. And how did you pay for that
6 100,000-dollar bond?

7 A. It was money contributed from different family
8 members, and his side of the family, and my friend's
9 mother bonded me out.

10 Q. Okay. So your family you say is the one who
11 posted or paid for your 100,000-dollar bond?

12 A. No.

13 Actually, it was money contributed from his
14 family, as well as with mine.

15 Q. Okay. And as it relates to the -- your
16 testimony today, are you testifying that you were
17 trafficking in drugs on that day?

18 A. Yes.

19 Q. And that's what you're going to -- and you're
20 admitting your guilt to that?

21 A. Yes, because it was found on my possession at
22 the time.

23 Q. All right. And you have no agreement with the
24 State as to sentence or charge reduction or anything of
25 that sort?

MIA PERRON, CVR-CM

-137-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 A. No, sir.

2 Q. All right. Do you know what trafficking is?

3 A. Yes.

4 Q. What is that?

5 A. When you have illegal substance within your
6 possession and you're driving within a vehicle or riding a
7 bike; as long as you're like on some type of state highway
8 or anywhere; when you're traveling from one destination to
9 another.

10 Q. That's your understanding of the charge?

11 A. Yes, sir.

12 Q. Okay. And that's what you're guilty of?

13 A. Yes, sir.

14 Q. Driving it around?

15 A. Yes, sir.

16 Q. Okay. Doesn't have anything to do with anything
17 else?

18 A. No, sir.

19 MR. RUNYON: Excuse me, Your Honor.

20 [Whereupon, Mr. Runyon and Mr. Sumter confer]

21 Q. [Mr. Runyon] On the day in question, where did
22 you originally pick up Mr. Sumter?

23 A. He actually met me at my apartment.

24 Q. And then you went to the gas station?

25 A. Yes, sir.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. All right. Who paid for the gas; do you
2 remember?

3 A. No, sir.

4 MR. RUNYON: Okay. No further questions at this
5 time, Your Honor.

6 MR. SIMPSON: Briefly.

7 REDIRECT EXAMINATION

8 BY MR. SIMPSON:

9 Q. Tiffany, you made a statement just a few moments
10 ago that you were guilty of trafficking narcotics?

11 A. Yes, sir.

12 Q. And your understanding of why you would say you
13 were guilty of narcotics is because you possessed the
14 narcotics?

15 A. Yes, sir.

16 Q. And under your understanding, if you're in a car
17 or on a road that's trafficking?

18 A. Yes.

19 Q. Okay. Did you possess those narcotics before
20 the blue lights lit up behind you?

21 A. After.

22 Q. After?

23 A. Yes, sir.

24 Q. When Eric handed them over to you?

25 A. Yes, sir.

MIA PERRON, CVR-CM

-139-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Q. And you're not an attorney; right? That's just
2 your understanding of what trafficking is?

3 A. Yes, sir.

4 Q. But you're here in front of this jury admitting
5 you did possess those narcotics?

6 A. Yes, sir.

7 Q. From that point on?

8 A. Yes, sir.

9 Q. From the point of the traffic stop on to the
10 when they were found at the jail?

11 A. Yes, sir.

12 Q. And you're admitting that in your understanding
13 that's trafficking so you're guilty?

14 A. Yes, sir.

15 MR. SIMPSON: Okay. Court's indulgence.

16 THE COURT: Yes, sir.

17 [Whereupon, Mr. Simpson and Mr. Yount confer]

18 MR. SIMPSON: The State has no further
19 questions.

20 MR. RUNYON: Briefly.

21

22

23

24

25

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

CROSS-EXAMINATION

BY MR. RUNYON:

Q. Ms. Deas, actually, you're admitting that you possessed the drugs and you were going to give them to someone; correct?

A. No. I possessed them and were holding them, not intention to give them to anyone.

Q. Well, you were going to give them back to Mr. Sumter, weren't you?

A. Yes, sir.

Q. Okay. So you were going to give them to somebody?

A. Yes, sir.

MR. RUNYON: Okay. No further questions.

THE COURT: You may step down, Ms. Deas.

[Whereupon, the witness is excused and exits the witness stand]

THE COURT: Call your next witness.

MR. SIMPSON: Your Honor, the State rests.

THE COURT: Ladies and gentlemen, that signifies to the Court there's a matter of law that I must take up outside of your presence.

Do not begin your deliberations. Do not discuss this case amongst yourselves.

Please rise for the jury.

MIA PERRON, CVR-CM

-141-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 [Whereupon, the jury exits the courtroom at
2 12:13 p.m.]

3 - - - - -
4 MOTION FOR A DIRECTED VERDICT

5 THE COURT: Be seated. Any motions or matters,
6 Mr. Runyon?

7 MR. RUNYON: Yes, Your Honor.

8 We've reached that point where the Supreme Court
9 says we've got to make these motions.

10 Your Honor, we would move for a directed verdict
11 as to the indictment and the lesser-included charges on
12 the grounds the State has failed to prove a prima facie
13 case. We acknowledge that the testimony is clear as to
14 the weight that's been testified to, and I can't argue
15 against that, but I think taken on balance they've got
16 what they've proven in this case, possession and
17 distribution. And we so move as it relates to the
18 primary charge on the indictment.

19 THE COURT: All right. Mr. Simpson, if you
20 would please articulate the evidence that corresponds
21 to each element as to the charge of trafficking.

22 MR. SIMPSON: Thank you, Your Honor.

23 My understanding of the elements of trafficking
24 is that one possessed, purchased, or deliver, or
25 attempt, conspire -- contempt -- attempt, aid, abet or

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 conspire to the purchase or delivery of over the
2 threshold weight, in this case being 100 to 200 grams.
3 We heard from Lynn Black, who testified. As Mr. Runyon
4 acknowledged, I don't think the weight is truly an
5 issue. I mean, there is evidence of the weight, that
6 it falls within that threshold.

7 As to purchasing, there is substantial
8 circumstantial evidence that Mr. Sumter purchased that
9 amount.

10 As to possessing, there is direct evidence from
11 the testimony of Tiffany Deas that he possessed it,
12 when he came back to the car, on his lap; therefore --

13 You know, Your Honor is aware of the standard of
14 any issue as to failing on an element would go to the
15 weight and not the existence of that evidence. And
16 looking at each -- looking at each element, and the
17 evidence in light most favorable to the State, the
18 motion for directed verdict should be denied. Thank
19 you.

20 THE COURT: Mr. Runyon, anything further?

21 MR. RUNYON: Nothing further, Your Honor.

22 THE COURT: With the indicted charge on Mr.
23 Sumter as to trafficking cocaine, 100 to 200 grams, the
24 State must prove that the defendant did knowingly sell,
25 manufacture, purchase, or was knowingly in actual or

MIA PERRON, CVR-CM

-143-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 constructive possession of cocaine.

2 There was testimony that it was presumptively
3 field-tested, as well as tested by the SLED analysis,
4 Ms. Black, that it was cocaine, was over the threshold
5 of 100 grams. There was testimony that the defendant
6 was in constructive actual and there was testimony that
7 he had purchased.

8 Concerned in the -- with the existence or
9 nonexistence of the evidence in the light most
10 favorable to the nonmoving party, denying your motion
11 for a directed verdict as to trafficking.

12 - - - - -

13 DEFENDANT'S RIGHTS

14 THE COURT: Mr. Sumter, I'm going to now advise
15 you certain of your rights. Please stand.

16 [Whereupon, Mr. Sumter complies]

17 THE COURT: Please swear the defendant.

18 [Whereupon, the defendant is duly sworn by the
19 clerk of court as follows: do you swear or affirm to
20 answer truthfully all questions asked of you by the
21 Court]

22 MR. SUMTER: Yes. Yes, ma'am.

23 THE COURT: Thank you.

24 Mr. Sumter, at this time I am going to explain
25 to you certain of your rights. If you do not

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 understand anything that I say, please let me know. If
2 you need me to repeat anything, please let me know.

3 We have now reached the stage of the trial where
4 you may present your defense. You have the right to
5 claim the protections given to you by the fifth
6 amendment to the Constitution of the United States of
7 America. This amendment states in part that no person
8 shall be compelled to be a -- to be compelled in any
9 criminal case to be a witness against himself. This
10 means that you cannot be required to testify in this
11 case.

12 You do have the right to testify. No one can
13 make you testify, Mr. Sumter. This is a personal right
14 and no one can waive this right except for you. If you
15 decide to testify, you will be subject to the same
16 rules that govern other witnesses and you may be
17 examined and cross-examined on any relevant issue in
18 this case.

19 In addition, if you have any convictions
20 involving dishonest or false statement or for crimes
21 punishable by imprisonment for more than one year and I
22 determine that the probative value of admitting this
23 evidence outweighs its prejudicial effect to you, the
24 solicitor will be able to introduce your record to
25 attack your credibility.

MIA PERRON, CVR-CM

-145-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 If you decide to testify, this decision on your
2 part must be freely, voluntarily, and intelligently
3 made, with the knowledge of the protections given to
4 you by the fifth amendment and the consequences of your
5 decision to testify. If you decide not to testify, I
6 will instruct the jurors that they cannot give the fact
7 that you did not testify any consideration whatsoever
8 and that there is to be absolutely no prejudice to you
9 because you did not testify.

10 It is left entirely up to you whether or not you
11 testify. You may talk with your attorney, your
12 friends, your family members, or anyone else, but the
13 final decision is left entirely up to you.

14 Do you understand what I have explained to you?

15 MR. SUMTER: Yes, Your Honor.

16 THE COURT: Do you have any questions about what
17 I've explained to you, either for the Court or for your
18 attorney?

19 MR. SUMTER: No.

20 THE COURT: Have you discussed with your lawyer
21 whether or not you should testify?

22 MR. SUMTER: Yes.

23 THE COURT: Do you need any additional time to
24 meet with him, concerning this decision, at this time?

25 MR. SUMTER: Give me a moment.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 THE COURT: I'm sorry?

2 MR. SUMTER: Yes, ma'am, I want to talk to him
3 for a little while.

4 THE COURT: Okay. Did you say give you a
5 minute?

6 MR. SUMTER: Yes.

7 THE COURT: Is that what you said, sir?

8 MR. SUMTER: Yes, ma'am.

9 THE COURT: All right.

10 [Whereupon, Mr. Runyon and Mr. Sumter confer]

11 MR. SUMTER: I choose not to testify.

12 THE COURT: Do you need any additional time to
13 meet with Mr. Runyon to discuss that decision, sir?

14 MR. SUMTER: No, ma'am.

15 THE COURT: So you do not wish to testify; is
16 that correct?

17 MR. SUMTER: Yes, ma'am.

18 THE COURT: All right. Thank you. You may have
19 a seat, Mr. Sumter.

20 Mr. Runyon, do you have any additional
21 witnesses?

22 MR. RUNYON: No, ma'am.

23 We would just request the privilege of resting
24 in front of the jury, Judge.

25 THE COURT: Certainly.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 My intention is to bring the jury back in, allow
2 you to rest, then we will break for lunch. We'll have
3 a charge conference and then after lunch you will argue
4 and then I will charge.

5 MR. RUNYON: Thank you very much, Your Honor.

6 THE COURT: All right. Thank you.

7 Let's bring in the jury.

8 [Off the record momentarily]

9 [Whereupon, the jury enters the courtroom at
10 12:22 p.m.]

11 THE BAILIFF: The jurors are seated, Your Honor.

12 THE COURT: Thank you. Please be seated.

13 Mr. Runyon.

14 MR. RUNYON: Your Honor, at this point in time
15 the defendant would rest. Thank you.

16 THE COURT: Thank you..

17 Ladies and gentlemen, you have now heard all of
18 the testimony and received into evidence all of the
19 exhibits that will be made part of the record in this
20 case.

21 We've reached an appropriate time for us to
22 break for lunch, so when we return from our lunch break
23 you will then hear closing arguments from counsel and I
24 will instruct you on the law applicable to this case.

25 We determined that it would be a good time to

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 break for lunch and so we will do that at this time.

2 Please remember, ladies and gentlemen, do not
3 begin your deliberations. Do not discuss this case
4 amongst yourselves. Please remember all of those
5 admonitions about discussions online and all of those
6 things. Do not do any independent investigations. Do
7 not read, watch, listen to, any news accounts should
8 there be any regarding this case.

9 Please be back in your jury room at 2:00 p.m.
10 and we will begin promptly at that time. Thank you.

11 Please rise for the jury.

12 [Off the record momentarily]

13 [Whereupon, the jury exits the courtroom at
14 12:23 p.m.]

15 THE COURT: Thank you. Be seated. All right.

16 MR. RUNYON: Your Honor, at this time we would
17 renew the motions made for a directed verdict and for
18 dismissal on the same grounds that were made previously
19 at the close of the State's case.

20 THE COURT: All right. Any additional -- there
21 was no additional testimony presented. Anything
22 further, Mr. Simpson?

23 MR. SIMPSON: Nothing further, Your Honor.

24 THE COURT: All right. And just for the record,
25 your objection is noted. There has been no additional

MIA PERRON, CVR-CM

-149-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 testimony, so the Court's ruling at the close of the
2 State's case still stands.

3 With that, is there anything further from the
4 defendant or the State at this time?

5 MR. SIMPSON: No, Your Honor.

6 MR. RUNYON: I don't think so, Your Honor.

7 - - - - -

8 CHARGE CONFERENCE

9 THE COURT: All right. Mr. Runyon, I'll be
10 happy to hear from you. I did not receive over the
11 evening hour any requests to charge. I'll be happy to
12 hear from you.

13 MR. RUNYON: No, Your Honor. As I said in our
14 brief pretrial conference, what we're looking for --
15 and I know -- I'm familiar with what I call standard
16 charge, your charge, that you deliver. And since the
17 State pays you big bucks for doing that -- I'm being
18 facetious, not sarcastic, Judge -- I did not prepare an
19 additional charge on possession with intent to
20 distribute. I would so request that the Court consider
21 giving a possession with intent to distribute charge,
22 in addition to the trafficking charge, Judge.

23 THE COURT: All right. Mr. Simpson, what's your
24 -- what's the State's position as to the possession
25 with intent to distribute?

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 MR. SIMPSON: Your Honor, I believe trafficking
2 is -- I don't know if that's the proper word -- strict
3 liability charge in the sense that it's unlike
4 possession or PWID charge which the State still has
5 that element of intent to prove. The elements of
6 trafficking are simply do they possess that amount. I
7 don't think there's been any evidence whatsoever
8 presented to the Court that somehow this is under the
9 100-gram threshold in the present case. Because there
10 is no evidence that it is not that threshold amount, I
11 don't think the possession with intent to distribute
12 charge is appropriate.

13 We did, early on in the case, have some general
14 testimony about the drug trade, some of the drug
15 paraphernalia that someone might use, i.e., the digital
16 scales. That's relevant to any drug case, especially
17 one in which scales are found in such close proximity
18 to the defendant. I don't think that somehow triggers
19 any change in what the charge is. The trafficking
20 charge is triggered on that threshold amount. We've
21 presented evidence that these drugs meet that threshold
22 amount and there's no other evidence this would be
23 somehow a lower amount making a PWID charge appropriate
24 in the present case, Your Honor.

25 THE COURT: Mr. Runyon, any disagreement with

MIA PERRON, CVR-CM

-151-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 what the solicitor said as to the amount only? Was
2 there any --

3 MR. RUNYON: Yes --

4 THE COURT: -- conflicting testimony as to the
5 amount of drugs?

6 MR. RUNYON: No, there wasn't any conflicting
7 amount, Judge.

8 But I hate to disagree with my colleague over
9 here, but criminal law is all about intent. And they
10 haven't proven intent, by way of conspiracy or
11 otherwise, to possess that particular amount. I mean,
12 there is no -- this is not strict liability. You don't
13 have strict liability in criminal law like he
14 indicated.

15 Now, they presented an officer and they
16 presented, as an expert on local drug trade, amount
17 amounts [phonetic] for users and about possession of
18 amounts, weighing it, and things of that sort. They
19 didn't prove that Mr. Sumter intended to acquire a
20 requisite amount. So I think that the Supreme Court
21 has talked about possession with intent to distribute
22 is a lesser-included and it's not strict --

23 THE COURT: Well, Mr. Runyon --

24 MR. RUNYON: It's not a strict liability --

25 THE COURT: -- it's a lesser-included if the

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 evidence justifies the inclusion. So articulate for
2 the Court what evidence has been presented that would
3 justify the inclusion of possession with intent to
4 distribute.

5 MR. RUNYON: All right. Your Honor, they
6 started out in their opening argument, and then in
7 their testimony, present a picture about, quote, the
8 big drug operation. Their testimony showed that Mr.
9 Sumter went to that apartment one time in all the time
10 they supervised it. They showed that the typical unit
11 of commercial for a user, for example, is about 3.54
12 grams of cocaine. This was -- the packaging, the way
13 this was packaged, is separately from where you would
14 package an entire amount to have a trafficking intent
15 or to take to -- from one location to another, to mule
16 it, things of that sort. So I think the question is
17 one for the jury as to whether or not this was to be,
18 for example, muled or whether it was taken for the
19 purpose of possession with intent to distribute.

20 And on the basis of their own expert officer's
21 testimony, this is not even a month's supply for a
22 user. So I think that as a practical matter, you have
23 -- it may not be a great threshold, but you have a
24 threshold presentation that the jury can go between
25 trafficking and possession with intent to distribute,

MIA PERRON, CVR-CM

-153-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Judge. And there's no -- there's no testimony about
2 the greater conspiracy or anything of that sort, Judge.
3 There just isn't. They promised the jury that they
4 were doing that, but they didn't present it.

5 THE COURT: All right. Mr. Simpson, any
6 response to that argument?

7 MR. SIMPSON: Just briefly, Your Honor.

8 I used the term strict liability. Your Honor, I
9 don't think that was articulated well.

10 THE COURT: I believe I --

11 MR. SIMPSON: In a trafficking charge --

12 THE COURT: -- understood what you meant, Mr.
13 Simpson, so move on.

14 MR. SIMPSON: Just to respond to what Mr. Runyon
15 said: in a trafficking charge, of course there's the
16 criminal intent. After criminal intent is they
17 knowingly possessed the substance. There is no
18 requirement or element that the State prove that he
19 knew the amount of the -- that's -- that is a -- not a
20 specific intent that the State has to prove, that he
21 knew the amount and he intended to possess over 100
22 grams. That is automatic. If he, in fact, knowingly
23 and willingly possessed the narcotics, if they're over
24 that threshold amount, that's automatic.

25 I would stand by my argument that there has been

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 no evidence that would justify a lesser-included of
2 possession with intent to distribute. All the evidence
3 that has been presented goes to the fact that he's
4 either guilty of the trafficking or not guilty at all.

5 THE COURT: All right. But, Mr. Simpson, hasn't
6 our case law indicated that possession with intent to
7 distribute is a lesser-included of trafficking if the
8 evidence shows?

9 MR. SIMPSON: If the evidence justifies it, Your
10 Honor. But it's like in any lesser-included offense,
11 there has to be some evidence. I understand the
12 threshold. It can be however slight. There has to be
13 some evidence that would justify that lesser-included
14 charge and it's just not there in this case, Your
15 Honor.

16 Again, what's been presented here is that Mr.
17 Sumter is either not guilty of trafficking or guilty of
18 trafficking. I don't know of any rationale that would
19 allow that jury to reach a verdict of guilty of a
20 lesser of possession with intent to distribute. He
21 either possessed a hundred -- over 100 grams of cocaine
22 or no cocaine at all. There's -- under that threshold,
23 there's no other decision.

