

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Horry County

John C. Hayes, III, Circuit Court Judge

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S.C. Supreme Court

LORENZO CROSS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-000022

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
2008-GS-26-1777

State of South Carolina,)
)
Plaintiff,)
)
-VS-)
)
Lorenzo Cross,)
)
Defendant.)

TRANSCRIPT OF RECORD

April 13, 2009
Conway, South Carolina

B E F O R E:

HONORABLE STEVEN H. JOHN, Circuit Judge.

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EXHIBITS

C=COURT

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1 THE COURT: All right, ladies and gentlemen, we're
2 going to go forward and select the jury in the case of the
3 State of South Carolina versus Lorenzo Cross. Now, in a
4 moment, I'm going to read the indictment or the charge to
5 you that the State has brought against Mr. Cross.

6 Now, before I do that, I'm going to tell you the
7 indictment is merely the charging document, the document
8 by which the matter is brought to Court. It's not
9 evidence, can't be considered by anyone as evidence in the
10 case, and the only reason I'm reading it to you at all is
11 to see if you happen to know anything about this case, you
12 have any information about this case that you need to tell
13 us before we got started, so the State of South Carolina
14 has charged the Defendant, Lorenzo Cross, that he did in
15 Horry County on or about February 11th, 2008, knowingly
16 sell, deliver, purchase, or bring into this State, or did
17 aid, abet, attempt, or conspire to sell, deliver, or
18 purchase, or bring into this State, or was in actual or
19 constructive possession, or attempted to become in actual
20 or constructive possession of a quantity of cocaine base
21 in an amount more than twenty-eight grams, but less than
22 one hundred grams, this being a controlled substance
23 within the Code of Laws of the State of South Carolina,
24 1976, such possession not having been authorized and in
25 violation of the law.

1 Is there any member of the potential jury panel that
2 knows anything about this particular case or has any
3 information about this matter that you need to bring to
4 the Court's attention at this time? (No response.)

5 The possible or the potential witnesses in this
6 particular case are Officer Crystal Garcia, Conway Police
7 Department; Sharon Lilly, Horry County Police Department;
8 Lisa Floyd, Horry County Drug Lab; Bill Knowles, the
9 Fifteenth Circuit Drug Enforcement Unit; and Lorenzo
10 Cross. Is there any member of the jury panel that's
11 related by blood or marriage, close personal friends,
12 acquainted with, knows any of these possible or potential
13 witnesses? If so, please stand. (No response.)

14 All right, is there any member of the jury panel or a
15 member of your immediate family has ever had any matters
16 whatsoever of any kind handled by the Fifteenth Circuit
17 Solicitor's Office? Remember that the Fifteenth Circuit
18 covers Horry and Georgetown Counties. If so, please
19 stand. (No response.)

20 Any member of the jury panel that either you or --
21 oh, I'm sorry. Yes, ma'am.

22 KAROLE JENSEN: I was just a witness in a ---

23 THE COURT: All right. First, and I should have
24 told y'all this; every time we ask a question and y'all
25 stand up, no matter if you stand up for every question,

1 you have to repeat your name and your juror number, so if
2 you would start off with your name and juror number first,
3 please.

4 KAROLE JENSEN: Karole Jensen, juror number 173.

5 THE COURT: All right, ma'am, you were a witness in
6 a particular case, is that right?

7 KAROLE JENSEN: Yes.

8 THE COURT: All right, ma'am. The qualification
9 question is can you give to the State of South Carolina
10 and to the Defendant a fair and impartial trial? Can you
11 be a fair and impartial juror?

12 KAROLE JENSEN: Yes.

13 THE COURT: Thank you very much, ma'am.
14 Yes, ma'am, standing right next to her.

15 JANET HOLLIMAN: Janet Holliman, 155.

16 THE COURT: All right. Do you know some of the
17 potential witnesses?

18 JANET HOLLIMAN: My nephew was arrested last
19 year ---

20 THE COURT: Okay. Well, ---

21 JANET HOLLIMAN: --- and I ---

22 THE COURT: Okay. All right, well, we haven't
23 gotten there yet, and also, and I should have said this
24 also. There will be a series of questions and at the very
25 end, I ask a general or catch-all question, so if you're

1 not covered by any of the questions -- this is for
2 everybody. If you're not covered by any of the questions
3 that I ask and you still have some issue, just respond to
4 the last question, you stand up, and then I'll probably
5 talk to you individually in that particular matter --
6 instance, all right?

7 All right, yes, ma'am, your name and juror number,
8 please?

9 VICTORIA LEACH: Victoria Leach, 206.

10 THE COURT: All right, ma'am.

11 VICTORIA LEACH: I have been convicted.

12 THE COURT: All right, ma'am. All right, come
13 forward and let me talk to you just a second, please,
14 ma'am. Counsel.

15 (Counsel and Victoria Leach approach the Bench for an off-
16 the-record conference with the Court. The juror is
17 excused in this case.)

18 THE COURT: All right, is there any member of the
19 jury panel that's related by blood or marriage, close
20 personal friends, acquaintances of anybody employed at the
21 Fifteenth Circuit Solicitor's Office? If so, please
22 stand. (No response.)

23 Is there any member of the jury panel that's ever had
24 -- either you or a member of your immediate family, ever
25 had any matters whatsoever handled by the Horry County or

1 the Fifteenth Circuit Public Defender's Office? If so,
2 please stand. (No response.)

3 Is there any member of the jury panel that's related
4 by blood or marriage, close personal friends,
5 acquaintances of anybody employed at the Horry County
6 Public Defender's Office? If so, please stand. (No
7 response.)

8 All right, Solicitor, if you would stand and identify
9 yourself, please, sir.

10 MR. RICHARDSON: My name is Jimmy Richardson. I'm
11 an Assistant Solicitor here in Horry County, in the
12 Fifteenth Judicial Circuit.

13 THE COURT: All right, thank you.

14 Ms. Wilson, if you would stand and identify yourself,
15 please, ma'am.

16 MS. WILSON: My name is Kia Wilson. I'm an
17 Assistant -- an Assistant Public Defender with the Horry
18 County Public Defender's Office.

19 THE COURT: All right, thank you.

20 Is there any member of the jury panel that's related
21 by blood or marriage, close personal friends,
22 acquaintances of either of the lawyers that are
23 representing their respective interests in this particular
24 case? If so, please stand. (No response.)

25 Is there any member of the jury panel that you

1 believe you have any kind of personal, political,
2 religious, philosophical belief that you believe would
3 prevent you from being a fair and impartial juror? If so,
4 please stand. (No response.)

5 Is there any member of the jury panel who is a former
6 law enforcement officer, that was you, yourself, were a
7 former law enforcement officer, or you now have a current
8 family member who is now in law enforcement or was in the
9 past in law enforcement? If so, please stand.

10 All right, yes, ma'am, right in front, your name and
11 juror number.

12 DONNA KOSTANEK: Donna Kostanek, juror 198.

13 THE COURT: Yes, ma'am.

14 DONNA KOSTANEK: My husband is a current police
15 officer for the City of Loris.

16 THE COURT: All right, ma'am. Can you give to the
17 State of South Carolina and to the defendant a fair and
18 impartial trial? Can you be a fair and impartial juror?

19 DONNA KOSTANEK: Yes, sir.

20 THE COURT: Thank you very much, ma'am.

21 Yes, ma'am, right behind her.

22 DEBRA BEST: Debra Best, Number 32.

23 THE COURT: Yes, ma'am.

24 DEBRA BEST: My son-in-law is a police officer, but
25 not in this county.

1 THE COURT: All right, ma'am. Where might that be?

2 DEBRA BEST: He's ---

3 THE COURT: In another state?

4 DEBRA BEST: Augusta.

5 THE COURT: In Augusta, okay, in Richmond County.

6 All right. Can you give to the State of South Carolina
7 and to the defendant a fair and impartial trial? Can you
8 be a fair and impartial juror?

9 DEBRA BEST: I think so, yes, sir.

10 THE COURT: All right, and I appreciate you saying
11 that -- and most people would say they believe so, but I
12 have to ask for an absolute yes or no.

13 DEBRA BEST: Yes, sir.

14 THE COURT: Thank you very much, ma'am. Thank you.
15 Yes, sir, your name and juror number?

16 RICHARD POST: I'm Richard Post, 282.

17 THE COURT: Yes, sir.

18 RICHARD POST: I was retired as a police officer.

19 THE COURT: And in -- where at?

20 RICHARD POST: In Fairhaven, New Jersey.

21 THE COURT: Okay. Can you give to the State of
22 South Carolina and to the defendant a fair and impartial
23 trial? Can you be a fair and impartial juror?

24 RICHARD POST: Yes, sir.

25 THE COURT: Thank you very much, sir.

1 Yes, ma'am.

2 PAGE MORRIS: I'm Page Morris, Number 253. My dad
3 is a retired police officer from the City of North Myrtle
4 Beach.

5 THE COURT: All right, ma'am. Can you give to the
6 State of South Carolina and to the defendant a fair and
7 impartial trial? Can you be a fair and impartial juror?

8 PAGE MORRIS: Yes, sir.

9 THE COURT: Thank you very much.
10 Yes, sir, on the end over there.

11 KEVIN MOSELEY: Kevin Moseley, 254. My sister is a
12 retired special agent with Army C.I.D., currently the
13 Deputy Director, Criminal Records Division, Fort Belvoir,
14 Virginia.

15 THE COURT: All right, sir. Can you give to the
16 State of South Carolina and to the defendant a fair and
17 impartial trial? Can you be a fair and impartial juror?

18 KEVIN MOSELEY: Yes, Your Honor.

19 THE COURT: Thank you very much.
20 Yes, sir.

21 WILLIAM DRAYTON: William Drayton, 89. I've got a
22 first cousin; my first cousin is a deputy sheriff.

23 THE COURT: Very good. Well, we won't disqualify
24 you just because of that. Thank you, sir. Can you give
25 to the State of South Carolina and to the defendant a fair

1 and impartial trial? Can you be a fair and impartial
2 juror?

3 WILLIAM DRAYTON: Yes, sir.

4 THE COURT: Thank you very much, sir.

5 Yes, ma'am.

6 KAROLE JENSEN: 173, Karole Jensen. My step-father
7 is a retired police officer from Richland County. He
8 retired about ten years ago.

9 THE COURT: Very good. Can you give to the State of
10 South Carolina and to the defendant a fair and impartial
11 trial? Can you be a fair and impartial juror?

12 KAROLE JENSEN: Yes.

13 THE COURT: Yes, ma'am.

14 CARLA LOVELACE: Carla Lovelace, Number 216. My
15 daughter-in-law is a former police officer for the City of
16 Myrtle Beach.

17 THE COURT: All right, ma'am. Can you give to the
18 State of South Carolina and to the defendant a fair and
19 impartial trial? Can you be a fair and impartial juror?

20 CARLA LOVELACE: Yes, sir.

21 THE COURT: All right, is there any member of the
22 jury panel that either you, yourself, or a member of your
23 immediate family has ever been a member of any kind of
24 victims' rights, or law enforcement support organizations?
25 Let me just give you a couple of examples. It's not an

1 exhaustive list of anything, but just examples of what I'm
2 talking about: Citizens Against Violent Crime, Mothers
3 Against Drunk Driving, the South Carolina Law Enforcement
4 Officers Association, the South Carolina Sheriff's
5 Association, just some kind of victims' rights or law
6 enforcement support organization. If so, please stand.

7 Yes, ma'am, your name and juror number, please.

8 LORI SMITH: Lori Smith, 337.

9 THE COURT: Yes, ma'am.

10 LORI SMITH: My husband's first wife was killed due
11 to drunk driving.

12 THE COURT: All right. Can you give to the State of
13 South Carolina and to the defendant a fair and impartial
14 trial? Can you be a fair and impartial juror?

15 LORI SMITH: Yes, Your Honor.

16 THE COURT: Okay, the next question, ladies and
17 gentlemen, I'm going to ask whether you, yourself, or a
18 member of your immediate family has ever been the victim
19 of a crime. Now, I'm not going to ask you what the crime
20 was about and don't necessarily want you to volunteer any
21 information to me about what the crime was about. The
22 question is going to be straightforward, was it yourself
23 or a family member, and then I'll ask the general
24 qualification question, so is there any member of the jury
25 panel that either you, yourself, or a member of your

1 immediate family has ever been the victim of a crime? If
2 so, please stand.

3 All right, yes, ma'am, your name and juror number,
4 please.

5 BARBARA ANDERSON: Barbara Anderson, Number 10.

6 THE COURT: And was it yourself or a family member?

7 BARBARA ANDERSON: My son.

8 THE COURT: Can you give to the State of South
9 Carolina and to the defendant a fair and impartial trial?
10 Can you be a fair and impartial juror?

11 BARBARA ANDERSON: Yes.

12 THE COURT: Thank you very much.

13 Yes, ma'am.

14 LORI SMITH: Lori Smith, 337.

15 THE COURT: Yourself or a family member?

16 LORI SMITH: Family member.

17 THE COURT: Can you give to the State of South
18 Carolina and to the defendant a fair and impartial trial?
19 Can you be a fair and impartial juror?

20 LORI SMITH: Yes, sir.

21 THE COURT: Thank you very much.

22 Yes, ma'am.

23 KAROLE JENSEN: 173, Karole Jensen; myself and my
24 family member.

25 THE COURT: Can you give to the State of South

VOIR DIRE

15

1 Carolina and to the defendant a fair and impartial trial?

2 Can you be a fair and impartial juror?

3 KAROLE JENSEN: Yes.

4 THE COURT: Thank you very much, ma'am.

5 Yes, sir.

6 JASON NALLEY: Jason Nalley, 259.

7 THE COURT: Yourself or a family member?

8 JASON NALLEY: A family member.

9 THE COURT: Can you give to the State of South
10 Carolina and to the defendant a fair and impartial trial?
11 Can you be a fair and impartial juror?

12 JASON NALLEY: Yes.

13 THE COURT: Thank you very much, sir.

14 All right, next I'm going to ask what I call as my
15 general or catch-all question. Do you know of any reason,
16 have any question in your mind, any doubt in your mind
17 that you believe you cannot give to the State of South
18 Carolina or to the Defendant a fair and impartial trial?
19 That is for any reason whatsoever you believe you cannot
20 be a fair and impartial juror. If so, please stand. (No
21 response.)

22 Thank you very much.

23 Any further questions from the State?

24 MR. RICHARDSON: No, sir.

25 THE COURT: From the Defense?

1 MS. WILSON: None, Your Honor.

2 THE COURT: Very good. What's going to happen now,
3 ladies and gentlemen, is the Clerk from the random list
4 drawing is going to call names. If your name is called,
5 you will come forward and basically come to a place that
6 is right in front of Miss Dixie, the Court Reporter, right
7 there. Just stand and face to the back of the courtroom.
8 At that point in time, the Clerk will inquire of the State
9 whether to present or to excuse the juror. If you're
10 excused, obviously you go back and have a seat from whence
11 you came.

12 If you are presented by the State, then the Clerk
13 will turn to the Defense to either seat or excuse the
14 juror. Again, if you're excused, you go back and have a
15 seat. If you are seated by the Defense, then you will
16 turn and go to the jury box and have a seat in the jury
17 box, so if you happen to have any personal items, a book,
18 purse, or whatever that might be, if your name is called
19 please bring that with you in case you are seated so you
20 can go directly to the jury box.

21 All right, Madam Clerk.

22 THE CLERK: 405, Kendall Wiggins. What say the
23 State?

24 MR. RICHARDSON: Please present the juror.

25 THE CLERK: Defense?

JURY SELECTION

17

1 MS. WILSON: Please seat the juror.

2 THE CLERK: Have a seat in the jury box, please.

3 110, Jeanette Gause. What say the State?

4 MR. RICHARDSON: Please present the juror.

5 THE CLERK: Defense?

6 MS. WILSON: Please seat the juror.

7 THE CLERK: Have a seat in the jury box, please.

8 259, Jason Nalley. What say the State?

9 MR. RICHARDSON: Please present the juror.

10 THE CLERK: Defense?

11 MS. WILSON: Please excuse the juror.

12 THE CLERK: You're excused in this particular case.

13 337, Lori Smith. What say the State?

14 MR. RICHARDSON: Please present the juror.

15 THE CLERK: Defense?

16 MS. WILSON: Please excuse the juror.

17 THE CLERK: You're excused in this particular case.

18 295, Shawn Ray. What say the State?

19 MR. RICHARDSON: Please present the juror.

20 THE CLERK: Defense?

21 MS. WILSON: Please seat the juror.

22 THE CLERK: Have a seat in the jury box, please.

23 254, Kevin Moseley. What say the State?

24 MR. RICHARDSON: Please present the juror.

25 THE CLERK: Defense?

JURY SELECTION

18

1 MS. WILSON: Please excuse the juror.

2 THE CLERK: You're excused in this particular case.

3 216, Carla Lovelace. What say the State?

4 MR. RICHARDSON: Please present the juror.

5 THE CLERK: Defense?

6 MS. WILSON: Please seat the juror.

7 THE CLERK: Have a seat in the jury box, please.

8 253, Page Morris. What say the State?

9 MR. RICHARDSON: Please present the juror.

10 THE CLERK: Defense?

11 MS. WILSON: Please seat the juror.

12 THE CLERK: Have a seat in the jury box, please.

13 33, Joseph Beverly. What say the State?

14 MR. RICHARDSON: Please present the juror.

15 THE CLERK: Defense?

16 MS. WILSON: Please excuse the juror.

17 THE CLERK: You're excused in this particular case.

18 219, Patricia Lucey. What say the State?

19 MR. RICHARDSON: Please present the juror.

20 THE CLERK: Defense?

21 MS. WILSON: Please seat the juror.

22 THE CLERK: Have a seat in the jury box, please.

23 89, William Drayton. What say the State?

24 MR. RICHARDSON: Please present the juror.

25 THE CLERK: Defense?

JURY SELECTION

19

1 MS. WILSON: Please seat the juror.

2 THE CLERK: Have a seat in the jury box, please.

3 36, Sandra Bone. What say the State?

4 MR. RICHARDSON: Please present the juror.

5 THE CLERK: Defense?

6 MS. WILSON: Please seat the juror.

7 THE CLERK: Have a seat in the jury box, please.

8 125, Lane Ringwood Hall. What say the State?

9 MR. RICHARDSON: Please present the juror.

10 THE CLERK: Defense?

11 MS. WILSON: Please seat the juror.

12 THE CLERK: Have a seat in the jury box, please.

13 155, Janet Holliman. What say the State?

14 MR. RICHARDSON: Please present the juror.

15 THE CLERK: Defense?

16 MS. WILSON: Please seat the juror.

17 THE CLERK: Have a seat in the jury box, please.

18 Number 10, Barbara Anderson. What say the State?

19 MR. RICHARDSON: Please present the juror.

20 THE CLERK: Defense?

21 MS. WILSON: Please seat the juror.

22 THE CLERK: Have a seat in the jury box, please.

23 135, Wendy Hardwick. What say the State?

24 MR. RICHARDSON: Please present the juror.

25 THE CLERK: Defense?

1 MS. WILSON: Please seat the juror.

2 THE CLERK: Have a seat in the jury box, please.

3 THE COURT: Let's have one alternate, please.

4 THE CLERK: 333, Barrett Slaughter. What say the
5 State?

6 MR. RICHARDSON: Please present the juror.

7 THE CLERK: Defense?

8 MS. WILSON: Please excuse the juror.

9 THE CLERK: You're excused in this particular case.
10 379, Janice Ullmeyer. What say the State?

11 MR. RICHARDSON: Please present the juror.

12 THE CLERK: Defense?

13 MS. WILSON: Please seat the juror.

14 THE CLERK: Have a seat in the jury box, please.

15 THE COURT: Ms. Ullmeyer, if you will remember you
16 are the alternate in this particular case, all right?
17 Thank you, ma'am.

18 JANICE ULLMEYER: What was that?

19 THE COURT: You're the alternate. Thank you, ma'am.
20 All right, is there any objections to the jury as
21 empaneled from the State?

22 MR. RICHARDSON: No, sir.

23 THE COURT: From the Defense?

24 MS. WILSON: None, Your Honor.

25 THE COURT: Very good. I find the jury has been

1 properly empaneled pursuant to Batson v. Kentucky and
2 J.E.B. v. Alabama.

3 All right, ladies and gentlemen of the jury in this
4 particular case, I'm going to ask that you go do one thing
5 for me now and that is to select your foreperson for this
6 particular jury. Let me tell you very briefly what the
7 foreperson's duties and responsibilities are.

8 If we're here in the courtroom and there is something
9 that the jury needs attention to, the witness needs to
10 speak up, the lawyers, or whatever it might be, basically
11 the foreperson on behalf of the jury will raise their
12 hand, get the Court's attention, and we'll handle the
13 matter, whatever it is.

14 If you're back in your jury room, then if some matter
15 comes up, the foreperson writes out a note, signs it,
16 hands it to the bailiff. It will come to me, and again,
17 we'll handle the matter, whatever it might be.

18 When the evidentiary portion of the trial has been
19 concluded and we've gone through the closing arguments and
20 I have given you the law that you will apply to the facts
21 as you so find them to be in this particular case, then
22 the foreperson's duties and responsibilities change in
23 this regard: When you are back in your jury room
24 deliberating on the case or decide on the case, the
25 foreperson is basically going to be acting like the

1 chairman at a meeting.

2 The foreperson's voice and vote on that ultimate
3 issue being decided carries no more weight than everybody
4 else. Everybody is on an equal plane in that regard, but
5 somebody does need to be in charge and guide the
6 discussions, if necessary.

7 And the final duty and responsibility of the
8 foreperson is once the jury has well and truly deliberated
9 in this case and reached its unanimous decision in this
10 particular matter, then the foreperson will take the
11 verdict form that the Court will provide to you, check the
12 appropriate block and thereafter sign your name as
13 foreperson, indicating that that indeed is the unanimous
14 verdict of the jury in this particular matter, so Ms.
15 Ullmayer, as the alternate you can vote on who the
16 foreperson is, but obviously being the alternate, you
17 cannot be the foreperson. Everyone else is eligible to be
18 the foreperson.

