

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable William H. Seals, Jr., Guilty Plea Judge
The Honorable Eugene C. Griffith, Jr., Post-Conviction Relief Judge

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JUL 31 2015

Appellate Case No. 2015-000785

S.C. Supreme Court

Edward Rorecuse Young, ... Respondent,

v.

State of South Carolina, ... Petitioner.

APPENDIX

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INDEX

INDEX.....	i
GUILTY PLEA TRANSCRIPT.....	1
APPLICATION FOR POST-CONVICTION RELIEF.....	85
RETURN.....	90
TRANSCRIPT OF POST-CONVICTION RELIEF HEARING.....	96
ORDER GRANTING POST-CONVICTION RELIEF.....	150
CLERK OF COURT RECORDS.....	155
S.C.D.C. RECORDS.....	158

1 STATE OF SOUTH CAROLINA) THE COURT OF GENERAL SESSION
2 COUNTY OF GREENVILLE) 2010-GS-23-915A
3)
4 State of South Carolina) TRANSCRIPT OF RECORD
5)
6 -vs-)
7 Edward Young)

8 October 9, 2012
9 Greenville, South Carolina

10 B E F O R E:

11 THE HONORABLE WILLIAM H. SEALS, JR., Judge.

12 A P P E A R A N C E S

13 Howard Steinberg, Esquire
14 Attorney for the State

15 Scott Robinson, Esquire
16 Attorney for the Defendant

17 CAROLINE HISKELL
18 Thirteenth Circuit Court Reporter
19
20
21
22
23
24
25

I N D E X

WITNESSES

DIR

CROSS

REDIRECT

Neil Mitchell

4

29

47

Mike Moore

48

55

Bradley Baxter

63

68

E X H I B I T S

State's Exhibit

ID

IN EVD

1-4 Photographs

7

7

5 Drug Report

76

76

6 Evidence

76

76

7 Photograph

76

State versus Young

P R O C E E D I N G S

1
2 MR. STEINBERG: From my understanding, this
3 is going to be a bench trial and a Jackson versus Denno
4 and a suppression hearing first and that will probably
5 incorporate a majority of the trial. Unless there's an
6 objection, I'm going to call my first witness.

7 MR. ROBINSON: I would rather, Your Honor --
8 may it please the Court.

9 THE COURT: Sure.

10 MR. ROBINSON: In my opinion it's kind of a
11 two-part thing because you've got an old paint can in the
12 woods and you got a car stop later on that found the
13 drugs. I would suggest to the State that they do the can
14 in the woods and suppression first and then the other part
15 of this as far as the car stop in this case.

16 THE COURT: Okay.

17 MR. STEINBERG: Your Honor, the State calls
18 it's first witness, Deputy Mitchell.

19 THE CLERK: If you would come forward to be
20 sworn. Raise your right hand place your left hand on the
21 Bible.

22 NEIL MITCHELL, having been duly sworn,
23 testified as follows:

24 Thank you. You may be seated. State your
25 name for the record?

State versus Young

1 THE WITNESS: Neil Mitchell.

2 DIRECT EXAMINATION

3 BY MR. STEINBERG:

4 Q. Deputy Mitchell, would you please tell us what
5 your rank is and what your title is and where you work?

6 A. I am a master deputy with the Greenville County
7 Sheriff's Office. I am currently assigned to the
8 administration division in the technical services unit.

9 Q. What's your highest level of education?

10 A. I have some college.

11 Q. Where are you from originally?

12 A. Maryland.

13 Q. Any military experience?

14 A. Yes, sir.

15 Q. Where was that?

16 A. I was active duty Air Force, Air Force Reserve
17 and I also did a short stint in the South Carolina
18 National Guard.

19 Q. Where do you live, sir?

20 A. 106 Brandt Road in Greer.

21 Q. And what part of the county is that considered?

22 A. I believe it's considered on the south east side.

23 Q. What sort of a residence do you live?

24 A. It's a relatively small subdivision but all of us
25 have a larger lot. I personally have almost four acres

State versus Young

1 but most of the folks in there have a couple acres.