24 THE COURT: Briefly, Mr. Runyon.

25 MR. RUNYON: Your Honor, the question of the

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 weight of the evidence, even if it's only slight, is
2 for the jury, not for the trial judge, to determine.

3 And here we have the interesting testimony, as I
4 referenced, of the drug trade, the expert witness, and
5 what-have-you. And I think that's sufficient enough
6 for the jury to take it and kind of push it around as
7 to what this may or may not be. I didn't present that.
8 They did.

9 THE COURT: All right. And, counsel, you agree
10 that Mr. Runyon has -- the defendant has last close
11 here?

12 MR. SIMPSON: Agreed.

13 MR. RUNYON: I beg your pardon, ma'am?

14 THE COURT: You have last close, Mr. Runyon; is
15 that correct?

16 MR. RUNYON: Yes, Your Honor.

17 THE COURT: All right. Counsel, I'm going to
18 review the testimony, review my notes. You will have
19 my ruling at 2:00 and then we'll begin with closing.

20 Thank you. We're at ease until 2:00.

21 MR. RUNYON: Thank you, Your Honor.

22 MR. DAVIS: Your Honor, may it please the Court?

23 THE COURT: Yes.

24 MR. DAVIS: Before you adjourn, Your Honor, on
25 behalf of Ms. Deas, obviously there's members of the

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 audience that came in later during the testimony. If
2 Your Honor could at least make it clear that she was
3 here under subpoena, she did not come willingly. And
4 we are just concerned. We had an escort. She has now
5 left the building and we're concerned about the people
6 on behalf on the defense understand that she was here
7 by subpoena and testified under that.

8 THE COURT: Well, Mr. Davis, and to all members
9 of the audience, whether you're here testifying under
10 subpoena or of your own free will, this is a courthouse
11 and we need to follow all of the laws and maintain
12 decorum.

13 So, Mr. Davis, I appreciate -- while you brought
14 that to the Court's attention, everybody that comes in
15 should be following the rules of the courtroom and
16 conducting themselves in an appropriate manner.

17 MR. DAVIS: Thank you very much, Your Honor.

18 THE COURT: Thank you.

19 [Whereupon, a recess is taken from 12:35 p.m. to
20 1:55 p.m.]

21 THE COURT: All right. Counsel, based upon my
22 review of the case law and the testimony that has been
23 presented, I am declining to charge possession with
24 intent to distribute cocaine.

25 Your exception and objection is noted for the

MIA PERRON, CVR-CM

-157-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 record.

2 With that, counsel, if you'll approach and
3 please review the verdict form.

4 [Whereupon, counsel review documents]

5 MR. RUNYON: That's it.

6 THE COURT: All right. Thank you.

7 All right. Counsel, I am not going to limit you
8 but let's remember the case only took about five hours.
9 Thank you.

10 Anything before we bring in the jury?

11 MR. SIMPSON: Nothing from the State, Your
12 Honor.

13 MR. RUNYON: Nothing from the defense, Your
14 Honor.

15 THE COURT: All right. And while they're going
16 to get the jury, counsel, if you'll just make sure all
17 of the exhibits are ready to go back.

18 [Off the record momentarily]

19 THE COURT: 1 and 2 were not admitted into
20 evidence.

21 Is that correct, Madam Court Reporter?

22 THE COURT REPORTER: That's what I show.

23 THE COURT: All right. State take any position
24 as to 1 and 2?

25 MR. SIMPSON: No, Your Honor. We're fine with

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 it. They were identified and discussed by the witness.

2 MR. RUNYON: I don't want them in, Judge.

3 THE COURT: All right. Thank you.

4 Mr. Simpson, just because they weren't admitted
5 doesn't -- you have to keep them as part of the record.
6 Thank you.

7 [Whereupon, the jury enters the courtroom at
8 1:58 p.m.]

9 THE BAILIFF: Jurors are seated, Your Honor.

10 THE COURT: Thank you. Please be seated.

11 I hope you had a wonderful lunch. As I
12 indicated, we've reached the stage of the trial where
13 you will hear closing arguments on behalf of the State
14 and the defendant. You will hear a closing argument on
15 behalf of the State and then you will hear closing
16 argument on behalf of the defendant. After that, I
17 will instruct you on the law applicable to this case.

18 Just as I indicated to you, closing -- excuse
19 me -- opening statements are not to be considered
20 evidence in this case, neither are closing arguments.
21 Please give your attention.

22 Mr. Simpson.

23 MR. SIMPSON: Thank you, Your Honor.

24

25

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

CLOSING ARGUMENT

MR. SIMPSON: Ladies and gentlemen, I would like to start -- we traditionally start our closing statement by thanking you for your time and attention. I know that when you received notice of jury duty this week, I'm going to guess that you weren't very excited about it. But luckily we've had an important trial but a relatively short trial. I appreciate you remaining attentive during that, listening to the evidence.

The facts of this case are not very complicated and that's why we find ourselves here on Tuesday wrapping things up, and that's why I don't anticipate my closing argument to be very long, but I do want to point out some important things about the evidence you've heard in the previous two days.

On May 7th, Eric Sumter called his girlfriend, Tiffany, who had a two-hour lunch break for lack of a better word -- she was on the split shift -- and asked for a ride somewhere. Tiffany, I wish she wasn't this way, but the compliant girlfriend, went along. She didn't ask a lot of questions. Said, you need a ride somewhere, okay, you know, I'll meet you at the house. Eric Sumter told Tiffany where to go. Tiffany followed his directions to the Acura dealership, followed his directions to the specific apartment, neither of them

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 knowing this place was under surveillance by the
2 narcotics unit.

3 Tiffany, although she acknowledged that she had
4 had some friends that lived in different apartments in
5 this complex, didn't know the people at that apartment.
6 During the exchange of Mr. Sumter, some of them came
7 out and she said, yeah, you know, I saw a guy I think I
8 recognized.

9 This was Eric's deal that brought them there
10 that day. This was at the behest of Eric Sumter that
11 they went to this apartment. Tiffany says that they
12 got there and she stayed in the car. Tiffany says Eric
13 went in and came back out and sat in the passenger
14 seat, taking out of the brown paper bag that she knew
15 was narcotics. And, again, compliance, letting Eric do
16 his thing, and waiting.

17 What did the detectives tell you they saw?
18 Detective Euper, our first witness. What did the
19 detective watching the apartment say he observed when
20 they pulled up to the place: Tiffany staying in the
21 car, Eric getting out, going into the apartment, coming
22 back and sitting in the passenger seat. And here we
23 have the first of many important points. We call that,
24 under the law, corroboration. That's when one person's
25 testimony fits with another person's testimony. And

MIA PERRON, CVR-CM

-161-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 that's important because the more that happens, the
2 easier it is for you to make your decision judging
3 what's the truth.

4 And so we have Tiffany's story of what happened,
5 when they pulled up to that apartment, fitting
6 perfectly with Matt Euper who, unbeknownst to any of
7 the parties, was sitting there watching in a nearby
8 car.

9 Eric Sumter weighed the cocaine on his lap and
10 apparently really didn't like what his digital scale
11 was telling him about the weight of that cocaine. You
12 heard Tiffany's testimony. He said, did you see me
13 drop something, and was so concerned that he went back
14 in.

15 What did the detectives observe? The same
16 thing. He got in the car, he sat in the passenger
17 seat, he got out, he went back in and had more
18 interaction with the people of this apartment.

19 Let's jump ahead a little bit. How were the
20 drugs packaged when they seized the drugs? There was
21 the mother load, so to speak, in one package that was
22 102 grams and some change, as Lynn Black testified to
23 you. There were also three smaller bags of cocaine
24 found also in the same package. I submit to you the
25 three smaller bags of cocaine, where Eric Sumter didn't

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 like what he saw on the digital scales and went back
2 in, said, hey, you guys are shorting me, got three
3 smaller bags back. Again, the physical evidence now.
4 Not just testimony of the testimony, but the physical
5 evidence corroborating the story that you heard from
6 the witnesses.

7 They said Eric Sumter -- Tiffany told us Eric
8 Sumter weighed those narcotics on his lap. What did he
9 use? A digital scale disguised as an iPod. What was
10 found on the very seat, moments after he stepped out of
11 the car, right under Eric Sumter? A digital scale.
12 Now, do we know that that digital scale was used to
13 weigh cocaine? Absolutely we do. It was sent to SLED.
14 And you even heard Lynn Black -- I called it residue.
15 She's like, I don't even call this residue; I can see
16 powder all over it; it was tested.

17 That scale, located essentially with Mr. Sumter
18 sitting on it in the passenger seat, was used to weigh
19 cocaine just as Tiffany tells you. Physical evidence
20 corroborating testimonial evidence, thus making your
21 job easier to determine the truth.

22 Detective Euper was honest with you. He said
23 -- it wasn't even on my question, it was on Mr.
24 Runyon's -- do you remember him carrying anything.
25 Detective Euper said, I remember a brown paper bag.

MIA PERRON, CVR-CM

-163-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 And he was honest. He said, look, I don't remember
2 coming or going, but I do remember seeing a brown paper
3 bag. What does Tiffany testify to? Yeah, he went in
4 and pulled it out of his pocket; it was a brown paper
5 bag and inside is the bag of cocaine. Corroboration.
6 What's found in Mr. Sumter's pocket when he's arrested?
7 A brown paper bag. Testimony corroborating testimony
8 corroborated by the physical evidence in this trial.

9 You have the activity when they arrived,
10 Tiffany's story fitting with the detectives'. You have
11 the fact that Tiffany says that he weighed it in his
12 lap, and a scale with cocaine residue found in the seat
13 of the car with Mr. Sumter. You have Tiffany
14 testifying that Mr. Sumter said, did I drop something,
15 right after he weighed it; is there something missing
16 here. It goes back. And, again, you have the
17 packaging and narcotics corroborating that story. You
18 have the observations from both Tiffany, Detective
19 Euper and Detective Costanzo when they searched the
20 defendant of the brown paper bag. It's in his back
21 pocket, along with another scale.

22 And so in this case you have the testimony
23 corroborating other testimony, all of which is
24 corroborated by the physical evidence that's been
25 entered in this case. So with that much corroboration,

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 we could send you back right there, proof beyond a
2 reasonable doubt, firmly convinced of what the truth
3 is, if that were all we had.

4 But is that all we have? No. We have Eric
5 Sumter's own voice. I hope you were paying attention
6 when we played some of those calls. I know the sound
7 quality isn't perhaps ideal. I want to talk a little
8 bit about what you heard on those jail-tape recordings.

9 The way people manipulate other people is
10 timeless. It's been going on for a hundred years. And
11 the two best ways to manipulate another human being is
12 with affection and fear. And so to get Ms. Deas to
13 play along in this game -- and it is a game to some
14 people. It's a game to Mr. Sumter. You heard two
15 conversations where he uses both. The first call on
16 5/8 -- remember that date -- the first call you heard
17 where it was between Tiffany, Eric and the mom, that is
18 almost twenty -- within twenty-four hours of their
19 arrest. And you hear Mr. Sumter laughing and joking,
20 because this is a game to him. He's laughing and
21 joking. And what kind of manipulation is he using
22 then? Well, tell her I'll marry her. Ha-ha-ha.
23 Laugh. Funny. Tell her I love her; tell her to quit
24 crying; tell her I'll marry her. And then he goes on
25 to say something.

MIA PERRON, CVR-CM

-165-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 And, ladies and gentlemen, these calls have been
2 entered into evidence. If you feel that you -- it
3 would help you to hear them again, they're going to be
4 made available to you.

5 What does he say? Tell her she'll just be doing
6 a little time and it'll all pay off. And here, tell
7 her I'm quitting; tell her I'll stop for her, all
8 right, okay; I'm quitting, okay; tell her I ain't doing
9 this no more; I'm sorry; I'm quitting all that. Think
10 about that for a second. Does he say, tell her I told
11 her she needed to quit doing stuff like this; tell her
12 I told her she needed to stop being involved in these
13 [phonetic] narcotics trade? No, he doesn't say that.
14 Does he say, tell her we'll quit, tell her we'll quit
15 making these deals; tell her we'll stop doing this.
16 No. Tell her, I'm quitting. Tell her, I'll stop for
17 her. I'm quitting, okay. Tell her, I ain't doing this
18 no more. Him, within twenty-four hours of the arrest.
19 Manipulation. Tell her I'll quit if she plays along
20 with this game.

21 In the second series of calls we heard the other
22 way you can manipulate somebody, and that's fear. We
23 hear Mr. Sumter getting angry. He says, your acting
24 like this is a bunch of -- pardon my language -- you're
25 acting like this is a bunch of big shit; this is just

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 some little shit. He says, you're getting -- you're
2 losing your composure; you're doing what they want you
3 to do; stick to the program. And as soon as she tries
4 to respond and as soon as she says she's going
5 somewhere with this, he says, you had better watch what
6 you M-F'ing say on this M-F'ing phone. Because he's
7 not going to go the whole way. He knows these calls
8 are being recorded. But you have in those calls ten
9 minutes of Mr. Sumter manipulating Ms. Deas.

10 And, look, again, Ms. Deas is not a perfect
11 angel. I don't present her to you as some innocent
12 bystander in all this. And she even said, look, with a
13 lot of these things, the letters I wrote and got
14 notarized, you know, she wasn't willing -- willingly
15 trying to do what she could do to get her boyfriend out
16 of jail. She was playing along. But it's not the
17 truth. When the rubber hit the road, she told you the
18 truth. She told you what happened. And what she told
19 you what happened fits with the evidence.

20 I'm going to put up a PowerPoint just briefly
21 for you, outlining the crime of trafficking in cocaine,
22 the elements of the different ways you can be guilty of
23 this crime. The first kind of threshold, or at least
24 the easiest one in this case, the easiest box to check,
25 is quantities and amounts. And you see in Mr. Sumter's

MIA PERRON, CVR-CM

-167-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 charge that trafficking is 100 to 200 grams of cocaine.
2 Not a lot of argument about that fact. As a matter of
3 fact, we had Lynn Black; you know, a very professional
4 scientist from SLED, come in and tell you exactly how
5 much it was. It was 102 and change, and then the three
6 small bags I think was 1.73 grams of cocaine, a
7 combined amount of, you know, roughly 104, 105 grams of
8 cocaine. And you heard testimony to that exactly.

9 So we -- as far as quantity, as far as amount,
10 we can take that off the board pretty easily. We know
11 what the quantity and what the amount was in this case,
12 and it meets that threshold, 100 to 200 grams of
13 cocaine.

14 So what do you have to do with that cocaine to
15 be guilty of this? Well, first you have to knowingly
16 be in possession of this cocaine. I don't need to go
17 and argue a whole lot about what possession means
18 because weighing it in your lap, sticking it in your
19 pocket, purchasing it from an apartment, is clearly
20 possession. Having dominion or control over something
21 is possession, and to do any of those things you need
22 dominion and control.

23 Or, in the alternative, another way you can
24 be guilty of trafficking in cocaine: delivering or
25 purchasing. Again, you've heard the evidence. Ms.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Deas did not see any narcotics. He did not have any
2 narcotics on him. It was not until he went to that
3 apartment which the drug unit had under surveillance,
4 had exchanges with the people at that apartment, that
5 the cocaine all of a sudden appeared. Mr. Sumter
6 purchased the cocaine, and he's guilty of trafficking
7 in cocaine under that element.

8 And then the third one, and this is interesting,
9 or who otherwise in any way aids, abets, attempts, or
10 conspires to purchase or deliver that much cocaine is
11 guilty of trafficking. I'm only going to hit on this
12 for a second because it's ridiculous, quite frankly.
13 The defense in this case has been that Tiffany Deas,
14 the girl that you heard from, is some queen-bee drug
15 kingpin and this is all her game, this is her purchase,
16 this is what she's doing and Mr. Sumter is just helping
17 her out. It's ridiculous, and it's not true, and you
18 know it's not true. But even if it is, if he aided,
19 abetted, or attempted or conspired with her together to
20 purchase this cocaine, they're still both guilty of
21 trafficking cocaine, no matter what role each one of
22 them plays.

23 On the streets, in slang terms the narcotics
24 trade is often called a game. All right? You're
25 gaming when you're out there. You're playing the game.

MIA PERRON, CVR-CM

-169-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 And for Mr. Sumter, this is a game. And just when most
2 of us look at the situation and say that the game was
3 over for Mr. Sumter, when those blue lights turned on
4 and when that traffic stop was about to happen, Mr.
5 Sumter kept playing. And he had one move left in his
6 arsenal. The only move he had was his girlfriend, who
7 agreed to give him a ride over there. That was his
8 last move. He kept playing the game afterwards. Even
9 after Tiffany had given her statement to police and
10 told them the truth about what happened, he kept
11 playing the game, manipulating Tiffany, an all too
12 willing participant in that manipulation, writing these
13 letters, saying, oh, he didn't know anything about --

14 In a lot of ways that game continues today.
15 That game continues right up until this very hour as we
16 sit here, and it's up to you to -- with finality in
17 this dangerous game that we've seen how even people we
18 have relationships with just get tossed aside and get
19 blamed for things that are our activity. The game that
20 we all know, from reading the papers, is so dangerous.
21 For Mr. Sumter, today is an opportunity to say game
22 over, enough game.

23 Look at the evidence, the physical evidence, the
24 testimonial evidence that matches, the physical
25 evidence that matches everything you heard, the

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 statements from Mr. Sumter's own mouth, I'm quitting,
2 I'll stop, tell her I'll quit. Any reasonable doubt
3 should be removed on the issue of whether or not Mr.
4 Sumter is guilty of the crime charged. I thank you
5 again for your time and attention.

6 THE COURT: Mr. Runyon?

7
8 CLOSING ARGUMENT

9 MR. RUNYON: You know, I've been at this for
10 forty-three years and have never heard the State of
11 South Carolina refer to the constitutional process as a
12 game. That's what this is, a constitutional process,
13 and for the State to say it's a game, you know, I don't
14 know. I'm kind of slow.

15 For a number of years we had a farm down in
16 Colleton County, and on that farm we had horses. And
17 it took me twenty-one years to figure out that
18 something that ate while I slept was not an investment.
19 And so when the State got up here and said in their
20 opening argument to you, got a contract with you, we're
21 going to show you about some big-time stuff here,
22 promised you that -- and what did they do? They gave
23 you two people, two wretched people, who bought some
24 drugs from a big-time place and now they want the
25 penalty and the verdict of guilty of that and that the

MIA PERRON, CVR-CM

-171-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 problem of this is all you're going to have to decide
2 is trafficking or nothing, you know.

3 And when he said, I'm going to stop, was he
4 talking about stopping -- did he say stopping
5 distributing drugs? Or is he talking about, I'm going
6 to stop using cocaine? The implication -- the problem
7 is you've got to decide that. That's your job.

8 And, remember, they had Detective Euper
9 qualified as a witness on local drug trade. What is
10 the sale quantity? About 3.4 grams. I mean, what was
11 purchased was a twenty-day supply for a person who
12 uses. A twenty-day supply. What their expert said.

13 Now, I don't know what you're going to make of
14 this. You know, Mr. Simpson said, well, Tiffany's just
15 a poor misguided person and she's just being
16 cooperative with her boyfriend and all that sort of
17 stuff. But then what happened? When the blue lights
18 came on, like Saul on the road to Damascus, she was
19 struck with the bright light of, I'll put it in my
20 crotch. Okay? That's what she said.