19 So with that, I'm going to send you back to your jury
20 room. Vote and select a foreperson. Knock on the door
21 and let the bailiff know who that is. Please go to your
22 jury room. Thank you very much.

23 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
24 THE JURY.)

25 THE COURT: All right, Solicitor and Ms. Wilson,

1 what we'll do is just as soon as the jury selects the
2 foreperson, then I'll excuse them for lunch. Let's start
3 back at two o'clock, okay? Let's start back at two
4 o'clock, then. Thank you very much. All right, I'll see
5 y'all back at two o'clock.

6 (OFF THE RECORD - Lunch Recess)

7 ON THE RECORD

8 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
9 THE JURY.)

10 THE COURT: All right, Solicitor, go ahead.

11 MR. RICHARDSON: Your Honor, if it please the Court,
12 we're here on the matter of the State versus Lorenzo
13 Cross. A jury has been selected. This is on Indictment
14 Number 2008-GS-26-1777 for trafficking cocaine, a
15 controlled substance between twenty-eight and a hundred
16 grams.

17 Mr. Lorenzo Cross is not present. We have subpoenaed
18 Mr. Cross several times. I am prepared to give the Court
19 a brief background as to what has taken place leading up
20 to today.

21 Mr. Cross was charged on February the 12th with
22 trafficking cocaine. He was given two dates by the
23 Magistrate to come back. One was for April 11th, 2008,
24 and one was for 5/16/2008. Mr. Cross showed up for both
25 of those hearings, and because Mr. Cross had helped us in

1 the past, the State had made a plea offer to him. He
2 showed back up on February 4th for a plea. At that time,
3 he actually signed up to plead guilty, signed the
4 paperwork, but he said that he needed to come back that
5 afternoon, and at the time, we were going to drop this
6 case to a second offense and let him plead for -- to a
7 mandatory minimum of seven years. He said that he wanted
8 to come back that afternoon and do the plea then. He did
9 not come back.

10 I subpoenaed him back to Court in April. He did not
11 show up at that point. Excuse me; I subpoenaed him one
12 time before in January; he didn't show up then. I'm
13 sorry. I brought him in in April. He didn't show up the
14 second time. He was supposed to be here last week for
15 trial. I contacted his bondsman, Beach Bonding, and Mike
16 Brown, two weeks ago. Mr. Brown has been looking for him,
17 and Mr. Brown was actually in Court this morning to speak
18 to Your Honor. Ms. Wilson saw him there. He has been
19 trying to find Lorenzo Cross for two weeks. He tells me
20 he believes he is now in Florida.

21 Ms. Wilson has also sent people from the Public
22 Defender's Office out to try to contact him. Basically,
23 Judge, we have heard nothing from Lorenzo Cross since the
24 day he came in to plead guilty, asking to come back that
25 afternoon, and failed to show. We asked for a Bench

MOTION RE TRIAL IN ABSENTIA

25

1 Warrant in front of Judge Hyman last week, and he signed a
2 Order for a Bench Warrant, and that is in place. He also
3 gave Ms. Wilson the weekend to see if she or anyone in her
4 office could find Mr. Cross, and Mr. Brown worked through
5 the weekend also seeing if he could find Mr. Cross,
6 without any success, so the State would make a motion to
7 go ahead and try him in his absence.

8 THE COURT: All right. Ms. Wilson.

9 MS. WILSON: Thank you, Your Honor. Your Honor, our
10 office, upon being notified that Mr. Cross was going to be
11 called for trial, did attempt to contact him at the phone
12 number that we had listed. We did not get any response to
13 the phone call. As a matter of fact, there was not even a
14 voice mail where we could leave a message.

15 In addition, we sent him a copy -- well, actually,
16 I'm not sure that we did. Typically we would send a copy
17 of the subpoena that we receive from the Solicitor's
18 Office and send a copy of that same subpoena to the client
19 so they get two forms of notification. In this particular
20 instance, I do not believe we sent one because I don't
21 believe we originally received a copy of the subpoena.

22 However, I will say that I had Jerome Randall, who is
23 the investigator in our office, go out and attempt to find
24 him at the last address that we had listed, and that Mr.
25 Cross was not there. It is my personal belief, Your

1 Honor, that some harm may have befallen him. However, I
2 have nothing to prove that other than the fact that he
3 typically has shown up for Court when requested.

4 THE COURT: All right. Solicitor, just tell me
5 again what efforts your office made to subpoena the
6 Defendant.

7 MR. RICHARDSON: Well, when he came in and signed up
8 to plead, of course he absconded that afternoon, but we
9 didn't seek a Bench Warrant, and we've subpoenaed him
10 since. The most recent time was that he was supposed to
11 be in last Friday, which would have been April 3rd, and he
12 was under subpoena from April 3rd through April 17th. We
13 sent that to the address that he had on his bond, and that
14 was at 465 Landmark Road, Conway, South Carolina.

15 We also sent a copy of that subpoena to Beach
16 Bonding, and Mike Brown, we called him last week. He's
17 been looking for him for two weeks, and we had sent a copy
18 of this to the Public Defender's Office also.

19 THE COURT: All right.

20 MR. RICHARDSON: And, Your Honor, just to reiterate
21 what Ms. Wilson has said, Mike Brown tells me that he has
22 called every number that is available to him, and he had a
23 contact through Mr. Cross's sister, I believe it was, and
24 he has not been able to get in touch with him.

25 THE COURT: All right, and the bond paperwork for

MOTION RE TRIAL IN ABSENTIA

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1 the Defendant carried the terminology that the matters
2 would proceed in his absence if he did not appear when
3 summoned, is that correct?

4 MR. RICHARDSON: Yes, sir, Your Honor. The bond was
5 for Fifteen Thousand Dollars, surety, and on the second
6 page of the bond under the acknowledgement by the
7 Defendant, it says -- it reads in part, "I understand that
8 I -- I understand and have been informed that I have the
9 right and obligation to be present at trial. Should I
10 fail to attend the Court, the trial will proceed in my
11 absence." The very next line, it says, "It has been
12 explained to me that if I fail to appear before the Court
13 as required, a warrant will be issued for my arrest."

14 The very next line, Your Honor, is Mr. Lorenzo
15 Cross's signature dated 2/12/2008, and to the left of his
16 signature is the address that he wished to be contacted
17 at, and his Social Security number.

18 THE COURT: All right, sir. Do you have a copy of
19 that that we could make a Court Exhibit?

20 MR. RICHARDSON: Yes, sir. We'll make this a Court
21 Exhibit.

22 BAIL PROCEEDING FORM II MARKED AS COURT'S

23 EXHIBIT NUMBER 1.

24 MR. RICHARDSON: And, Your Honor, I will -- if Your
25 Honor wish, I will make a copy of his subpoena to the

1 address listed on his bond paperwork, I'll make that also
2 a Court's Exhibit.

3 THE COURT: All right, sir, if you would, that would
4 be great. Thank you very much.

5 SUBPOENA MARKED AS COURT'S EXHIBIT NUMBER 2.

6 THE COURT: All right, the Court finds that pursuant
7 to the case of State v. Castineria and a number of other
8 cases that have addressed this issue to try a Defendant in
9 his absence, the Court has to make certain findings of
10 fact on the record, one, that the Defendant received
11 notice of his right to be present, and two, he was warned
12 that he would be tried in his absence should he fail to
13 attend. We find that both prongs of this have been
14 proved to the Court in this particular matter, and I do
15 find that it is proper to try the Defendant in his
16 absence.

17 With that, is the State ready to proceed?

18 MR. RICHARDSON: Yes, sir, Your Honor.

19 THE COURT: Defense?

20 MS. WILSON: One motion, Your Honor.

21 THE COURT: Yes, ma'am.

22 MS. WILSON: That is that the State's witnesses be
23 sequestered.

24 THE COURT: Is there any objection to that,
25 Solicitor?

REMARKS BY THE COURT

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1 MR. RICHARDSON: No, sir.

2 THE COURT: All right, very good. Do you have a
3 chief investigating officer in this matter or someone who
4 is in charge of the file?

5 MR. RICHARDSON: I do, Your Honor. That's Crystal
6 Garcia. She will be our first witness.

7 THE COURT: All right, very good. All right, then
8 I'll just have the other witnesses, then, if y'all
9 wouldn't mind just occupy one of the conference rooms
10 outside, please.

11 Ask the jury to come in, please.

12 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE
13 JURY.)

14 THE COURT: All right, good afternoon, ladies and
15 gentlemen. We are going to commence the trial of the
16 State of South Carolina versus Lorenzo Cross. The first
17 thing that's going to happen is the Clerk of Court will
18 administer your oath to you, so if you will please stand
19 at this time.

20 (The Clerk administers the oath to the jurors.)

21 THE COURT: All right, ladies and gentlemen, as I
22 indicated to you, we are going to commence the trial in
23 this particular matter. Now, I told you in this
24 particular matter that the charges against Mr. Cross as I
25 read to you are not evidence and cannot be considered by

1 you as evidence in the case. That would come to you from
2 the witness stand, the witnesses that will testify before
3 you under oath, and any documentary or other type of
4 physical evidence that might be introduced properly in
5 this particular case.

6 The trial will, I expect, not be a lengthy trial, but
7 it is an important case nevertheless. The length of a
8 trial does not necessarily determine how important or
9 unimportant a case may be because we all obviously
10 consider all cases important and certainly when you are
11 asking a jury to see whether or not the State can prove
12 its case to you beyond a reasonable doubt, all matters
13 obviously in that vein are important.

14 How we proceed is we will have the -- when I get done
15 with these brief opening statements, we will have the
16 opening statements of the attorneys. The opening
17 statements are not evidence. They cannot be considered by
18 you as evidence. They are important in that they are each
19 side's introduction to -- as to what they believe is
20 important about this particular matter, and then we will
21 go into the evidentiary portion of the trial, in which you
22 will hear from witnesses under oath, and again, the
23 introduction of any physical evidence that may be
24 important in this particular matter.

25 We will then have the closing arguments of the

REMARKS BY THE COURT

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1 attorneys, and again, those are not evidence, can't be
2 considered by you as evidence in the case, but they are
3 each side's summation to you of what they believe the
4 evidence has shown to you during the course of the trial.

5 Then I will give you the law that you will apply to
6 the facts as you so find them to be in this particular
7 case, and then I will submit the case to you for your
8 deliberation and your unanimous decision in this
9 particular matter.

10 In this particular case, collectively you will be the
11 judges of the facts of this particular case. I will not
12 indicate to you or intimate to you in any way what I
13 believe the facts of this case are because that's not my
14 job. That's your job. That's your responsibility, to
15 listen to all the evidence and find that evidence which
16 convinces you of its truth and then weigh that evidence
17 that you believe to be true as against the State's burden
18 of proof in this matter.

19 In any criminal case, this one being no different,
20 the Defendant has nothing to show to you. The Defendant
21 has nothing to prove to you. The State has now and always
22 has the burden of proof in the case. The State must prove
23 to you by the evidence presented the guilt of the
24 Defendant of the crime charged beyond a reasonable doubt,
25 so it will be your job as judges of the facts to find the

1 facts and evidence that you believe to be true and
2 thereafter weigh that evidence that you believe to be true
3 as against the State's burden to prove the Defendant
4 guilty beyond a reasonable doubt.

5 The Defendant is presumed innocent of the charges
6 that are made against him and that presumption remains
7 until and if you believe the State has proved to you the
8 guilt of the Defendant beyond a reasonable doubt.

9 The other job that the Court has besides giving you
10 the law that you will apply to the facts as you so find
11 them to be in this case is to govern the proceedings. If
12 there are any motions or objections by the attorneys as to
13 what is being presented, and if I make any rulings in your
14 presence, please remember I'm telling the lawyers how the
15 case will be conducted. I'm not making any comments on
16 the facts because, again, that's your job; that's your
17 responsibility, to find the facts and evidence that you
18 find to be true in this particular matter, so with that,
19 I'll turn it over to the attorneys for their opening
20 statements.

21 All right, Solicitor.

22 MR. RICHARDSON: Thank you, Your Honor.

23 Easter Monday, I'm sure y'all could have had
24 someplace better to be, but we certainly appreciate y'all
25 coming in and if there is any good news, I will tell you

1 that this case, like Judge John said, will not be
2 extremely long. Matter of fact, we'll probably be through
3 with the State's case at least maybe an hour, hour and a
4 half, but I don't want you to get into a mind set of,
5 "Well, it can't be that important if it only took an hour
6 and a half." It is an extremely important case, and I
7 could probably stretch it out by bringing in other people
8 that saw the same thing that these witnesses saw, but what
9 you will hear from these particular witnesses is the
10 evidence against Mr. Lorenzo Cross, that he did, in fact,
11 have possession of an amount of crack cocaine and that
12 that amount of crack cocaine made it trafficking.

13 I want to also make you aware, because there's --
14 it's easy to get into a misconception that if you say
15 trafficking cocaine, you think almost along the lines of
16 Scarface or something, something like that, people
17 bringing in a pile of cocaine from other states and things
18 like, you know, a higher amount of cocaine than it
19 actually is.

20 To traffic cocaine is nothing like that at all, and
21 what we have charged him with is simply having possession
22 of an amount of cocaine that the statute, the State
23 statute says if it's above this weight, it is trafficking
24 weight. If it's a small amount, of course, you wouldn't
25 charge them with trafficking, but this is a much larger

1 amount, and it's not bricks of cocaine, but it is above
2 that level, and you will hear the levels and the weights
3 that it is. It's actually above twenty-eight grams, but
4 less than a hundred grams of cocaine, and the statute says
5 because of that it is going to trafficking.

6 The main thing that you'll have to decide is did
7 Lorenzo Cross either have constructive possession or
8 actual possession, and that's a fairly easy concept to
9 pick up on also, like right now I'm in actual possession
10 of this pen, but if I put the pen down here, I'm in
11 constructive possession of it. In other words, I could
12 pick it up. I've got control of that pen.

13 What you will hear in this case is from three
14 witnesses, but the main part of that will be from Crystal
15 Garcia, and Ms. Garcia is seated over here with me at the
16 State's table, and what Ms. Garcia will tell you is that
17 she was working with a drug enforcement agency back in
18 February of 2008 when Mr. Cross was arrested. They had
19 enough information that a Magistrate signed a Search
20 Warrant and that she used that Search Warrant to go to his
21 house. He was at the house. They came in, put handcuffs
22 on him to hold him and searched the house. She will tell
23 you that Mr. Cross was very cooperative, gave her the
24 drugs, and gave her other drugs that were in the house,
25 and that's why this case isn't going to last but about an

1 hour or hour and a half. It's fairly clear-cut as being
2 so.

3 She will also -- she will testify -- will certainly
4 be the longest of the three witnesses. The next witness
5 will be a lady by the name of Sharon Lilly, and all you
6 will hear from Ms. Lilly is basically that "I work at
7 Horry County Police Department in Evidence. I received
8 this bag of crack cocaine. It was sealed. I kept it in
9 evidence until a date that I was supposed to take it over
10 and someone else was to test it to make sure it was, in
11 fact, crack cocaine."

12 And the lady that we have in Horry County that does
13 that, her name is Lisa Floyd, and Lisa Floyd runs a --
14 it's call Horry County Drug Lab, but they test the drugs
15 and make sure that it's not some sort of baking soda or
16 something else, make sure that drugs are actually drugs,
17 and that's the third and final witness that you'll hear
18 from, and Ms. Floyd will tell you, "This is what I found,"
19 either that it was drugs or wasn't drugs, and certainly
20 the cat is a little bit out of the bag because if it
21 wasn't drugs, we wouldn't be here today, but she will also
22 tell you how much the drugs weighed.

23 Sharon Lilly and Lisa Floyd wouldn't know Lorenzo
24 Cross from Adam's house-cat. She just -- none of them
25 ever saw him. It's just, "I took the drugs and I gave

1 them to her," and that's called a chain of custody, to
2 make sure that people haven't tampered with the evidence,
3 make sure that nobody has come in and done any foul play,
4 so that's basically it, and then at the end of hearing
5 those people testify, you'll have to go out and make a
6 decision whether or not Lorenzo Cross is guilty of
7 trafficking.

8 More so, and you do get to decide on the weight, so
9 don't take it as such, but again, possession is the same
10 thing as trafficking except for trafficking, this will
11 weigh more. The drugs will weigh more; that's it, and
12 that's the only thing that I hope you don't get caught up
13 on. I think the rest of it's going to be pretty cut and
14 dried.

15 Possession is possession of a small amount.
16 Trafficking is -- trafficking is a good bit more, and at
17 the end of the day, I'll come back and we'll give a
18 closing statement, and it won't be any longer than the
19 opening was, and I'll ask you to go back and weigh the
20 evidence and return a verdict of guilty.

21 I would ask you now to listen to Ms. Kia Wilson from
22 the Public Defender's Office as she gives you a brief
23 opening statement, and I thank you for your time.

24 THE COURT: All right, Ms. Wilson.

25 MS. WILSON: Thank you, Your Honor.

1 Good afternoon, everyone. I'm Kia Wilson. I work
2 for the Horry County Public Defender's Office, as I've
3 already told you, and I represent Lorenzo Cross in this
4 case.

5 If there is one thing that I want you to keep in mind
6 as you listen to the evidence, as you contemplate the
7 evidence, which, of course, will not start until the Judge
8 orders deliberation, it is that Lorenzo Cross does not
9 have to prove anything. He does not have to present a
10 witness. He doesn't have to speak. The burden of proof
11 lies on the State. It lies with the State. It is their
12 job to convince you beyond a reasonable doubt that Mr.
13 Cross is guilty.

14 Now, he's talked about the witnesses that he's going
15 to bring before you, and it is important. It's important
16 to listen to what they have to say, but it is also
17 important to remember that you have an important job, and
18 that is when the Judge orders deliberation, you have the
19 job of deciding whether or not you believe what you've
20 heard.

21 Now, as the Solicitor has told you, and the Judge
22 stated, this is probably going to be a pretty short trial,
23 but again, part of the reason that it's going to be short
24 is because they have very few witnesses, and we are not
25 required to put up a witness, and we are not going to put

1 up a witness. It does not mean anything. All it means is
2 that the State has a burden to prove that my client is
3 guilty, and if I stand up and say nothing else for the
4 entirety of this trial, it still means nothing, so I ask
5 you to listen carefully, to think about what you're
6 listening to, and hopefully at the end of this trial, you
7 will find that my client is innocent of these charges.
8 Thank you.

9 THE COURT: All right, Solicitor, your first
10 witness, please, sir.

11 MR. RICHARDSON: Thank you, Your Honor.

12 The State would call Crystal Garcia.

13 THE COURT: Please come around and be sworn, ma'am.

14 CRYSTAL GARCIA, being first duly sworn, testifies as
15 follows:

16 THE CLERK: Please be seated. State your full name
17 and spell your last name.

18 MS. GARCIA: Good afternoon. My name is Crystal
19 Garcia. Last name spelling is G-A-R-C-I-A.

20 DIRECT EXAMINATION BY MR. RICHARDSON:

21 Q. Ms. Garcia, where are you employed, please?

22 A. I'm employed by Conway Police Department.

23 Q. And where were you employed on February 1st, 2008?

24 A. I'm employed by Conway Police Department, but I'm a
25 -- I was assigned to the Fifteenth Circuit Drug

1 Enforcement Unit, which is the Drug Task Force for the
2 Solicitor's Office.

3 Q. If you will, explain just a little bit about that,
4 how you could be employed by the City of Conway and still
5 work for the D.E.U.

6 A. Basically Conway signs my paycheck, but I was --
7 like had a special assignment, so for the three years I
8 spent on the Task Force.

9 Q. What does -- did you already tell us what D.E.U.
10 stands for?

11 A. It's the Drug Enforcement Unit.

12 Q. And did you have an occasion while you were with
13 the Drug Enforcement Unit to set up surveillance in Conway
14 on February -- say from January 30th until February 11th?

15 A. That's correct.

16 Q. And what particular address was that?

17 A. We were investigating drugs being sold from 1417
18 Racepath Avenue, which is located in the city limits of
19 Conway.

20 Q. And is that in Horry County?

21 A. Yes, sir.

22 Q. All right. Did you have a particular suspect's
23 name?

24 A. At the time when we first received the information,
25 we had an alias, which was what they called him, was

1 Florida Kevin.

2 Q. And did you receive information through this
3 surveillance that there were drugs in the house of 1417
4 Racepath in Conway?

5 A. Well, the information we received was that this
6 gentleman named Florida Kevin was selling drugs from 1417
7 Racepath Avenue.

8 Q. Tell us a little bit about the surveillance. Did
9 you actually sit and watch what was going on?

10 A. Are you talking about on the 30th?

11 Q. Yes, ma'am.

12 A. Okay. On the 30th of January, we met with the
13 informant that gave us the information about drug sales
14 taking place at the residence, and this informant
15 indicated that they could buy from Florida Kevin. We met
16 with the informant, issued him official police buy-money,
17 which was pre-recorded.

18 We searched the informant and attached an audio
19 recording system to his person, and we took him close to
20 the buy location and dropped him off. He walked to the
21 buy location and met with Mr. Cross, and a transaction
22 occurred. The informant was picked back up after he left.
23 We took him back to the pre-determined location. We also
24 search them again to make sure there's no contraband, and
25 we took the wire off of him and retrieved the drugs.

1 Q. Were you able to monitor this sale as it went on
2 through the wire?

3 A. We heard it in and out. Normally what we do is we
4 play it back when we get to the office because there's
5 times where we can't hear everything that goes on.

6 Q. And was the informant able to tell you who he had
7 purchased these drugs from?

8 A. The informant knew this individual as Florida
9 Kevin. We put the informant back in the vehicle after the
10 buy and drove him past the house to make sure we had the
11 right house to get the search warrant for, and he
12 positively identified which house he went to to purchase
13 the drugs.