2 Q. It's part of Greenville County?

3 A. Yes.

4 Q. On July 30, 2010, what were you doing in the
5 evening hours?

6 A. If I recall correctly it's a Friday evening and I
7 was attempting to get a head start on weekend chores. So
8 I come home from work, changed clothes and got on a
9 lawn mower and was cutting grass. I got about two acres
10 of grass on the one lot. I was almost done. I was
11 actually cutting grass closer to the road.

12 Q. What, if anything, did you see?

13 A. I observed -- my house is actually the first
14 driveway when you come into the subdivision -- so I
15 observed a black in color Crown Vic older model, heavily
16 tinted windows, drive into the subdivision. The first
17 thing I took notice of is it was driving slow. Everybody
18 in my neighborhood drives fast so that was the first thing
19 that kind of caught my attention and then we had actually
20 had a burglar of my neighbor directly across the street,
21 attempted burglary, a night or two nights before. So the
22 neighbors came to me and asked me to kind of look out and
23 be on alert so I was.

24 I didn't recognize the vehicle and kind of
25 paid attention to it as it drove in slow. It drove pass

State versus Young

1 me and within a couple of seconds, maybe less than 30
2 seconds it turned around and was coming back out of the
3 subdivision.

4 Q. You said it was a dark in color Crown Vic. Was
5 there anything else unusual about this vehicle? How did
6 it appear to you?

7 A. It may have been an old law enforcement vehicle.
8 If it remember correctly it had a spot light on the
9 driver's side.

10 Q. When the car went back out of your subdivision,
11 what did you see next?

12 A. The car goes up to the stop sign of Branlin and
13 Thompson. It comes to a complete stop and then it starts
14 to make a left hand turn ahead southbound on Thompson
15 headed back towards the Greenville Park Recreation and
16 Soccer Complex there on Anderson and Ridge Road, that
17 direction southbound. But immediately as the vehicle
18 started to make a left hand turn his break lights went on
19 and he stopped and I observed the defendant get out of the
20 vehicle and run across the street back towards my property
21 line up towards the corner of the street.

22 So he runs off the road into the woods there.
23 So I immediately shut the lawn mower off.

24 Q. What door did this person get out of?

25 A. He got out of the passenger's side.

State versus Young

1 MR. STEINBERG: I'd like to have these marked
2 and I'll show these to defense counsel, State's 1 through
3 4.

4 (Photographs marked as State's Exhibit Nos. 1
5 through 4 for identification.)

6 BY MR. STEINBERG:

7 Q. Deputy Mitchell, I'd like to show you first
8 what's been marked as State's Exhibit No. 4 and tell us
9 where your house was?

10 A. My house was located here as you can see here.

11 THE COURT: Any objection from the defense?

12 MR. ROBINSON: No objection.

13 THE COURT: 1 through 4 into evidence without
14 objection.

15 (Photographs marked as State's Exhibit Nos. 1
16 through 4 for identification was admitted into evidence.)

17 BY MR. STEINBERG:

18 Q. Please point out where your address and where the
19 car was stopped?

20 A. My residence is here. I was cutting the lawn
21 parallel to the road here and a vehicle stopped here at
22 the intersection so I had a clear view of it when it came
23 to stop here.

24 Q. This is where Thompson and Branlin Road meet?

25 A. Yes.

State versus Young

1 Q. And there was a car stopped physically on
2 Thompson Road or Branlin Road?

3 A. The stop sign is on Branlin.

4 Q. When the car stopped and the person got out, what
5 road were they physically on?

6 A. They were on Thompson by that time.

7 Q. I'm going to show you what's marked as State's
8 Exhibit No. 1. Please tell us what this is a picture of?

9 A. This is a photograph coming northbound on
10 Thompson from the Greenville Rec Soccer side on the
11 Anderson and Ridge Road side of Thompson. That's a
12 picture of where the contraband was found and the point of
13 reference that the defendant gave regarding a rusty metal
14 pipe.