21 The problem with it -- deciding what to do with
22 these cases -- and it's a tough job, by the way, is
23 that you have to take all these things -- and the judge
24 is going to tell you if I say anything about the law
25 that is different from what Her Honor tells you, by all

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 means you take what she says. But you decide the
2 facts. And are the facts, just because the quantity is
3 good enough, for you to determine that he should be
4 convicted of trafficking?

5 Remember their promise to you. They promised in
6 opening argument, we're going to show you how we go
7 after the big people. And what have they got? They've
8 got two people in a red car, stopped on the side of the
9 highway, and who went to that apartment one time.
10 Remember they had the surveillance or what-have-you?
11 One time. And, unfortunately, you're not going to be
12 given the choice of other charges that could fall in
13 this case. You're only going to have to decide the one
14 charge of trafficking. And it's not a game. This is a
15 proceeding with consequences. And it means something.
16 It means something under the constitution.

17 And you know what? If the system works for
18 somebody like Mr. Sumter, it'll work for anybody. It
19 really will. He ain't never going to find a cure for
20 cancer. No. He's been languishing in here in the jail
21 for two years.

22 And what about Ms. Deas? She's made her deal,
23 whatever it was. She's been living, in some fashion
24 for the last two years, out and about. There's no way
25 that she can be treated out of the same spoon. There

MIA PERRON, CVR-CM

-173-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 just isn't. She's done her -- she has some sort of
2 deal and she doesn't even know what it is --

3 MR. SIMPSON: Objection, Your Honor.

4 MR. RUNYON: She has some sort of deal and she
5 doesn't even know what it is, and that was her
6 testimony.

7 MR. SIMPSON: Withdrawn.

8 THE COURT: Thank you.

9 MR. RUNYON: Unfortunately, in these cases the
10 truth is hard to find. And the truth hurts. And I'm
11 going to ask you to find Mr. Sumter not guilty of
12 trafficking, because they didn't show you that this was
13 some sort of big old operation. Just some wretched
14 soul who had some cocaine and his girlfriend is trying
15 to keep her head above water. And it's your
16 prerogative to take the law and you can go in the back
17 and say, amount -- like Mr. Simpson said, amount, these
18 other things, we're going to go home and never look
19 back.

20 I'm going to ask you to consider everything, the
21 gravity of the situation, the gravity of the charge,
22 and ask you to find Mr. Sumter not guilty of
23 trafficking, because one thing which they haven't shown
24 with all this other good stuff is the intent to be a
25 trafficker. Remember what he said out of that -- out

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 of this speaker right here: I'm going to quit; I'm
2 going to quit.

3 All of our lives have been touched by people who
4 were going to quit. At least one person, probably.

5 Somehow or another, it's hard. And I'm asking you to
6 find Mr. Sumter not guilty. Thank you.

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MIA PERRON, CVR-CM

-175-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

CHARGE OF THE COURT

THE COURT: Ladies and gentlemen, I remind you that during this trial you and I have had certain duties to perform. As the trial judge, it is my responsibility to preside over the trial of this case and I also have the duty to rule on the admissibility of the evidence offered during this trial.

You are to consider only the competent evidence before you. If there was any testimony ordered stricken from the record, you must disregard that testimony. You are to consider only the testimony which has been presented from the witness stand, the exhibits which have been made part of the record of this case, as well as the stipulations of counsel.

I have the additional duty to charge you the law applicable to this case. As the presiding judge, I am the sole judge of the law of the case and it is your duty as jurors to accept the law and apply the law as I state it to you now. If you already have any idea as to what the law is or what the law ought to be and it does not agree with what I'm about to tell you, you must abandon your own ideas because you are sworn to accept the law and apply the law as I state it to you now.

In every case tried in court before a jury, the

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 jury becomes the sole and exclusive judge of the facts
2 in a case. A trial judge can make -- not make any
3 comment on or make any statement to you about the facts
4 in this case. Since you, the jury, are the sole judge
5 of the facts in this case, you are not to infer from
6 anything that I have said or done during the progress
7 of this trial, in ruling upon the admissibility of the
8 evidence, or anything that I say now during the course
9 of the instruction to you, that I have any opinion as
10 to the facts in this case. The law does not allow me
11 to have an opinion about the facts in this case. This
12 is a matter solely for you, the jury, to determine.

13 As jurors it is your duty to determine the
14 effect, value, and weight and the truth of the evidence
15 presented during this trial. The indictment charges
16 the defendant with trafficking cocaine base. I remind
17 you, the fact that the defendant was arrested, charged,
18 and indicted in this case is not evidence in this case
19 and cannot be considered by you as evidence of guilt in
20 this case, nor does it create any presumption or
21 inference of guilt. This document is simply the formal
22 written instrument which contains the charge made
23 against the defendant. It is the formal document by
24 which this case is brought into court.

25 The defendant has pled not guilty to this

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 indictment and that plea puts the burden on the State
2 to prove the defendant guilty. A person charged with
3 committing a criminal offense in South Carolina is
4 never required to prove himself innocent. I charge you
5 it is an important rule of the law that a defendant in
6 a criminal trial, no matter what the seriousness of the
7 charge may be, will always be presumed to be innocent
8 of the crime for which the indictment was issued unless
9 guilt has been proven by evidence satisfying you of
10 that guilt beyond a reasonable doubt. This presumption
11 of innocence does not end when you begin your
12 deliberations but it accompanies the defendant
13 throughout the trial until you reach a verdict of guilt
14 based upon evidence satisfying you of that guilt beyond
15 a reasonable doubt.

16 The presumption of innocence is like a robe of
17 righteousness placed about the shoulders of the
18 defendant, which remains with the defendant until it
19 has been stripped from the defendant by evidence
20 satisfying you of the defendant's guilt beyond a
21 reasonable doubt. The presumption of innocence is not
22 just mere legal theory, it is not a legal phrase, it is
23 a substantial right to which every defendant is
24 entitled unless you, the jury, are satisfied from the
25 evidence of the defendant's guilt beyond a reasonable

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 doubt.

2 The State has the burden of proving the
3 defendant guilty beyond a reasonable doubt. Some of
4 you may have served as jurors before where you were
5 told it was only necessary to prove that a fact is more
6 likely true than not true, such as by a greater weight
7 or preponderance of the evidence. In criminal cases,
8 the State's proof must be more powerful than that. It
9 must be beyond a reasonable doubt. Proof beyond a
10 reasonable doubt is proof that leaves you firmly
11 convinced of the defendant's guilt. There are very
12 few things in this world that we know with absolute
13 certainty, and in criminal cases the law does not
14 require proof that overcomes every possible doubt.
15 If, based upon your consideration of the evidence, you
16 are firmly convinced that the defendant is guilty of
17 the crime charged, you must find the defendant guilty.
18 If, on the other hand, you think there is a real
19 possibility that the defendant is not guilty, you must
20 give the defendant the benefit of the doubt and find
21 him not guilty.

22 There are two types of evidence which are
23 generally presented during a trial: direct evidence
24 and circumstantial evidence. Direct evidence is the
25 testimony of a person who claims to have actual

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 knowledge of a fact, such as an eyewitness. It is
2 evidence which immediately establishes the main fact to
3 be proved. Circumstantial evidence is a proof of a
4 chain of facts and circumstances indicating the
5 existence of a fact. It is evidence which immediately
6 establishes collateral facts from which the main fact
7 may be inferred. Circumstantial evidence is based on
8 inference and not on personal knowledge or observation.

9 The law makes absolutely no distinction between
10 the weight or value to be given either direct or
11 circumstantial evidence, nor is a greater degree of
12 certainty required of circumstantial evidence than that
13 of direct evidence. You should weigh all of the
14 evidence in this case and after weighing all of the
15 evidence if you are not convinced of the guilt of the
16 defendant beyond a reasonable doubt, you must find the
17 defendant not guilty.

18 Necessarily, you must determine the credibility
19 of witnesses who have testified in this case.
20 Credibility simply means believability. It becomes
21 your duty as jurors to analyze and to evaluate the
22 evidence and determine which evidence convinces you of
23 its truth. In determining the believability of
24 witnesses who have testified in this case, you may
25 believe one witness over several witnesses or several

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 witnesses over one witness. You may believe a part of
2 the testimony of a witness and reject the remaining
3 part of the testimony of that same witness. You may
4 believe the testimony of a witness in its entirety or
5 reject the testimony of a witness in its entirety. You
6 may consider whether a witness has exhibited to you any
7 interest, bias, prejudice, or other motive in this case
8 and you may also consider the appearance and manner of
9 a witness while on the witness stand.

10 The rules of evidence ordinarily do not permit
11 witnesses to testify to opinions or to conclusions. An
12 exception to this rule exists for witnesses we call
13 expert witnesses, a witness who by education and
14 experience has become an expert in some art, science or
15 profession or calling may state an opinion as to
16 relevant and material matter in which the witness
17 claims to be an expert and may also state the reasons
18 for that opinion. You should consider any expert
19 opinion received in evidence in this case and, like any
20 other evidence, give it the weight you think it
21 deserves. If you decide that the opinion of an expert
22 witness is not based on sufficient education or
23 experience, or if you conclude that the reasons given
24 in support of the opinion are not sound, or that the
25 opinion is outweighed by some other evidence, you may

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 disregard the opinion entirely. An expert witness'
2 testimony is to be given no greater weight than that of
3 any other witness simply because the witness is an
4 expert. Further, you are not required to accept an
5 expert's opinion, even though it was not contradicted.

6 I instruct you and I emphasize, the fact that
7 the defendant did not testify is not a factor to be
8 considered by you in any way in your deliberation and
9 in your consideration on the question of the guilt or
10 the innocence of the defendant. It must not be
11 considered by you in any manner whatsoever. A
12 defendant has the constitutional right to remain silent
13 and the assertion of this right must not be considered
14 by you in your deliberations. I repeat: under your
15 oath, you are to draw no conclusion whatsoever from the
16 fact that the defendant in this case did not testify.
17 The fact that this defendant did not testify should not
18 even be discussed in the jury room. The burden of
19 proof, as I have stated to you, is on the State. The
20 defendant is not required to prove himself innocent.
21 The burden of proof remains on the State to prove guilt
22 beyond a reasonable doubt.

23 In order to establish criminal liability,
24 criminal intent is required. For example, the mental
25 state required to be proved by the State for a

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 particular crime might be purpose, intent, knowledge,
2 recklessness, or criminal negligence. Criminal intent
3 must be proved by the State beyond a reasonable doubt.
4 Criminal intent is always a matter that must be
5 determined by the jury from the circumstances
6 surrounding the situation. There is no way to prove
7 intent to a mathematical certainty. There is no way
8 that medical science can dissect a person's brain and
9 determine what that person had in mind, so the law says
10 that criminal intent may be inferred from the
11 circumstances shown to have existed. This is how you
12 make a determination of whether or not the element
13 requiring intent was present. It is not necessary to
14 establish intent by direct and positive evidence but
15 intent may be established in the same way as any other
16 fact, by taking into consideration the acts and the
17 parties and all the facts and circumstances of this
18 case. Criminal intent is a mental state, a conscious
19 wrongdoing. It is up to you to determine what the
20 defendant intended to do, based upon the circumstances
21 shown to have existed. Criminal intent can arise from
22 action or a failure to act. It may arise from
23 negligence, recklessness, or an indifference to duty or
24 to consequences that is considered by the law to be the
25 equivalent of criminal intent.

MIA PERRON, CVR-CM

-183-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 The defendant is charged with trafficking
2 cocaine -- with trafficking in cocaine base. The State
3 must prove beyond a reasonable doubt that the defendant
4 knowingly sold, manufactured, cultivated, delivered,
5 purchased, brought into this state, provided financial
6 assistance, or otherwise aided, abetted, attempted, or
7 conspired to sell, manufacture, cultivate, deliver,
8 purchase, or bring into this state, was knowingly in
9 actual or constructive possession, knowingly attempted
10 to become in actual or constructive possession of
11 cocaine. Actual possession means that the cocaine was
12 in the actual physical custody of the defendant.
13 Constructive possession means that the defendant had
14 dominion and control or the right to exercise dominion
15 and control over either the cocaine itself or the
16 property on which the cocaine was found.

17 Mere presence at the scene where the drugs were
18 found is not enough to prove possession. Actual
19 knowledge of the presence of the cocaine is strong
20 evidence of the defendant's intent to control its
21 disposition or use. The defendant's knowledge and
22 possession may be inferred when a substance is found on
23 the property under the defendant's control. However,
24 this inference is simply an evidentiary fact to be
25 taken into consideration by you along with the other

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 evidence in this case and to be given the weight you
2 decide it should have. Two or more persons may have
3 joint possession of a drug.

4 The State must also prove beyond a reasonable
5 doubt that the amount of the cocaine, or any mixture
6 containing cocaine, was 100 grams or more but less than
7 200 grams. This is the amount that the law requires
8 and applies to the aggregate weight of any mixture
9 containing cocaine, not merely the weight of the
10 cocaine in its pure form.

11 Ladies and gentlemen, I will read to you the
12 verdict form. I read it in no particular significance.
13 It's simply one has to go on the paper first. In the
14 Court of General Sessions, docket number 2008-GS-10-
15 7492, the State of South Carolina versus Eric Sumter:
16 we, the jury, find the defendant not guilty or, we, the
17 jury, find the defendant guilty, of trafficking
18 cocaine.

19 Madam Foreperson, you must sign the verdict form
20 and date the verdict form. You must certify that the
21 decision is reached and it is a unanimous decision of
22 the jury.

23 Ladies and gentlemen, this will be the last
24 time that I say this to you: do not begin your
25 deliberations. Do not discuss this case amongst

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 yourselves. We will be gathering the verdict form and
2 the evidence that goes back to you and at that time the
3 bailiff will indicate to you that you may begin your
4 deliberations.

5 Ladies and gentlemen -- Mr. Alternate, you have
6 completed your service and so you will be kept in a
7 separate room for just a few moments and I will release
8 you at the appropriate time.

9 Until you are told to begin your deliberations,
10 do not do so.

11 Please rise for the jury.

12 [Whereupon, the jury exits the courtroom at
13 2:34 p.m.]

14 THE COURT: Please be seated.

15 Any objection to the charge as read? From the
16 State?

17 MR. SIMPSON: None from the State, Your Honor.

18 THE COURT: From the defendant?

19 MR. RUNYON: Judge, out of an abundance of
20 caution -- and I would never presuppose to argue with a
21 ruling of the Court -- but I would renew my request for
22 the same reason as before, for the Court to charge
23 possession with intent to distribute. And I would add,

24 Judge, in thinking about it, that based upon the
25 expert's testimony, simple possession would not be

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 beyond the pale of this case, and I would ask for that
2 additional charge.

3 THE COURT: All right. And, again, there was no
4 objection to the verdict form, there's no objection to
5 the charge as read, with the exception that you are
6 wishing the Court to include the lesser-included.

7 State's 3, 4, 5, 6, 7, 8 and 9 are going back to
8 the jury.

9 I am declining to charge the lesser-included
10 possession with intent to distribute cocaine and now,
11 the request by the defendant, possession of cocaine.

12 The Court's review of the testimony as
13 presented, as well as the case law, indicates that
14 there was no evidence, there was no discrepancy as to
15 the total weight of over 100 grams. And based upon my
16 review of the case law and the request by the defendant
17 to charge what could be a lesser-included if there had
18 been some discrepancy as to the weight of the drugs, I
19 am declining to charge any lesser-included, based on
20 the evidence and the testimony that was presented.

21 Your objection I believe now is noted twice for
22 the record, Mr. Runyon.

23 Any objection to the verdict form and the
24 evidence going back?

25 MR. RUNYON: Not from the defense, Your Honor.

MIA PERRON, CVR-CM

-187-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 THE COURT: All right. Thank you.

2 MR. SIMPSON: If I may approach the court
3 reporter? These were not entered into evidence --

4 THE COURT: Here you go, Mr. Bailiff, ready to
5 go back.

6 [Whereupon, the evidence goes to the jury at
7 2:37 p.m.]

8 THE COURT: And with that, anything further
9 before we await a verdict?

10 MR. RUNYON: Nothing from the defense, Your
11 Honor.

12 THE COURT: All right. We'll be at ease.

13 [Whereupon, a recess is taken from 2:38 p.m. to
14 2:52 p.m.]

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State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

VERDICT

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2 THE COURT: All right. Anything before we bring
3 in the jury? From the State?

4 MR. SIMPSON: Nothing from the State, Your
5 Honor.

6 THE COURT: From the defendant?

7 MR. RUNYON: Nothing from the defense, Your
8 Honor.

9 THE COURT: All right. Let's bring in the jury.

10 [Whereupon, the jury enters the courtroom at
11 3:02 p.m.]

12 THE BAILIFF: The jury is seated, Your Honor.

13 THE COURT: Thank you. Please be seated. Madam
14 Foreperson, I understand that you have reached a
15 verdict. If you'll please hand the verdict form to the
16 bailiff.

17 [Whereupon, the foreperson proffers documents to
18 the bailiff. The bailiff proffers documents to the
19 Court]

20 THE COURT: Mr. Sumter, please rise.

21 [Whereupon, the Court proffers documents to the
22 clerk of court]

23 THE CLERK OF COURT: In the Court of General
24 Sessions, State of South Carolina, County of
25 Charleston, the State of South Carolina, plaintiff,

MIA FERRON, CVR-CM

-189-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 versus Eric Sumter, defendant, we, the jury, find the
2 defendant guilty of trafficking cocaine; I certify that
3 this decision is the unanimous decision of the jury;
4 signed, Mary K. Bauer, Foreperson, October 19th, 2010.

5 Madam Foreperson, ladies and gentlemen of the
6 jury, if this is your verdict, please raise your right
7 hand.

8 [Whereupon, jurors comply]

9 THE CLERK OF COURT: Your Honor, the verdict
10 stands.

11 THE COURT: Thank you.

12 Anything further required of the jury, Mr.
13 Runyon?

14 MR. RUNYON: We would respectfully request
15 polling, Judge.

16 - - - - -
17 POLLING OF THE JURY

18 THE COURT: All right. Madam Clerk, if you
19 would please poll the jury.

20 THE CLERK OF COURT: Ladies and gentlemen of the
21 jury, I will call your name and I will ask you if this
22 is your verdict. And if it is, please give the
23 appropriate response.

24 Juror number 14, Mary K. Bauer.

25 MS. BAUER: Yes.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 THE CLERK OF COURT: Is this your verdict?

2 MS. BAUER: Yes.

3 THE CLERK OF COURT: And is this still your
4 verdict?

5 MS. BAUER: Yes.

6 THE CLERK OF COURT: Thank you.

7 Juror number 66, Patricia Durr. Is this your --

8 MS. DURR: Yes.

9 THE CLERK OF COURT: -- verdict?

10 MS. DURR: Yes.

11 THE CLERK OF COURT: Is this still your verdict?

12 MS. DURR: Yes.

13 THE CLERK OF COURT: Thank you.

14 Juror number 205, Myron Pstrak.

15 MR. PSTRAK: Pstrak.

16 THE CLERK OF COURT: Pstrak. Is this your
17 verdict?

18 MR. PSTRAK: Yes, it is.

19 THE CLERK OF COURT: Is this still your verdict?

20 MR. PSTRAK: Yes, it is.

21 THE CLERK OF COURT: Thank you.

22 Juror number 253, Mark Stephenson. Is this your
23 verdict, sir?

24 MR. STEPHENSON: Yes.

25 THE CLERK OF COURT: Is this still your verdict?

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 MR. STEPHENSON: Yes.