14 Q. And what's the street address of that house?

15 A. The street address was 1417 Racepath Avenue.

16 Q. Upon getting that information, tell me what you did
17 next.

18 A. We typed up a -- well, I typed up a search warrant
19 basically with all the facts of what we did in the process
20 of purchasing the drugs from Florida Kevin at that
21 residence. Also in the search warrant we indicate what
22 type of residence it is, give a physical description, how
23 to get there, and also what we're searching for, and
24 vehicles that may be located on the property.

25 Q. And who did you present this search warrant to?

1 A. Judge Mayers.

2 Q. And he's a Magistrate in Conway?

3 A. That's correct.

4 Q. All right, and you've already said you gave a
5 description of the house. Did you actually give them the
6 -- did you give Judge Mayer the actual street address?

7 A. Yes. It says 1417 Racepath Avenue located in
8 Conway, South Carolina.

9 Q. All right, and you told -- did you tell him what
10 kind of property you were looking for?

11 A. Yes. It's -- the way I described it on the search
12 warrant is a single-story brick residence with dark-
13 colored shutters, a wooden fence around the rear.

14 Q. What did you tell Judge Mayer you would be looking
15 for if he granted such search warrant?

16 A. Any and all drugs, but more specifically crack
17 cocaine, any like scales, bags, anything used to
18 facilitate drug sales.

19 Q. And as far as probable cause, what did you tell
20 Judge Mayer -- what was your reasoning for buying --
21 excuse me, for requesting a search warrant for that
22 Racepath address?

23 A. I basically described the same thing, just that we,
24 you know, utilized the confidential informant to make the
25 purchase, and just detailed as I explained it to you guys.

1 Q. All right. Did you tell him how -- approximately
2 what time or when this confidential informant had bought
3 drugs from Florida Kevin?

4 A. Well, the date on the search warrant is the 1st of
5 February. We have seventy-two hours from the time that
6 you actually do the transaction, which the transaction
7 occurred on the 30th of January, and I obtained the search
8 warrant on the 1st, so it was about forty-eight hours
9 later.

10 Q. And did Judge Mayer give you permission to or give
11 you a search warrant for that address?

12 A. That's correct. He signed the search warrant, and
13 I also signed and swore to the search warrant.

14 Q. Are you aware of how many days it takes for a
15 search warrant to go stale?

16 A. It's ten days, yeah, ten days from the time the
17 search warrant is signed.

18 Q. Did you execute this search warrant within that
19 ten-day period?

20 A. Yes, sir.

21 Q. What day did you go back to that address to serve
22 the search warrant?

23 A. We served the search warrant on February the 11th,
24 which was the 10th day.

25 Q. All right, and who went with you?

1 A. Several agents, Agent Grate, Commander Knowles,
2 Agent Lynch, Agent Mullinax, Agent Necessary, and there
3 was a couple of Conway Police marked units, and a canine
4 officer that was with us.

5 Q. Before going to the house, were you able to
6 determine whether or not Florida Kevin or Lorenzo Cross
7 was in the house?

8 A. The morning of the search warrant when we decided
9 we were going to execute the search warrant, I contacted
10 the confidential informant and asked that confidential
11 informant to try to get in touch with Florida Kevin to see
12 if he was going to be at home when we were going to go to
13 the residence. The confidential informant did make
14 contact with Florida Kevin, Lorenzo Cross, and Cross said
15 that he was at home and that he could come by, and shortly
16 thereafter, maybe thirty, forty-five minutes later, we
17 executed the search warrant at the house, and there was
18 one older male that was there and then three females at
19 the house.

20 Q. The only male there was the older male that you ---

21 A. Lorenzo Cross.

22 Q. Okay. Did you detain him for any period of time
23 upon entering the house?

24 A. That's correct. When we walked into the house, he
25 was standing in the living room area. We did detain him,

1 put handcuffs on him, and as just the general thing I
2 always do to make sure I don't get cut or stuck with any
3 needles, I ask, "Do you have any guns, drugs, bombs,
4 knives or anything like that on you, anything that's going
5 to cut me or stick me," and he told me, "What you're
6 looking for is in my pocket," and at that time, I asked
7 him, "Which pocket?" and he said, "My right pocket," and I
8 pulled out a bag. I believe it had four different
9 separate baggies of suspected crack cocaine in there.

10 Q. Okay, and did Mr. Cross cooperate with you guys?

11 A. Yeah. He was very cooperative. I asked him if
12 there was anything else in the house. He said yes, and he
13 agreed to take me to it.

14 Q. And where did he take you?

15 A. He took me to a back bedroom that him and his
16 girlfriend were sharing, and he said that there was a bag
17 of crack cocaine in his jacket pocket, which was located
18 in his closet, and we pulled out the jacket and he said,
19 "Check in this pocket right there," and we opened it up
20 and there was a clear bag containing -- I think it was
21 like forty-five grams of crack cocaine.

22 Q. Approximately how much crack cocaine was in his
23 pocket, in the pocket that he had on?

24 A. Approximately five grams in four different small
25 bags.

1 Q. Okay, and that was in his pocket that he was
2 wearing?

3 A. That's correct.

4 Q. How many -- you say about forty-five grams in the
5 closet?

6 A. Yeah, and they were in seven different bags.

7 Q. All right. Did he have any identification on him?

8 A. He did. He had a -- I believe it was a South
9 Carolina State I.D., and it was in the name of Lorenzo
10 Cross.

11 Q. Did y'all arrest those ladies that were in the
12 house?

13 A. No. He indicated numerous times that the drugs
14 that were found in the house were his. He didn't want,
15 you know, the girls to get in trouble because they had
16 nothing to do with it.

17 Q. Okay, and did you find anything else on Mr. Cross
18 that would indicate the drug sales -- or that would
19 indicate that drugs were being sold from that residence?

20 A. Also in the same bedroom where the bag was found in
21 the closet, he had a digital scale and a box of sandwich
22 baggies that were found in that bedroom.

23 DIGITAL SCALES MARKED FOR IDENTIFICATION

24 AS STATE'S EXHIBIT NUMBER 1.

25 Q. Ms. Garcia, let me pass to you what has been marked

1 as State's Exhibit Number 1, the bag that it was held in.
2 Do you recognize that?

3 A. Yes. That's the same one that we took from his
4 house.

5 Q. All right. What is State's Exhibit Number 1?

6 A. It's a silver digital scale commonly used to weigh
7 drugs or ---

8 Q. And that was found in his closet with the larger
9 amount of cocaine?

10 A. It was found in his bedroom. I'm not exactly sure.
11 I'd have to refer to my notes.

12 MR. RICHARDSON: While you're looking for that, Your
13 Honor, the State would move State's Exhibit Number 1 into
14 evidence, the digital scales.

15 THE COURT: Is there any objection to that?

16 MS. WILSON: No objection, Your Honor.

17 THE COURT: All right. State's 1 is in evidence
18 without objection.

19 STATE'S EXHIBIT NUMBER 1 ADMITTED INTO EVIDENCE.

20 A. Looking at the pictures that we took, it looks like
21 it was found in the closet on the top shelf.

22 Q. Did Mr. Cross help you in finding that?

23 A. I don't believe I asked him about any paraphernalia
24 or anything like that.

25 MR. RICHARDSON: If you will mark that as State's

1 Exhibit Number 2.

2 DRUGS IN SEALED POUCH MARKED FOR IDENTIFICATION

3 AS STATE'S EXHIBIT NUMBER 2.

4 Q. Ms. Garcia, I want to also pass to you what has
5 been marked as State's Exhibit Number 2. Please tell me
6 if you recognize what's in State's Exhibit Number 2.

7 A. Yes. That was what was in his pocket, this little
8 baggie.

9 Q. All right. The smaller bag was in his pocket?

10 A. That's correct.

11 Q. And is there a separate bag in there?

12 A. Yeah. This was what was found in his room, in his
13 jacket pocket in his closet.

14 Q. Okay, so the smaller packet was found in the pocket
15 that he was wearing?

16 A. That's correct.

17 Q. The larger packet was found in the ---

18 A. In his closet, in his jacket pocket in his closet.

19 Q. Tell me, please, what you did with the crack
20 cocaine, what ended up being crack cocaine found in his
21 pocket? What did you do upon getting that?

22 A. Take it back to the office and I field-tested it to
23 make sure we get a positive result, that it is believed to
24 be -- confirms our suspicions of crack cocaine, and we
25 place it into an Horry County Best Kit for the chemist to

1 test.

2 Q. And what did you do upon receiving this larger
3 packet of crack cocaine?

4 A. It also went into the same Best Kit, which we
5 sealed and placed in Horry County Evidence.

6 Q. And what you are calling a Best Kit, will you show
7 the jury what part is the Horry County Best Kit.

8 A. This blue and white envelope here, it's a long
9 envelope. It looks like this when it's opened up. You
10 just open it up; you drop your evidence in there. There's
11 a chain of custody form that we also put inside the
12 envelope. On the outside, we just mark our agency, the
13 date we sealed it. We sign our names and print our names
14 on there.

15 Q. Is that, in fact, your name and your signature on
16 it?

17 A. Yes, sir, it is.

18 Q. And when you tell them you seal it, once you seal
19 that kit is there any way to open that kit without -- or
20 to tamper with it ---

21 A. No. It has a tamper-proof seal. If anybody does
22 try to open it, it is clearly all skewed and that's the
23 way to know that it's been tampered with.

24 Q. Now, did anyone tamper with either of these
25 packages of drugs when they were in your possession?

1 A. No.

2 Q. Did these leave your possession at any time before
3 they went in this Best pack?

4 A. No, sir, they didn't.

5 Q. And once you field-tested it and placed it in this
6 sealed envelope, what did you do with the drugs?

7 A. I submitted it to Horry County Police's Evidence
8 Division.

9 Q. All right. Now, tell us about what happens when
10 you take it to the Evidence Division. Do you put it in a
11 -- tell us what you do.

12 A. We put it in a locker, or there's like a drop slot,
13 which it's all secured.

14 Q. All right. Do you have keys to that?

15 A. No. There's one key; you open -- if you go put it
16 into a locker, you open the locker and you put your stuff
17 in, and then there's a little hole you can drop the key
18 in.

19 Q. Okay, so could you have gotten back to these drugs?

20 A. No.

21 Q. All right. They were out of your custody or
22 control?

23 A. That's correct.

24 Q. And while they were in your custody, no one changed
25 anything or did anything, save for your field-testing

1 for ---

2 A. No, sir.

3 Q. --- the presence of cocaine? All right.

4 Tell us, Ms. Garcia, what, if anything else with
5 regard to identifying Lorenzo Cross as being a/k/a Florida
6 Kevin.

7 A. After he was detained, I asked him -- he had -- his
8 phone was ringing off the hook. I asked him if this was
9 his phone and he said yes. When I opened it up to see if
10 the informant had -- you know, his number had come up on
11 Mr. Cross's phone, it had, so that confirmed the
12 connection between the informant and Mr. Cross in
13 identifying him as Florida Kevin. Also, he indicated to
14 me that he was from Flor- -- originally from Ocala,
15 Florida, and had connections all throughout Florida.

16 Q. Did you go with them to book him in at the jail?

17 A. Yes.

18 Q. All right, and the person that you took from 1417
19 Racepath, that's the person you booked into the jail?

20 A. That's correct.

21 Q. And what was he -- what name was he booked under?

22 A. Lorenzo Cross.

23 Q. All right, and you say he had identification on him
24 also being Lorenzo Cross?

25 A. That's correct.

1 MR. RICHARDSON: I believe that that is all the
2 questions that I have for you. If you would answer any
3 questions Ms. Wilson has for you.

4 A. Yes, sir. Thank you.

5 THE COURT: Cross examination.

6 MS. WILSON: Thank you, Your Honor.

7 CROSS EXAMINATION BY MS. WILSON:

8 Q. Ms. Garcia, you said that you were assigned to the
9 D.E.U. three years ago or for a three-year period?

10 A. For a three-year period.

11 Q. And you say that the D.E.U. is a subdivision of the
12 Solicitor's Office?

13 A. It was established by the Solicitor's Office. It
14 was their concept, from what I understand.

15 Q. So in effect, you were kind of working for the
16 Solicitor? You worked for Conway Police Department, but
17 you were on a Task Force designed by them?

18 A. I'm a police officer, and we're all police officers
19 that work on the Task Force. Our boss is employed by the
20 Solicitor's Office.

21 Q. So every police officer is on the Task Force for
22 the Drug Enforcement Unit?

23 A. Can you say that one more time?

24 Q. I said so every officer is on the Task Force for
25 the Drug Enforcement Unit?

1 A. Every officer?

2 Q. Of the Conway Police Department?

3 A. No. It's comprised by different police officers
4 from every agency -- well, almost every agency here in
5 Horry County.

6 Q. You were on it for a continuous three-year period?

7 A. That's correct.

8 Q. Is that the normal period of appointment to the
9 Task Force?

10 A. Every department is different. My particular
11 department, it was a three-year agreement.

12 Q. Now, you said that you sought a search warrant for
13 the house at Racepath on the 1st. Do you typically list
14 the times that you seek the warrant or that you seek to
15 have a search warrant signed by the Judge?

16 A. When we present the search warrant to the Judge,
17 generally the Judge will write the date and the time that
18 they sign the search warrant.

19 Q. And in this instance, do you remember the time that
20 was listed?

21 A. I can look it up. Just one second.

22 Q. Well, do you remember a time around eleven forty-
23 five?

24 A. That sounds about right.

25 Q. Or was it in the afternoon?

1 A. I can look it up if you'll hold on a second.
2 According to his signature, it says eleven forty-five a.m.
3 he signed the search warrant to be issued.

4 Q. And on the 11th, which is the date you said that
5 you executed the warrant, what you -- was the time around
6 eleven o'clock that you actually went out to execute the
7 warrant?

8 A. Right, eleven a.m.

9 Q. Is it typical to wait the full ten days before you
10 go out to execute a search warrant?

11 A. Well, in this particular incident, I believe
12 Lorenzo Cross -- our informant had tried to get in touch
13 with him, but he was actually in Florida at the time we
14 first scheduled to execute the search warrant.

15 Q. So do you have any proof that he was in Florida?

16 A. That's just what we were told. We can't prove
17 anything, you know.

18 Q. So no proof of that. When you got into the house,
19 he's there. Do you have any proof, any recording, that he
20 made all the concessions to you that you stated?

21 A. Just from what he said to me. There's other agents
22 that were there with me when he, you know, took me back to
23 the bedroom and said, "The drugs are in there," so ---

24 Q. So he welcomed -- he welcomed you in and showed you
25 around?

1 A. That's correct. He's been in trouble before, so he
2 was very compliant.

3 Q. And at any point in time after you had arrested Mr.
4 Cross, did you arrest anyone else in the house on that
5 day?

6 A. On that date? No, we didn't arrest anybody else at
7 that residence on that date.

8 Q. But you did state that there were three other
9 females in the house, right?

10 A. That's correct.

11 Q. And they were not arrested because why?

12 A. They were not arrested because Mr. Cross was
13 emphatic about claiming the drugs and that they were all
14 his, and he didn't want the girls to go to jail for
15 something that he did basically.

16 Q. And this is, again, something that he told you ---

17 A. That's correct.

18 Q. --- just freely?

19 A. That's correct.

20 MS. WILSON: No further questions, Your Honor.

21 THE COURT: Any redirect?

22 MR. RICHARDSON: No, sir, Your Honor.

23 THE COURT: You may step down, ma'am.

24 A. Thank you.

25 THE COURT: Who is your next witness, Solicitor?

1 MR. RICHARDSON: Sharon Lilly.

2 THE COURT: Please come around to be sworn, ma'am.
3 Come forward up here.

4 SHARON LILLY, being first duly sworn, testifies as
5 follows:

6 THE CLERK: Please be seated, and state your name
7 and spell your last name.

8 MS. LILLY: Sharon Lilly, L-I-L-L-Y.

9 THE COURT: All right, Solicitor.

10 MR. RICHARDSON: Thank you, Your Honor.

11 DIRECT EXAMINATION BY MR. RICHARDSON:

12 Q. Ms. Lilly, where are you employed, please?

13 A. The Evidence Department, Horry County Police
14 Department.

15 Q. And give us a little bit of your job description.
16 What do you do there?

17 A. I take in evidence and property from the officers
18 and log it into the computer.

19 Q. Log it into the computer?

20 A. Yes, sir.

21 Q. All right. Did you have an occasion to come across
22 this crack cocaine? I'm going to hand you what's been
23 marked as State's Exhibit Number 2.

24 A. Yes, sir. It was turned in by Agent Garcia.

25 Q. All right, and how do you know that it was turned

1 in by Agent Garcia?

2 A. I remember taking it out of the Evidence drop box.

3 Q. Is your name on there anywhere?

4 A. Yes, sir.

5 Q. All right, and did you put your name on it
6 anywhere?

7 A. Not on this, no, sir.

8 Q. You took it out of the drop box. Now, once it goes
9 into that drop box, can anybody tamper with it or have
10 control over the crack cocaine that was in that?

11 A. No, sir. It's in a sealed package.

12 Q. Which sealed package was it in?

13 A. It was in the blue sealed package with the red ring
14 on top, and it was sealed when I got it.

15 Q. And it was sealed when you got it?

16 A. Yes, sir.

17 Q. Did it appear to have been tampered with? Was
18 there anything squirrely about the seal?

19 A. No, sir.

20 Q. All right, and what did you do with it?

21 A. I took it out to log it into our computer and put
22 it on our drug vault shelf.

23 Q. Drug vault shelf?

24 A. Yes, sir.

25 Q. Now, could Ms. Garcia or any other police officer

1 have gone in there and tampered with that once it was ---

2 A. No, sir. It's a locked room. Only our Evidence
3 personnel can have entry into it.

4 Q. And did you ever sign for that or receiving that on
5 the chain of custody sheet?

6 A. Yes, sir, I did.

7 Q. And do you know what date that you signed for it?

8 A. I believe it was February the 15th.

9 Q. And what would you have done with that? Would you
10 have ever touched those drugs again?

11 A. I would have pulled them whenever the Solicitors
12 call and they're going to be tested for Court, and then I
13 give them to Lisa Floyd, the chemist, to be tested.

14 Q. All right, and so you took custody of them again
15 and took them to ---

16 A. Yes, sir, Lisa Floyd.

17 Q. All right, and where is Lisa Floyd's office?

18 A. She's about two doors down from my office.

19 Q. When you took those drugs to Lisa Floyd, were they
20 still in that Best bag?

21 A. Yes, sir.

22 Q. And the entire time that they were in your control
23 and possession, were they ever tampered with?

24 A. No, sir.

25 Q. And then Ms. Floyd, once she tests them, what does

1 she do with them? Does she give them back?

2 A. She gives them back to me in this other sealed
3 envelope.

4 Q. And you have held them until today?

5 A. Yes, sir.

6 MR. RICHARDSON: I have no further questions. If
7 you would answer any questions that Ms. Wilson has for
8 you.

9 THE COURT: Ms. Wilson.

10 MS. WILSON: Thank you, Your Honor.

11 Just very briefly, Ms. Lilly.

12 CROSS EXAMINATION BY MS. WILSON:

13 Q. You said that the drugs were taken from the
14 Evidence drop box, but that you didn't put your name on
15 it, is that correct?

16 A. I put my name on the chain of command. That's what
17 I put my name on, but not the drugs.

18 Q. Okay, and you said that only Evidence -- that only
19 Evidence personnel can actually go into the locked room
20 where the evidence is kept, is that correct?

21 A. Yes, ma'am.

22 Q. How many people have access to that room?

23 A. Two other people.

24 Q. Two other people, so at some point in time, there
25 were two other people who could have accessed ---

1 A. Yes, ma'am.

2 Q. --- the Best Kit?

3 A. Not the Best Kit because it's sealed. They could
4 have got into the room where it was stored.

5 Q. Right, but they could have gotten the Kit itself,
6 could they not?

7 A. Yes, ma'am.

8 Q. Because it was in the locked room?

9 A. Yes, ma'am.

10 Q. And at those points in time when other people might
11 have entered the room, you would not have had any contact
12 with the Kit, is that correct?

13 A. That's right.

14 MS. WILSON: Thank you. No further questions.

15 THE COURT: Any redirect?

16 MR. RICHARDSON: Briefly, Your Honor.

17 REDIRECT EXAMINATION BY MR. RICHARDSON:

18 Q. When you took this Best Kit to Ms. Floyd, had it
19 been tampered with in any way?

20 A. No, sir.

21 MR. RICHARDSON: I have nothing further.

22 THE COURT: Do you wish to excuse the witness?

23 MR. RICHARDSON: Yes, sir.

24 THE COURT: Any objection?

25 MS. WILSON: No objection, Your Honor.

1 THE COURT: All right, ma'am, you are released from
2 your subpoena and may go back to your regular duties.

3 MR. RICHARDSON: Lisa Floyd.

4 THE COURT: Please come around to be sworn, ma'am.

5 LISA FLOYD, being first duly sworn, testifies as
6 follows:

7 THE CLERK: Please be seated. Please state your
8 full name and spell your last name for the Court.

9 MS. FLOYD: Lisa Floyd, F-L-O-Y-D.

10 DIRECT EXAMINATION BY MR. RICHARDSON:

11 Q. Ms. Floyd, please tell the jury where you are
12 employed.

13 A. I work for the Horry County Police Department. I
14 run the Regional Drug Analysis Laboratory.

15 Q. All right. Do you know Lorenzo Cross?

16 A. No, I do not.

17 Q. Let me ask you about your experience and your
18 education that would lead you to be able to test such
19 drugs. If you would basically just give us your resume,
20 please.

21 A. I have a Bachelor of Science Degree in biochemistry
22 from Clemson University, and approximately twenty-four
23 hours toward a Master's Degree in biochemistry from
24 Clemson, as well, and I also underwent a fourteen week
25 training program specifically for forensic drug analysis

1 with the Spartanburg County Forensics Laboratory, and it
2 is run by a former SLED chemist.