15 MR. STEINBERG: I'll hand these up to the
16 Judge.

17 THE WITNESS: And they were taken at the time
18 of the incident.

19 BY MR. STEINBERG:

20 Q. Did you take those photographs yourself?

21 A. Yes, sir.

22 THE COURT: What time in the evening did this
23 happen?

24 THE WITNESS: This was approximately
25 7:00 p.m.

State versus Young

1 BY MR. STEINBERG:

2 Q. When this vehicle came to a stop, what did you
3 then do?

4 A. The vehicle came to a stop and then pulled out on
5 Thompson and stopped again. The defendant got out and ran
6 around and it appeared he was heading back towards my
7 property line in the woods.

8 So I stopped the lawnmower, I get up and I
9 start to jog over there. At this time, it's probably
10 sixty yards or so as I start to jog up the driveway. I
11 see the defendant go in off the edge of the road. I had
12 to look through some trees to see him but he did have a
13 white tank top on and I saw him about 20 or 30 feet off
14 the edge of the road and he was bent over at the waist
15 from what I can see.

16 Again, I was having to look through some
17 trees to see him. It's a lot of growth. So I'm jogging
18 up there trying to ascertain what they're doing, but in
19 the meanwhile the vehicle that had turned left and
20 immediately stopped started to do this multi-point turn at
21 Thompson and trying to turn and face back northbound. In
22 my mind I was a little confused as to what was going on.

23 By the time I made it up to the intersection
24 I don't know if he saw me but he jetted out of the woods
25 back up and was headed back up towards the vehicle which

State versus Young

1 was now facing back northbound.

2 Q. When you saw him, how close was he to the vehicle
3 -- when he saw you, how close was he?

4 A. I would probably say it would have to be in the
5 30, 40 yard range.

6 Q. What were you wearing at the time? Were you
7 wearing any law enforcement gear at the time?

8 A. No, sir, probably tee shirt and shorts.

9 Q. Were you armed?

10 A. No.

11 Q. Did you ever speak with this individual?

12 A. Yeah. I confronted him. As I got to the
13 intersection and he was coming out of the woods heading
14 back to the vehicle, I confronted him and said, hey, what
15 are you doing and he said he was just taking a piss.

16 Q. Are those his words?

17 A. Yes, I believe so. It's either I'm taking a piss
18 or I'm looking for a place to take a piss.s

19 Q. What, if anything, did you say to him?

20 A. I said what a strange spot to take a piss.

21 Q. What was his answer to that?

22 A. I don't remember any specific response to that.

23 I asked him where he was coming from because based on what
24 I saw when I was coming up the road, he was bent over at
25 the waist so obviously -- unless he was physically looking

State versus Young

1 for a spot on the ground the urinate, it just didn't
2 appear that he was urinating from what I could see.

3 I asked him where he was coming from and he
4 pointed out towards the soccer fields on Anderson Ridge
5 Road and said he was working with his uncle on Anderson
6 Ridge Road and he said he just came to his uncle's house.

7 Q. What did you tell him next?

8 A. Well, I believe I said this isn't a spot to
9 urinate, but of course in my mind I'm thinking well, you
10 just came from your uncle's house ---

11 MR. ROBINSON: Objection.

12 THE COURT: Sustained.

13 BY MR. STEINBERG:

14 Q. Don't tell us what you were thinking just what
15 you did.

16 A. At that time there was still a conversation, he
17 got in his vehicle, I told him not to come back. He got
18 in the vehicle and drove off and I obtained the tag
19 number.

20 Q. Now, was the car parked in the same direction or
21 had it moved since you first approached?

22 A. Yeah, it had done a multi-point turn in the
23 middle of the road on that corner and then it was facing
24 northbound. It was still in that position as he got in
25 the passenger's side.

State versus Young

1 Q. This individual that you saw in the wood line, is
2 he in the courtroom today?

3 A. Yes, sir.

4 Q. Please point to him.

5 A. Seated there.

6 Q. Pointing to the defendant?

7 A. Yes.

8 Q. Tell us about his demeanor as you spoke to him at
9 that location?

10 A. Based on my experience I thought he was overly
11 nervous for somebody who just trying to find a spot to
12 urinate. I noticed that several points -- it was a brief
13 interaction -- but he looked back towards the woods, the
14 general area where he was standing and he definitely seem
15 like he was willing to talk. He was making motions to get
16 to the passenger's side of that vehicle so he could beat
17 it out of there.