2 THE CLERK OF COURT: Thank you.

3 Juror number 261, Amy Thomas. Is this your
4 verdict, ma'am?

5 MS. THOMAS: Yes.

6 THE CLERK OF COURT: Is this still your verdict?

7 MS. THOMAS: Yes.

8 THE CLERK OF COURT: Thank you.

9 Juror number 97, Emuel Green. Is this your
10 verdict?

11 MR. GREEN: Yes.

12 THE CLERK OF COURT: Is this still your verdict?

13 MR. GREEN: Yes.

14 THE CLERK OF COURT: Thank you.

15 Juror number 306, Arlene Ethridge. Is this your
16 verdict?

17 MS. ETHRIDGE: Yes.

18 THE CLERK OF COURT: Is this still your verdict?

19 MS. ETHRIDGE: Yes.

20 THE CLERK OF COURT: Thank you.

21 Juror number 138, Henry Laurens. Is this your
22 verdict?

23 MR. LAURENS: Yes.

24 THE CLERK OF COURT: Is this still your verdict?

25 MR. LAURENS: Yes.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 THE CLERK OF COURT: Thank you.

2 Juror number 6, Meaghan Askea. Is this your
3 verdict?

4 MS. ASKEA: Yes, it is.

5 THE CLERK OF COURT: Is this still your verdict?

6 MS. ASKEA: Yes.

7 THE CLERK OF COURT: Thank you.

8 Juror number 92, William Gotell. Is this your
9 verdict?

10 MR. GOTELL: Yes.

11 THE CLERK OF COURT: Is this still your verdict?

12 MR. GOTELL: Yes, it is.

13 THE CLERK OF COURT: Thank you.

14 Juror number 212, Barbara Rivers. Is this your
15 verdict?

16 MS. RIVERS: Yes.

17 THE CLERK OF COURT: Is this still your verdict?

18 MS. RIVERS: Yes.

19 THE CLERK OF COURT: Thank you.

20 Juror number 94, Natasha Grayer. Is this your
21 verdict?

22 MS. GRAYER: Yes.

23 THE CLERK OF COURT: Is this still your verdict?

24 MS. GRAYER: Yes.

25 THE CLERK OF COURT: Thank you.

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 Your Honor, the jurors were polled and the
2 verdict stands.

3 THE COURT: Thank you.

4 Mr. Runyon, anything further?

5 MR. RUNYON: Nothing further, Your Honor.

6 THE COURT: Anything further of the jury from
7 the State?

8 MR. SIMPSON: Nothing from the State, Your
9 Honor.

10 THE COURT: Ladies and gentlemen, this completes
11 your service to this matter. If you would please --
12 you'll be escorted to your jury deliberation room and I
13 will be in there in just a few moments to personally
14 thank you for your service to Charleston County.

15 Please rise for the jury.

16 [Whereupon, the jury exits the courtroom at
17 3:07 p.m.]

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State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

SENTENCING

THE COURT: Thank you. Be seated.

Outside of the presence of the jury, Mr. Runyon,
anything further?

MR. RUNYON: No, Your Honor, not at this time.
We are present and ready for sentencing.

THE COURT: All right. Are you prepared with
your sentencing sheet at this time?

MR. SIMPSON: I am, Your Honor.

THE COURT: All right. Please hand it forward.
Is this a first-offense drug offense for Mr.
Sumter, Mr. Simpson?

MR. SIMPSON: No, it is not, Your Honor. But I
believe the sentencing on the weight is mandatory,
regardless of what sentence.

All we would state as to sentencing, Your Honor,
is to cite defendant's prior record is a 1999, two
counts of unlawful possession of a pistol; from
February of 2001, possession of a stolen motor vehicle
and resisting arrest; in July of 2001, failure to stop
for a blue light and giving false info to police; and
from July of 2005, possession with intent to distribute
crack cocaine.

THE COURT: And my understanding of the possible
-- or the sentence is a mandatory twenty-five years and

MIA PERRON, CVR-CM

-195-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 \$50,000; is that correct?

2 MR. SIMPSON: That's my understanding, Your
3 Honor.

4 THE COURT: Mr. Runyon, is that your
5 understanding of what the sentence is?

6 MR. RUNYON: Unfortunately, Your Honor, yes, I
7 understand that.

8 THE COURT: All right. Mr. Runyon, I'll be
9 happy to hear from you. I've sat through two days of
10 trial. I've heard the facts. Be happy to hear from
11 you with regards to your client Mr. Sumter.

12 MR. RUNYON: Your Honor, it's always --
13 sentencing is always difficult. He's in court with his
14 family and his mother. And this whole situation is
15 hard on everyone. Mr. Sumter is -- as you've said,
16 you've heard the facts. I would ask you to stick with
17 the statutory requirement, and thank you for the
18 Court's ruling.

19 And I would -- after you impose sentence, I
20 would like to enter some post-trial motions just
21 briefly so we'll have the record complete.

22 THE COURT: All right. Mr. Sumter, anything you
23 wish to tell the Court before I impose sentence?

24 MR. SUMTER: I'd like -- I just want to ask the
25 Court, Your Honor, for some leniency with the guilty

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 verdict. And that's all. And ask for Your Honor to
2 give me some kind of leniency.

3 THE COURT: Thank you, Mr. Sumter. Anything
4 further, Mr. Runyon?

5 MR. RUNYON: No, Your Honor.

6 THE COURT: It's the order of the Court on
7 indictment 2008-GS-10-7492, Mr. Sumter, that you be
8 committed to the State Department of Corrections for a
9 term of twenty-five years and pay a fine of \$50,000.
10 Give you credit for any time that you have served.

11 Mr. Sumter, good luck to you.

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MIA PERRON, CVR-CM

-197-

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

POST-TRIAL MOTIONS

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2 THE COURT: Mr. Runyon, I'll be happy to hear
3 from you as far as any post-trial motions.

4 MR. RUNYON: Your Honor, I think just to make
5 the record complete, it behooves us to -- and because
6 of the severity of the charge and the sentence, we
7 would ask the Court to set aside the verdict of the
8 jury and grant a new -- and enter a motion for a new
9 trial, essentially based upon the Court's refusal to
10 charge possession with intent to distribute and
11 insufficiency of the evidence in the case, but
12 primarily based upon the denial of our motion for a
13 charge of possession with intent to distribute, Your
14 Honor. I know we previously argued it and I'm not
15 going to belabor the Court's time.

16 THE COURT: Mr. Simpson, any response to Mr.
17 Sumter's motion for a new trial?

18 MR. SIMPSON: Just briefly, Your Honor.

19 Your Honor, we would just ask you -- we
20 obviously believe your earlier rulings on this point
21 were correct and supported by case law. Specifically
22 State v. Peay -- P-E-A-Y -- I think addresses the
23 specific point, among other cases address it, Your
24 Honor.

25 THE COURT: Anything further, Mr. Runyon?

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 MR. RUNYON: No, Your Honor.

2 THE COURT: I am denying your motion for a new
3 trial. I believe the reasons you articulate, Mr.
4 Runyon, were the failure for the Court to charge the
5 lesser-included, as you believe the possession with
6 intent to distribute cocaine, based upon, as I
7 articulated at my ruling at the close of the evidence,
8 there was not evidence with which the Court felt would
9 entitle your client to a charge of possession with
10 intent to distribute cocaine. You argued that at the
11 close of the case, as well as after I instructed the
12 jury. I articulated the Court's rationale at both of
13 those times.

14 As to your motion for a new trial based upon the
15 insufficiency of evidence: there was overwhelming
16 evidence that there was 105.5 grams of cocaine. The
17 defendant was in possession, actual and constructive
18 possession, of the cocaine in the vehicle. There was
19 testimony by more than one individual that identified
20 your client as the individual in possession of the
21 cocaine and that there was more than one individual
22 that testified that the -- all of the events occurred
23 in Charleston County. Deny your motion for a new
24 trial.

25 Anything further?

State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

1 MR. RUNYON: Nothing further from the defense,
2 Your Honor.
3 THE COURT: Anything further from the State?
4 MR. SIMPSON: No, Your Honor.
5 THE COURT: All right. Mr. Sumter, I'm sure
6 your attorney -- Mr. Sumter, I'm sure your attorney has
7 advised you, but I feel that it is the Court's province
8 to advise you, as well: you have the right to appeal
9 the Court's sentence, as well as the jury's decision,
10 but you or your attorney must do so within ten days.
11 Do you understand that, sir?
12 MR. SUMTER: Yes, Your Honor.
13 THE COURT: Good luck to you, Mr. Sumter.
14 MR. RUNYON: It will be filed in the morning,
15 Judge --
16 THE COURT: Thank you..
17 MR. RUNYON: -- to complete the record.
18 THE COURT: All right. I understand -- we are
19 in recess in this matter.
20 [JURY TRIAL CONCLUDES AT 3:13 P.M.]
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State v. Eric Sumter
Jury Trial - Volume 2 of 2
October 19, 2010

C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Kristi L. Harrington, on Tuesday, October 19, 2010.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 21st day of May, 2011.

Mia Perron
Mia Perron, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM

COPY

-201-

FORM 5

2013-CP-10-38

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTONEric Sumter, #278658

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
JULIE L. ARMSTRONG
CLERK OF COURT
13 JAN -3 PM 3:44INSTRUCTIONS - READ CAREFULLY

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

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Corr. Inst.
2. Name and location of Court which imposed sentence Charleston Co. General Sessions
3. Name(s) of co-defendant(s) (if any) Tiffany Deas
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-10-07492 Trafficking Cocaine
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 10/19/2010 25 yrs & \$50,000 fine
 - (b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty Yes
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 10/10/12
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. No. 2012-UP-554
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) See attached pages 3 A-C
- (b) _____
- (c) _____

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

- (a) same as 10(a)
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

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

- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (c) the disposition thereof:
- i. _____
- ii. _____
- iii. _____

Applicant was denied his Sixth and Fourteenth Amendment rights to the effective assistance of counsel insofar as trial counsel failed to provide representation within the requisite range of competent assistance and these omissions were prejudicial to his defense:

- 10(a) Trial counsel failed to challenge the sufficiency of the subject indictment prior to taking of evidence in contravention of the Fifth Amendment and South Carolina Law.
- 11(a) Trial counsel failed to timely object to the sufficiency of the indictment which did not specifically allege the essential element of conspiracy with co-defendant Tiffany Deas, who was the person in possession of the drugs.
- 10(b) Trial counsel failed to move for dismissal or directed verdict where Applicant was not in possession of the drugs for which he was arrested and indicted.
- 11(b) Applicant was not in possession of drugs and was not charged with conspiracy as an element of the offense and counsel failed to move for directed verdict upon these deficiencies.

- 10(c) Trial counsel failed to object to the Solicitor leading a witness.
- 11(c) Trial counsel did not object to the Solicitor leading the co-defendant state witness (Deas) during direct testimony to justify her knowledge of and presence at a known drug dealer's apartment where Deas was the person in possession of the drugs during the arrest.
- 10(d) Trial counsel failed to object to the Solicitor testifying for, vouching for, and pitting witnesses.
- 11(d) In opening statements, the Solicitor testified as to what witnesses would say specifically; vouched for the credibility of the state's witness Tiffany Deas; and pitted the future testimony of Deas against the anticipated absence of Applicant's testimony, and trial counsel failed to object.
- 10(e) Trial counsel failed to object to the solicitor eliciting testimony regarding alleged prior bad acts of Applicant.
- 11(e) During direct examination of state witness Tiffany Deas, the Solicitor elicited testimony that implied Applicant was previously engaged in drug trafficking, which was not properly before the jury, and counsel failed to object.

- 10(f) Trial counsel failed to object to the Solicitor bolstering witness testimony.
- 11(f) During closing arguments the Solicitor bolstered the testimony of Tiffany Deas that the drugs she had in her possession at arrest, as shown by the evidence, were not hers, but the Applicant's; and counsel failed to object.
- 10(g) Trial counsel conceded the guilt of Applicant during trial thus depriving him of representation.
- 11(g) During his closing argument trial counsel conceded the guilt of Applicant to the jury when he told the jury Applicant was "just some wretched soul who had some cocaine," which negated Applicant's defense and deprived him of a fair trial.
- 10(h) Trial counsel failed to object or move for a directed verdict where essential elements of the state's case were not proven.
- 11(h) Trial counsel did not object or move for directed verdict concerning the essential elements of actual or constructive possession not being shown.

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- _____ No _____
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Grounds 10 a-h cognizable only on PCR
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

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

- (a) the name and address of each attorney who represented you:
- i. William Runyon, Charleston Bar
- ii. Susan B. Hackett, S.C. Office of Appellate Defense
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial & Sentencing
- ii. Direct appeal
- iii. _____

19. State clearly the relief you seek in filing this application:

Vacate conviction and sentence or remand for a new trial.

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

No

STATE OF SOUTH CAROLINA)

County of CHARLESTON)

VERIFICATION

Eric Sumter

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Eric Sumter

SWORN to and subscribed before me this 27th
day of December, 2012.

Ludleen Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

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

Eric Sumter

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Eric Sumter

Applicant

SWORN or affirmed to and subscribed before me this
27th day of December, 2012.

Ludraan Bryant
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Eric Sumter, #278658,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2013-CP-10-0038

RETURN

The Respondent, making its Return to the application for post-conviction relief (PCR) filed January 3, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the October 2008 term of the Charleston County Grand Jury for trafficking cocaine (2010-GS-10-7492). The Applicant was represented by William J. Runyon, Esquire.

The Applicant proceeded to trial and was convicted. On October 19, 2010, the Applicant was sentenced by the Honorable Kristi L. Harrington to confinement for a period of twenty-five (25) years and a fine of \$50,000.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Susan Hackett, Esquire, of the South Carolina Office of Indigent Defense. The Applicant's appeal was dismissed after the filing of an Anders brief. State v. Sumter, 2012-UP-554 (S.C. Ct. App. October 10, 2012). The Remittitur was issued October 26, 2012.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the appellate documents. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Trial counsel failed to challenge the sufficiency of the subject indictment prior to taking of evidence in contravention of the Fifth Amendment and South Carolina Law.
 - b. Trial counsel failed to move for dismissal or directed verdict where Applicant was not in possession of drugs for which he was arrested and indicted.
 - c. Trial counsel failed to object to the Solicitor leading a witness.
 - d. Trial counsel failed to object to the Solicitor testifying for, vouching for, and pitting witnesses.
 - e. Trial counsel failed to object to the Solicitor eliciting testimony regarding alleged prior bad acts of Applicant.
 - f. Trial counsel failed to object to the Solicitor bolstering witness testimony.
 - g. Trial counsel conceded the guilt of Applicant during trial thus depriving him of representation.
 - h. Trial counsel failed to object or move for a directed verdict where essential elements of the state's case were not proven.

III.

The Applicant alleges ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having

produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

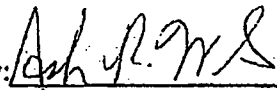
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

Nov. 1, 2013.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ERIC SUMTER, #278658

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent

IN THE COURT OF COMMON PLEAS

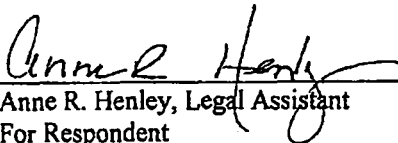
2013-CP-10-0038

AFFIDAVIT OF SERVICE BY MAIL

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

David J. Harmon
 40 Calhoun Street
 Suite 400
 Charleston, SC 29401

DATED this 4th day of November, 2013


 Anne R. Henley, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
 COUNTY OF CHARLESTON) CASE NO.: 2013-CP-10-00038

ERIC SUMTER,)
)
 APPLICANT,)
)
 VS.)
)
 STATE OF SOUTH CAROLINA)
)
 RESPONDENT.)

POST CONVICTION RELIEF HEARING

held before the Honorable Deadra L. Jefferson
 Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
 in the Charleston County Courthouse.
 Charleston, South Carolina
 on May 20, 2014, Commencing at 9:59 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 31865
 Charleston, South Carolina 29417-1865
 1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE APPLICANT: Charles T. Brooks, III, Esquire
Attorney at Law
309 Broad Street
Sumter, South Carolina 29150

FOR THE RESPONDENT: Ashleigh R. Wilson, Esquire
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211-1549

INDEX TO PROCEEDINGS

	PAGE
PROCEEDINGS	4
ERIC SUMTER	
Direct Examination by Mr. Brooks	10
Cross-Examination by Ms. Wilson	22
WILLIAM RUNYON	
Direct Examination by Mr. Brooks	27
Cross-Examination by Ms. Wilson	32
CLOSING ARGUMENT BY MR. BROOKS	39
CLOSING ARGUMENT BY MS. WILSON	40
COURT'S FINDINGS	43
CERTIFICATE OF COURT REPORTER	53

EXHIBITS

[None]

Eric Sumter vs. State of South Carolina
Post-Conviction Relief Hearing
May 20, 2014

1 PROCEEDINGS

2 THE COURT: Ready to proceed?

3 MR. BROOKS: Yes, ma'am.

4 I wanted to tell you before we proceed, Judge,
5 my client, he has some shades on, and he said that he
6 had some surgery, some eye surgery on the eyes.

7 THE COURT: Okay.

8 MR. BROOKS: So I wanted to let the Court know
9 because I know generally most judges, and you
10 included, Judge, probably do not want somebody sitting
11 in here with shades on.

12 THE COURT: Okay. That's fine.

13 MR. BROOKS: The second thing, Judge -- I guess
14 we're on the record, ma'am?

15 THE COURT: Yes.

16 MR. BROOKS: Judge, my client expresses that he
17 wants me to ask the Court for a continuance in this
18 matter. He has indicated he just doesn't feel
19 comfortable going forward today.

20 THE COURT: Because?

21 MR. BROOKS: And I've expressed to him, you
22 know, the situation in this PCR the fact that, you
23 know, delaying it would only -- could actually hurt
24 him, as far as if he's eligible to get a PCR, and
25 postpone it, and then we get a new trial and deal with

Eric Sumter vs. State of South Carolina
Post-Conviction Relief Hearing
May 20, 2014

1 the case again. But he wants me to ask for a
2 continuance in this matter.

3 THE COURT: What's the State's position?

4 MS. WILSON: Your Honor, the State is here and
5 we're ready to proceed with our witness.

6 THE COURT: I haven't heard anything that would
7 rise to the level of justifying a continuance. Your
8 motion is denied.

9 MR. BROOKS: Yes, ma'am.

10 THE COURT: Are you ready to proceed, Mr.
11 Brooks?

12 MR. BROOKS: Yes, ma'am.

13 THE COURT: Is the State ready to proceed?

14 MS. WILSON: Yes, Your Honor.

15 THE COURT: All right. Call your first witness.

16 MR. BROOKS: We call Mr. Sumter to the stand.

17 THE COURT: Sir, you can testify at counsel
18 table. If you would stand and raise your right hand
19 to be sworn.

20 MR. SUMTER: Can I say something, Your Honor?

21 THE COURT: Sure.

22 MR. SUMTER: I had surgery on my eyes. I barely
23 can see right now. My vision is real poor.

24 THE COURT: Yes, sir.

25 MR. SUMTER: So I don't feel I'm able to conduct

Eric Sumter vs. State of South Carolina
Post-Conviction Relief Hearing
May 20, 2014

1 my case the way it's supposed to be.