3 Q. Have you ever been qualified to testify as an
4 expert in South Carolina?

5 A. Yes, I have.

6 Q. In drug analysis, I would guess?

7 A. Yes, I have.

8 Q. And approximately how many times?

9 A. Twenty-two.

10 Q. Twenty-two times you've been qualified as an
11 expert?

12 A. That's correct.

13 MR. RICHARDSON: Your Honor, the State would ask
14 that Ms. Floyd be qualified as an expert in this case.

15 THE COURT: Any objection?

16 MS. WILSON: No objection, Your Honor.

17 THE COURT: All right. She is qualified to give her
18 opinion. You may proceed.

19 MR. RICHARDSON: Thank you, Your Honor.

20 Q. Ms. Floyd, I want to pass to you what has been
21 marked as State's Exhibit Number 2. Please look at that
22 and tell this jury if you recognize that.

23 A. Yes, I do. The lab number that I have written on
24 the package matches the lab number for the report on this
25 case.

1 Q. Ms. Floyd, what is that lab number, please?

2 A. It is L081 -- excuse me -- 0152.

3 Q. Okay, and did you put any identifying information
4 on your drug report other than the lab number as to whose
5 case it is and what the Defendant's name is?

6 A. Yes. At the top of all of my reports, it has the
7 date, the lab number that I assign it, the incident date
8 for that case, the agency's case number, and the control
9 number, which is a pre-printed number that comes on the
10 package that comes to me, and in this case, they do all
11 match.

12 Q. Please tell us did you -- how did you receive the
13 drugs that were -- that are contained here in this case?
14 Tell the jury how they came to you.

15 A. When I receive the drugs, they are in this envelope
16 you see inside, which is folded in half. It has a blue
17 design around all of the edges, and then there's three red
18 adhesive stripes across the top, and those are called what
19 are -- like a tamper-evident packaging so that if anyone
20 tries to get into it, then those designs will be distorted
21 in some way.

22 Q. The package that you have there, has anyone
23 tampered with it, the packaging?

24 A. No. I know that because when I get it, I inspect
25 it, and I put my initials, the letters, "O.K." and the

1 date, and that "O.K." tells me that there was no evidence
2 of tampering.

3 Q. Okay, so you receive it in that blue packet, and
4 inside this it appears to have several packages. Did you
5 test both of those packages?

6 A. Yes, I did.

7 Q. All right, and let's start with the -- with this
8 smaller packet. Is that identified in any way with any
9 writing?

10 A. I have labeled it Item 2.

11 Q. Now, did the officer label it in any way? Is that
12 the officer's writing on the packet?

13 A. The way -- the way the Item 2 came to me was an
14 off-white rock substance that was packaged in four smaller
15 -- what's referred to as a corner baggie. It's just the
16 corner of a bag that's been cut off, inside of a sandwich
17 baggie, and it was in some impulse-sealed plastic that was
18 labeled by, I assume, the officer, "Found in Defendant's
19 pocket."

20 Q. Okay. Please, what did -- did you test this small
21 packet?

22 A. Yes, I did.

23 Q. And what was the result of those tests?

24 A. It was found to be cocaine base, which is commonly
25 referred to as crack cocaine.

1 Q. And did you weigh that smaller packet?

2 A. Yes, I did. It was a combined weight of all four
3 corner-baggie's contents, which was 5.01 grams, or 77.30
4 grains.

5 Q. When you come up and figure 5.01, did that include
6 the packaging?

7 A. No, it does not.

8 Q. That only includes the actual drugs themselves?

9 A. Right. The weight reported is the weight of the
10 substance only.

11 Q. And you determined that to be crack cocaine, 5.01
12 grams?

13 A. That is correct.

14 Q. And labeled that under "Found in Defendant's
15 pocket"?

16 A. That's how it came to me labeled, yes.

17 Q. Right, and you don't know Lorenzo Cross and was not
18 there on the 11th day of February, 2008?

19 A. No, I was not.

20 Q. All right. Let's turn to this other packet. That,
21 too, was that in the blue package?

22 A. Yes. Item 1 is how that was labeled.

23 Q. Item 1, and was there any indication on Item 1 as
24 to where that was found?

25 A. Yes. Item 1 was an off-white rock substance in

1 each of seven corner-baggies inside of a plastic sandwich
2 bag, and it was in impulse-sealed plastic that was labeled
3 "Found in jacket pocket in closet."

4 Q. Okay, and did you test the contents of that second
5 larger package?

6 A. Yes, I did.

7 Q. And tell us the result of that test, please.

8 A. It was found to be cocaine base, again commonly
9 referred to as crack cocaine, in the amount of 41.66
10 grams, which is 642.81 grains.

11 Q. And you say that neither of these appeared to have
12 been tampered with when you received them?

13 A. Both of the items were contained in that outer blue
14 envelope, blue cornered envelope, and there was no
15 evidence of tampering, no.

16 Q. After you tested them, how did they get in this
17 larger bag, exterior bag?

18 A. This is how I repackage it after testing, and all
19 evidence is repackaged the same way. Basically everything
20 is labeled as its taken out, so any of the packaging that
21 the drugs came to me in are labeled with my initials, the
22 date, the lab number, and any item number that I might
23 assign to it, and then when I repackage the drugs, I use
24 these small ziplocks that have the red line at the top so
25 that I know that those are mine, and then I put the lab

1 number, my initials, and the date again and actually heat-
2 seal all those things into the outer package.

3 Q. And then what do you do with that outer package?

4 A. It's returned to Evidence.

5 Q. Is there any indication that it's been opened since
6 you returned it to Evidence?

7 A. No.

8 Q. It is still heat-sealed?

9 A. Yes, it is.

10 MR. RICHARDSON: Your Honor, the State would move
11 State's Exhibit Number 2 into evidence.

12 THE COURT: Is there any objection?

13 MS. WILSON: No, Your Honor.

14 THE COURT: All right. State's 2 is in evidence
15 without objection.

16 STATE'S EXHIBIT NUMBER 2 ADMITTED INTO EVIDENCE.

17 MR. RICHARDSON: Thank you, Your Honor. I have no
18 further questions for Ms. Floyd. If you would answer any
19 questions Ms. Wilson might have for you.

20 THE COURT: Cross examination.

21 MS. WILSON: Thank you, Your Honor.

22 Just very briefly, Ms. Floyd.

23 CROSS EXAMINATION BY MS. WILSON:

24 Q. When you initially receive this packet, who
25 delivers it to you?

1 A. May I refer to the chain. I received it from
2 Sharon Lilly, and it's dated March the 11th of 2008.

3 MS. WILSON: Thank you.

4 No further questions, Your Honor.

5 THE COURT: Anything on redirect?

6 MR. RICHARDSON: No, sir, Your Honor.

7 THE COURT: All right. You may step down.

8 Do you wish the witness to be excused?

9 MR. RICHARDSON: Yes, sir, please.

10 THE COURT: Any objection?

11 MS. WILSON: None, Your Honor.

12 THE COURT: All right, ma'am, you are released from
13 your subpoena and may go back to your regular duties.

14 Further witnesses on behalf of the State?

15 MR. RICHARDSON: No further. The State would rest
16 with that, Your Honor.

17 THE COURT: All right, and are there some matters
18 you need to take up with the Court at this time, Ms.
19 Wilson?

20 MS. WILSON: Yes, sir.

21 THE COURT: All right, very good.

22 All right, ladies and gentlemen of the jury, if you
23 would go to your jury room for a few moments, and I will
24 call you back in in just a couple of minutes. Thank you
25 very much.

MOTIONS

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1 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
2 THE JURY.)

3 THE COURT: All right, Ms. Wilson, I'll be glad to
4 hear from you, ma'am.

5 MS. WILSON: Thank you, Your Honor. Your Honor, at
6 this time I would move for a directed verdict on the
7 grounds that the State has failed to prove the essential
8 elements of their case, mainly, Your Honor, that there is
9 nothing to confirm that my client made any of these
10 incriminating statements to Ms. Garcia of the D.E.U. Your
11 Honor, there is nothing to suggest that my client would
12 even have known where the substances were in the house
13 other than her statements, and knowledge, of course, is an
14 essential part of this case being that it's a trafficking
15 charge.

16 In addition, Your Honor, my client obviously is not
17 here to speak for himself and certainly Ms. Garcia has
18 made a lot of statements about what my client told her
19 during the -- I guess the search of this house at
20 Racepath, and on those grounds, I would ask for a directed
21 verdict.

22 THE COURT: Regarding this particular matter,
23 obviously a Defendant would be entitled to a directed
24 verdict when the State fails to produce evidence of the
25 offense charged. The Court is not looking at the weight

1 of the evidence, but is concerned with the existence of
2 evidence. I find that there is more than sufficient
3 evidence that has been produced if so believed by the
4 jury, that being their job to judge the credibility and
5 believability of the witnesses of whether or not the State
6 has proved its burden to prove the Defendant guilty beyond
7 a reasonable doubt, but I find that there is more than
8 sufficient evidence if so believed by the jury to convict
9 the Defendant beyond a reasonable doubt, and, therefore, I
10 respectfully decline to grant your motion for a directed
11 verdict.

12 Any other motions on behalf of the Defense?

13 MS. WILSON: Nothing else, Your Honor.

14 THE COURT: All right, very good.

15 We'll just take a short break for about five minutes
16 and then we'll come back in and conclude this matter.
17 Thank you very much.

18 MS. WILSON: Thank you, Your Honor.

19 (OFF THE RECORD)

20 ON THE RECORD

21 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
22 THE JURY.)

23 THE COURT: I will just go over real briefly what I
24 intend to charge to see if y'all have any additions or
25 changes to that. We will do the things we normally do,

MOTIONS

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1 talking about credibility and believability, direct and
2 circumstantial evidence, the rule about the expert witness
3 testimony not being given any greater weight simply
4 because the Court qualified them to give their opinion,
5 the presumption of innocence, the reasonable doubt, the
6 kind of doubt that would cause a reasonable, ordinary
7 person to hesitate to act.

8 I will charge them the fact the Defendant did not
9 appear is not a fact to be considered by them in any way
10 in their deliberations or the consideration of the
11 question of whether the State has proved the Defendant
12 guilty beyond a reasonable doubt, not to be considered by
13 them in any manner whatsoever, and then regarding
14 trafficking, just generally tell them the State has to
15 prove beyond a reasonable doubt the Defendant knowingly
16 sold, manufactured, cultivated, delivered, purchased,
17 bring into the State, provided for financial assistance,
18 or otherwise aided, abetted, attempted or conspired to
19 sell, manufacture, cultivate, deliver, purchase, or bring
20 into the State, or was knowingly in actual or constructive
21 possession, or knowingly attempted to become in actual or
22 constructive possession of the cocaine base.

23 Will also tell them that mere presence in the area
24 where drugs are found does not constitute in and of itself
25 constructive possession, and that it can be proven by

1 circumstantial evidence and the State has to prove beyond
2 a reasonable doubt that the amount of cocaine or any
3 mixture containing the cocaine or cocaine base was twenty-
4 eight grams or more, but less than a hundred grams, and
5 you have the verdict form in front of you, so any requests
6 or exceptions to that from the State?

7 MR. RICHARDSON: Nothing from the State, Your Honor.

8 THE COURT: From the Defense?

9 MS. WILSON: Nothing, Your Honor.

10 THE COURT: All right, very good.

11 MR. RICHARDSON: The verdict form is fine.

12 THE COURT: Very good.

13 Defense?

14 MS. WILSON: It is fine, Your Honor.

15 THE COURT: Very good. Is the State ready for the
16 jury to come in?

17 MR. RICHARDSON: Yes, sir.

18 THE COURT: All right, the Defense?

19 MS. WILSON: Yes, sir.

20 THE COURT: All right. Ask the jury to come in,
21 please.

22 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE
23 JURY.)

24 THE COURT: All right, ladies and gentlemen, we have
25 concluded the evidentiary portion of the trial in this

1 particular matter, and we're going to now go into the
2 closing arguments of the attorneys, and I will remind you
3 again that the closing arguments are not evidence, are not
4 to be considered by you as evidence in the case, but they
5 are important in that they are the respective arguments of
6 the attorneys as to what they believe the evidence has
7 shown to you during the course of the trial, so we're
8 going to ask you to listen attentively to those, after
9 which I will give you the law that you will apply to the
10 facts as you so find them to be in this particular case.

11 All right, Solicitor.

12 MR. RICHARDSON: Thank you, Your Honor.

13 Ladies and gentlemen, I appreciate your patience. I
14 won't trouble you very much as far as time. If I did, it
15 would go past the length that it took to try this case,
16 but again, one of the things I'm fearful of is that you'll
17 say, "Well, that's too easy," or "That didn't take long
18 enough," but you heard the evidence, that if we brought in
19 fifteen people to say the same thing, then that's exactly,
20 you know, what you would have had. It would have made it
21 a little bit longer, but the gist of it would have been
22 the same, and the gist of it is that Lorenzo Cross, on
23 February 11th, 2008, had in his possession amounts of
24 cocaine, and that's basically all we've got to prove.

25 Now, you'll have this back in evidence, but I know

1 there's usually a time, and if it would have lasted much
2 longer, I would have asked the Judge for permission to
3 produce this and let you look at it while I went on with
4 the testimony, but you will see a small package here that
5 all of them were testifying about, Crystal Garcia, Ms.
6 Lilly, and Lisa Floyd, and this is "A" that she was
7 talking about, and you will see on it it was in his pants
8 pocket. That's the small amount that started it all.

9 This represents actual construction. Remember, we
10 talked just a little bit at the beginning of the case
11 about what is actual versus constructive possession, and
12 the Judge will tell you that mere presence, simply being
13 around the drugs, doesn't mean that they are yours, so
14 when I gave you that little example early on and put the
15 pen there, just because you were merely present when I
16 laid that pen down didn't mean it was your pen, didn't
17 mean that you had possession, possessory rights of it,
18 because if you'll notice, I was standing right here at it.
19 I could have taken custody of it before you could have,
20 but you've got an idea of that, just like teenagers riding
21 in a car where the police will arrest the whole crowd for
22 one open container. Well, certainly everybody is not
23 drinking out of the same one Pabst Blue Ribbon beer, but
24 many times teenagers will go to jail for that.

25 In this case, Mr. Cross said -- it's even more

1 obvious than that, that Mr. Cross said, "Don't arrest
2 anybody else. This is all mine. They don't deserve to go
3 down for anything that I've done," so he stood up and he
4 took possession of that stuff, and again, this is actual
5 possession because it was actually in his pocket. There's
6 no question about that, but this amount was only, I
7 believe, about five grams.

8 Now, this much larger package is the package that Mr.
9 Cross took Crystal Garcia to. Of course, she was there
10 with a search warrant. It's inevitable she's going to
11 find the drugs, but Mr. Cross said, "Don't worry about
12 looking. I'll show you right where it's at" and took her
13 to a coat pocket of his in his closet with this amount of
14 drugs in it, and this larger package of crack cocaine is
15 approximately forty -- well, this one is 41.6 grams, and
16 this one is 5.01 grams.

17 If you need to listen back to any of the testimony
18 from Ms. Floyd, you could certainly take it from her as to
19 the amounts, but this plus this would come up to
20 approximately 46, almost 47 grams, and what Lorenzo Cross
21 is charged with doing is having in his possession or
22 constructive possession over 28 grams, so this is far in
23 excess of 28 grams, and that statute goes from 28 to 100,
24 so it's right in the middle of what that would be.

25 We don't have to prove anything else except that it

1 was in his possession, actual or constructive, and
2 certainly by him having it in either his pants pocket or
3 this larger amount in his coat pocket in the closet, that
4 was in his possession. He had all rights to that, and he
5 said, "It's all mine."

6 If we had to try him for possession with intent to
7 distribute or distribution, you know, certainly these
8 scales come into play more on that, but there's no doubt
9 but that with scales and with multiple sandwich bags that
10 Ms. Garcia was talking about, and you'll see them -- I
11 believe they're in here also -- I don't see them in there,
12 but the multiple sandwich bags that she was talking about
13 is actually selling it in smaller amounts, and we didn't
14 go through that whole thing.

15 You'll notice you didn't hear from the C.I. We're
16 not here to prove to you that he sold it to the C.I.
17 We're not here to prove to you that he was selling at all,
18 but you can certainly look at the evidence and determine
19 what was going on, and basically what you're determining
20 is that this amount is too much for one person to consume.
21 It's actually trafficking weight, and that's a good bit of
22 cocaine.

23 There's really not much more to it than that. She
24 told you some of the -- you know, that he was cooperative,
25 that he took her to the other drugs, that he had certain

1 drugs in his pocket, told her in the beginning, "What
2 you're looking for," not any knives or weapons, "but what
3 you're looking for is in my pocket, and there's other
4 drugs in that closet," and not only that, but "These
5 ladies had nothing to do with it." You can't get much
6 more in actual possession or in constructive possession
7 than that.

8 You, of course, get this -- will be charged that you
9 have got to weigh the credibility of each witness and
10 determine for yourself if Ms. Garcia was telling you a fib
11 or if Lisa Floyd or Ms. Lilly, if any of them -- if you
12 believe that they were being untruthful with it, you can
13 certainly hold that against them, but several of them
14 said, "I didn't even know him," so you can also take into
15 it bias, and even from Ms. Garcia's standpoint, you heard
16 her testifying; she couldn't say that he acted out in any
17 way. He cooperated with her, so I believe that leads that
18 she wasn't biased either. There's not a great conspiracy
19 or a grand conspiracy to get Lorenzo Cross.

20 The Judge is also going to tell you that just because
21 he didn't show up today, you don't hold that against him.
22 You shouldn't even discuss that in the jury room. He has
23 every right not to show up. It is our duty to prove that
24 he had actual or constructive possession of these drugs,
25 and we take that on.

1 And I think that we have shown you that he did, in
2 fact, have it. I just want to make sure, and I will say
3 it once again, trafficking breaks down into many different
4 categories, and Judge John is going to explain that all to
5 you, and it could mean bringing it in from Miami, or
6 bringing it in from Mexico or some other place that
7 produces cocaine, and he'll go through those with you,
8 moving it from state to state, but the last few things
9 that he will tell you about, he'll say or having actual
10 possession of a certain amount of drugs, or having
11 constructive possession of a certain amount of drugs, and
12 that is really what you're dealing with here.

13 Of course, there was some testimony about him going
14 back and forth to Florida. We're not going -- we're not
15 even trying to prove that when he was going back and forth
16 he was bringing drugs with him. We're simply saying that
17 on February 11th, 2008, he had actual or constructive
18 possession of these drugs, and the only way that you can
19 find any differently is if you say, "Well, one of these
20 people were storying to me." If you believe them, then
21 that is what -- what he had there with him.

22 I also want you to consider -- the only other thing
23 really to consider is the weight of it, and Ms. Floyd said
24 that we weighed them on scales not much different than
25 these, but calibrated scales at the County, and that those

1 said -- this part was 41 grams, well over it by itself,
2 and then you add in the 5 grams that were found in his
3 pocket, 46 grams, and that's what trafficking is, having
4 in possession an amount over 28 grams for this particular
5 brand. There is, of course, a trafficking 10 to 28, which
6 is a lower charge than this, but this is that next tier of
7 trafficking, 28 to 100. Then there's actually a
8 trafficking which he's not charged with, 100 to 200, so
9 it's that mid-level trafficking, and that's what you've
10 got here.

11 I noticed that you were listening attentively. It
12 didn't take long but you listened to all of the people as
13 they came up and told you what they found, what they
14 heard, what they saw, what Mr. Cross led them to, and some
15 of the things that made them know that it was, of course,
16 Lorenzo Cross, and that Lorenzo Cross did, in fact, have
17 possession of those drugs, and this other, I just put it
18 in for your -- that little scale, of course, could have
19 various other uses, but it's one that's commonly used to
20 weigh out -- and then weigh out drugs, and the packaging
21 is the same way.

22 So with all that being said, I would ask you to go
23 back, consider the statements made by the witnesses, and
24 the Judge is going to tell you that you've got to find
25 beyond a reasonable doubt that all of this is, of course,

1 true.

2 He'll tell you that a reasonable doubt doesn't mean a
3 foolish doubt or a crazy doubt. It just would leave you
4 firmly convinced that Lorenzo Cross has done this, or it
5 would cause you to hesitate and say, "Wait a minute, now.
6 I don't believe that." If you get caught up on that and
7 believe that they're not being truthful with you, then, of
8 course, you give him every benefit of the doubt and you
9 must find him not guilty if you don't believe what they've
10 told you, but if you believe what they've said, you would
11 have adhered to that reasonable doubt standard, which is
12 basically firmly convinced or it would cause you to
13 hesitate to act. That's what the standard is.

14 You know, I used to hear a Judge always say you
15 might have a doubt as to whether or not you will ever
16 catch another fish out of the Waccamaw River. Well,
17 that's a foolish doubt. We don't have to prove beyond
18 that doubt whether there's fish there or not. We don't
19 have to go the entire way. If we do, it would have to be
20 a video tape or something with him holding those drugs,
21 but you've got to rely on what we did put up for you and
22 determine for yourself if these people are truthful, and
23 if they're truthful and they're telling you the truth in
24 this case, then Lorenzo Cross was in possession of 46 some
25 odd grams of crack cocaine, and if he is in possession of

1 46 some odd grams of crack cocaine, then he is guilty of
2 trafficking weight, and if he's guilty of that, then
3 that's the only just verdict that you can reach.

4 I thank you for your time. I would ask you again to
5 listen to Ms. Wilson as she gives you closing arguments,
6 and then I would just ask you to go out and reach the only
7 verdict that I believe will speak the truth, and that is a
8 verdict of guilty. Thank you.

9 THE COURT: All right, Ms. Wilson.

10 MS. WILSON: Thank you, Your Honor.

11 Ladies and gentlemen, you've heard all the evidence
12 that the State has at this point. You heard from Ms.
13 Garcia; you've heard from Ms. Lilly about the chain of
14 custody, and you've heard from Ms. Floyd about the testing
15 of the substances, so for all intents and purposes, what
16 you have are two witnesses that can only talk about what
17 the police claim was found on the scene.