18 Q. Were you able to get the tag number on that
19 vehicle?

20 A. Yes, sir.

21 Q. Do you remember what the tag number is?

22 A. I don't know off the top of my head. It's in my
23 report.

24 Q. I'm going to hand you a copy of your report and
25 then I want you to read over it and then read it into the

State versus Young

1 record.

2 A. The tag number?

3 Q. The tag number.

4 A. The tag number was DNX-428. That's a South
5 Carolina tag.

6 Q. After the car drove away, what, if anything, did
7 you do?

8 A. I can't really speak to my feelings right at that
9 point.

10 Q. Tell us what you did and why you did it.

11 A. Well, based on that interaction and based on the
12 statements he gave, his story didn't seem to match up. So
13 I ran back to the house and got my patrol vehicle and
14 drove up to the area where I last saw him.

15 Q. Please tell the Judge why you returned to your
16 patrol vehicle?

17 A. Well, one, I had a firearm there and I also had
18 access to the radio, police frequency.

19 Q. Once you got back to where the car was stopped,
20 what, if anything did you see?

21 A. When I entered the wood line where I last saw the
22 defendant immediately I saw what appeared to be a paint
23 can about 30 feet or so off the edge of the road. It was
24 just inside the wood line so I walked over to that.

25 That's the first thing that called my attention. So I

State versus Young

1 picked it up and it felt like it was empty but it was
2 something that was rattling around inside of it.

3 The lid was loose so I popped the lid off and
4 inside I observed a pill bottle inside a zip lock bag or
5 plastic bag.

6 Q. I'm going to show you a photograph marked as
7 State's Exhibit No. 3. Please identify this and tell us
8 when you took it?

9 A. This is the paint can and the area where I found
10 it. It was taken later that evening because once the
11 contraband was received from the can, we put the paint can
12 back as a decoy. That's the paint can where I found the
13 contraband.

14 Q. Is this the same condition, same position?

15 A. Yes.

16 MR. STEINBERG: I'll hand this up for the
17 Court to review.

18 BY MR. STEINBERG:

19 Q. Please tell the Court what you then did with this
20 information that you had just come into?

21 A. I took the pill bottle out of the bag and I
22 popped the lid off of it and I saw several large white
23 chunks of rock like substance which in my experience was
24 consistent with crack cocaine. It appeared wet or moist,
25 which, you know, I was thinking was freshly cooked.

State versus Young

1 MR. ROBINSON: Objection, Your Honor.

2 THE COURT: Sustained.

3 MR. ROBINSON: I ask it to be stricken.

4 THE COURT: It is.

5 THE WITNESS: What part is stricken?

6 MR. STEINBERG: Your conclusion about it
7 being wet.

8 THE WITNESS: It appeared to be crack cocaine
9 based on my experience.

10 BY MR. STEINBERG:

11 Q. How close was this paint can to where the
12 defendant had been standing?

13 A. As best as I could tell it was at least within
14 five feet of where it was, but again with the wooded area
15 it was hard to tell, but it was definitely in the general
16 vicinity.

17 Q. What did you then do?

18 A. At that point?

19 Q. Yes, sir.

20 A. My observation was that it was an illegal
21 contraband so I notified dispatched. I asked if they have
22 a uniformed patrol deputy respond to the area that had a
23 drug test kit so we could verify it. Then I provided them
24 with a vehicle description, the tag number of the vehicle,
25 and the defendant description. I couldn't see the driver.

State versus Young

1 The windows were so heavily tinted if there were any other
2 occupants in the vehicle. I couldn't make out the driver.

3 Q. Which deputy responded?

4 A. Deputy Mike Moore.

5 Q. What did he do once he arrived?

6 A. He arrived and provided a cocaine base test kit
7 and it tested positive for cocaine base. It was packaged
8 and sealed for property and evidence. At that point I was
9 just going to do a found narcotics incident. Deputy
10 Moore, I also provided him with the vehicle description
11 tag number and the vehicle description.