2 THE COURT: Well, sir --

3 MR. SUMTER: That's why I asked for a
4 continuance.

5 THE COURT: -- you have a lawyer that represents
6 you. If you have anything you want to make him aware
7 of, you can certainly -- you're able to speak, you're
8 able to communicate, so you're able to assist in your
9 representation. And you can bring anything to his
10 attention that you feel you need to tell him about.

11 MR. SUMTER: Yes, ma'am.

12 Also, I have my paperwork right here, right --

13 THE COURT: He has your paperwork. What
14 paperwork you have in your file is not going to be
15 determinative of the questions he asks.

16 MR. SUMTER: I'm trying -- I can't really see.
17 If I take these shades off, I can't really see, Your
18 Honor.

19 THE COURT: I understand that. But there's
20 nothing that I can discern in that paperwork that
21 would aid you in answering Mr. Brooks' questions.

22 MR. SUMTER: And also, Your Honor, Mr. Brooks
23 just got my case last month in April. I had Judge
24 Harmon -- I mean, not judge. I had --

25 THE COURT: David Harmon.

Eric Sumter vs. State of South Carolina
Post-Conviction Relief Hearing
May 20, 2014

1 MR. SUMTER: -- David Harmon on the case.

2 He just got the case last month and I don't feel
3 that, you know, he have enough time.

4 THE COURT: There's nothing particularly complex
5 about this. They're fairly straightforward. A month
6 is a more than adequate time frame to prepare for your
7 PCR. It's based on the record of your -- of the
8 transcript in this matter, so there isn't really much
9 more that he needs to do, other than to review that
10 and speak with you and see if there are any other
11 leads or other things that you would want him to
12 follow up on.

13 MR. SUMTER: I spoke with him one time before,
14 and this is the first time I met him today. It's the
15 first time. I spoke to him one time on the phone.
16 And I don't feel I'm ready.

17 THE COURT: Well, Mr. Brooks has indicated to
18 the Court that he's ready to proceed. And I've
19 considered the motion for continuance and I've denied
20 it.

21 I need you to raise your right hand for me,
22 please, sir, to be sworn, so that you can testify.

23 [Whereupon, Mr. Sumter is duly sworn by the
24 Court as follows: do you swear or affirm the
25 testimony you give will be the truth]

Eric Sumter vs. State of South Carolina
Post-Conviction Relief Hearing
May 20, 2014

1 MR. SUMTER: Yes.

2 THE COURT: You can put your right hand down,
3 sir.

4 State your full name for the record.

5 MR. SUMTER: Eric Sumter.

6 THE COURT: Sir, you may be seated. If you
7 would state your full name for the record, spelling
8 your last name for the court reporter.

9 THE WITNESS: Eric Sumter. S-U-M-T-E-R.

10 THE COURT: You may take your seat.

11 This is Eric Sumter versus the State of South
12 Carolina, 2013-CP-10-38. It is before the Court on an
13 application for post conviction relief filed on
14 January 3rd of 2013. The State filed its return on
15 November 5th of 2013. Mr. Sumter pled guilty before
16 Judge Harrington on --

17 MR. BROOKS: Actually --

18 THE COURT: I'm sorry?

19 MR. BROOKS: Actually, Judge, a trial.

20 THE COURT: I apologize. You're absolutely
21 correct.

22 He proceeded to trial and was convicted on
23 October 19, 2010, before Judge Harrington. She
24 sentenced him to twenty-five years and a 50,000-dollar
25 fine. A timely appeal was filed by the office of

Eric Sumter vs. State of South Carolina
Post-Conviction Relief Hearing
May 20, 2014

1 indigent defense and the appeal was dismissed pursuant
2 to an Anders brief and pursuant to an unpublished
3 opinion. He alleges ineffective assistance of
4 counsel, Mr. Runyon was his trial counsel, and he
5 makes several allegations that are enumerated as A
6 through H.

7 Mr. Brooks, you may proceed.

8 MR. BROOKS: Yes, ma'am.

9 THE COURT: You're welcome.
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ERIC SUMTER
Direct Examination by Mr. Brooks
May 20, 2014

ERIC SUMTER,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BROOKS:

Q. Mr. Sumter, you brought this allegation against Mr. Runyon as your trial counsel in this matter; is that correct?

A. Yes, sir.

Q. Now, was Mr. Runyon retained or court appointed?

A. Retained.

Q. You're at Fagee [phonetic]

A. Yes, sir.

Q. And in the facts of this case, it involved the police stopping a vehicle that you were in riding with a Tiffany Deas; is that correct?

A. Yes.

Q. And who is Tiffany Deas?

A. My codefendant.

Q. Was she a girlfriend?

A. No, not a girlfriend --

THE COURT: Sir, you need to speak up. We can't hear you.

A. She was a friend of mine.

I wouldn't consider her as being a girlfriend.

ERIC SUMTER
Direct Examination by Mr. Brooks
May 20, 2014

1 But, yeah, she was a friend of mine.

2 Q. [Mr. Brooks] And when the police stopped her,
3 they detained y'all and actually took her down to the
4 detention center; is that correct?

5 A. Yes.

6 Q. And that's where she -- as a part of being
7 booked, she disclosed that she had drugs on her; is that
8 correct?

9 A. Yes.

10 Q. Now, the police never found any drugs on you; is
11 that right?

12 A. No.

13 Q. During the stop; is that correct?

14 A. No, sir.

15 Q. Yet, you were charged with this incident; is
16 that right?

17 A. Yes.

18 Q. Now, during the trial, did you -- or prior to
19 the trial, were you on the street on bond or were you in
20 jail before --

21 A. I was --

22 Q. -- your trial?

23 A. I was in the county jail for two and a half
24 years.

25 Q. Okay. And when you tried your case, what are

ERIC SUMTER
Direct Examination by Mr. Brooks
May 20, 2014

1 you saying that Mr. Runyon did wrong in his representation
2 of you?

3 A. What did he do wrong?

4 Q. Yes, sir. This is your day for you to talk
5 about Mr. Runyon and his mistakes as your trial counsel
6 and why these mistakes prejudiced you in your case.

7 A. Well, Mr. Runyon failed to challenge the
8 sufficiency of my indictment prior to taking up evidence
9 in contravention [phonetic] of the fifth amendment and
10 South Carolina law.

11 Q. All right. We'll take it one at a time.

12 THE COURT: Let the record reflect that
13 Mr. Sumter seems to be capable of reading from the
14 documents around him, as he just articulated very
15 clearly what he has written in front of him.

16 You may continue.

17 Q. [Mr. Brooks] So what you're saying is he should
18 have challenged the indictment?

19 A. Yes.

20 Q. And you're saying that the indictment was
21 insufficient on its face; is that correct?

22 A. Yes.

23 Q. What are you saying particularly was
24 insufficient about the indictment?

25 A. That he failed to timely object to the

ERIC SUMTER
Direct Examination by Mr. Brooks
May 20, 2014

1 sufficiency of the indictment, which we know specifically
2 allege the essential elements of conspiracy with my
3 codefendant Tiffany Deas, who was the person in possession
4 of the drugs.

5 Q. So what you're saying is he should have actually
6 moved to the Court that they wasn't ready to try you
7 because the indictment was defective?

8 A. Yes, sir.

9 Q. What's the next thing about Mr. Runyon's poor
10 performance in representing you?

11 A. Mr. Runyon failed to move for dismissal or
12 direct verdict to the fact I was not in possession of the
13 drugs for which I was arrested and indicted for.

14 Q. So basically you're saying that he should have
15 asked the Court to basically dismiss the case because you
16 didn't even have the drugs in your possession?

17 A. Yes.

18 Q. Personal or constructive possession; is that
19 correct?

20 A. Yes.

21 Q. And that the drugs actually were in the
22 possession of somebody else?

23 A. Yes, sir.

24 Q. What's the next thing?

25 A. Mr. Runyon failed to object to the solicitor

ERIC SUMTER
Direct Examination by Mr. Brooks
May 20, 2014

1 leading a witness.

2 Q. Is this in regards -- which witness? Is this in
3 regards to Tiffany?

4 A. Yes.

5 Q. Can you tell the Court what you mean by the
6 solicitor leading Tiffany Deas, your codefendant?

7 A. As you can see, Your Honor, on page 94, Volume 2
8 of 2 in my trial transcript, Mr. Runyon did not object to
9 the solicitor leading my codefendant Tiffany Deas during
10 direct testimony to justify her knowledge and presence at
11 allegedly -- apartment where Tiffany Deas was the person
12 in possession of the drugs during her arrest.

13 THE COURT: If anyone has a cell phone on, it
14 needs to be turned off. Not vibrate, off. If it goes
15 off, it will be taken and it will not be returned.

16 You may continue.

17 Q. [Mr. Brooks] Now, is there anything else in
18 regards to Mr. Runyon's trial performance that you want to
19 tell the Court?

20 A. Mr. Runyon failed to object to the solicitor
21 testifying for and vouching for and defending my
22 codefendant, Tiffany Deas.

23 As you can see, Your Honor, on pages 45, 46, 47
24 and 48 in Volume 1 of 2 in my trial transcript, in opening
25 statement the solicitor testified as to what Tiffany Deas

ERIC SUMTER
Direct Examination by Mr. Brooks
May 20, 2014

1 would say specifically. He vouched for the credibility of
2 the State's witness, Tiffany Deas, and pitted the future
3 testimony of Tiffany Deas against the participator actions
4 of my testimony. And Mr. Runyon failed to object.

5 Q. So you're saying that the solicitor bolstered
6 the credibility of the codefendant, Tiffany Deas, in the
7 eyes of the jury and that's something that Mr. Runyon
8 should have objected to; is that correct?

9 A. Yes.

10 Q. And what's the next thing in regards to?

11 A. Mr. Runyon failed to object to the solicitor
12 eliciting testimony regarding my alleged prior bad acts.

13 As you can see, Your Honor, on page 122 of
14 Volume 2 of 2 of my trial transcript, during direct
15 examination of the State's witness, Tiffany Deas, the
16 solicitor elicited testimony that I was previously engaged
17 in drug trafficking, which was not properly before the
18 jury. And Mr. Runyon failed to object.

19 Q. And you feel that that prejudiced you and put
20 you in a bad light; is that correct, Eric?

21 A. Yes.

22 Q. And that's something that Mr. Runyon should have
23 objected to because it clearly prejudiced you in your
24 trial in front of the jury?

25 A. Yes.

ERIC SUMTER
Direct Examination by Mr. Brooks
May 20, 2014

1 Q. And what's the next thing about Mr. Runyon's
2 performance?

3 A. Mr. Runyon failed to object to the solicitor
4 bolstering Tiffany Deas' testimony.

5 As you can see, Your Honor, on page 169 in
6 Volume 2 of 2 of my trial transcript, during closing
7 argument the solicitor bolstered testimony of Tiffany Deas
8 that the drugs she had in her possession at arrest, as
9 shown by the evidence, were not hers but belonged to me.
10 And Mr. Runyon failed to object.

11 Q. And is there anything else after that?

12 A. Mr. Runyon conceded my guilt during trial, thus
13 depriving me of representation.

14 Q. Okay. So what you're saying is that in the
15 closing argument that he made, he made statements that
16 prejudiced you and conceded your guilt; is that correct?

17 A. Yes.

18 As you can see, Your Honor, on page 174 of
19 volume 2 of 2 of my trial transcript, during closing
20 argument Mr. Runyon conceded my guilt to the jury and he
21 told the jury I was just some wretched soul who had some
22 cocaine, which negated my defense and deprived me of a
23 fair trial.

24 Q. Okay. Now, in your case here, is there anything
25 else?

ERIC SUMTER
Direct Examination by Mr. Brooks
May 20, 2014

1 A. Yes. I got one more.

2 Mr. Runyon failed to object or move for a direct
3 verdict where essential elements of the State's case were
4 not proven.

5 As you can see, Your Honor, on page 142 of
6 volume 2 of 2 of my trial transcript, Mr. Runyon did not
7 object or move for a direct verdict concerning the
8 essential elements of actual or constructive possession
9 not being shown.

10 Q. Okay. Now, Eric, I've got a couple of questions
11 for you.

12 Did you know that Tiffany Deas had made a deal
13 with the State and was going to testify against you?

14 A. No. No, sir.

15 Q. Is that something that was never discussed
16 between you and Mr. Runyon?

17 A. No, sir.

18 Q. So when you got ready to go to trial, you still
19 didn't know Tiffany was planning to testify against you?

20 A. No.

21 I asked him -- I asked him if she was present.
22 He said he didn't know.

23 Q. Now, you didn't testify in the case; is that
24 correct?

25 A. No.

ERIC SUMTER
Direct Examination by Mr. Brooks
May 20, 2014

1 Q. Okay. Do you recall why it was that you did not
2 testify?

3 A. He said that he didn't think -- he didn't think
4 that I needed to testify.

5 Q. If you had testified, what would you have told
6 the Court?

7 A. I would have told him what happened.

8 Q. Which is?

9 A. Which is -- well, this is what happened. Let's
10 see. Well, first of all, I'm going to put it like this.
11 There was no audio or video of me making an arranged buy,
12 so therefore there was no indication that I was at the
13 apartment going to make a drug purchase. And also there
14 is no indication that any particular party was superior in
15 control of the other. To the knowledge of the driver --
16 to my knowledge, the driver was generally in control due
17 to the fact the car was in her name. And also the officer
18 that testified against me --

19 MR. BROOKS: You've got to repeat yourself.

20 THE COURT REPORTER: I'm having a little bit of
21 trouble understanding you.

22 THE WITNESS: Okay.

23 THE COURT: I need you to speak up, sir, and
24 slow down.

25 THE WITNESS: All right.

ERIC SUMTER
Direct Examination by Mr. Brooks
May 20, 2014

1 Q. [Mr. Brooks] Can you say all that again?

2 A. All right. There was no audio or video of me
3 making an arranged buy, so therefore there is no
4 indication that I was at the apartment going to make a
5 drug purchase. And also there is no indication any
6 particular party was superior in control of the other. To
7 my knowledge, the driver was generally in control due to
8 the fact the car was in her name.

9 And, also, all the officer that testified
10 against me for the fact that she was the first one to exit
11 the vehicle and enter the apartment. The only reason I
12 got out of the car and went into the apartment was to use
13 the restroom. When I got to the apartment, there were two
14 guys sitting on the sofa and she was upstairs. After I
15 used the restroom, I left out the apartment. By that
16 time, she was already back in the car. When I got to the
17 car, I noticed I left my phone in the restroom so I went
18 back and got it.

19 When we left, the car was stopped due to a
20 traffic violation, which a ticket was never given to
21 Tiffany Deas for the traffic violation.

22 Tiffany Deas stated she had two package
23 containing drugs: one she immediately handed to the
24 office when we was getting strip-searched at the county
25 jail, and the second package she tried to hold on to. She

ERIC SUMTER
Direct Examination by Mr. Brooks
May 20, 2014

1 also stated the drugs belonged to her and her testimony --
2 and she was guilty of trafficking cocaine.

3 If you would like, Your Honor, you can look that
4 up in volume 2 of 2 of my trial transcript, page 137 and
5 138.

6 She also wrote two notarized statements claiming
7 full responsibility of the drugs.

8 If I was driving, Your Honor, and the car was in
9 my name, that makes me in full control and responsible for
10 all auto offense. So if I was arrested for possession of
11 the drugs, could I have logically said that the drugs
12 belonged to the passenger of Tiffany Deas?

13 Q. Now, is there anything else that you haven't
14 covered that you want to tell the Court about why you
15 should have your PCR granted?

16 A. I don't feel I was guilty of trafficking
17 cocaine.

18 Q. Anything else about Mr. Runyon's --

19 A. No. The only other thing I left out was the two
20 statements I have right here where she wrote claiming all
21 responsibility for the drugs when it first happened.

22 Q. Okay. Were these ever admitted in the trial?

23 A. No, sir, they wasn't.

24 Q. Did your lawyer have them?

25 A. Yes, he did have them.

ERIC SUMTER
Direct Examination by Mr. Brooks
May 20, 2014

1 Q. Okay. Your Honor, if I could take a moment to
2 show them --

3 [Off the record momentarily]

4 MR. BROOKS: Your Honor, I've got two documents
5 that I've given to Madam Attorney General to look at.

6 THE COURT: Those are already a part of the
7 record. Are they statements from Ms. Deas?

8 MR. BROOKS: Okay.

9 THE COURT: I've read them.

10 MR. BROOKS: All right.

11 MR. SUMTER: If I can say one more thing, Your
12 Honor.

13 On one of the statements at the bottom, I don't
14 know if it's a -- I don't want to know if it's a fraud
15 or anything, but it got notarized by Charleston County
16 Sheriff Al Cannon was the notary on 6/12/2008.

17 Q. [Mr. Brooks] Is there anything else that we
18 need to tell the Court that you haven't disclosed --
19 testified to here today?

20 A. No, sir.

21 MR. BROOKS: Answer any questions the attorney
22 general has.

23 THE COURT: You may proceed.

24 MS. WILSON: Thank you, Your Honor.

25

ERIC SUMTER
Cross-examination by Ms. Wilson
May 20, 2014

CROSS-EXAMINATION

BY MS. WILSON:

Q. Mr. Sumter, how many times did you recall meeting with Mr. Runyon before you went to trial?

A. Like three times.

Q. Did you meet with him in the jail or at his office?

A. I was locked up the whole time. Later on at the county jail, out of the two and half years I was there he only came to see me three times.

Q. Did you talk to him on the phone or correspond with him by mail?

A. Every time I tried, it always be something I can't get in contact with him.

Q. Did you go over the State's evidence against you with Mr. Runyon?

A. The State's evidence, yes. I had a copy of that.

Q. And did you talk to him about possible defenses and what he could present if you went to trial?

A. When we did -- when we did talk, he always was trying to get me to plea. When I hired him, I told him I specifically wanted to take it to trial because I would get off not guilty. But every time he came, he was trying to get me to take a plea. Which I told him from day one

ERIC SUMTER
Cross-examination by Ms. Wilson
May 20, 2014

1 that I was hiring him to take it to trial.

2 Q. Okay. But I guess closer to time that you were
3 going to go to trial, certain that you had a date for a
4 trial, did y'all talk about what defenses he would present
5 at trial?

6 A. No.

7 Q. And today you said that --

8 THE COURT: Did he answer the question?

9 MS. WILSON: He said --

10 A. It's no. No.

11 THE COURT: Sir, you need to answer yes or no.

12 A. No. No, ma'am.

13 Q. [Ms. Wright] And so today you said that
14 Mr. Runyon didn't challenge the sufficiency of your
15 indictment. What was the problem with your indictment?

16 A. He didn't -- he failed to object to the
17 sufficiency of my indictment, which did not specifically
18 allege the essential elements of conspiracy. Which my
19 codefendant, Tiffany Deas, was the person in possession of
20 the drugs.

21 Q. And you agree with me that you were charged with
22 trafficking in cocaine; is that correct?

23 A. Yes.

24 Q. And you knew from your indictment that you were
25 charged with trafficking; is that right?

ERIC SUMTER
Cross-examination by Ms. Wilson
May 20, 2014

1 A. Yes.

2 Q. And you said -- did you get a chance to review
3 your trial transcript before you came today? I know you
4 were citing a couple of points of it. You got to review
5 it?

6 A. Yes.

7 Q. Do you recall Mr. Runyon moving for a directed
8 verdict at the end of the State's case?

9 A. Yes.

10 Q. And do you recall him renewing that at the end
11 of -- at the end of your case when -- after the Court
12 advised you about your right to testify and the defendant
13 -- the defense rests, do you remember him renewing that
14 objection?