18 Then you have Ms. Garcia, who is the witness who was
19 telling you that Mr. Cross welcomed her into that house
20 with open arms, aside from the fact that they had a search
21 warrant to go in and that once they got in, he said, "Oh,
22 let me take you over here because there's drugs in there.
23 Oh, and let me show you this because there's a scale over
24 there." If he was going to be that cooperative, quite
25 possible that maybe they wouldn't have needed a search

1 warrant at all.

2 It is important that when you deliberate that you
3 think about what you've heard today. Don't suspend all of
4 your common sense in deliberation. You still have a job
5 to do, and part of that job is thinking rationally about
6 what you've heard.

7 Beyond a reasonable doubt is what -- in part what
8 you've heard the Solicitor say that the Judge is going to
9 tell you what it means, and when you deliberate, you have
10 to think rationally, clearly, focus in on what you've
11 heard and whether or not that makes sense to you, and it's
12 just that basic. Does it make sense? If it doesn't make
13 sense, you should find my client innocent on these
14 charges. If it doesn't make sense that someone is just
15 going to say, "Oh, I've got all these drugs and here they
16 are," you need to find him innocent of these charges.

17 Now, -- now, there was no evidence presented that
18 this house belonged to Mr. Cross. You haven't heard that.
19 What you have heard is he was at the house. You haven't
20 heard that he lived there. I think the Solicitor
21 mentioned that Mr. Cross takes Ms. Garcia back to the
22 bedroom where his closet was and where his jacket pocket
23 was. There has been no evidence presented that this house
24 belonged to Mr. Cross, that Mr. Cross lived at this house,
25 that that bedroom was his, or that the jacket belonged to

1 him. What you have is Ms. Garcia saying that he took her
2 back there and said, "Here are all these drugs."

3 Now, you know, am I suggesting to you that there's a
4 problem here? Yes, I am. What I am saying is that you
5 have to decide who you find to be most credible in this
6 instance. Is it reasonable to believe that he went to
7 just point out the drugs and say, "I've got all this.
8 Here it is"?

9 Now, I'm not going to belabor this point because I
10 think I've said it enough and it's clear. Don't suspend
11 your belief. Don't suspend all thought processes in this
12 deliberation. It's important for you to think about what
13 you've heard and deliver a verdict that is concurrent with
14 that thought process, and in this instance I am asking you
15 to find that Lorenzo Cross is innocent of these charges.
16 Thank you.

17 THE COURT: All right, ladies and gentlemen, it is
18 now my duty and responsibility to give you the law that
19 you are going to apply to the facts as you find them to be
20 in this particular case.

21 Now, I told you at the very beginning that you are
22 the judges of the facts of this particular case and in
23 that, one of your duties and responsibilities is to judge
24 the credibility, that is the believability, of witnesses
25 that have testified before you in this particular case.

1 You can believe one witness against several, several
2 against one. You can believe a portion of what a witness
3 says and disregard the remaining portion of it. If you've
4 got a good and sound reason for doing so, you could
5 disregard it in its entirety, the testimony of a
6 particular witness.

7 You look at whether or not the witnesses have
8 exhibited to you any kind of interest, bias, prejudice in
9 their testimony, any motive in giving you the testimony
10 that they gave you. Obviously you consider the
11 opportunity for knowledge, how did they come about that
12 information that they gave you from the witness stand.
13 Your objective in this, as I told you from the beginning,
14 is to find that evidence which convinces you of its truth.
15 You don't do that by counting the witnesses. What you are
16 doing is examining the evidence and finding that evidence
17 which convinces you of its truth. Think about it as far
18 as judging credibility and believability; it's something
19 you do every single day of your life. When somebody tells
20 you something, you automatically are judging whether or
21 not you believe them.

22 How do you do that? You use your good common sense,
23 your good judgment, that you use in conducting your own
24 affairs, and you transfer that to the courtroom here
25 today, and the evidence and testimony you've heard, find

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1 that evidence which convinces you of its truth and then
2 weigh that evidence as against the State's burden to prove
3 the Defendant guilty beyond a reasonable doubt.

4 You don't have any friends to reward, any enemies to
5 punish. Your verdict can't be the result of any kind of
6 passion, prejudice, or sympathy. It is an examination of
7 the facts to find that evidence which convinces you that
8 it's true.

9 There are two types of evidence that are presented in
10 virtually every case that's tried called direct and
11 circumstantial evidence. This case was no different.

12 Direct evidence is the testimony of a person who claims or
13 asserts to have actual knowledge of a fact.

14 Circumstantial evidence is proof of a chain of facts
15 indicating the existence of a fact. The law doesn't make
16 any distinction between the two. A greater degree of
17 certainty is not required of one over the other. What you
18 are doing is looking at all the evidence presented and
19 finding that evidence that convinces you of its truth, and
20 after weighing all the evidence if you are not convinced
21 of the Defendant's guilt beyond a reasonable doubt, you
22 must find the Defendant not guilty.

23 Normally we do not allow witnesses to give their
24 opinion. Sometimes we allow witnesses who are sometimes
25 called expert witnesses to give opinions based upon their

1 training, or knowledge, expertise in a certain area. The
2 fact that the Court qualified someone to be sufficiently
3 qualified to give their opinion doesn't give them any
4 special status. It doesn't make them in any way a better
5 witness than some other witness. You judge all the
6 witnesses the same. You judge all the witness's
7 credibility and believability. You look at all the
8 evidence presented and find that evidence which convinces
9 you of its truth.

10 The Defendant in this matter, to the charge presented
11 by the State, pled not guilty, and as I told you at the
12 very beginning, that plea put the burden of proof on the
13 State of South Carolina to prove the Defendant guilty
14 beyond a reasonable doubt. The Defendant has nothing to
15 prove to you. The Defendant has nothing to show to you.
16 The burden of proof is on the State of South Carolina and
17 always is on the State of South Carolina to prove the
18 Defendant guilty beyond a reasonable doubt.

19 That presumption of innocence didn't end at the
20 beginning of the trial. It hasn't ended now. It only
21 ends when you, the jury, believe the State has produced
22 sufficient evidence to prove the Defendant guilty beyond a
23 reasonable doubt. Presumption of innocence isn't some
24 legal theory or legal phrase. It's a substantial right to
25 which every Defendant, to which every American, is

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1 entitled unless and until you, the jury, are satisfied
2 from the evidence of the Defendant's guilt beyond a
3 reasonable doubt.

4 What is reasonable doubt? A reasonable doubt is the
5 kind of doubt that would cause an ordinary, reasonable
6 person to hesitate to act. Proof beyond a reasonable
7 doubt is proof that leaves you firmly convinced of the
8 Defendant's guilt, and there are very few things that we
9 can know with absolute certainty, and the law doesn't
10 require the State of South Carolina to give you that
11 degree of proof. What is required, based upon your view
12 and your consideration of the evidence, if you are firmly
13 convinced of the Defendant's guilt of the crime charged,
14 you must find the Defendant guilty. On the other hand,
15 based upon your view of the evidence, if you are not
16 firmly convinced of the guilt of the Defendant of the
17 crime charged, you must give the Defendant the benefit of
18 the doubt and find him not guilty.

19 The Defendant in this case did not appear. I
20 instruct you and emphasize that to you that fact does not
21 enter and cannot enter in your deliberations whatsoever.
22 It is not part of your consideration as to whether or not
23 the State has proved the guilt of the Defendant beyond a
24 reasonable doubt. Remember, the State has to produce the
25 evidence, and the State has to produce sufficient evidence

1 to convince you of the guilt of the Defendant beyond a
2 reasonable doubt, reminding you again the Defendant has
3 nothing to prove to you. The Defendant has nothing to
4 show to you. The burden is on the State of South Carolina
5 to prove the Defendant guilty beyond a reasonable doubt.
6 The Defendant is never required to prove themselves
7 innocent or to present to you any kind of proof
8 whatsoever.

9 The State has charged the Defendant with the offense
10 of trafficking. The Defendant, being charged with
11 trafficking, the State has to prove to you beyond a
12 reasonable doubt that the Defendant knowingly sold,
13 manufactured, cultivated, delivered, purchased, or brought
14 into the State, or provided financial assistance or
15 otherwise aided, abetted, attempted, or conspired to sell,
16 manufacture, cultivate, deliver, purchase, or bring into
17 the State, or was knowingly in actual or constructive
18 possession, or knowingly attempted to become in actual or
19 constructive possession of the cocaine base.

20 Actual possession means that the cocaine base, crack
21 cocaine, was in the actual physical custody of the
22 Defendant. Proof of constructive possession requires a
23 showing in proving to you by the State beyond a reasonable
24 doubt that the accused had knowledge of and/or dominion or
25 control of either the drugs or the premises upon which the

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1 drugs were found. Mere presence in the area where drugs
2 are found does not constitute constructive possession.
3 Constructive possession may be proved to you by
4 circumstantial evidence.

5 The State also has to prove to you beyond a
6 reasonable doubt that the amount of cocaine or any mixture
7 containing the cocaine was more than 28 grams, but less
8 than 100 grams. That is the law that you will apply to
9 the facts as you so find them to be.

10 To aid you in reaching a -- arriving at your verdict
11 and recording that, the Court has had prepared for you a
12 verdict form. Basically it has the caption of the case
13 and it says, "Trafficking cocaine base more than 28 grams,
14 less than 100 grams. On the charge of trafficking cocaine
15 base more than 28 grams, less than 100 grams, we, the
16 jury, by unanimous consent, find the Defendant" -- and
17 there's two choices. I put one before the other;
18 obviously you don't assign anything to that. You've got
19 to put one before the other -- not guilty or guilty, and
20 when your jury well and truly deliberates this matter and
21 reaches a unanimous decision, Madam Forelady, you will
22 check the appropriate block, sign your name, put today's
23 date, knock on the door, and let the bailiff know that
24 your jury has reached a unanimous verdict in this
25 particular matter.

1 Now, I have said unanimous I don't know how many
2 times. It means exactly what you think it means, twelve-
3 zero. It doesn't mean eleven-one, ten-two, any
4 combination thereof. Whatever the verdict is, it's the
5 verdict of each and every one of you. Everybody agrees to
6 the verdict, so again, Madam Forelady, when you check that
7 block, whatever it is, you are saying to the Court
8 everybody, all twelve of you, agree that is their verdict.

9 With that, I'm going to ask that you go back to your
10 jury room. Madam Forelady, -- the alternate, ma'am,
11 please, you will stay with us. Madam Forelady, do not
12 begin your deliberations until the bailiff gives to you
13 the verdict form and the Exhibits. Thank you.

14 (AT 3:55 P.M., THE JURY RETIRES TO THE JURY ROOM FOR
15 DELIBERATION, AND THE FOLLOWING TAKES PLACE OUTSIDE THE
16 PRESENCE OF THE JURY.)

17 THE COURT: All right, Madam Alternate, at the
18 present time I cannot release you until the jury reaches a
19 unanimous verdict in this particular matter, because
20 obviously your job is to step in the shoes of one of the
21 jurors if they are unable to do so, until they reach a
22 verdict, that we do not know that that has occurred, so if
23 you will find her an appropriate place, and we will keep
24 you updated and we will call you in just as soon as they
25 reach a unanimous verdict, all right? Thank you, ma'am.

1 All right, any exceptions, deletions, additions to
2 the charge, from the State?

3 MR. RICHARDSON: No, sir.

4 THE COURT: From the Defense?

5 MS. WILSON: Nothing, Your Honor.

6 THE COURT: All right. We will be at ease until the
7 jury needs us. Obviously y'all get with the Court
8 Reporter and make sure that the exhibits that we do have
9 are the proper ones, okay?

10 MR. RICHARDSON: Judge, I want to pass up something
11 to you based on his prior record. Of course, this is the
12 third or subsequent. I've got two true and certified
13 copies, one for trafficking in cocaine from Clarendon
14 County, another one from Horry County for possession. I
15 think it complies with the 44-53-470, which would upgrade
16 these to a third or subsequent offense.

17 THE COURT: All right, sir.

18 MR. RICHARDSON: I'll just pass them up ---

19 THE COURT: All right. Why don't you give those to
20 the Court Reporter and have her mark those as Court's
21 Exhibits.

22 MR. RICHARDSON: Thank you, Your Honor.

23 THE REPORTER: Do you want to mark those together,
24 Judge, or ---

25 THE COURT: Are they two separate documents?

1 MR. RICHARDSON: Yes, sir.

2 THE COURT: If you don't mind, just mark them
3 separately then.

4 SENTENCE SHEET FOR 6/27/1994 MARKED AS
5 COURT'S EXHIBIT NUMBER 3.

6 SENTENCE SHEET FOR 10/12/1999 MARKED AS
7 COURT'S EXHIBIT NUMBER 4.

8 THE COURT: If you would take those to the jury,
9 please, ma'am.

10 (THE EXHIBITS AND VERDICT FORM ARE TAKEN TO THE JURY
11 AT 4:00 P.M. BY THE BAILIFF.)

12 (OFF THE RECORD)

13 ON THE RECORD

14 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
15 THE JURY.)

16 THE COURT: Solicitor and Ms. Wilson, I understand
17 the jury has reached a verdict in this matter. Is the
18 State ready to receive it?

19 MR. RICHARDSON: Yes, sir.

20 THE COURT: Defense?

21 MS. WILSON: Yes, sir, Your Honor.

22 THE COURT: Thank you very much.

23 All right, ask the jury to come in, please.

24 (THE FOLLOWING TAKES PLACE IN THE PRESENCE OF THE
25 JURY.)

VERDICT OF THE JURY
POLLING OF THE JURY

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1 THE COURT: All right, Ms. Wiggins, has your jury
2 reached a verdict in this particular matter?

3 MS. WIGGINS: We have, Your Honor.

4 THE COURT: All right. Could you hand the verdict
5 form to the Clerk, please, ma'am.

6 Very good, Madam Clerk. You may publish the verdict.

7 THE CLERK: This is Indictment Number 2008-GS-26-
8 1777, the State of South Carolina versus Lorenzo Cross,
9 indicted for trafficking cocaine base, more than 28 grams,
10 less than 100 grams. The verdict is guilty. Kendall
11 Wiggins, Forelady, dated April 13th, 2009.

12 Madam Forelady and ladies and gentlemen of the jury,
13 if this is your verdict, so signify by raising your right
14 hand. (All jurors raise their right hand.) Thank you.

15 THE COURT: The jury having affirmed the verdict in
16 this matter, does the State wish the jury polled?

17 MR. RICHARDSON: No, sir.

18 THE COURT: Defense?

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

20 THE COURT: All right, Madam Clerk, could you poll
21 the jury, please.

22 THE CLERK: I will ask you two questions. When I
23 call your name, please answer the first question and then
24 the second question, and then please be seated.

25 Kendall Wiggins, is this your verdict?

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1 MS. WIGGINS: Yes.

2 THE CLERK: Is it still your verdict?

3 MS. WIGGINS: Yes.

4 THE CLERK: Thank you. Jeanette Gause, is this your
5 verdict?

6 MS. GAUSE: Yes.

7 THE CLERK: Is it still your verdict?

8 MS. GAUSE: Yes.

9 THE CLERK: Thank you. Shawn Ray, is this your
10 verdict?

11 MR. RAY: Yes.

12 THE CLERK: Is it still your verdict?

13 MR. RAY: Yes.

14 THE CLERK: Thank you. Carla Lovelace, is this your
15 verdict?

16 MS. LOVELACE: Yes.

17 THE CLERK: Is it still your verdict?

18 MS. LOVELACE: Yes.

19 THE CLERK: Thank you. Page Morris, is this your
20 verdict?

21 MS. MORRIS: Yes.

22 THE CLERK: Is it still your verdict?

23 MS. MORRIS: Yes.

24 THE CLERK: Thank you. Patricia Lucey, is this your
25 verdict?

POLLING OF THE JURY

95

1 MS. LUCEY: Yes.

2 THE CLERK: Is it still your verdict?

3 MS. LUCEY: Yes.

4 THE CLERK: Thank you. William Drayton, is this
5 your verdict?

6 MR. DRAYTON: Yes.

7 THE CLERK: Is it still your verdict?

8 MR. DRAYTON: Yes.

9 THE CLERK: Thank you. Sandra Bone, is this your
10 verdict?

11 MS. BONE: Yes.

12 THE CLERK: Is it still your verdict?

13 MS. BONE: Yes.

14 THE CLERK: Thank you. Lane Ringwood Hall, is this
15 your verdict?

16 MS. HALL: Yes.

17 THE CLERK: Is it still your verdict?

18 MS. HALL: Yes.

19 THE CLERK: Thank you. Janet Holliman, is this your
20 verdict?

21 MS. HOLLIMAN: Yes.

22 THE CLERK: Is it still your verdict?

23 MS. HOLLIMAN: Yes.

24 THE CLERK: Thank you. Barbara Anderson, is this
25 your verdict?

1 MS. ANDERSON: Yes.

2 THE CLERK: Is it still your verdict?

3 MS. ANDERSON: Yes.

4 THE CLERK: Thank you. Wendy Hardwick, is this your
5 verdict?

6 MS. HARDWICK: Yes.

7 THE CLERK: Is it still your verdict?

8 MS. HARDWICK: Yes.

9 THE CLERK: Thank you.

10 THE COURT: The jury having been polled and affirmed
11 the verdict, is there anything further as to the jury from
12 the State?

13 MR. RICHARDSON: No, sir.

14 THE COURT: As to the jury from the Defense?

15 MS. WILSON: Nothing, Your Honor.

16 THE COURT: Thank you very much.

17 All right, ladies and gentlemen, I want to thank you
18 for the service in this particular case. As you might
19 expect, it does not end your jury service for this
20 particular week. There are other matters that we will
21 need your assistance with, but I will be able to excuse
22 you for the balance of the day, which is not much longer
23 for today. I will need you back tomorrow morning. I am
24 going to have the jury assemble tomorrow morning again at
25 9:30, the ones that are not already in trial with Judge

MOTIONS

97

1 Baxley and with Judge Cottingham, so the remainder of the
2 jurors, along with yourself, will reassemble tomorrow
3 morning downstairs in the jury assembly room at 9:30 and
4 we will pick another jury and go forward at that time, so
5 with that, you are now excused, and I will see you back
6 tomorrow morning at 9:30. Thank you very much.

7 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF
8 THE JURY.)

9 THE COURT: All right, Ms. Wilson, motions on behalf
10 of the Defense?

11 MS. WILSON: Yes, sir. I have a motion for order in
12 arrest of judgment, Your Honor. My basis is simply that I
13 believe that my client's absence probably played heavily
14 in the jury eyes as far as to their decision in the case,
15 and I think that it affected the outcome of the case.

16 THE COURT: All right. Thank you, ma'am. I
17 appreciate that. I think that, number one, that the Court
18 properly proceeded with the trial in the absence based
19 upon the evidence and matters presented to the Court in
20 accordance with the law of the State, and secondly, I do
21 find the jury was properly charged that the fact that the
22 Defendant did not appear was not part of this case and was
23 not part of their considerations in this matter, and I
24 have heard nothing that would indicate that they
25 disregarded those instructions. Therefore, I would

1 respectfully decline to grant your motion for a new trial
2 in this particular matter.

3 Anything further from the Defense?

4 MS. WILSON: Nothing further from the Defense, Your
5 Honor.

6 THE COURT: All right.

7 Solicitor, do you have the sentencing sheet in this
8 matter?

9 MR. RICHARDSON: Yes, sir.

10 THE COURT: All right, sir. Thank you, sir.

11 MR. RICHARDSON: Thank you.

12 THE COURT: Is there anything that you would like to
13 say to the Court, Solicitor, before I impose the sentence
14 in this matter?

15 MR. RICHARDSON: No, sir. Ms. Wilson doesn't need
16 to sign that, does she?

17 THE COURT: No, it is not necessary.

18 Ms. Wilson, is there anything you'd like to say on
19 behalf of your client?

20 MS. WILSON: As far as ---

21 THE COURT: As to the sentence in this matter, even
22 though I understand that it's going to be sealed and we
23 are not going to announce the sentence, but anything that
24 you'd like me to consider?

25 MS. WILSON: Yes, sir, actually, I would. Your

SENTENCING PROCEEDINGS

99

1 Honor, my client, Mr. Cross, at the time that I began
2 representing him was fifty years old, divorced, has two
3 children. They are both adults, tells me that he worked
4 doing drywall, and, Your Honor, I believe -- I fervently
5 believe that this case was going to be a guilty plea from
6 the very outset, and I believe that because that's what my
7 client had explained to me.

8 Certainly in this instance, Ms. Garcia has testified
9 and there has been evidence presented that, you know, he
10 was very cooperative with the State, had done some work
11 for the D.E.U., and it is my personal belief, Your Honor,
12 that since he had always shown up before, that it's quite
13 possible that he was not in a position where he could show
14 up at this particular point in time. Now, I don't have
15 anything to bear that out. Obviously I'm not able to
16 contact my client, haven't seen my client within the last
17 few months, not since February of this year.

18 I will say that certainly prior to February, he was
19 very consistent about showing up and being present when he
20 was called, whether it was for a conference in my office
21 or whether it was by the Solicitor for court. To that
22 end, Your Honor, certainly given the fact that he did do
23 work for the D.E.U., I believe that he was instrumental in
24 helping them bring down a couple of important drug persons
25 and given the fact that certainly -- I'm not sure that if

1 my client were present this case would have proceeded to
2 trial. I think it would have been a plea.

3 We're asking the Court for any consideration that the
4 Court might be able to show us as far as sentencing. I
5 understand that this is a third, that this is an eighty-
6 five percent offense and it carries a minimum of twenty-
7 five years up to thirty. Certainly it may not seem like a
8 lot to the Court, but I think that that five years is a
9 substantial amount of time at eighty-five percent for my
10 client to have to serve as well, so we are asking the
11 Court to consider very strongly only imposing the minimum
12 twenty-five year sentence in this case. Thank you.

13 THE COURT: All right, thank you very much, ma'am.

14 On the sentencing sheet it had the charge is -- and
15 it's got the trafficking and ice, crank, crack, 28 grams
16 to 100 grams -- but less than 100 grams, third or
17 subsequent, and then down below it's got check lesser
18 included offense. That's actually the one for which he
19 was indicted, correct?