12 Q. Who kept possession of the drugs at that point?

13 A. At that point I believe it was Deputy Moore
14 because he was going to take it and put it into property
15 and evidence for me.

16 Q. Did you later retrieve it from Deputy Moore?

17 A. I did. It was at the traffic stop.

18 Q. Was it in the same condition as when you gave it
19 to him?

20 A. Yes, sir.

21 Q. What happened next? Did anybody ever contact you
22 in this case?

23 A. At that point Deputy Mike Moore leaves the area,
24 I call for directed patrol sergeant. They specialize in
25 narcotics and prostitution. So I spoke to the sergeant and

State versus Young

1 told him what I had. We thought based on the amount of
2 contraband that was there ---

3 MR. ROBINSON: Your Honor, objection. I
4 think he's trying to testify about the other person and
5 talking about what they concluded. It's hearsay.

6 MR. STEINBERG: I don't think he's going that
7 far, Judge.

8 THE COURT: Keep inside that loop.

9 BY MR. STEINBERG:

10 Q. Please continue on.

11 A. So I explained what I had and that someone would
12 probably -- the thought was that someone would probably
13 come back and try to retrieve that based on the street
14 value amount of contraband that we had at the time. So we
15 left the paint can as a decoy. There was a house under
16 construction directly across the street so the
17 conversation was that directed patrol could set up
18 surveillance at that point and then hopefully get folks on
19 the back that are trying to get their narcotics.

20 So I left the scene at that point. Once I
21 made contact with DPU, I came back and posted in the
22 driveway where I could keep a visual on the situation.

23 Q. Did anybody contact you?

24 A. Yes. A while later, I don't know if it was 15 or
25 20 minutes -- directed patrol was still in a meeting and I

State versus Young

1 don't know if it was going to be 20 or 30 minutes or so
2 out, but before that I received a call from dispatch
3 advising me that Deputy ---

4 MR. ROBINSON: Objection. Hearsay.

5 MR. STEINBERG: Your Honor, it's not hearsay
6 to talk about radio dispatch. We don't bring in radio
7 dispatchers. He'll talk about what he heard and what he
8 did.

9 THE COURT: Overruled.

10 THE WITNESS: Dispatch advised me that Deputy
11 Mike Moore had the defendants stopped a short distance
12 from my home and asked that I respond to the location.

13 BY MR. STEINBERG:

14 Q. Did you change clothes?

15 A. I did.

16 Q. What did you change into?

17 A. I had pants, boots, put my firearms on. I have a
18 tactical vest that has handcuffs and I responded.

19 Q. Does the tact vest indicate what agency you
20 worked with?

21 A. It just says Sheriff's Office on it but I also
22 have a badge.

23 Q. Now, you were off duty. What's your agencies
24 policy on off duty? Do you have authority to arrest?

25 A. Within our jurisdiction, absolutely.

State versus Young

1 Q. Did you have a duty to assist in crimes when you
2 are off duty?

3 A. Yes, sir.

4 Q. Once you got this information, where did you go?

5 A. I went to Batesville. It was just down from
6 Roper Mountain. Deputy Moore had the vehicle stopped at,
7 I believe, it's Kingsville Subdivision off the side of the
8 road.

9 Q. I'm going to hand you what's marked as State's
10 Exhibit No. 2, would you please identify it.

11 A. What route I took to get to Deputy Moore?

12 Q. Tell us what the document is first?

13 A. It's going the incident location marked. It's
14 got the Greenville Recreation and Soccer Complex marked.
15 It's also got -- it has Anderson Bridge Road, Roper
16 Mountain Road and it also has Batesville Road and the
17 suspect vehicle where it was stopped.

18 Q. Who made this photograph?

19 A. I made this.

20 Q. What is your job at the Sheriff's Office?

21 A. I'm currently assigned to Administrative Division
22 and at the time I was assigned to the Technical Service
23 Unit.

24 Q. As part of your job, do you actually make these
25 for other cases?

State versus Young

1 A. That's correct. We make large scale area
2 photographs as well for investigative and court trial
3 cases. We also process and collect video evidence.