15 A. Yes.

16 THE COURT REPORTER: Is that yes?

17 A. Yes.

18 Q. [Ms. Wright] Do you also remember him making
19 that same objection and renewing all of his objections
20 after you received a verdict from the jury?

21 A. Can you say that again, please?

22 Q. What did you say? I'm sorry.

23 A. Can you --

24 MR. BROOKS: He needs you to --

25 THE COURT: He needs you to repeat the question.

ERIC SUMTER
Cross-examination by Ms. Wilson
May 20, 2014

1 MS. WILSON: Sure.

2 Q. [Ms. Wright] I'm sorry.

3 You just said that Mr. Runyon moved for directed
4 verdict after the close of the State's evidence. And then
5 you also said that he renewed his objection -- I mean, he
6 renewed his motion for a directed verdict at the close of
7 the defense evidence. And so after you were sentenced and
8 the jury came back with a jury verdict of guilty, did you
9 recall Mr. Runyon renewing his objection then?

10 A. No.

11 Q. And did you testify -- you talked to Mr. Runyon
12 about your right to testify; is that correct?

13 A. Yes.

14 Q. And do you recall telling the Court that it was
15 your decision not to testify at trial?

16 A. Yes.

17 Q. And you also told the Court you didn't need
18 anymore time to speak with Mr. Runyon; is that correct?

19 A. Yes.

20 MS. WILSON: Okay. Thank you.

21 THE COURT: Any redirect?

22 MR. BROOKS: No, ma'am.

23 THE COURT: You may call your next witness.

24 MR. BROOKS: We would call Mr. William Runyon.

25 THE COURT: Mr. Runyon, if you would come to the

ERIC SUMTER
Cross-examination by Ms. Wilson
May 20, 2014

1 stand to be sworn.

2 [Whereupon, Mr. Runyon comes forward]

3 [Whereupon, Mr. Runyon is duly sworn by the
4 clerk of court as follows: do you swear or affirm
5 that the testimony you will give the Court will be the
6 truth, the whole truth, and nothing but the truth, so
7 help you God]

8 THE WITNESS: I do.

9 THE COURT: You may be seated. Once seated, if
10 you will please state your first and last name and
11 spell your last for the record, please, sir.

12 [Whereupon, Mr. Runyon takes the witness stand]

13 THE WITNESS: My name is William L. Runyon, Jr.
14 R-U-N -- R-U-N-Y-O-N.

15 THE COURT: You may proceed.

16 MR. BROOKS: Mr. Runyon --

17 THE WITNESS: Yes, sir?

18 MR. BROOKS: -- how are you doing today?

19 THE WITNESS: I guess I'm doing fine.
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William Runyon, Jr.
Direct Examination by Mr. Brooks
May 20, 2014

WILLIAM RUNYON, JR.,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BROOKS:

Q. You represented Mr. Sumter in this matter; is that correct?

A. Yes, sir.

Q. Can you give a brief summary of what the State's evidence was against him?

A. Well, the State's evidence against him was the testimony of officers, who had an apartment West of the Ashley under surveillance. They saw an automobile in which Mr. Sumter was a passenger and along with Ms. Deas. It was their theory that this apartment was where drugs were being distributed from.

They then saw Mr. Sumter and Ms. Deas leave the apartment after I believe -- it's been a while since we tried this case. But I believe Mr. Sumter went into the apartment. I'm not sure if Ms. Deas went into the apartment. Then he came out and they left.

They followed the car. My recollection is is that Ms. Deas was driving and she had incurred some minor traffic violation. They used that as a pretext, quite frankly, to ultimately stop the vehicle. They testified

William Runyon, Jr.
Direct Examination by Mr. Brooks
May 20, 2014

1 that they saw furtive actions in the -- allegedly in the
2 car. And they took them both out of the car, searches of
3 Ms. Deas and Mr. Sumter. Mr. Sumter showed nothing. Ms.
4 Deas was searched and found cocaine in a particular amount
5 on her person.

6 Q. Now, so as a result -- as you indicated, they
7 didn't find any drugs on Mr. Sumter?

8 A. Absolutely. They did not find any drugs on him.

9 Q. And yet he was charged with this; is that
10 correct?

11 A. He was charged, along with Ms. Deas and
12 primarily on the -- as I recall, on the word of Ms. Deas
13 that she put the drugs in her clothing at his direction.

14 Q. She had a lawyer, too; is that right?

15 A. I beg your pardon?

16 Q. She had an attorney?

17 A. Yes, sir. She sure did.

18 Q. Now, were you aware that Ms. Deas was a
19 potential witness in Mr. Sumter's trial?

20 A. Yes, sir.

21 Q. Did you ever tell him that?

22 A. Yes, sir.

23 As a matter of fact, if -- this transcript
24 doesn't reflect the fact that this case was scheduled for
25 trial on three occasions. The first occasion we were down

William Runyon, Jr.
Direct Examination by Mr. Brooks
May 20, 2014

1 here, we were ready to go to trial and Ms. Deas was rushed
2 to the hospital with complications from her pregnancy.
3 She apparently became pregnant, not by Mr. Sumter, I don't
4 think. And the case was continued. And this is based on
5 recollection, okay, so I'm subject to being corrected.
6 But I think it was put on the record of her illness and
7 that she was crucial to the State's case. The second time
8 it was scheduled for trial is when she was rushed to the
9 hospital to have the baby. So there were two miss-cues on
10 even commencing the trial. And he was aware of that. We
11 talked about it. He was -- at least on one of those
12 occasions he was brought to the courthouse. And then on
13 the third occasion was when we finally got the case off
14 the ground. But on all those occasions we talked.

15 And, yes, I -- and he's absolutely correct.
16 When I went to talk to him, on more than one occasion I
17 discussed a possible plea with him, because I had been
18 approached by the solicitor about trying to work something
19 out, and Mr. Sumter was adamant that he would not plea.

20 Q. Do you recall what the potential deal was or --
21 that the solicitor had offered?

22 A. The solicitor had talked about a ten-year deal.
23 Now, that never came to pass because Mr. Sumter rejected
24 any pleas. It was his position at all times that Ms. Deas
25 was going to testify that it was her drugs, that he didn't

William Runyon, Jr.
Direct Examination by Mr. Brooks
May 20, 2014

1 know anything about it, and what have you, which frankly
2 would have been a pretty good defense. But she didn't
3 testify to that. The transcript speaks for itself what
4 she testified to.

5 Q. And did you have those particular statements,
6 when she was testifying, to use as -- to potentially
7 impeach her?

8 A. Yes, sir. We knew all about that. We had all
9 that.

10 And as I said, we prepared for trial on three
11 occasions and two of them misfired.

12 Q. You utilized those statements as a part of your
13 cross-examination of her?

14 A. If you want me to say I utilized those
15 statements, I don't know. I haven't read this transcript
16 thoroughly. I don't know if you would consider I utilized
17 those statements or not. But, I mean, I cross-examined her
18 as I cross-examined her.

19 Q. And you did have those statements that are in
20 the record? You had them at the beginning of the trial?

21 A. I think so, yes, sir. I'm almost positive I
22 did.

23 But we had everything. It was very clear that
24 this was a case where she just flipped on him. And it was
25 -- I mean, there was no question about the fact she had

William Runyon, Jr.
Direct Examination by Mr. Brooks
May 20, 2014

1 the drugs on her. And her testimony was the one thing
2 that could sink him, so to speak, if the jury chose to
3 believe her. Because he had absolutely no drugs on him.

4 Q. Now, he didn't testify in his case?

5 A. That's right.

6 Q. And you advised him not to do that?

7 A. We discussed it. It was his decision. I don't
8 have his prior record, but I think that fact factored into
9 it. But, of course, it was his decision not to testify.

10 MR. BROOKS: Beg the Court's indulgence, Your
11 Honor.

12 [Whereupon, Mr. Brooks and Mr. Sumter confer]

13 MR. BROOKS: No other questions, Judge.

14 THE COURT: Any questions for the witness?

15 MS. WILSON: Thank you, Your Honor.

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William Runyon, Jr.
Cross-Examination by Ms. Wilson
May 20, 2014

CROSS-EXAMINATION

BY MS. WILSON:

Q. Mr. Runyon, can you just briefly tell us how long you've been practicing law and how much time you've spent doing criminal work?

A. September the 13th, 1967, I got sworn in. That's about, what, forty-six, forty-seven years now. I was the first public defender in Charleston County in the early '70s, '73, '74. At least half of my practice is criminal work in state and federal court. I've been in criminal courts not only in the state of South Carolina and federal court, but I've been in the southern district of New York federal court. And I tried a case, at least one case, over in the -- I believe it's the southern district of Georgia. It was an income tax-related case. I was associated with a tax -- with a draft-evasion case in the late '70s in the fifth circuit down in New Orleans. So I've done quite a bit of criminal work.

Q. And you testified today you were retained to represent Mr. Sumter. And do you recall about when you were retained or how far out before trial?

A. I haven't the foggiest notion because we -- when I filed the notice of intention to appeal, I sent my file to appellate defense and I haven't seen it since then, so to speak.

William Runyon, Jr.
Cross-Examination by Ms. Wilson
May 20, 2014

1 Q. And was it farther enough for you to look into
2 everything and have talked to Mr. Sumter as much as you
3 needed to, though?

4 A. Yes, ma'am.

5 And not only that but, like I said, we misfired
6 trying this case on two prior occasions. And --

7 Q. Did you file Brady or Rule 5 motions for
8 Mr. Sumter?

9 A. I beg your pardon?

10 Q. Did you file any Brady or Rule 5 motions for
11 Mr. Sumter?

12 A. Yes, ma'am.

13 I think the motions are part of the -- part of
14 something somewhere in this proceeding.

15 Q. And did you review the materials that you
16 received with Mr. Sumter?

17 A. Yes, ma'am.

18 It was pretty -- I'm not belittling the case,
19 but it was a pretty kind of a yellow-pad case because he
20 didn't have the drugs on him, she did, and he was relying
21 on her to quite frankly, quote, do the right thing for him
22 and she didn't.

23 Q. And did you talk to him about the elements of
24 the charge he was facing and what the State had to prove?

25 A. Yes, ma'am.

William Runyon, Jr.
Cross-Examination by Ms. Wilson
May 20, 2014

1 Q. And did you talk to him about his version of the
2 facts, obviously that he didn't have the drugs and they
3 weren't his?

4 A. That's right.

5 And I also talked to him about what constitutes
6 a constructive possession, because the drugs were on her.
7 And that's where the testimony -- as I recall, the
8 testimony of the officers, if you read the transcript,
9 which I did part of it, the officers testified about the
10 so-called furtive movements -- or I think they had some
11 kind of language about the movements inside the car before
12 they approached it to get them out of the car. And that
13 was their explanation, their argument, that she was
14 putting the drugs in her clothing at that time. That was
15 their general theory. Of course, they didn't see -- they
16 didn't see that happen. That just was their theory.

17 Q. And did you talk to Mr. Sumter about possible
18 defenses and what ultimately did y'all decide to present
19 at trial?

20 A. Yeah, we talked about the defenses. And his
21 basic defense was that it was her drugs and she was going
22 to claim them. But she didn't. Matter of fact, she
23 didn't claim the drugs early on. She put it on him pretty
24 well not too long after the arrest.

25 Q. And what kind of investigation did you have to

William Runyon, Jr.
Cross-Examination by Ms. Wilson
May 20, 2014

1 do other than -- did you have to just -- did you just
2 review the discovery or did you have to do anything else?

3 A. Well, we had discovery. I drove over to where
4 the apartments were, where they said that they were
5 observing the apartment from, so could they have seen it
6 and that sort of thing.

7 There was a -- this case involved a bigger
8 investigation of an individual whom I was familiar with.
9 And ultimately that individual wound up indicted in
10 federal court later on. And so -- and I had represented
11 some folks later on down the road after Mr. Sumter. But I
12 was kind of familiar with the investigation at the time I
13 was retained by Mr. Sumter.

14 Q. And did you feel like you had ample time to
15 prepare for trial?

16 A. I beg your pardon?

17 Q. Did you feel like you had ample time to prepare
18 for trial?

19 A. Oh. Yes, ma'am.

20 Q. And before -- when you were retained on this
21 case, did you review Mr. Sumter's indictment and did you
22 see any basis to challenge the indictment?

23 A. No, ma'am. But I reviewed the indictment and
24 I'm familiar with the fact that if you don't raise the
25 issue -- unless the indictment is just flat-out not

William Runyon, Jr.
Cross-Examination by Ms. Wilson
May 20, 2014

1 sufficient, if you don't raise the issue prior to trial
2 you more or less waive it.

3 So I read the indictment. It charged the crime
4 of trafficking. And I believe the language of the statute
5 -- I haven't read the indictment today, for example. As I
6 recall it, it charged trafficking in the language of the
7 statute and I believe referred to the statute.

8 Q. Okay. And do you recall moving for a directed
9 verdict and renewing your motions throughout the end of
10 the trial?

11 A. Do I recall that specifically today, the number
12 of cases I've tried? Absolutely not. I don't
13 specifically recall that. I'm sure I did. The transcript
14 seems to indicate that I did, so I think I did, yes,
15 ma'am.

16 Q. And did you see any basis for objecting to the
17 solicitor's opening while you were at -- while you were at
18 trial?

19 A. There were a lot of -- there was a lot of self-
20 serving statements by the State in this. I think I did,
21 in fact, interrupt the solicitor on more than one
22 occasion. I'm not sure which one -- precisely where it
23 was. Because they were bootstrapping this case to get

24 Mr. Sumter. There's no question about that.

25 Q. And do you recall conceding Mr. Sumter's guilt

William Runyon, Jr.
Cross-Examination by Ms. Wilson
May 20, 2014

1 in closing?

2 A. I beg your pardon?

3 Q. Do you recall conceding Mr. Sumter's guilt in
4 closing?

5 A. I'm not sure I understand the question.

6 Q. Mr. Sumter alleged that during your closing
7 statement you conceded that he was guilty to the jury. Do
8 you recall doing that?

9 A. One of the -- well, if you read my -- if you
10 read my closing statement, one of the things that I was --
11 see, here's the problem. The case was one of trafficking.
12 They presented one of their officers. And the Courts --
13 with all due respect to the bench, the judges let them
14 present these officers as, quote, experts on drug trade.
15 And so I was able to elicit the testimony on cross-
16 examination, I believe, from the officer, that the drugs
17 found might have been sufficient for the trafficking
18 offense but basically they were -- there was also a
19 smaller enough quantity for someone who is a user. So I
20 did not think arguing that if you want to find that he was
21 in possession of these drugs, that it was for his own use,
22 and it was possession and not trafficking, and you folks
23 on the jury are only concerned with one thing, and that is
24 trafficking, and if you find that he's guilty of something
25 less than that, that's not before you, you have to find

William Runyon, Jr.
Cross-Examination by Ms. Wilson
May 20, 2014

1 him not guilty. So in a manner of conceding that, I guess
2 you could say I conceded that particular point.

3 MS. WILSON: Okay. Thank you.

4 THE COURT: Any redirect?

5 MR. BROOKS: No, ma'am.

6 THE COURT: Sir, you may step down.

7 [Whereupon, Mr. Runyon is excused and exits the
8 witness stand]

9 THE COURT: Does the applicant have any further
10 witnesses?

11 MR. BROOKS: No, ma'am.

12 THE COURT: Does the State have any witnesses?

13 MS. WILSON: Nothing further from the State.

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Eric Sumter vs. The State of South Carolina
Closing Argument by Mr. Brooks
May 20, 2014

CLOSING ARGUMENT

THE COURT: Be glad to hear arguments.

MR. BROOKS: May it please the Court, Judge.

THE COURT: Yes, sir.

MR. BROOKS: For all of the issues that we've raised on PCR, we would respectfully ask the Court to grant Mr. Sumter a new trial.

We feel that obviously there are some things that Mr. Runyon did not do. And we obviously take -- my client takes issue with the conceding of his guilt in this particular case where the entire case simply was built on his codefendant testifying.

Judge, my client has eloquently testified as to his reasons and rationale of why a post conviction relief should be granted and we would respectfully stand on those as he's testified and ask the Court to be so kind as to grant him that request.

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Eric Sumter vs. the State of South Carolina
Closing Argument by Ms. Wilson
May 20, 2014

CLOSING ARGUMENT

THE COURT: Yes, ma'am.

MS. WILSON: May it please the Court.

The State would just ask that you deny this application for post conviction relief with prejudice.

With regard to Mr. Runyon's failure to challenge the sufficiency of Mr. Sumter's indictment for trafficking: after reviewing the indictment, the record reflects that the indictment is sufficient. And not only does it -- not only does it apprise Mr. Sumter of the charge that he was facing, because we know that indictments are only notice documents, but it also cites the applicable statute from which the State indicted Mr. Sumter.

With regard to his motion -- or Mr. Sumter's allegation that Mr. Runyon didn't move for a directed verdict: Mr. Sumter testified here today that he did recall that happening. And it's reflected in the record, on page 234 of the transcript, where Mr. Runyon initially motioned for a directed verdict after the State rested and then where he renewed that motion, on page 241, after the defense rests. And then he renewed that again at the conclusion of trial, in which he also motioned for a new trial based on the insufficiency of the evidence, on page 290.

Eric Sumter vs. the State of South Carolina
Closing Argument by Ms. Wilson
May 20, 2014

1 With regard to Mr. Sumter's allegation that
2 Mr. Runyon did concede -- conceded his guilt during
3 closing: we heard from Mr. Runyon that his basis for
4 saying that was simply his argument that the one
5 officer testified that the quantity and the way it was
6 packaged could have been for personal use and that in
7 the event that the defendant was using the drugs for
8 his personal use, that was the trafficking for which
9 he was indicted for.

10 So we would just ask that you deny this
11 application with prejudice.

12 MR. SUMTER: May I speak, Your Honor?

13 THE COURT: No, sir. If there's something you
14 want Mr. Brooks to bring to the Court's attention, you
15 can tell him.

16 [Whereupon, Mr. Brooks and Mr. Sumter confer]

17 MR. BROOKS: Just a clarification, Judge.

18 My client indicates that in his response to
19 Ms. Wilson's questions that he was saying that
20 Mr. Runyon made a directed verdict as it relates to
21 possession with intent to distribute, he did not make
22 a motion for a directed verdict as it relates to a
23 conspiracy charge.

24 THE COURT: He wasn't charged with conspiracy.
25 Conspiracy was the State's theory under constructive

Eric Sumter vs. the State of South Carolina
Closing Argument by Ms. Wilson
May 20, 2014

1 possession. It doesn't have to be -- you don't have
2 to have a separate charge for conspiracy and you don't
3 have to charge everybody that's involved in the
4 conspiracy. So I'll note what you stated for the
5 record.

6 MR. BROOKS: Thank you, Judge.

7 That's it from us, Judge. I just wanted to
8 bring that to the Court's attention.

9 THE COURT: Thank you. We appreciate the
10 clarification.

Eric Sumter vs. the State of South Carolina
Court's Findings
May 20, 2014

COURT'S FINDINGS

1
2 THE COURT: In considering an application for
3 post conviction relief, the Court looks at several
4 factors, one of which is that it is the applicant's
5 burden of proof to establish that his trial counsel's
6 performance fell below the range of competence
7 required in criminal cases. The Courts presume, and
8 the case law presumes, that counsel rendered adequate
9 assistance and made all significant decisions in the
10 exercise of reasonable professional judgment. It is
11 the applicant's burden to overcome this presumption in
12 order to receive relief.