20 MR. RICHARDSON: Yes, sir. I can tell you what
21 happened. We had printed off one because we had let him
22 -- we had agreed to a plea, and I just didn't uncheck ---

23 THE COURT: That's all right, so what I need to do
24 is just check the one that's for as indicted?

25 MR. RICHARDSON: Yes, sir. I apologize for that.

SENTENCING PROCEEDINGS

101

1 THE COURT: Very good. All right. Is there any
2 problem with me correcting that, Ms. Wilson?

3 MS. WILSON: None, Your Honor.

4 THE COURT: Solicitor, you had previously indicated
5 to me that a bench warrant had already been issued by
6 Judge Hyman, is that correct?

7 MR. RICHARDSON: Yes, sir.

8 THE COURT: All right, very good.

9 All right, Madam Clerk, here is the sealed sentence.

10 All right, thank you very much.

11 MR. RICHARDSON: Thank you, Your Honor.

12 MS. WILSON: Thank you, Your Honor.

13 (Conclusion of Transcript of Record.)
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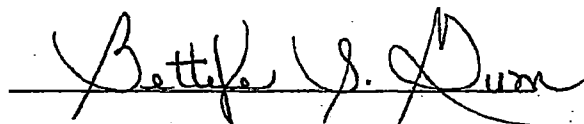
STATE OF SOUTH CAROLINA)

COUNTY OF Horry)

I, the undersigned Bettye S. Gum, Certified Court Reporter and Notary Public in and for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the captioned case, as taken by Dixie Cox Eubank, Official Reporter, and transcribed by me, relative to appeal, in the Court of General Sessions for Horry County, South Carolina.

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

August 31, 2010



BETTYE S. GUM, CCR-CVR-CM

Certified Court Reporter and

Notary Public for South Carolina

My Commission Expires: 7/13/14

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF GENERAL SESSIONS
2008-GS-26-01777

State of South Carolina,

PLAINTIFF,

vs.

Lorenzo Cross,

DEFENDANT.

TRANSCRIPT OF RECORD

May 19, 2010
Conway, South Carolina

Before:

The Honorable, Steven H. John

Appearances:

BY: Donna E. Elder, Esq.
Attorney for State of South Carolina

BY: Kia T. Wilson, Esq.
Attorney for Lorenzo Cross

Brenda R. Babb
Circuit Court Reporter

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Sentencing Hearing - May 19, 2010

3

1 Ms Elder: Your Honor, we're here on
2 indictment 2010-GS-26-1777. It's the State vs. Lorenzo
3 Cross, a true billed indictment for trafficking in cocaine
4 base twenty-eight to a hundred grams, third offense. It's
5 our understanding that a TIA trial was done in '09 and a
6 sentence was sealed at that time. This is for the purposes
7 of opening that sentence, Your Honor.

8 The Court: All right, very good.

9 Ms. Elder: And I believe we do have a bench
10 warrant as a result of that trial.

11 The Court: All right, just hang on a second
12 and sign that and give it to you. Thank you, ma'am.

13 All right, this is 2008-GS-26-1777, State of
14 South Carolina v. Lorenzo Cross whereby a trial was held in
15 Mr. Cross's absence, he being properly notified by the
16 finding of the Court made at the time of the trial. The
17 jury in this matter returned a verdict of guilty in the
18 matter of trafficking in cocaine base, more than twenty-
19 grams, less than one hundred grams. Pursuant to that the
20 Court imposed a sealed sentence in this matter. At this
21 point in time I'm going to open that particular sentence.

22 State of South Carolina, County of Horry vs.
23 Lorenzo Cross, regarding trafficking in ice, crank or crack
24 twenty-eight to one hundred grams, third or subsequent, the
25 jury having found him guilty of the charge, the defendant

Sentencing Hearing - May 19, 2010

4

1 is sentenced to the State Department of Corrections for a
2 determinate term of twenty-five years. Thank you, very
3 much.

4 Ms. Elder: Thank you, Your Honor, - the -

5 The Court: Regarding the community
6 supervision matter that he's currently, on we'll just
7 continue him on that particular matter.

8 Ms. Elder: Thank Your, Your Honor.

9 End of requested transcript.....

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CERTIFICATE OF REPORTER

I, the undersigned Brenda R. Babb, official court reporter the South Carolina Court Administration, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina.

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

August 20, 2014

Brenda R. Babb

Brenda R. Babb, CVR
OFFICIAL REPORTER

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF HORRYLORENZO CROSS 261862
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

13

3958

APPLICATION FOR

POST-CONVICTION

INSTRUCTIONS - READ CAREFULLY

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

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention PERRY CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence ON BACK PLEASE
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) #2008GS2601777
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) SENTENCED UNSEALED 5-21-10; 25 YEARS
 - (b) _____

2) Horry County, General Session's Fifteenth Judicial Circuit.

13 JUL 8 6 43 PM '81
CLERK OF COURT
Horry County, South Carolina

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓ PLEA BARGAIN
- (b) after a plea of not guilty _____
- (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. THE SOUTH CAROLINA COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. DISMISSED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. FILED JUNE 20, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

ON BACK-

- (a) 7 YEAR PLEA AGREEMENT MISCHARACTERIZED AND NOT CLARIFIED
- (b) CONTRACT AGREEMENT FOR 7 YEAR TERM ORIGINATION (ON BACK)
- (c) TRAFFICKING 3RD OFFENSE IS UNTRUE ONLY 2ND

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

- (a) ATTACHED SHEET (STAPLED NEXT PAGE)
- (b) ATTACHED SHEET (STAPLED NEXT PAGE)
- (c) INTENSIFIED SENTENCE ENLARGEMENT. I'VE ONLY BEEN (ON BACK)

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. _____

10(A) AS TO THE BARGAINED OBLIGATIONS PERFORMED ON MY PART,
LISTED ON SEPARATE AND IDENTIFIABLE PAGES ARE SOME CASE CITINGS SIMILAR
TO MY PLIGHT FOR FAIRNESS

D(B) AND OMISSION OF BARGAIN BY STATE

11(A) ATTACHED SHEET

(B) ATTACHED SHEET (ON BACK OF A SIDE ATTACHED SHEET)

(C) CHARGED WITH TRAFFICKING TWICE NOT 3 TIMES. AN ERROR THAT
AGGRAVATED SENTENCE TO MINIMUM OF MAXIMUM SENTENCE

1. STATE CONCISELY AND IN THE SAME ORDER THE FACTS WHICH SUPPORT EACH OF THE GROUNDS SET OUT IN (10);

- (A) OMISSION OF AGREED TO TERMS PRECLUDED ME FROM BENEFITTING FROM AGREED TO TERMS. UNCLEAR WAS HOW SHORTER SENTENCE HAD EARLIER ARRIVED.
- 1) INTERPRETATION OF PLEA AGREEMENT IS GUIDED BY CONTRACT LAW AND PARTIES TO AGREEMENT SHOULD RECEIVE THE BENEFITTING OF THEIR BARGAIN.
 - 2) PLEA AGREEMENT NEGOTIATED ON BEHALF OF U.S. OBLIGATES ALL U.S. ATTORNEYS TO HONOR THEM U.S.V. GEBBIE 294 F3d 540, 549 (3rd CIR. 2002)
 - 3) ENHANCEMENT OF SENTENCE NOT INCLUDED IN AGREEMENT. DEFENDANT FULFILLED OBLIGATIONS OF AGREEMENT TO 7 YEAR TERM
 - 4) VIOLATION OF RULE 11 AFTER REJECTING PLEA AGREEMENT BY SUGGESTING ACCEPTABLE PLEA. U.S.V. CROWELL 60 F3d 203 (5th CIR. 1995)
 - 5) U.S.V. RINGLING 988 F2d 504 (4th CIR. 1993)
 - 6) U.S.V. DEMARTINO 112 F3d 75, 79 (2nd CIR. 1997) DISTRICT COURT ERRED BY INCREASING SENTENCE IN LATER WRITTEN JUDGEMENT IN DEFENDANTS ABSENCE FROM ORALLY IMPOSED SENTENCE BECAUSE IT WAS UNCLEAR HOW COURT HAD ARRIVED AT EARLIER SHORTER SENTENCE
 - 7) CRIMINAL LAW KEY 273 (2) EVEN IF THE AGREEMENT HAS NOT BEEN FINALIZED BY THE COURT, A DEFENDANTS DETRIMENTAL RELIANCE ON A PROSECUTORIAL PROMISE IN PLEA BARGAINING (BE HONORED) COULD MAKE A PLEA AGREEMENT BINDING
 - 8) CRIMINAL LAW KEY 265.5 ONCE A DEFENDANT ENTERS A PLEA AND THE PLEA IS ACCEPTED BY THE COURT, DUE PROCESS REQUIRES THE PLEA BARGAIN BE HONORED U.S.C.A. CONST. AMEND. 14
 - 9) CROSBY V. U.S. CITE 456 U.S. 255. THE SUPREME COURT JUSTICE BLACKMON HELD THAT (1) FEDERAL RULE OF CRIMINAL PROCEDURE 43 PROHIBITS TRIAL IN ABSENCE OF DEFENDANT WHO IS NOT PRESENT AT BEGINNING OF TRIAL AND (2) DISTINCTION IN RULE 43 BETWEEN FLIGHT AND DURING TRIAL IS RATIONAL MARKING POINT AT WHICH COST OF DELAYING TRIAL ARE LIKELY TO INCREASE AND HELPING TO INSURE THAT ANY WAIVER IS KNOWING AND VOLUNTARY
 - 10) FEDERAL RULE CRIMINAL PROCEDURE 43, 18 U.S.C. APP. P 821. "IT IS WELL SETTLED THAT AT COMMON LAW THE PERSONAL PRESENCE OF THE DEFENDANT IS ESSENTIAL TO A VALID TRIAL AND CONVICTION ON A CHARGE OF FELONY. IF HE IS ABSENT, A CONVICTION WILL BE SET ASIDE
 - 11) FAILING TO APPEAR WARRANT A CONTEMPT FINDING NOT AN INCREASE IN SENTENCING

- (A) DEFENDANT DID NOT BREACH AGREEMENT. HE GAVE COMPLETE, ACCURATE INFO AND PROVIDED ACTUAL ACTS AS PART OF AGREEMENT U.S. v BERMUDEZ
- 1) U.S. v WOOD 378 F3d 342, 348 GOVERNMENT HELD TO HIGHER STANDARD THAN DEFENDANT
 - 2) U.S. v McQUEEN 108 F3d 64, 66-67 (4th CIR 2007) DEFENDANT ENTITLED TO SPECIFIC PERFORMANCE OF ORAL PLEA AGREEMENT WHEN PROSECUTOR BREACHED PLEA AGREEMENT BY FAILING TO ARGUE FOR REDUCTION OF SENTENCE.
 - 3) U.S. v FOWLER 445 F3d 1035, 1038 (8th CIR 2006) DEFENDANT ENTITLED TO REMAND FOR DETERMINATION OF AGREEMENT BY ADVOCATING FOR SENTENCE DIFFERENT FROM THAT IN AGREEMENT
 - 4) DUNN v. COLLIERAN 347 F3d 459, 462-463 (3rd CIR 2001) HABEAS CORPUS RELIEF WARRANTED WHEN STATE BREACHES PLEA AGREEMENT. THOUGH REMEDY SHOULD BE REFERRED TO STATE COURT.
 - 5) SEALED CASE 181 F3d 128, 142 (D.C. CIR 1999) (ENBANC) DEFENDANT MAY BE ENTITLED TO DOWNWARD DEPARTURE FROM SENTENCING GUIDELINES FOR COOPERATION WITH GOVERNMENT ABSENT PROSECUTORIAL MOTION NORMALLY REQUIRED TO GIVE COURT SUCH AUTHORITY WHEN GOVERNMENT'S REFUSAL TO BRING MOTION BREACHED AGREEMENT
 - 6) U.S. v SHEPARD 102 F3d 558, 562 (D.C. CIR 1996) COURT MUST PROVIDE A REASONED EXERCISE OF DISCRETION IN ORDER TO JUSTIFY A DEPARTURE FROM THE COURSE AGREED UPON BY THE PROSECUTION AND DEFENSE IF IT WISHES TO REJECT GUILTY PLEA.
 - 7) QUESTIONABLE. IF EACH WEEK IS CONSIDERED A TERM OF COURT. (ADJOURNMENT) STATE v CAMPBELL 656 SE2d 371, 376 SC. 212. TRIAL COURT DID NOT HAVE JURISDICTION TO RECONSIDER. SENTENCE WAS IMPOSED UPON DEFENDANT AND COURT HAD ADJOURNED
 - 8) U.S. v COX 985 F2d 427, 430 (8th CIR 1993) NEITHER GOVERNMENT NOR DEFENDANT MAY UNILATERALLY DECLARE AGREEMENT VOID. ONLY COURT HAS THAT AUTHORITY
 - 9) U.S. v GUZMAN 318 F3d 1191, 1196 (10th CIR 2003) HEARING AND FINDING BY COURT REQUIRED BEFORE GOVERNMENT COULD BE RELEASED FROM ITS OBLIGATIONS UNDER AGREEMENT.
 - 10) STATE v. MILLER 375 S.C. 370, 652 SE 2d 444 (Ct. APP. 2007)
 - 11) STATE WITNESS CRYSTAL GARCIA, DRUG ENFORCEMENT UNIT - CONWAY POLICE OFFICER CONTRACT AND BARGAIN AGREEMENT ARRANGED

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?

SOUTH CAROLINA COURT OF APPEALS

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

(a) which grounds have been presented:

i. TRIAL IN ABSENTIA

ii. _____

iii. _____

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

i. DISMISSED

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) ATTORNEY LANELLE CANTEY DURANT OF COLUMBIA INITIALLY CONBA

(b) _____

(c) _____

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

16(a) AND THROUGHOUT APPEAL PROCESS HELD THE DESIRE TO BE RELIEVED OF ASSISTING ME AS AN ATTORNEY. MY IGNORANCE OF WHAT TO ARGUE AND BELIEF THAT WHAT WAS TO BE CONTESTED WOULD BE, CONTESTED BY MRS. LANELLE CANTEY-DURANT

- (a) your arraignment and plea? YES
- (b) your trial, if any? YES, TRIAL WAS IN ABSENCE OF ME (DEFENDANT)
- (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? YES

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. KIA T. WILSON - ESQUIRE - PUBLIC DEFENDER (ON BACK) →
- ii. LANELLE DURANT CANTEY: APPELLATE DEFENDER (ON BACK) →
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. TRIAL IN ABSENTIA - SEALED SENTENCE. KIA T. WILSON
- ii. DIRECT APPEAL - LANELLE CANTEY DURANT
- iii. _____

19. State clearly the relief you seek in filing this application:

7 YEAR SENTENCE BOTH PARTIES AGREED UPON ON BACK →

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

NO

18(A)
 i. HARRY COUNTY PUBLIC DEFENDER OFFICE
 POST OFFICE BOX 1666
 CONWAY, S.C. 29528

18(A)
 ii. SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE
 P.O. BOX 11589
 COLUMBIA, S.C. 29211

19. FOR THE STATE BENEFITED ON BARGAIN.

A UNITED STATES V RINGLING 988 F.2d 504 (4th Cir. 1993).

B I WAS NOT GIVEN OPPORTUNITY TO ADDRESS COURT IN SENTENCING, NEITHER WAS IT DISCLOSED OF HOW COURT ARRIVED AT 7 YEAR SENTENCE EARLIER. BREACH OF TERMS OF PLEA AGREEMENT BY SOLICITOR ACTIVELY ADVOCATING LONGER SENTENCE.

STATE OF SOUTH CAROLINA

County of

VERIFICATION

13

3968

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.

Lorenzo Cross

SWORN to and subscribed before me this 24th
day of May, 2013.

Nancy C. Muehler (L.S.)
Notary Public

My Commission Expires: 1-23-2023

HORRAX COUNTY
13 JUN -6 PM 12:57
NOTARY PUBLIC

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

13

3958

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.

Arump Cross
Applicant

SWORN or affirmed to and subscribed before me this

24th day of May, 2023

Nancy Muehler
Notary Public

My Commission Expires: 1-23-2023

FILED
JUN - 6 PM 11:11
CLERK OF COURT

RECEIVED
MAY 28 2013
P.C.I. MAILROOM

CERTIFICATE OF SERVICE

THE UNDERSIGNED APPELLANT HEREBY CERTIFIES THAT THE APPLICATION FOR POST CONVICTION RELIEF HAS BEEN SERVED UPON THE HORRY COUNTY CLERK OF COURT.

P.O. BOX 1666
CONWAY, S.C. 29528

MELANIE HUGGINS WARD
CLERK OF COURT - DEPUTY CLERK

I FORREST CROW ALONG WITH THE MAIL CLERK HERE AT PERRY CORRECTIONAL ON THE 24TH DAY OF MAY 2013 HAS NOTARY PUBLIC WITNESS TO THE APPLICATION FOR POST CONVICTION RELIEF SIGNED AND RECORDED OF ABOVE APPLICATION BEING SENT TO THE HORRY COUNTY CLERK OF COURT.

SUBSCRIBED AND SWORN TO BEFORE ME THIS 24 DAY OF MAY 2013

Nancy M. Muckey (L.S.)
NOTARY PUBLIC OF SOUTH CAROLINA
MY COMMISSION EXPIRES: 1-23-2023

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Lorenzo Cross,
S.C.D.C. No. 261862,

C.A. No. 2013-CP-26-3958

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed June 6, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Horry County Clerk of Court's orders of commitment. The Applicant was indicted at the May 2008 term of the Horry County Grand Jury for trafficking in cocaine base (2008-GS-26-1777). Kia T. Wilson, Esquire represented the Applicant. The State took the case to trial, and on November 4, 2009 the Applicant was found guilty in absentia. The Honorable Steven H. John sentenced the Applicant to twenty-five (25) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Lanelle C. Durant, Esquire, of the South Carolina Commission on Indigent Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. State v. Cross, Op. No. 2012-UP-370 (S.C. Ct. App. filed June 20, 2012). The Remittitur was sent on July 6, 2012.

Attached herewith and incorporated herein by reference are the records of the Horry

County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records. Any records not so attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Seven (7) year plea agreement not honored.
2. Conviction is only second offense, not third.

Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

III.

The Respondent interprets Applicant's allegations as claims of ineffective assistance of counsel. The Respondent asserts any allegations Applicant's attorney was ineffective are without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation

within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

Respondent further submits any allegations regarding a plea agreement are without merit.

The State may withdraw a plea offer at any time prior to the court accepting the defendant's plea. Reed v. Becka, 333 S.C. 676, 688, 511 S.E.2d 396, 402 (Ct. App. 1999) ("A plea agreement is only an 'offer' until the defendant enters a court-approved guilty plea. A defendant accepts the 'offer' by pleading guilty. Thus, until formal acceptance of the plea by the court has occurred, the plea binds no one, not the defendant, the State, or the court." (citing Harden v. State, 453 So.2d 550 (Fla. Dist. Ct. App. 1984))). The only exception to this rule is when the defendant detrimentally relies on the plea offer. Id. Respondent submits the record reflects Applicant did not enter a plea, but was tried in his absence when he absconded. Therefore, the allegation regarding a breach of a plea agreement should be dismissed.

V.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held on those issues so requiring one.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS.
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By:


Attorneys for Respondent

2/27, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

LORENZO CROSS, #261862)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

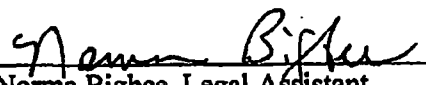
2013-CP-26-3958

AFFIDAVIT OF SERVICE BY MAIL

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

Daniel A. Selwa, II, Esquire
 1053 London St., Suite A
 Myrtle Beach, SC 29577

DATED this 27th day of February, 2014.


 Norma Bigbee, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)

TRANSCRIPT OF RECORD

COUNTY OF HORRY

) CASE NO.: 2013-CP-26-3958

PCR HEARING

October 27, 2014

BEFORE: The Honorable John C. Hayes

LORENZO CROSS,

Petitioner,

vs.

THE STATE OF SOUTH CAROLINA,

Respondent.

 ORIGINAL

APPEARANCES:

Joshua Thomas, Esq.

Attorneys for the Respondent.

Daniel Selwa, Esq.

Attorneys for the Petitioner.

Official Court Reporter
Natalie Dahl, RPR

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I N D E X

WITNESS

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E X H I B I T S

(NO EXHIBITS)

P R O C E E D I N G S

MR. THOMAS: Lorenzo Cross versus State of South Carolina, 2013-CP-26-3958. Mr. Cross was indicted in May of 2008 for trafficking cocaine base, 28 to 100 grams. He was represented by Kia Wilson. He was tried in his absence on April 13, 2009, convicted as indicted. The Honorable Steven H. John sentenced him. He was apprehended and sentenced on May 19, 2010 by Judge John to 25 years. Lanelle Durant at the Office of Public Defense did file an Anders on appeal. The Court of Appeals dismissed it in Unpublished Opinion 2012-UP-370. A remitter was returned in July of 2012. This PCR was filed in June of 2013 alleging a breach of plea agreement and an illegal sentence. Mr. Cross is present in court and represented by Daniel Selwa, and the State is ready to proceed.

THE COURT: I'm looking at his application, and if I'm looking at the right page, he has about 11 issues as grounds?

MR. SELWA: Yes, Your Honor. I'll focus on one ground, the ineffective assistance of counsel, as a general ground. Mr. Cross may bring up some issues he wants to express to the Court.

THE COURT: Call your first witness.

MR. SELWA: Thank you. I would like to call

LORENZO CROSS - DIRECT EXAMINATION

1 Lorenzo Cross to the stand.

2 (LORENZO CROSS, having been duly sworn,
3 testified as follows:)

4 THE CLERK: State your name to the Court and
5 spell your last.

6 THE WITNESS: Lorenzo Cross, C-R-O-S-S.

7 DIRECT-EXAMINATION

8 BY MR. SELWA:

9 Q Mr. Cross, you are present today alleging
10 ineffective assistance of counsel against your trial
11 counsel for your conviction in trafficking in cocaine;
12 is that correct?