13 There is a two-prong test that is employed in
14 that analysis, and first is was counsel's performance
15 deficient. I find for the record that it was not.
16 The next prong is judging that performance by its
17 reasonable and unprofessional norms as a part of that
18 first prong. And the next question is was counsel's
19 deficient performance -- counsel's deficient
20 performance must have prejudiced the applicant, plus
21 that there is a reasonable probability that but for
22 counsel's unprofessional errors, the result of the
23 proceedings would have been different.

24 Again, the applicant bears the burden of
25 establishing ineffective assistance under Strickland

Eric Sumter vs. the State of South Carolina
Court's Findings
May 20, 2014

1 and Cherry and its progeny.

2 He alleges several things. First, he alleges
3 that his lawyer failed to challenge the sufficiency of
4 the judgment of the indictment prior to the jury being
5 sworn. I find no basis or merit to that argument.
6 The indictment in this case was sufficient on its
7 face. An indictment is a notice document. It is only
8 required that a person be put on notice as to the
9 charges that they are facing so that they can be aware
10 of what they need to defend.

11 And clearly he was on notice as to what he was
12 being charged with, which was trafficking. It clearly
13 articulates that in the body of the indictment. The
14 State does not have to allege each and every factual
15 circumstance that they contend is the basis for a
16 charge. It only has to put you on notice, again, as
17 to what you're being charged with and what you have to
18 answer to. Again, it is merely a notice document.
19 The State did not have to allege each and every factor
20 that it -- that was involved in the theory of their
21 case. And their theory in this case was that it was a
22 conspiracy, that Ms. Deas simply had these drugs at
23 the direction of Mr. Sumter and that at all times he
24 exercised both constructive, if not actual, possession
25 of these drugs because he controlled basically the

Eric Sumter vs. the State of South Carolina
Court's Findings
May 20, 2014

1 environment and he had dominion and control over the
2 environment where the drugs were and where they were
3 located, irregardless of whether the car was in his
4 name or not. But based on Ms. Deas' testimony that
5 she was under his direct control and influence and
6 that the drugs were his and that she was hiding them
7 at his direction, based on what she termed as a
8 romantic relationship in her testimony.

9 So there is no basis to the argument that, one,
10 the indictment was sufficient and there was no basis
11 for -- even though Mr. Runyon could have challenged
12 it, it would have in all likelihood been unsuccessful
13 because while it was the State's theory that this was
14 a conspiracy, they did not have to charge him
15 separately with the offense of conspiracy.

16 It is clear in the record that Mr. Runyon moved
17 for a directed verdict at the appropriate juncture of
18 the trial. And the basis of his directed verdict
19 motion is the State failed to produce sufficient
20 evidence to prove his client's guilt beyond a
21 reasonable doubt either by direct or substantial
22 circumstantial evidence. So it was clearly preserved
23 for the record and he made those motions.

24 And, frankly, based on the record it is -- I
25 mean, I don't disagree with -- it's rare that you're

Eric Sumter vs. the State of South Carolina
Court's Findings
May 20, 2014

1 going to prevail on a directed verdict motion unless
2 there is complete and absolute failure of the evidence
3 presented by the State. And sometimes it does happen
4 but it is very rare. And under the circumstances of
5 this case, it certainly would not have been warranted.
6 But as it is alleged by the applicant, very clearly
7 Mr. Runyon met his burden -- his obligation to his
8 client by making motions for a directed verdict at the
9 appropriate times and renewing those motions.

10 I did not see any evidence in the record of
11 trial counsel leading -- of the solicitors' leading
12 the witness inappropriately regarding her testimony.
13 And there really wasn't any testimony about that, so I
14 would assume that that ground is abandoned.

15 And I did not see any evidence in the record of
16 the solicitor testifying for, vouching, or pitting any
17 witnesses. It is natural in an adversarial process
18 that witnesses' interests are going to be adverse.
19 That does not mean that it's pitting. I did not
20 recall any point in the record where the solicitor
21 asked any witnesses to vouch for the credibility of
22 other witnesses, which would be pitting. And I,
23 again, will review the record, but I did not see any
24 evidence of that in the record.

25 And, actually, on B, which is -- there was no

Eric Sumter vs. the State of South Carolina
Court's Findings
May 20, 2014

1 testimony elicited from Mr. Runyon regarding any
2 alleged prior bad acts of the applicant, which he
3 testified to. He said that Mr. Runyon failed to
4 object to the solicitor eliciting testimony regarding
5 alleged prior bad acts of the applicant. And I need
6 to supplement the record with Mr. Runyon's testimony
7 in that regard.

8 Mr. Runyon, do you recall from the trial at any
9 time the solicitor eliciting testimony regarding
10 alleged prior bad acts of your client?

11 MR. RUNYON: I don't really recall that, Judge.
12 And I don't -- in my limited reading of the
13 transcript, I didn't see that.

14 THE COURT: Thank you, sir.

15 Any questions as a result of the Court asking
16 for clarity from Mr. Runyon? From the applicant?

17 MR. BROOKS: No, ma'am.

18 THE COURT: From the State?

19 MS. WILSON: Nothing from the State, Your Honor.

20 THE COURT: Bear with me just one moment.

21 [Whereupon, the Court reviews documents]

22 THE COURT: I'll come back to that.

23 There is no evidence in the record, that I can
24 discern, of counsel objecting -- or failing to object
25 for -- or of the solicitor bolstering any witness'

Eric Sumter vs. the State of South Carolina
Court's Findings
May 20, 2014

1 testimony.

2 And as I read the closing argument, Mr. Runyon
3 did not concede his client's guilt. What he did was
4 he tried to minimize any deficits in his case by
5 simply saying the State has the burden of proving
6 these things, if you feel the State has not met this
7 burden or even if you feel it may have met this burden
8 and you're inclined to believe that my client was
9 doing a particular -- was guilty or culpable of a
10 certain set of circumstances with these drugs, in the
11 alternative you need to consider that with this amount
12 of drugs it is possible that it was used for personal
13 use. And as I recall, the trafficking statute or the
14 trafficking instruction that's given by the Court, you
15 are not guilty of trafficking if it's for your
16 personal use. So I do not see any prejudice to Mr.
17 Sumter in Mr. Runyon arguing that. He simply was
18 arguing a deficit in the State's case. In other
19 words, you could believe that my client had this for
20 personal use and if you believe that, then you have to
21 find him not guilty.

22 [Off the record momentarily]

23 THE COURT: Then he said trial counsel failed to
24 object -- move for a directed verdict where essential
25 elements of the State's case were not proven. And I

Eric Sumter vs. the State of South Carolina
Court's Findings
May 20, 2014

1 think I've already addressed that issue.

2 The real rub in this case is that -- and I did
3 find for the record Mr. Runyon's testimony that he was
4 aware through the discovery process that Ms. Deas very
5 early on had, using common parlance, flipped on his
6 client and planned to testify against him and that
7 this case had come before the Court on at least two
8 prior occasions and then was finally tried on the
9 third occasion, due to the health complications of
10 Ms. Deas. And I find him credible that he totally
11 discussed that with Mr. Sumter and that -- in these
12 type cases, there's nothing more compelling than
13 basically what amounts to an eyewitness who says, I
14 was there and this happened, and this is how it
15 transpired, and basically I was just being used as a
16 mule for this gentleman that I was involved with. And
17 apparently the jury found her credible and believed
18 her testimony and in combination with the other
19 testimony regarding this particular unit being under
20 surveillance for certain drug activity.

21 I do find credible that Mr. Runyon went over all
22 of the discovery with his client and that he was well
23 aware of what he was being charged with and what he
24 had to answer to at trial and that Mr. Runyon was, in
25 fact, prepared for trial.

Eric Sumter vs. the State of South Carolina
Court's Findings
May 20, 2014

1 I also do not find credible that Mr. Runyon was
2 not prepared for trial and he was constantly trying to
3 push a plea deal on his client. Very clearly, under
4 the ethics rules whenever the State makes a plea offer
5 to a defendant, his lawyer is duty-bound to disclose
6 that deal to him and to have him make a free and
7 voluntary and informed decision as to whether he
8 intends to accept or reject that offer. And that
9 is -- it appears from the record that that is merely
10 what Mr. Runyon was doing. Because then what will
11 happen on a PCR if he doesn't disclose it is that the
12 person will say, I went to trial unaware of the plea
13 deal and I was prejudiced as a result of it because --
14 at least based on other PCRs I've heard, what they
15 will say is, I would have taken that deal and it
16 wasn't disclosed to me. So certainly Mr. Runyon had
17 an ethical obligation and a professional obligation to
18 have disclosed any deals that were offered, pleas
19 offers that were extended, to his client.

20 And the record does reflect that Mr. Runyon made
21 appropriate objections during argument and appropriate
22 objections during the course of the trial.

23 And that he effectively cross-examined Ms. Deas
24 regarding her credibility.

25 I am directing the assistant attorney general to

Eric Sumter vs. the State of South Carolina
Court's Findings
May 20, 2014

1 provide the Court with a proposed order within fifteen
2 days of today. I'm also giving her leave to make any
3 additional findings of fact and conclusions of law
4 consistent with the record. I likewise will do the
5 same, as I rarely, if ever, sign an order the way it
6 is submitted to me. So I will go back through the
7 record, as well, and make any other findings of fact
8 and conclusions of law that are supported by the
9 transcript and record of this matter. That order will
10 also be provided to Mr. Brooks.

11 Mr. Brooks, if you have any additions,
12 modification or otherwise that you would like to
13 suggest to Ms. Wilson, please make her aware of that,
14 as she is fairly accommodating and will usually
15 incorporate those changes.

16 MR. BROOKS: Yes, ma'am.

17 THE COURT: And then if not, if y'all can't
18 agree on it, then make me aware of it. And submit
19 those to the Court. Okay?

20 MR. BROOKS: Yes, ma'am.

21 THE COURT: Thank y'all.

22 And if you'll wait a moment, Mr. Brooks, we'll
23 give you a copy of that form order --

24 MR. BROOKS: Yes, ma'am.

25 THE COURT: -- that I'm going to do as a result

Eric Sumter vs. the State of South Carolina
Court's Findings
May 20, 2014

1 of this hearing.

2 MS. WILSON: Thank you, Your Honor.

3 THE COURT: Thank you very much.

4 [HEARING CONCLUDES AT 10:56 A.M.]

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Eric Sumter vs. the State of South Carolina
Court's Findings
May 20, 2014

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the PCR hearing held before the Honorable Deadra L. Jefferson, on May 20, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 7th day of September, 2014.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Eric Sumter, #278658,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2013-CP-10-0038

ORDER OF DISMISSAL

FILED
2014 JUL 16 PM 3:36
JULIE J. ARMSTRONG
CLERK OF COURT

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:
Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
Charles T. Brooks, III, Esquire
Ashleigh R. Wilson, Esquire
William L. Runyon, Jr., Esquire
May 20, 2014
Joyce C. Rueger

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 3, 2013. The Respondent made its Return on November 1, 2013. An evidentiary hearing on the matter was convened on May 20, 2014 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Charles T. Brooks, III, Esquire. Ashleigh R. Wilson, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

Also present and testifying was William L. Runyon, Jr., Esquire. The Court had before it the trial transcript, the Charleston County Clerk of Court records, the Applicant's records from the South Carolina Department of Corrections, the Applicant's application, the Respondent's Return, and the appellate records.

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PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Charleston County Clerk of Court. The Applicant was indicted at the October 2008 term of the Charleston County Grand Jury for Trafficking Cocaine-100-200 Grams¹ (2010-GS-10-7492). He was represented by William L. Runyon, Jr., Esquire.

The Applicant proceeded to trial and was found guilty as indicted. On October 19, 2010, the Applicant was sentenced by the Honorable Kristi L. Harrington to twenty-five (25) years imprisonment and a \$50,000 fine.

A Notice of Appeal was filed on the Applicant's behalf at the South Carolina Court of Appeals. Susan Hackett, Esquire of the South Carolina Office of the Appellate Defense perfected the appeal pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Sumter, Op. No. 2012-UP-554 (S.C. Ct. App. October 10, 2012).

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Trial counsel failed to challenge the sufficiency of the subject indictment prior to taking of evidence in contravention of the Fifth Amendment and South Carolina Law.
 - b. Trial counsel failed to move for dismissal or directed verdict where Applicant was not in possession of drugs for which he was arrested and indicted.
 - c. Trial counsel failed to object to the Solicitor leading a witness.

¹ Trafficking Cocaine is a violent, serious felony punishable by a mandatory minimum twenty-five (25) years imprisonment, none of which may be suspended, nor probation granted, and a fifty thousand dollar (\$50,000.00) fine. See S.C. CODE ANN. § 44-53-370(e)(2)(c) (2008); S.C. CODE ANN. § 16-1-10(b) (2008); S.C. CODE ANN. § 17-25-45 (2008).

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- d. Trial counsel failed to object to the Solicitor testifying for, vouching for, and pitting witnesses.
- e. Trial counsel failed to object to the Solicitor eliciting testimony regarding alleged prior bad acts of Applicant.
- f. Trial counsel failed to object to the Solicitor bolstering witness testimony.
- g. Trial counsel conceded the guilt of Applicant during trial thus depriving him of representation.
- h. Trial counsel failed to object or move for a directed verdict where essential elements of the State's case were not proven.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. CODE ANN. § 17-27-80 (2003).

At the commencement of the Applicant's evidentiary hearing, the Applicant moved for a continuance of his case. The grant or denial of a motion for continuance is within the sound discretion of the trial judge and is reviewable on appeal only when an abuse of discretion appears from the record. Plyler v. Burns, 373 S.C. 637, 650, 647 S.E.2d 188, 195 (2007) (citing Bridwell v. Bridwell, 279 S.C. 111, 112, 302 S.E.2d 856, 858 (1983)). See Hudson v. Blanton, 282 S.C. 70, 74, 316 S.E.2d 432, 434 (Ct. App. 1984) (noting a moving party must show the absence of some material evidence and due diligence on his part to obtain such evidence to justify a continuance). Cf. Beasley v. Kerr-McGee Chem. Corp., 273 S.C. 523, 532, 257 S.E.2d 726, 730 (1979) (finding a movant failed to show due diligence to justify a continuance when he had eight months from filing of the complaint until trial to prepare).

In support of his Motion, the Applicant asserted that: (1) he did not feel comfortable going forward with his hearing at the time; (2) he recently had eye surgery and could not read; and (3) he felt that because his attorney received his case only the month before, his counsel was unprepared. In response, the Respondent stated that it was ready to go forward with the Applicant's evidentiary hearing. Thereafter, this Court denied the Applicant's Motion and placed its findings on the record. This Court finds that, although the Applicant asserted that he could not read, the Court observed him read verbatim from his paperwork at counsel's table while articulating the grounds for his Motion; therefore, the Applicant was presently able to assist counsel in his representation and able to proceed with his evidentiary hearing.² Further, this Court finds that the Applicant presented no reasonable grounds in support of his contention that his lawyer was unprepared. Moreover, the bald assertion that the Applicant or his counsel was not ready to go forward and the Applicant was unprepared is not a sound basis for granting a motion for continuance. See State v. Williams, 321 S.C. 455, 459, 469 S.E.2d 49, 51-52 (1996); Plyler v. Burns, 373 S.C. 637, 650, 647 S.E.2d 188, 195 (2001) ("[T]he denial of a motion for a continuance on the ground that [a party] has not had time to prepare is rarely disturbed on appeal."). Accordingly, the Applicant's Motion for Continuance is heard and respectfully denied.

Thereafter, the parties proceeded with the Applicant's PCR hearing.

Summary of the Testimony

The Applicant was present and testified he retained William Runyon, Esquire to represent him. The Applicant testified he was in jail for two and one half years (2.5) prior to trial. The Applicant testified he met with Counsel two (2) to three (3) times in jail prior to trial and that he

² The Court observed the Applicant read verbatim from his papers and documents during the entire proceedings. It appeared he was able to read clearly from those documents and others utilized for purposes of the hearing. While it appeared that Applicant had had some type of procedure to his eyes it was not clear what type. However, it is clear from the Court's observations that he was able to read and see clearly.

4 *Hof 18*

attempted to communicate with his attorney by mail and telephone. He testified Counsel reviewed the discovery materials with him and gave him a copy but denies Counsel ever reviewed possible defenses with him. He testified trial counsel always wanted him to plead guilty and he did not want to plead guilty.

The Applicant testified Counsel did not challenge the sufficiency of his indictment. He testified he knew from the indictment that he was charged with Trafficking Cocaine, but the indictment did not allege the elements of the crime of Conspiracy. He testified Counsel also failed to move for a directed verdict or dismissal at trial based on the State's failure to prove the element of possession and the fact that his co-defendant conceded her guilt on the stand and took responsibility for the drugs. However, on cross-examination, the Applicant admitted that Counsel moved for a directed verdict and renewed his motion at the end of the trial.

The Applicant testified Counsel also failed to object to the Solicitor's leading questioning of his co-defendant Tiffany Deas. He testified Counsel also failed to object to the Solicitor vouching for and bolstering the credibility of Deas in opening and closing argument. The Applicant testified Counsel failed to object to the testimony of Deas that the Applicant was engaged in prior bad acts. He also testified trial counsel conceded his guilt in closing argument and it prejudiced him at trial.

The Applicant testified he discussed his desire to testify with Counsel. He testified that he remembered being advised of his right to testify by the court and that he told the court it was his decision to not testify at trial and that he did not need more time to speak with his attorney about his right to testify. The Applicant testified Counsel told him he should not testify at trial. He testified had he taken the stand, he would have told the court there were no audio or video recordings of the arranged buy at the apartment. The Applicant testified he did not know his co-

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defendant was going to testify against him because she had reached a deal with the Solicitor to that effect and Counsel told him he did not know if Deas would testify.

Bill Runyon, Esquire, testified he was retained to represent the Applicant at trial. He testified that he sent his entire file to indigent defense for purposes of the appeal and has not seen the file since, so he has no independent recollection of the exact date he was retained. Counsel has been practicing law since September 1967. He testified he was the first public defender in Charleston County in the early seventies and remained in that position for two (2) years and currently one half (1/2) of his practice is both state and federal criminal law. He further testified that he has handled criminal cases in both the Southern District of New York and the Southern District of Georgia. Counsel testified police were watching an apartment where they suspected drugs were being distributed. He testified the Applicant and his co-defendant Tiffany Deas were seen on police surveillance leaving the apartment and were stopped by police for a traffic violation shortly after leaving the apartment. Counsel testified police did not find drugs on the Applicant, but the Applicant and his co-defendant were arrested as a result of Deas' "furtive movements" as she put the drugs in her clothing allegedly at the direction of the Applicant. Counsel testified that he was able to use Deas' pretrial statements as part of the Applicant's defense. He further testified that he was able to attack Deas' credibility with her pretrial statements made shortly after arrest and her claims that the drugs belonged to the applicant.

Counsel testified he filed Brady and Rule 5 motions on the Applicant behalf. He testified he reviewed the discovery materials received with the Applicant. He testified his initial defense at trial was to argue against both actual and constructive possession by claiming the drugs belonged to Deas and were not found on the Applicant. Alternatively, counsel testified that after the co-defendant Deas "flipped" on the Applicant by testifying against him he altered his strategy to argue one of personal use versus selling the drugs. Counsel testified he discussed with the

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Applicant the elements of the charges, range of punishment and what the State was required to prove. He testified he discussed constructive versus actual possession with the Applicant, possible defenses and the Applicant's version of facts.

Counsel testified his investigation of the case involved reviewing the discovery and visiting the apartment. He testified the Applicant's case involved a larger drug investigation of which he was very familiar. He testified that his familiarity with the investigation stemmed from his representation of other defendants in federal court. Counsel testified he was prepared for trial and reviewed the Applicant's indictment prior to trial and saw no basis to challenge the indictment. Counsel testified the indictment charged the language of the trafficking statute and referred to the statute.

Counsel testified he discussed with the Applicant the possibility of Deas testifying against him at trial. He testified that the Applicant was well aware there was a great possibility of Deas testifying against him. He further testified that they discussed this possibility in thorough detail. He testified the Applicant's case was scheduled three (3) times for trial and that he was prepared each time, but that the case had to be continued the first two (2) times because of medical complications with Deas' pregnancy. He testified the Applicant was well aware of the reason for the case being continued. He further testified that he and the Applicant discussed each continuance of the case.

Counsel testified he discussed the possibility of pleading guilty with the Applicant more than one (1) time after being approached by the Solicitor. He testified the Applicant did not want to plead guilty. He testified he was approached by and spoke with the Solicitor about a plea agreement. He testified the Solicitor offered a deal for ten (10) years' imprisonment, but it was never formalized. Counsel testified the Applicant adamantly rejected the ten (10) year deal. Counsel testified initially the Applicant thought Deas was going to testify the drugs were hers

7/18/18

and that he was relying on her to do the "right thing," which she did not. He further testified that he and the applicant discussed in detail that Deas' testimony would be the one (1) thing to "sink" his defense.

Counsel testified Deas "flipped on" the Applicant soon after the arrest, led him to believe the opposite and testified against him at trial. Counsel testified he used letters from Deas to the Applicant and Deas' statements to impeach her at trial on cross-examination. He testified he discussed with the Applicant his right to testify and the Applicant decided not to testify. Counsel testified it was the Applicant's decision not to take the stand and the Applicant's prior record was probably a factor the Applicant considered when deciding not to take the stand.

Counsel testified he moved for a directed verdict at the conclusion of the State's case. He testified the State's closing argument included many self-serving statements, in the nature of "bootstrapping to get the defendant," to which he objected more than one (1) time. Counsel testified he elicited testimony from an officer on cross-examination that the quantity of drugs found was small enough for personal use versus trafficking. He testified he then argued to the jury in closing that it was possible the Applicant was in possession of the drugs for personal use and was not trafficking the drugs as the State claimed. In essence, Counsel testified, he argued the lesser-included offense of Possession of Cocaine to the jury. Counsel testified that after the Applicant was found guilty, he submitted his file to the Office of Appellate Defense and had not interacted with the Applicant since that time.

Ineffective Assistance of Counsel

I. Standard.

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "the burden of proof is on the applicant to prove his allegation by a preponderance of the evidence."

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Rule 71.1(e), SCRCF; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 622, 300 S.E.2d 482, 483 (1983)). Where the Applicant alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 686, 104 S. Ct. at 2064).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. See Strickland at 690, 104 S. Ct. at 2066. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See id. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. See id. at 117-18, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 668, 104 S. Ct. at 2052). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

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This Court finds that Counsel has extensive experience in the practice of criminal law and has been practicing law since 1967. This Court finds Counsel provided credible testimony, while the Applicant's testimony was not credible. This Court finds that Counsel met with the Applicant numerous times prior to trial and fully investigated the Applicant's case. This Court finds that Counsel filed Brady and Rule 5 motions on the Applicant's behalf and reviewed the received discovery with the Applicant. This Court finds that Counsel discussed with the Applicant the elements of the charges against him, range of penalty and what the State was required to prove. This Court finds that Counsel discussed the Applicant's version of the facts and possible defenses with the Applicant.

II. Sufficiency of the Indictment.

The Applicant alleges Counsel was ineffective for failing to challenge the sufficiency of his trafficking indictment. This Court finds Counsel was not deficient for failing to challenge the sufficiency of his indictment. "An indictment is merely a notice document." State v. Baker, 390 S.C. 56, 62, 700 S.E.2d 440, 442 (Ct. App. 2010) (citing State v. Gentry, 363 S.C. 93, 102-103, 610 S.E.2d 494, 500 (2005)). Whether or not the indictment could be made more definite and certain is irrelevant. Baker, 390 S.C. at 62, 700 S.E.2d at 442. "[A]n indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." State v. Tumbleston, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (Ct. App. 2007). Courts employ a two (2) prong test to determine whether an indictment is sufficient:

The sufficiency of the indictment is determined by whether: (1) the offense charged is stated with sufficient certainty and particularity to enable a court to know what judgment to pronounce, and the defendant to know what he or she is called upon to answer and whether he or she may plead an acquittal or conviction thereon, and (2) whether it apprises the defendant of the elements of the offense that are intended to be charged.

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Baker, 390 S.C. at 62, 700 S.E.2d at 442 (citing Gentry, 363 S.C. at 102-103, 610 S.E.2d at 500).

Furthermore, in order to challenge the sufficiency of an indictment, an objection must be made before the jury is sworn in. See S.C. CODE ANN. §17-19-90 (2003). A court should examine "the totality of the circumstances" to determine if the defendant was cognizant of the crimes for which he was charged. State v. Reddick, 348 S.C. 631, 636, 560 S.E.2d 441, 443 (Ct. App. 2002) (citing State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1981); State v. Adams, 277 S.C. 115, 283 S.E.2d 582 (1981)).

The Applicant's indictment read as follows:

At a Court of General Sessions convened on October 6, 2008, the Grand Jurors of Charleston County present upon their oath:

Trafficking Cocaine

That in Charleston County, South Carolina, on or about May 7, 2008, the Defendant ERIC SUMTER unlawfully and knowingly did sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did possess or attempt to possess a controlled substance of a controlled substance analogue, to wit: Cocaine, in excess of approximately 105.5 grams; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

This Court finds the Applicant's Trafficking Cocaine indictment sufficiently stated the offense charged for which the Applicant was charged. This Court also finds the language of the indictment adequately informed the Applicant of what charge he was called upon to answer- Trafficking Cocaine. The Applicant was sufficiently put on notice that he could argue constructive versus actual possession and defend against the element of dominion and control of

his environment, even though his challenge was unsuccessful at trial.³ This Court finds the indictment also stated the specific statute the Applicant was alleged to have violated. This Court finds the indictment did not have to outline the elements of the offense of Conspiracy as the Applicant claims since the Applicant was not indicted for Conspiracy. This Court finds it is unlikely any challenge to the Applicant's indictment would have been successful. This Court finds the Applicant has not proven his indictment was defective or that the outcome of his proceeding would have been different had Counsel challenged the sufficiency of his indictment. This Court finds the Applicant has failed to carry his burden of proving Counsel's performance was ineffective in this regard.

III. Directed Verdict.

The Applicant alleges Counsel was ineffective for failing to move for a directed verdict. This Court finds this allegation is wholly without merit and unsupported by the record. This Court finds and the record reflects Counsel moved for a directed verdict at the conclusion of the State's case, which the court denied. (Tr. 142:4-18, 144:8-11). This Court finds Counsel also renewed the Applicant's motions after the jury returned a guilty verdict, which the court denied.

³ See State v. Tabor, 260 S.C. 355, 364-65, 196 S.E.2d 111, 113 (1973) "[P]roof of possession requires more than proof of mere presence, and that the State must show defendant had dominion and control over the thing allegedly possessed or had the right to exercise dominion and control over it." United States v. Bethea, 442 F.2d 790 (1971); State v. Adams, 291 S.C. 132, 135, 352 S.E.2d 483, 486 (1987) (citing State v. Hudson, 277 S.C. 200, 284 S.E.2d 773 (1981); State v. Brown, 267 S.C. 311, 227 S.E.2d 674 (1976)) (constructive possession is "defendant's knowledge and possession may be inferred if the substance was found on premises under his control"); State v. Kimbrell, 294 S.C. 51, 54, 362 S.E.2d 630, 631 (1987) (citing State v. Lane, 271 S.C. 68, 245 S.E.2d 114 (1978)) ("Because actual knowledge of the presence of the drug is strong evidence of intent to control its disposition or use, knowledge may be equated with or substituted for the intent element."); State v. Mollison, 319 S.C. 41, 45, 459 S.E.2d 88, 91 (Ct. App. 1995) (citing State v. Ellis, 263 S.C. 12, 22, 207 S.E.2d 408, 413 (1974)) ("Actual possession occurs when the drugs are found to be in the actual physical custody of the person. Constructive possession occurs when the person charged with possession has dominion and control over either the drugs or the premises upon which the drugs were found.).

(Tr. 198:2-15, 199:2-3). This Court finds Counsel was not deficient for failing to move for a directed verdict.

IV. Failure to Object.

"Defense counsel may decide as a strategic matter not to object because his objection would highlight the erroneous evidence, argument, or charge." State v. Torrence, 305 S.C. 45, 65, 406 S.E.2d 315, 326 (1991). Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1996); Underwood v. State, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 778-79 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) (citing Goodson v. U.S., 564 F.2d 1071 (4th Cir. 1977)).

A. Leading the Witness.

The Applicant alleges Counsel was ineffective for failing to object to the Solicitor leading Deas on direct examination. This Court finds the Applicant has failed to carry his burden of proving Counsel was ineffective for failing to object to the form of the Solicitor's questions to Deas. This Court finds there is no evidence of the Solicitor leading the witness inappropriately. This Court finds that the Solicitor was entitled to lead the witness on background and foundation materials, for example Tr. 89: 21-25; 90; 91; 93:1-6, et cetera. Further this Court finds and the record reflects that the Solicitor asked the witnesses open ended questions seeking her narrative of the day of the incident and events leading up to the crime, for example Tr. 94; 97:15; 98:15-16; 99:2-20, et cetera. Moreover, this Court finds that the leading questions the Solicitor asked the witness were not entirely inappropriate; at times in the record it was necessary for the

Solicitor to lead the witness because she was speaking quickly and at times found it difficult to communicate. Additionally, Deas could be considered a hostile witness, biased or prejudiced witness, or a witness identified with the adverse party because of her romantic relationship with the Applicant and her familiar involvement and living situation with the applicant's family. See Rule 611(c), SCRE: State v. Nelson, 192 S.C. 422, 7 S.E.2d 72 (1940) ("[G]enerally, when a witness is an unwilling one, or hostile to the party calling him, or stands in a situation which makes him necessarily adverse to such party, his examination in chief may be allowed to assume something of the form and character of cross-examination, at least to the extent of permitting leading questions to be put to him."). Accordingly, this Court finds the Applicant has failed to show how Counsel's failure to object affected the outcome of his proceeding.

B. Opening and Closing Statements.

The Applicant alleges Counsel was ineffective for failing to object to the Solicitor's closing and opening arguments. The Applicant claims the Solicitor vouched for and bolstered the testimony of the State's witnesses. This Court finds Counsel was not deficient for failing to object to the State's opening and closing argument. This Court finds there was no evidence of the Solicitor vouching for the State's witnesses during either opening or closing arguments. This Court finds and the record reflects that the State's opening and closing arguments were simply the State's interpretation of the evidence presented at trial and were proper. (Tr. 43:11-12, 17-18; 44:8, 16, 22; 45:3, 19, 24; 46:2, 17, 20; 47: 3-4, 7, 18, 21; 48:2.) This Court also finds the Applicant failed to carry his burden of proving prejudice resulted from Counsel's performance. This Court finds prejudice was particularly unlikely since the Court advised the jury that opening and closing statements are not evidence. (Tr. 40:1-7). This Court finds the Applicant has failed to carry his burden of proving Counsel was ineffective in this regard.

C. Prior Bad Acts.

The Applicant alleges Counsel was ineffective for failing to object to Deas' testimony that the Applicant engaged in prior bad acts. The rule of law is that, for prior bad acts evidence to be admissible, "[t]he record must support a logical relevance between the prior bad act and the crime for which the defendant is accused." State v. Brooks, 341 S.C. 57, 62, 533 S.E.2d 325, 328 (2000) (citing State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996)). This Court finds the Applicant has failed to highlight any portions of the transcript in support of his allegation and finds that the record is void of any testimony from Deas that the Applicant was engaged in any prior bad acts. When specifically asked by Counsel for the Applicant about the Applicant's background, Deas testified she did not know the Applicant to use drugs and she did not know what the Applicant was going to do with the drugs. (Tr. 128:25-129:7). Counsel also elicited testimony from Deas that she had never seen cocaine in connection with her and the Applicant's relationship and the Applicant earned a living in the music business. (Tr. 121: 18-25, 132:1-25, 133:1-6).

Further, the State elicited testimony from Deas regarding jail house recordings of the Applicant's telephone conversations with Deas, where he makes the following comments: "as long as you played along, you guys would be getting married;" "tell her I'm sorry, tell her I'll quit, tell her I won't do this again." (Tr. 122: 7-15). The State entered the jail house recordings into evidence and published them for the jury without objection by Counsel. (Tr. 120: 15-25, 121:1-6). Moreover, this Court finds that, even if the Applicant's counsel had not consented to the admission of the jail house tapes where the Applicant and Deas' conversation suggests that the Applicant had engaged in prior drug activity, the tapes would have been admissible into evidence based on the *res gestae* exception to objectionable hearsay or character evidence and the *res gestae* of the charged offense. See Rule 404(b), SCRE; State v. Blackburn, 271 S.C. 324,

327-28, 247 S.E.2d 334, 336-37 (1978) ("In order to qualify as a part of the *res gestae*, a statement must be substantially contemporaneous with the litigated transaction and be the spontaneous utterance of the mind while under the active, immediate influence of the event."); State v. Dennis, 321 S.C. 413, 417-18, 468 S.E.2d 674, 676-77 (1996) (citing State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995)) (same); State v. King, 334 S.C. 504, 512-13, 514 S.E.2d 578, 582-83 (1999) (citing State v. Adams, 322 S.C. 114, 122, 470 S.E.2d 366, 370-71 (1996)) ("The *res gestae* theory recognizes evidence of other bad acts may be an integral part of the crime with which the defendant is charged, or may be needed to aid the fact finder in understanding the context in which the crime occurred."); see also, State v. Gagum, 328 S.C. 560, 563 & n.2, 492 S.E.2d 822, 823 & n.2 (1997) (citing State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923); State v. Bolden, 303 S.C. 41, 43, 398 S.E.2d 494, 495, n.1 (1990)) ("While there are times when evidence may be admissible under *Lyle* and Rule 404(b) and the *res gestae* exception, the *res gestae* exception is properly viewed as independent of *Lyle*—that is, some evidence that would be inadmissible under *Lyle* and Rule 404(b) would be admissible as part of the *res gestae*"). In addition, the Applicant's statements on the tape are more aligned with non-hearsay admissions rather than inadmissible character evidence.

This Court finds this allegation is without merit and the Applicant has failed to carry his burden of proving Counsel was ineffective for failing to object to alleged testimony that the Applicant engaged in prior bad acts.

V. Conceding Guilt in Closing Argument.

The Applicant alleges Counsel was ineffective for conceding the Applicant's guilt at trial during closing argument. This Court finds Counsel was not deficient and did not concede the Applicant's guilt at trial. This Court finds Counsel's statements during closing were not a concession of guilt, but an attempt by Counsel to minimize the deficits in the Applicant's defense

and argue an alternate finding if the jury concluded that the State failed to meet its burden of proof on the Trafficking offense. (Tr. 172:3-7; 173: 1-4). Counsel provided credible testimony that his strategy was to argue to the jury that they should not find the Applicant guilty of trafficking solely based on the quantity of drugs found. Counsel argued to the jury that if they believed the State met their burden of proof as to actual or constructive possession that the Applicant did not intend to traffic the drugs and the quantity could have been for personal use. (Tr. 172:8-12; 174:9-25; 175:1-6). This Court finds Counsel's strategy and argument was valid in light of testimony the defense elicited from Officer Euper on cross-examination that 100 grams could be one month's supply of cocaine for one person. (Tr. 73:10-13). This Court further finds Counsel's argument was an attempt to provide the jury with an alternative to trafficking that would not result in a guilty verdict and that Counsel's strategy was helpful to the Applicant's defense, not prejudicial. This Court finds the Applicant has failed to carry his burden of proving Counsel provided ineffective assistance of counsel for the statements he made at trial during closing argument.

All Other Allegations

As to any and all allegations that were raised in the application in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence or testimony regarding such allegations. Accordingly, this Court deems the allegations abandoned by the Applicant. Therefore, these allegations are denied and dismissed with prejudice.

CONCLUSION

Based on all the forgoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing

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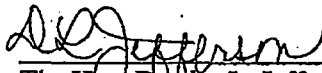
proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

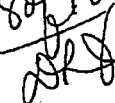
1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 15th day of July, 2014



The Hon. Deadra L. Jefferson
Presiding Judge, 9th Judicial Circuit

Charleston, South Carolina
At Chambers

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BCS20080502917

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2008010559

ARREST WARRANT NUMBER

K300426

DATE OF ARREST

May 8, 2008

ACTION OF GRAND JURY

Michelle
Foreperson of Grand Jury Date: UCI 6 2008

VERDICT

NOTED

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GSI007492

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

October Term 2008

THE STATE

Vs.

ERIC SUMTER
DOB: [REDACTED]
B/M

Indictment for

Trafficking Cocaine

08-2982-1

2008 OCT 10 PM 2:35

CLEARING COURT

BY

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions convened on October 6, 2008, the Grand Jurors of Charleston County present upon their oath:

Trafficking Cocaine

That in Charleston County, South Carolina, on or about May 7, 2008, the Defendant ERIC SUMTER unlawfully and knowingly did sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State; or did possess or attempt to possess a controlled substance or a controlled substance analogue, to wit: Cocaine, in excess of approximately 105.5 grams; in violation of 44-53-370 of the South Carolina Code of Laws (1976) as amended.

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


BENJAMIN CHAD SIMPSON
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.

ERIC SUMTER

AKA:

Race: B Sex: M Age: 27DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]

NORTH CHARLES, SC 294180000

DL#: [REDACTED] SID#: [REDACTED]INDICTMENT/CASE#: 2008GS1007492A/W#: K300426Date of Offense: 5/7/2008S.C. Code § : 44-53-0370(e)(2)(c)CDR Code #: 0280

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was
TO: Trafficking in cocaine, 100 to 200 grams☒ CONVICTED OF or ☐ PLEADSin violation of § 44-53-0370(e)(2)(c) of the S.C. Code of Laws, bearing CDR Code # 0280☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Simpson, Benjamin Chad71257
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 days/months/year or ☐ under the Youthful Offender Act not to exceed 1 yearsand/or to pay a fine of \$ 50,000.00; provided that upon the service of 1 days/months/years and/or paymentof \$ 1; plus costs and assessments as applicable*; the balance is suspended with probation for 1

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ 167,150.90 plus 20% fee: \$ 33,430.18 days/hours Public Service Employment

Payment Terms:

☐ set by SCDPPPS

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ 167,150.90 beginning\$ 167,150.90 paid to Public Defender Fund

Other:

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47-12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

PRESIDING JUDGE

Judge Code:

Sentence Date:

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2009)

Tara N. Myers
Mia Perron[Signature]
27
10/19/10