13 A Yes.

14 Q And was this a sentence, or a guilty plea?

15 A It started out as a guilty plea.

16 Q A trial or guilty plea, I'm sorry.

17 A Started out as a guilty plea with specific works
18 resulting to a plea agreement of a seven-year deal.

19 Q So you had a plea agreement in place; is that
20 what you are saying?

21 A Yes.

22 Q And had you signed the plea agreement?

23 A Yes.

24 Q What happened after you signed the plea
25 agreement?

LORENZO CROSS - DIRECT EXAMINATION

1 A I went to court that day and me and
2 Mr. Richardson, the Solicitor, had a 30-day verbal
3 agreement that I could be out. Well, on February 4th I
4 went -- it was the 21st day -- and he wasn't there;
5 they had another Solicitor. She said she was unaware
6 of any plea or 30-day notice, and that I was going to
7 plead then. So I told Ms. Wilson that I was going to
8 go to trial. Ms. Wilson counseled me to get the
9 progress in order -- or in action by signing the plea
10 agreement, which I did. Upon leaving that day, I had
11 done some prior work for the DEU.

12 Q Can you explain what that is?

13 A Drug Enforcement Unit. They did not cover my
14 actions.

15 Q What do you mean?

16 A They arrested someone in a sting operation, and
17 he was adamant about me being the one that did it to
18 him.

19 Q The confidential informant?

20 THE COURT: He's saying he is a confidential
21 informant.

22 MR. SELWA: Yes, that is what I was trying to get
23 out, I'm sorry.

24 THE WITNESS: Yes.

25 A And I was told that I had a target on my back,

LORENZO CROSS - DIRECT EXAMINATION

1 you know. The sting that was conducted, they didn't
2 put no cover on me. So these people are numerous. I
3 don't know who they were, but with something on my
4 back, I was in fear for my life.

5 Q (MR. SELWA) When did you learn that you were,
6 basically, marked?

7 A That day they arrested the guy, because he made
8 phone calls and was out on the streets.

9 Q Was that the day before or after you signed the
10 plea agreement?

11 A It was the day before. We had talked about plea
12 agreements in line, you know, specific words. I signed
13 the document or contract with DEU Agent Crystal Garcia,
14 and that was for a seven-year deal.

15 Q That was part of the deal that you actually did
16 some work for the DEU; is that correct?

17 A Yes.

18 Q As a confidential informant?

19 A Yes.

20 Q You fulfilled that obligation; is that right?

21 A Yes.

22 Q And pursuant to your fulfillment of that
23 obligation, you are telling the Court today that,
24 basically, you became very scared of and in fear of
25 your safety?

LORENZO CROSS -- DIRECT EXAMINATION

1 A Yes. I was relying upon the seven-year plea
2 agreement.

3 Q All right. When did you sign that plea
4 agreement?

5 A February 4th, 2009.

6 Q What time of day did you sign that agreement?

7 A It would be about -- approximately around 10:45,
8 11 o'clock.

9 Q And was that what we refer to as a sentencing
10 sheet? Did it have your information at the top and you
11 had to sign your name with a specific charge and what
12 the recommendation and negotiation was for that plea?

13 A Yes.

14 Q And you, in fact, signed that agreement?

15 A Yes.

16 Q When were you to plead guilty in front of a
17 judge?

18 A February 4th.

19 Q That same day?

20 A Yes.

21 Q Did you plead guilty in the morning?

22 A No.

23 Q What did -- did you break for lunch?

24 A I didn't bring anything for lunch.

25 Q I'm sorry. I said did you break for lunch?

LORENZO CROSS - DIRECT EXAMINATION

1 A Yes.

2 Q Did you go out and leave the courthouse?

3 A Right.

4 Q Did you come back to the courthouse?

5 A No. This is when I learned about the threat on
6 my life.

7 Q Were you in fear for your life if you came back
8 to the courthouse?

9 A Oh, yes, because I don't know who these guys
10 were, and the way the sting operation resulted, it had
11 me thinking something that I can't prove, that law
12 enforcement had some ties with it, because they didn't
13 cover me at all, left me in the open.

14 Q Did you receive a specific threat to your life?

15 A Well, it was just somebody by another state told
16 somebody from another state, and it got back to me.
17 Because that was my friend, and he said, They got you
18 down there too, say he got a lot of friends and a mark
19 on your back.

20 Q Where did you go as soon as you heard this?

21 A Columbia, South Carolina.

22 Q Where did you stay in Columbia?

23 A West Columbia, Lexington.

24 Q Did Ms. Wilson, your trial attorney, did she have
25 these addresses?

LORENZO CROSS - DIRECT EXAMINATION

1 A No. No.

2 Q Did she have your phone number?

3 A No. I contacted Ms. Garcia, that is who I had to
4 deal with.

5 Q Who is that?

6 A The DEU agent working with Conway City Police
7 Department. In the transcript, she says that her and
8 the Solicitor's office -- she was working -- she was
9 employed by the Solicitor Office also, and that was
10 part of the task force that she was assigned to. They
11 gave me the deal that if I bring in a few arrests, then
12 I can have this plea.

13 Q Okay. And you were in contact with her, and did
14 you let her know that you were leaving because you were
15 in fear of your life?

16 A Yes.

17 Q Did she have your location? Did she know where
18 you were at? Any way to contact you?

19 A No. No. No. We contacted by phone. She called
20 and I answered, and she told me that the guy was
21 adamant about knowing that it was me that done that to
22 him, and the guy that I was with, he was coming back
23 and forth to Conway, and he got the news that my life
24 was threatened, so he told me, and I was in double
25 fear.

LORENZO CROSS - DIRECT EXAMINATION

1 Q Is this a dangerous job that you were doing?

2 A Oh, yeah.

3 Q Basically you were risking your life to work this
4 deal, correct?

5 A Right.

6 Q And you did help?

7 A I did fulfill my bargain.

8 Q How long did you stay hidden, I guess?

9 A About 14, 15 months.

10 Q At any point during that time did you contact
11 your attorney?

12 A No.

13 Q Were you worried at any point that something
14 would happen if you didn't contact your attorney?

15 A Nothing other than I signed for a seven-year plea
16 agreement.

17 Q Did you have plans to come back and enter that
18 plea and serve your time?

19 A Oh, yeah, let things die down.

20 Q Did you regret signing that once you knew that
21 you were marked?

22 A Oh, yeah. The way it went down, yes.

23 Q Did you have any indication that they had people
24 in the prison system?

25 A No, just on the streets.

LORENZO CROSS - DIRECT EXAMINATION

1 Q Did you maintain any contact with anyone that
2 would have known where you were at from the Public
3 Defender's Office, Solicitor's Office, any
4 investigative agency, anybody?

5 A No.

6 Q Did you receive any notice of any bench warrants?

7 A No.

8 Q Did you receive any notice of any hearing dates?

9 A None.

10 Q Did you get a subpoena to court for any reason?

11 A No.

12 Q Did you maintain any contact with your bondsman?

13 A No.

14 Q Did your bondsman try to reach out to your
15 family, to your knowledge?

16 A I'm from Florida, and the woman that I was living
17 with, she said after -- in 2010 that they had came by
18 trying to contact me, but I had no contact with her
19 before then.

20 Q Did you regret signing that, basically, after you
21 had signed it knowing that your life was in danger at
22 that point?

23 A Oh, yes. Not that I signed the plea agreement,
24 but what I had actually done, I was sorry for that.

25 Q Had you known they would try you in your absence,

LORENZO CROSS - DIRECT EXAMINATION

1 would you have made yourself available to accept the
2 plea agreement?

3 A Oh, yes.

4 Q Well, rather, go through with the plea?

5 A Yeah, I would have made myself available to get
6 the seven years.

7 Q And you didn't have any kind of notice, is what
8 you are telling us?

9 A No, I didn't.

10 Q Was there any bench warrants issued, to your
11 knowledge?

12 A Not that I know of.

13 Q Had you run across the police during that time?

14 A Yes, I think Florida, around Orlando. One guy
15 was driving with no lights and we was leaving a club,
16 and we got pulled over and they ran names, so it went
17 through, you know, bench warrant.

18 Q When did you first learn about your trial that
19 had taken place without your presence?

20 A March 2nd, 2010.

21 Q And what did you do at that point?

22 A I was in police custody.

23 Q Why were you in police custody at that point?

24 A Traffic stop, pulled me over. I told them my
25 name, to get it over with. I started running. I told

LORENZO CROSS - DIRECT EXAMINATION

1 them -- then they couldn't find nothing on me, but then
2 he said, yeah, they want you in Conway, and that is
3 when I found out, but I didn't find out about the
4 sentence until May 26.

5 Q Now, you are here today, basically, to say that
6 your trial counsel was ineffective?

7 A Yes.

8 Q And your trial counsel was Kia Wilson?

9 A Yes.

10 Q To your knowledge, did Ms. Wilson during the
11 trial, did she ask the Court for a continuance?

12 A Not by what I've read in the transcript.

13 Q Have you had a chance to review the transcript?

14 A Yes.

15 Q And in your review of the transcript, did you see
16 anywhere in the transcript where she asked for a
17 continuance to try to find you?

18 A No.

19 Q After your review of the transcript, was she
20 concerned about your well-being?

21 A In one part she mentioned that harm could have
22 come to me, because I always showed up to court prior.

23 Q So you had a record of showing up to court,
24 right?

25 A Yes.

LORENZO CROSS - DIRECT EXAMINATION

1 Q You went to your initial appearance?

2 A Yes.

3 Q And you went to your second appearance?

4 A Yes.

5 Q You showed up for every appearance up to that
6 point where you find out that you were marked; is that
7 right?

8 A Yes.

9 Q And do you think Ms. Wilson's failure to ask for
10 the continuance prejudiced your case?

11 A Yes. Because of the omission of how it was
12 arranged, the plea bargain. If I do work, then seven
13 years instead of 25 or 15.

14 Q Mr. Cross, did you at any point plan to actually
15 come back and take that plea and go through with the
16 sentence?

17 A Yes.

18 Q And at what point were you going to do that?

19 A I can't say specifically when, to be truthful.

20 Q Would you say that your nerves overwhelmed you?

21 A Yes, I was nervous, scared.

22 Q At any point did you think it would have been a
23 good idea to contact your trial attorney?

24 A In hindsight, now, because the result now, I'm in
25 custody, but out there running and living, it is a

LORENZO CROSS - DIRECT EXAMINATION

1 different thing.

2 Q What kind of contact, to your knowledge, did Ms.
3 Wilson's office have with you? Did you give her your
4 number, family members' numbers, addresses?

5 A She had an address where I was living, but that
6 was up here, and like I said, I'm from Florida, Miami.

7 Q Any family members in the area?

8 A No.

9 Q To your knowledge, did you give them any contact
10 information for anybody that would have been able to
11 find you at any point?

12 A No. I made myself scarce.

13 Q Had Ms. Wilson asked for a continuance and been
14 granted a continuance, do you think you would have
15 gotten back in touch with her before you were actually
16 tried in your absence?

17 A Yes.

18 Q And how was the Court to understand that the
19 continuance would have allowed you to get in contact
20 with Ms. Wilson?

21 A Because I would have been able to tell them of
22 the agreement that was made and me keeping my bargain,
23 putting my life on the line to reach that agreement.

24 Q And how long had your -- had you ever gotten back
25 in touch with your bondsman?

LORENZO CROSS - DIRECT EXAMINATION

1 A No.

2 Q Did he have any contact information for you, your
3 family members, any additional contact information that
4 would have led to finding you or someone that knew
5 where you were?

6 A No one knew where I was, no.

7 Q Are there any other issues which you wish to
8 bring before the Court regarding ineffective assistance
9 of counsel of Ms. Wilson?

10 A Yes. The trial counsel's failure to request a
11 jury charge regarding my absence constitutes
12 ineffective assistance and in violation of the 6th and
13 14th Amendments to the United States Constitution.
14 Trial counsel's failure for motion to suppress my
15 statements to the police that drugs was in my pants
16 pocket and jacket pocket on the ground, that I was in
17 custody when I made these statements, but had not been
18 read my Miranda rights, and that constitutes
19 ineffective assistance in violation of 5th, 6th and
20 14th Amendments to the United States Constitution.
21 Trial counsel's failure to object to officer's
22 testimony of confidential informant's statements to
23 officers, that was hearsay and denial of the
24 confrontation clause in violation of the 6th and 14th
25 Amendments, in violation of the United States

LORENZO CROSS - DIRECT EXAMINATION

1 Constitution.

2 Q So Ms. Wilson didn't object to hearsay testimony;
3 is that what you are saying?

4 A Yes.

5 Q And what was that hearsay testimony?

6 A About the confidential informant saying he
7 brought this, and whatever he purchased from me. He
8 was not there to testify, as far as the transcript.

9 Q So the confidential informant didn't testify at
10 your trial, and because of your review of the record,
11 you didn't see where Ms. Wilson objected; is that
12 correct?

13 A Yes.

14 Q Had she objected to that, and the Court required
15 the confidential informant to testify, being that the
16 confidential informant was not present, do you feel
17 that the trial would have been different?

18 A It would have been proper.

19 Q You feel that that prejudiced you?

20 A Yes.

21 Q You think the outcome would have been different?

22 A Yes. More details would have come out.

23 Q You relied on that --

24 A Seven-year plea.

25 Q Is there anything else you would like to tell the

LORENZO CROSS - CROSS-EXAMINATION

1 Court today?

2 A Yes. With the enhancements on my sentence, they
3 say trafficking three times, but I have two. I have
4 one possession, and that possession -- if it is not a
5 possession with intent to distribute, how can that be
6 enhanced to trafficking? You know, I find that a
7 discrepancy somewhat, mischaracter (sic).

8 Q Anything further?

9 A Hand of evil and the mind of evil; I was helping
10 the government, and got crossed.

11 MR. SELWA: No further questions. Please answer
12 any questions that the AG's office has for you.

13 MR. THOMAS: If it pleases the Court?

14 THE COURT: Yes.

15 CROSS-EXAMINATION

16 BY MR. THOMAS:

17 Q Mr. Cross, how many meetings did you have with
18 Ms. Wilson before your trial?

19 A About three, four.

20 Q Feel like you had a pretty good relationship with
21 her, talked about the case a lot?

22 A Yeah, we talked about the case.

23 Q Went over basically the State's discovery? You
24 knew what the evidence was against you, didn't you?

25 A Yes.

LORENZO CROSS - CROSS-EXAMINATION

1 Q You got a chance to tell her your version of what
2 happened the day you were arrested?

3 A Yes.

4 Q And that involved, basically, the police coming
5 to your house and you invited them in, and you were
6 cooperative? You told them where the drugs were?

7 A Yes.

8 Q Did you tell her about this work you say you did
9 for the DEU?

10 A I can't recall.

11 Q Let's think about it right now, then. Let's talk
12 about it. When did you say you did work for the DEU?

13 A Two occasions. The last one I know was
14 February 3rd.

15 Q Who did you work for that day?

16 A Detective -- Officer Garcia.

17 Q And that is the incident you said made you fear
18 for your life?

19 A No, that is the last one. The first one, she was
20 in charge of; and the second one, some other -- she was
21 working with another officer, and they took me to do
22 work, and on that one, it just fell apart.

23 Q You said the person that got arrested for that is
24 the person that was threatening you?

25 A Yes.

LORENZO CROSS - CROSS-EXAMINATION

1 Q What is that person's name?

2 A I don't even know his name. He went by Hype
3 (phonetic).

4 Q Well, I need to know, because if someone is
5 intimidating State's witnesses, I need to find that
6 person and talk with him. Do you have any information
7 you can share?

8 A Yes. Ms. Garcia would know who that person is.

9 Q Okay, but you don't know?

10 A No, don't know.

11 Q And you only heard about him threatening your
12 life through one guy that talked to another guy from
13 another state?

14 A From another state, but the circles run around in
15 the streets, said I had a mark on my back. The people
16 was like the guy I did that to was liked by a lot of
17 people.

18 Q When you say you signed a plea deal, what you
19 really are saying is that you signed a sentencing
20 sheet?

21 A I signed paperwork.

22 Q Let me ask you something --

23 MR. THOMAS: Can I approach?

24 THE COURT: You may.

25 Q (MR. THOMAS) This is your sentencing sheet, part of

LORENZO CROSS - CROSS-EXAMINATION

1 the clerk's records. That is obviously not the one
2 you signed, but does that look like something that you
3 signed?

4 A It didn't have all of that writing on it.

5 Q So this isn't -- doesn't look like what you
6 signed? You signed something completely different?

7 A Ms. Wilson would have that.

8 Q So Ms. Wilson has a copy of it?

9 A Yes. That is who I signed it with.

10 Q So she was present when you signed it?

11 A Yes.

12 Q You said that was the day after you had done your
13 most recent CI work for the DEU?

14 A Yes.

15 Q Did you do any work for the DEU after you signed
16 that sheet?

17 A No.

18 Q So you never actually testified in a trial?

19 A No.

20 Q And so you came in on the morning of
21 February 4th?

22 A Yes.

23 Q Signed paperwork with Ms. Wilson?

24 A Yes.

25 Q And then asked to come back that afternoon to

LORENZO CROSS - CROSS-EXAMINATION

1 talk to the judge?

2 A I didn't ask. I left, and upon leaving to get
3 some lunch, I was told then that people that I did that
4 to knew a lot of people and I had an X on my back.

5 Q So that is when you took off to Lexington?

6 A Yes.

7 Q Never told Ms. Wilson that you were going to
8 Lexington?

9 A No.

10 Q Never told the Solicitor you were going to
11 Lexington?

12 A No.

13 Q Never told your bondsman you were going to
14 Lexington?

15 A No, but I had a conversation with Ms. Garcia.

16 Q Right, but you didn't tell her where you were
17 going?

18 A No.

19 Q You weren't arrested in Lexington; you were
20 arrested in Orlando, Florida?

21 A Well, pulled over.

22 Q What had you been doing that night before you
23 were arrested?

24 A Drinking at a club. We pulled out and we saw
25 people walking on the sidewalk, and one was attractive.

LORENZO CROSS -- CROSS-EXAMINATION

1 The guy didn't turn on the lights. I was a passenger.
2 The police was right there. He pulled around the
3 corner, pulled him over, ran our IDs.

4 Q But you said that -- let me back up. You never
5 told Ms. Wilson you were going to be in Florida?

6 A No.

7 Q But you were scared for your life?

8 A Oh, yeah.

9 Q Terrified?

10 A I was scared.

11 Q But you are hanging out in clubs at Orlando
12 having a good time?

13 A Orlando; not here.

14 Q Just for the record, you were never charged with
15 a distribution? The confidential informant they talked
16 about at trial, you weren't charged with selling to
17 that person, were you? You were just charged with
18 having it in your possession afterwards?

19 A Well, they say that is where they get the warrant
20 from, him purchasing from me.

21 MR. THOMAS: Thank you. That is all I have.

22 MR. SELWA: No redirect.

23 THE COURT: You can step down, thank you.

24 MR. SELWA: Nothing further.

25 MR. THOMAS: State calls Kia Wilson to the stand.

KIA WILSON - DIRECT EXAMINATION

1 (KIA WILSON, having been duly sworn, testified
2 as follows:)

3 THE CLERK: State your name and spell your last
4 for the Court.

5 THE WITNESS: Kia Wilson, W-I-L-S-O-N.

6 DIRECT-EXAMINATION

7 BY MR. THOMAS:

8 Q Thanks for hanging out with us and waiting on us.
9 Could you give us a brief overview of your experience
10 as an attorney?

11 A I actually -- criminal experience began briefly
12 in an office with my dad, Ralph Wilson. I worked with
13 him for probably six months or so. I then worked for
14 The Center of Equal Justice doing civil work for
15 another six months before I started at the Public
16 Defender in 2004, and I've been there for the past ten
17 years.

18 Q How did you become involved in Mr. Cross' case?

19 A I was appointed to represent him.

20 Q And how many meetings would you say you had with
21 him?

22 A We spoke a few times, quite a few. Let's see.
23 Looks like our first meeting in the office was back in
24 June of 2008. We had what I call an office ACC, or an
25 office conference. Again, January 13, and again

KIA WILSON - DIRECT EXAMINATION

1 February 4. Actually, the February 4th date is not
2 actually a meeting; he was supposed to appear, but did
3 not.

4 Q Was that February 4th the same day we've been
5 talking about the day he signed the sentencing sheet?

6 A Yes. On February 4th I had spoken with the
7 Solicitor, Jimmy Richardson, multiple times about this
8 case. Mr. Cross had previously shown up for
9 everything. I don't recall a point in time when he did
10 not come in. He was actually very concerned about what
11 was going on in his case. On that particular day, my
12 notes reflect that he was supposed to appear in the
13 morning to sign up for a plea and then return on
14 February 13th for the actual plea date, so he was only
15 signing up that morning.

16 He showed up that morning, but left without
17 permission. I told Jimmy Richardson that if he came
18 back in the afternoon, to give him a come-back sheet
19 for the date. So he wasn't going to get in trouble
20 for that. We were still working with it. After that,
21 the Solicitor -- I had been working to try to get the
22 plea offer down. I think originally it was for 15
23 years, got it lowered to seven.

24 Q Going back, did you review his criminal history
25 with him?

KIA WILSON - DIRECT EXAMINATION

1 A Yes.

2 Q And you are familiar with his prior drug charges?

3 A Yes.

4 Q Do you think that there is anything wrong with
5 them charging him as a third offender?

6 A I do not. I think I was very clear about the
7 fact that it didn't have to be a trafficking in order
8 to enhance him. I was more concerned about trying to
9 get the overall sentence down.

10 Q And I guess we need to walk through this time
11 line. You said he was very involved, communicative
12 with you prior to February 4th?

13 A Yes. He showed up on his conference in the
14 office, which does not happen frequently. A lot of my
15 clients don't show up; he showed up. We had a detailed
16 discussion about what he wanted to do. We discussed
17 drug court in the alternative. We talked about a plea
18 and what he wanted in a plea, if he were to try to work
19 for one, what we might be able to do to facilitate
20 that. So he definitively was involved in this case
21 prior to that. Because of the seriousness of the
22 charge and the mandatory minimum, you know, we would
23 definitely need to try to get it reduced to something
24 less.

25 Q What did he tell you about his work as a

KIA WILSON - DIRECT EXAMINATION

1 confidential informant?

2 A I want to say that he did tell me that he did
3 some work. I was never really clear about how much
4 work or whether or not the DEU was fully still using
5 him, but it did come to my attention at one point that
6 he felt very unsafe. He did indicate to me that he had
7 been either threatened or that he was fearful for his
8 life because of some work he did for the DEU, and that
9 was the basis for some of the things I said at the
10 trial, because I was concerned about the fact that he
11 didn't come.

12 Q But to your knowledge, did he do any work for the
13 DEU while the time you were representing him?

14 A I'm not sure of that, no. I don't have any
15 indication that he was involved with them at that time.

16 Q So you also don't know if he did anything after
17 February 4th?

18 A I do not.

19 Q Could you give us a brief overview for the record
20 here about your efforts to locate him after he didn't
21 show back up February 4th?

22 A I was concerned that something had happen given
23 the fact he was fearful for his safety. I did try to
24 reach him. Basically, what ends up happening is Jimmy
25 Richardson -- and my notes reflect on March 31, 2009 he

KIA WILSON - DIRECT EXAMINATION

1 was offered a plea to do seven years. That would still
2 be open, but apparently at some point Fran Humphries
3 had taken over the case, or something happened. I
4 don't know what was going on, or at least Fran was over
5 Jimmy at that point in time. My understanding is that
6 he refused to lower it. So we were back at a first.

7 My client had not shown up in approximately -- it
8 is over a month's time at this point. I was trying to
9 call him as of the March 31st date; no answers. Our
10 office investigator, Jerome Randall, tried to find
11 him, track him down, see if he was anywhere in the
12 area, if there was anyone who might know where he was;
13 that was fruitless. I was told by the State that they
14 were going to -- because I was still asking them to
15 lower the charge -- I was informed that they were
16 going to try this case 4/9 of '09, so April 9th. So
17 at that point, I was pretty much stuck.

18 Q So he never left you any information about where
19 he was going or what he was doing?

20 A He did not.

21 Q I guess to cover our basis, you went over the
22 discovery with him?

23 A I did, yes.

24 Q And, basically, the discovery was they went to
25 execute a search warrant at his house, and he basically

KIA WILSON - DIRECT EXAMINATION

1 was cooperative and said I'll tell you where the drugs
2 are?

3 A That is what they claimed, yes.

4 Q So this wasn't really a CI case in the sense
5 that --

6 A It was not. Crystal Garcia, who was the DEU lead
7 on this case, basically showed up to court saying she
8 had a subpoena, but that my client was incredibly
9 cooperative, and basically took her to the back room
10 and said this is my room and coat pocket, and by the
11 way, these are all my drugs, that was her testimony.

12 Q So they got the search warrant on the basis of
13 maybe some stuff he had done with the CI, but it wasn't
14 a distribution charge?

15 A Right. Right, it was not.

16 Q So along those lines, I guess, would you --
17 obviously you didn't object to any testimony about the
18 CI providing the basis for the search warrant?

19 A Right.

20 Q Why didn't you?

21 A I think at the time I was focused on the fact
22 that the search warrant itself was a good search
23 warrant. At this juncture, hindsight being 20/20, it
24 was probably a mistake.

25 Q But at the end of the day, it was a good search

KIA WILSON - DIRECT EXAMINATION

1 warrant?

2 A I think it was, yes. But they didn't really need
3 the search warrant, because the testimony was -- well,
4 I still should have probably made some hay about the
5 search warrant, but at the end of the day the testimony
6 was that my client granted entry without the search
7 warrant.

8 Q And so I noticed there also wasn't any Jackson v.
9 Denno hearing on this?

10 A There was not.

11 Q Any reason to challenge his statements?

12 A No.

13 Q Because he wasn't actually arrested until after
14 he told them where the drugs were?

15 A Right.

16 Q Do you remember if the judge gave a charge on the
17 Defendant's absence of trial?

18 A I do not recall that, I'm sorry.

19 MR. THOMAS: I beg the Court's indulgence one
20 moment.

21 (A brief pause in the proceedings.)

22 MR. SELWA: I'll stipulate he did. I recall
23 reading that last night.

24 MR. THOMAS: In that case, I have no further
25 questions.

KIA WILSON - CROSS-EXAMINATION

1 THE COURT: Cross?

2 CROSS-EXAMINATION

3 BY MR. SELWA:

4 Q How are you doing today?

5 A Good, thank you.

6 Q Good. Ms. Wilson, did you -- you represented
7 Mr. Cross, obviously?

8 A Yes.

9 Q At his trial, did you ask for a continuance to
10 try to locate him?

11 A I don't think that we asked for a continuance on
12 the day of, at least I did not see one reflected at the
13 start of the transcript. I don't recall all of the
14 specifics from that day. It's been awhile, but I don't
15 think so. I think we had tried to find him and we
16 could not. I don't think I requested one that day.

17 Q How much contact information did you have on
18 Mr. Cross or his family?

19 A I had two numbers for him, and I knew he had two
20 adult children. The numbers I had did not work. I had
21 -- like I said before, I had Investigator Jerome go out
22 and see if he could locate him where he used to live or
23 hang out, and we could not find anybody with any
24 ability to contact him or who knew where he was or
25 reach him even by phone. I had nothing. Like I said

KIA WILSON - CROSS-EXAMINATION

1 before, that was a concern. I thought maybe he was
2 dead, honestly.

3 Q Did you express your concerns to any agency that
4 may investigate missing persons?

5 A No. No. I didn't call missing persons. Our
6 office was looking for him. It is certainly not
7 unusual that my clients don't come to trial sometimes,
8 but I was particularly concerned about him because of
9 what he had said about the DEU contact he had in the
10 past, so I thought maybe something had happened, and
11 that was my concern.

12 Q And as you testified, you went over all the
13 elements of the case and the statutory code and what he
14 was charged with him?

15 A Absolutely.

16 Q He was aware of the potential sentence that this
17 charge carried, correct?

18 A He was. As a matter of fact, my notes reflect
19 that I wrote specifically all of the information
20 regarding a second and third offense. I knew he was
21 looking at a third. The goal was to get him out of a
22 25-year minimum. It still would have been 85 percent,
23 but a seven-year minimum would have been much more
24 palatable. So we definitely discussed that in great
25 detail.

KIA WILSON - CROSS-EXAMINATION

1 Q And if he was aware of that, and also agreed to a
2 seven- year plea agreement, did you at any point feel
3 that he was mentally incompetent or any reason that he
4 would have not grasped that concept, that if he
5 appeared he would be getting seven; if he didn't, they
6 would proceed and he would get 25 to 30?

7 A I never thought that he was incompetent. He
8 certainly seemed to have all of his faculties about him
9 and always able to discuss with me. He had very
10 intelligent questions and was telling me about how he
11 wanted to proceed, what he wanted, drug court. If he
12 had a plea, he wanted a smaller amount of time, which
13 would be normal. But, honestly, I never had any
14 indication that he did not understand what we were
15 talking about. We certainly had opportunities to speak
16 often enough that he would have an opportunity to say I
17 don't get this, break this down to me.

18 Q Do you feel like he was waiting for the cases
19 that he worked on to resolve themselves?

20 A I didn't get that understanding. When he was
21 scheduled for court on the 4th to sign up and return on
22 the 13th, I had no -- I was really unclear why he
23 wasn't present. No, I don't think necessarily that is
24 the case.

25 Q Do you think any amount of extra time would have

KIA WILSON - CROSS-EXAMINATION

1 reasonably led to finding him or finding a new lead to
2 find him?

3 A I do not. I think that given extra time he may
4 have contacted us eventually. A year -- which is
5 basically what went by between the time of this trial
6 and the time that he actually was caught -- I don't
7 think his plea offer would have indicated that it would
8 have been opened that long. This was something that
9 was still a departure from the original plea offer.
10 The original was for 15 years. We had to work to get
11 seven. That was a last minute thing from the State.
12 They didn't really want to do it, but subsequently when
13 he didn't show, they immediately pulled it.

14 Q Again, I might have missed this, so it may have
15 been -- did he sign a sentencing sheet, or a standard
16 plea offer from the Solicitor's office?

17 A I don't have a copy of a signed plea offer. It
18 could be that the State has one in their possession.
19 I'm not saying he didn't accept the plea. I don't
20 think that it is necessary that he sign a sheet in
21 order to say I want to take a plea. The problem is
22 that he didn't show up for the plea.

23 Q And your testimony is that no one in your office
24 was able to contact him?

25 A No. I personally was trying and, of course, like

KIA WILSON - CROSS-EXAMINATION

1 I said, I had the office investigator, Jerome Randall,
2 go out and attempt to contact someone to see if we
3 could find him somewhere.

4 Q Had you actually found him, do you think he would
5 have shown up to accept the plea?

6 A I think he would have. I was under the
7 impression he was going to plea. I think I said that
8 at trial as well. I expected him to show up for a
9 plea. This case was always going to be that plea, as
10 soon as we worked out a reasonable deal. I knew he was
11 willing to take the seven, so I was very vocal about
12 that.

13 Q And do you feel that failure to ask for that
14 continuance hurt him at all?

15 A Ultimately, I do not. I think I should have
16 requested a continuance just because. It certainly
17 doesn't hurt. I certainly ask for lots of things. I'm
18 pretty sure the Court won't grant them all the time;
19 however, I don't think that the Court was going to
20 continue his case. This was not the first missed court
21 date. Given that he had shown up and left without
22 permission, and there were at least two other
23 opportunities inside of the months preceding trial for
24 him to be present, and he wasn't there.

25 Q Are you talking about other dates after he didn't

KIA WILSON - REDIRECT EXAMINATION

1 show up to plea that he could have shown up?

2 A I'm saying after the February date, the 4th, when
3 he came in the morning and left without permission and
4 didn't come back that afternoon, and I'm talking about
5 -- actually, that would be two opportunities, but maybe
6 just one. Of course, the actual date of court, because
7 he would have been sent a subpoena.

8 Q And do you think that the challenge of the search
9 warrant or his statements would have affected the
10 outcome at trial?

11 A I do not.

12 MR. SELWA: No further questions. Thank you.

13 THE COURT: Redirect?

14 REDIRECT-EXAMINATION

15 BY MR. THOMAS:

16 Q You said you had to work to get it down to the
17 seven years?

18 A Yes.

19 Q What do you mean by you had to work?

20 A The Solicitor and I had been going back and forth
21 about this case, and there is always a bunch of
22 back-and-forth when you are negotiating a sentence. My
23 client originally told me on the 6/10/08 date when we
24 met that he was looking for a lesser sentence, seven
25 years. My note specifically reflects that I explained

KIA WILSON - REDIRECT EXAMINATION

1 to him that this was unlikely because the last prison
2 term was for eight-and-a-half years, 85 percent, and
3 generally the Solicitor won't give you less on a higher
4 offense than previous.

5 So I was skeptical I could make it happen, but I
6 was going to try. I ultimately got them to agree to a
7 seven-year sentence, which meant it wasn't a third; it
8 was going to be a second. The rest, as they say, is
9 history.

10 Q But when you say you worked for the seven, you
11 don't mean --

12 A I didn't --

13 Q You didn't set him up with the DEU or anything?

14 A No. I mean that I actually was hounding the
15 State to get a better deal.

16 Q Thank you.

17 THE COURT: Mr. Selwa.

18 MR. SELWA: Nothing.

19 THE COURT: Step down. I appreciate your time.
20 We'll take a break.

21 MR. THOMAS: We're done with Cross.

22 THE COURT: Okay. Let's take a break before the
23 next one.

24 (Whereupon, the proceedings concluded.)

25

1 CERTIFICATE OF REPORTER

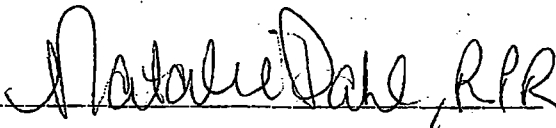
2
3 State of South Carolina)

4 County of Horry)

5
6 I, Natalie Dahl, Official Court Reporter for the
7 State of South Carolina, do hereby certify that the
8 foregoing is a true, accurate and complete Transcript
9 of Record of the proceedings had and evidence
10 introduced in the captioned case, relative to appeal,
11 for Horry County, South Carolina, on the 27th day of
12 October, 2014.

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

15
16 January 26, 2015

17
18 
19 _____
20 Natalie Dahl, RPR

21 Court Reporter
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Lorenzo Cross,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C.A. No.: 2013-CP-26-3958

ORDER

This is a Post-Conviction Relief Proceeding.

HORRY COUNTY
14 NOV 17 PM 12:59
MELANIE BURGESS-JACKSON
CLERK OF COURT

Applicant filed an application for Post-Conviction Relief (PCR) on June 6, 2013. The case was heard by the undersigned on the 27th day of October 2014. The State of South Carolina was represented by Josh Thomas, Esquire, and the Applicant was represented by Daniel Selwa, II, Esquire.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the May 2008 term of the Horry County Grand Jury for trafficking in cocaine base (2008-GS-26-1777). Kia T. Wilson, Esquire represented the Applicant. The State took the case to trial, and on November 4, 2009 the Applicant was found guilty *in absentia*. The Honorable Steven H. John sentenced the Applicant to twenty-five (25) years imprisonment.

A notice of appeal was filed at the South Carolina Court of Appeals. Lanelle C. Durant, Esquire, of the South Carolina Commission on Indigent Defense perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence. *State v. Cross*, Op. No. 2012-UP-370 (S.C. Ct. App. Filed June 20, 2012). The Remittitur was sent on July 6, 2012.

[Handwritten signature]
JOSHUA H. THOMAS, ESQUIRE
COURT REPORTER & CLERK

In his appeal, Applicant raised as an issue the Court proceeding with a trial of Applicant in his absence. The unpublished opinion states that Applicant argues "the circuit court erred in proceeding with his trial in his absence when Cross had previously signed the paper work to plead guilty to a lesser offense." The Court of Appeals dismissed Cross's appeal pursuant to *Anders v. State of Cal.*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967) and *State v. Williams*, 305 S.C. 116, 116, 406 S.E.2d 357 (1991). By virtue of this dismissal the Court of Appeals has found that the issue of Applicant's trial in his absence has no arguable merit. See *Williams* at 358.

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

1. Seven (7) year plea agreement was not honored.
2. Conviction is only second offence, not third.

Applicant's allegations are claims of ineffective assistance of counsel. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on 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 v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C.115, 386 S.E.2d 624 (1989).

A two pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, 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.E. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984)).

As to a plea deal, the State may withdraw a plea offer at any time prior to the court accepting the defendant's plea. *Reed v. Becka*, 333 S.C. 676, 688, 511 S.E.2d 396, 402 (Ct. App. 1999) ("A plea agreement is only an 'offer' until the defendant enters a court-approved guilty plea. A defendant accepts the 'offer' by pleading guilty. Thus, until formal acceptance of the plea by the court has occurred, the plea binds no one, not the defendant, the State, or the court." (citing *Harden v. State*, 453 So.2d 550 (Fla. Dist. Ct. App. 1984))). *Reed*, while helpful, is not dispositive of the issue raised by Applicant. This is so, as in *Morris v. State*, 371 S.C. 278, 639 S.E.2d 53 (Ct. App. 2006), the court seems to give efficacy to a signed plea deal.

In *Morris*, the Applicant signed a sentencing sheet on his trial date for the crime of assault and battery of a high and aggravated nature (ABHAN) as a lesser offense than the charge he was facing, assault and battery with intent to kill (ABWIK). After signing the sentencing sheet based on what appears to be poor communication Morris left the courthouse, did not return and was tried and convicted *in absentia* for ABWIK. The *Morris* court found counsel ineffective

under these facts as counsel did not move for a continuance of Applicant's case when the State proceeded to trial in spite of there being a signed plea deal seemingly accepted by Morris based on his signing of the sentencing sheet. In *Morris*, a continuance would have been justified based on Morris' mistaken belief.

Under *Reed*, Morris would have not been prejudiced by his counsel's failure to request a continuance as no rights would inure to Morris's benefit simply by his acceptance of a plea offer signified by him signing a sentence sheet. The *Morris* court recognized continuance motions are reviewed under an abuse of discretion rubric and determined that the denial of a motion for a continuance under the *Morris* facts would have constituted an abuse of discretion.

In the instant case, trial counsel did not move for a continuance. I cannot find a denial of motion for continuance, had one become made, would have amounted to an abuse of discretion as that is not before me. However, the undersigned must observe the facts at the time in question and may assess how they would have impacted a motion for continuance.

What may be a drastic distinction between Morris and Applicant is that Morris did not appear at trial based on his understanding that his sentencing was being deferred to a later date. Here, Applicant admitted he simply skipped based on his fear of harm due to his prior cooperation with the State on some drug deals. Applicant's testimony was that he fled and remained absconded until he was arrested in Florida. After he fled, the rather intense efforts to find Applicant by his counsel and the State were futile as no one in the system had any contact information for Applicant and could not scrounge any up. In the vernacular, Applicant "flew the coop."

Counsel's inability to contact Applicant had been related to Judge Larry Hyman the week before trial through a request by the state for a bench warrant. Judge Hyman held off issuing the

bench warrant so efforts could be made over the weekend to locate Applicant. The record reflects that efforts were made to locate Applicant over the weekend.

Under the facts of this case, it is doubtful that a continuance would have been granted if requested. Applicant had been absconded for 63 days, a bench warrant for his arrest had been issued (and held by the State), adequate, if not more than adequate efforts to locate Applicant had taken place, no one had contact information for Applicant, and Applicant made it clear he was gone. A continuance would not have been justified under the facts of Applicant's case.

Here trial counsel had no legitimate grounds upon which to bottom a request for a continuance. Trial counsel could not, by such a motion, suggest to the court a later time to which to continue the case as she had no contact with Applicant. Judge Hyman had determined sufficient grounds existed for the issuance of a bench warrant. By virtue of language on his bond paperwork, Applicant knew that if he took leave, as he did, he would be tried in his absence.

While this case does, to a degree, parallel *Morris*, where it diverges it does so in great degree. I find to such a degree the *Morris* is not controlling, that trial counsel, who acknowledges she should have requested a continuance, was not ineffective in her representation of Applicant as the facts of this case overwhelmingly lead to the conclusion that a motion for continuance would have had no merit.

While of no merit in the analysis of the issue of a motion for continuance it is of interest that after the verdict trial counsel reiterated her dilemma regarding Applicant and expressed, indirectly, concern for his wellbeing. (TR p. 99 LL 11-17). At the PCR hearing, trial counsel candidly testified that she did not think any extra time for locating Applicant would have been helpful.

In addition to the continuance issue, Applicant asserts his conviction should have been to a second offense, not a third. Trial counsel testified that by virtue of proper enhancement Applicant's current offense was properly categorized as a third. The State at the hearing also placed on the record sufficient prior enhancement offenses.

Applying the *Strickland* test, I find trial counsel's representation of Applicant was effective in her representation of Applicant as to the charges presented in his application for post-conviction relief. Additionally, looking at the prejudice prong of *Cherry* even if trial counsel was ineffective such would not have prejudiced Applicant. Under the facts of this case it does not appear that Applicant was entitled to a continuance.

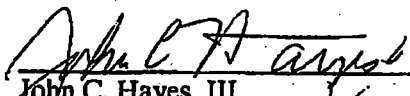
Additionally, by virtue of Applicant's appeal alleging error by the trial judge in proceeding to try him in his absence, the appellate court has found no merit to this claim. While this is a different issue than that of alleged ineffective assistance of counsel it is recognition by the Court of Appeals that Applicant was not entitled to have his case continued. *See State v. Cross, supra*.

Wherefore, Applicant's Application for Post-Conviction Relief is denied and dismissed with prejudice.

Applicant is hereby placed on notice that any petition for certiorari to the South Carolina Supreme Court must be filed within thirty (30) days. See Appellate Court Rules 203, 206, and 227(b).

IT IS SO ORDERED.

November 10, 2014
Conway, South Carolina


John C. Hayes, III
Presiding Judge 

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

LORENZO CROSS, #261862)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2013-CP-26-3958

AFFIDAVIT OF SERVICE BY MAIL

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

Daniel A. Selwa, II, Esquire
1053 London St., Suite A
Myrtle Beach, SC 29577

DATED this 3rd day of December, 2014.


Norma Bigbee, Legal Assistant
For Respondent

WITNESSES

Crystal Garcia DEU

DOCKET NO. 2008-GS-26-1177

The State of South Carolina

County of Horry

Jimmy Richardson, II
08H00689

COURT OF GENERAL SESSIONS

May, 2008 TERM

ARREST WARRANT NUMBER

J610688

CDR: 0349 44-53-0375(C)(2)(c)

DOA: 2/12/2008

THE STATE

vs.

ACTION OF GRAND JURY

TRUE BILL

James Webber
Foreperson of Grand Jury

Date:

MAY 15 2008

Lorenzo Cross
/ M

Conway, SC 29527-7216

DOB:

SSN:

ATTORNEY:

VERDICT

Indictment for

Trafficking in Cocaine Base

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury

Date:

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on May 15, 2008, the Grand Jurors of Horry County present upon their oath:

TRAFFICKING COCAINE BASE
MORE THAN 28 GRAMS, LESS THAN 100 GRAMS

CDR: 0349 44-53-375(C)(2)(c)

That Lorenzo Cross did in Horry County on or about February 11, 2008, knowingly, sell, deliver, purchase, or bring into this State; or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this State, or was in actual or constructive possession or attempted to become in actual or constructive possession of a quantity of Cocaine Base in an amount of more than twenty-eight grams but less than one-hundred grams, same being a controlled substance all within the meaning of Section 44-53-110, et seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized and in violation of Section 44-53-375(c)(2), S. C. Code of Laws, 1976, as amended, for the crime of trafficking.

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


J. GREGORY AMBREE
FIFTEENTH CIRCUIT SOLICITOR