4 Q. Where you mark incident location, does that
5 accurately reflect where the incident occurred?

6 A. Yes, sir.

7 Q. Where the paint can was found?

8 A. Incident location, yes, sir.

9 Q. Is that where you put the suspect vehicle stop,
10 is that accurate?

11 A. That is accurate, yes, sir.

12 THE COURT: I'll hand that up to the Court.
13 It's already been admitted.

14 BY MR. STEINBERG:

15 Q. When you arrived at the location, what did you
16 see and who did you see?

17 A. As I pulled in I observed Deputy Mike Moore was
18 behind the suspect vehicle. He had both the defendant and
19 another subject out of the rear of their vehicle. I
20 believe he had his taser out or at low ready and basically
21 was standing in front of him so I pulled off to the side.

22 Q. Was the person that was out with Deputy Moore the
23 same person as you saw in the woods?

24 A. Yes, sir.

25 Q. How could you tell? What are some of the

State versus Young

1 similarities?

2 A. He was wearing the same clothing. He had braided
3 hair. It was not quite as long as it is today I don't
4 believe. He also had a large tattoo on I want to say on
5 the right side of his neck of a dollar bill.

6 Q. And did you see that when you were at the scene
7 out near your house?

8 A. I saw it at the house and obviously I saw that
9 once ---

10 Q. And you're convinced it's the same person?

11 A. Yes, sir.

12 Q. The vehicle that was stopped, was that the same
13 vehicle?

14 A. Yes, same tag number and same vehicle that I saw
15 in the neighborhood.

16 Q. What did you say or do with Mr. Young?

17 A. I immediately detained him, and told him he would
18 be placed under investigative detention, placed handcuffs
19 on him. I believe by that time Deputy Holman had also
20 shown up as back-up. So he was placed in Deputy Holmes's
21 car in the back seat. We separated who I assumed to be
22 the driver and the defendant so they couldn't have a
23 chance to get their story straight.

24 Q. Where was this defendant, not his brother, this
25 defendant placed? In whose car?

State versus Young

1 A. I believe he was placed in Deputy Holmes's
2 vehicle.

3 Q. Were you able to determine where this defendant
4 was from, where he lived?

5 A. Yes.

6 Q. Where was that?

7 A. Woodruff.

8 Q. What county is that?

9 A. Spartanburg.

10 Q. Did you advise Mr. Young of his Miranda Rights?

11 A. Yes. Once he was placed in the back of Holmes's
12 vehicle. Actually Deputy Moore provided me with his
13 Miranda card.

14 Q. Did you have a similar Miranda card?

15 A. Yes. I actually brought one today.

16 Q. Please advise the Court as to what rights you
17 advised the defendant?

18 A. You want me to read them off the card?

19 Q. Yes, please.

20 A. Number 1, you have the right to remain silent.

21 Anything you say can and will be used against you in a
22 court of law. You have the right to talk to an attorney
23 and have him or her present with you while you are being
24 questioned. If you can not afford to hire an attorney,
25 one will be appointed to represent you before any

State versus Young

1 questioning, if you wish. You can decide at any time to
2 exercise these rights and not answer any questions or make
3 any statements. Do you understand the rights as I have
4 explained them to you? And having these rights in mind,
5 do you wish to speak with me?"

6 Q. How did he respond to that?

7 A. Yes.

8 Q. Did he advise that he understand his rights?

9 A. Yes.

10 Q. And what did you ask him or what did he tell you?

11 A. I asked him to tell me what he was doing out
12 there and he started to tell me he was taking a piss and I
13 stopped him. I said you only get one chance to tell the
14 truth. He thought about it for a second and he said,
15 alright, man, the truth is and he proceeded to provide a
16 statement.

17 Q. What did he say at first?

18 A. He said that he was working with his uncle that
19 evening and he and his uncle went to the Citgo which was
20 later determined to be at Five Folks Roads where the BiLo
21 is for gas and chips at the Citgo, and that white guy that
22 works at Citgo paid him \$50 to come down there to Thompson
23 Road to get a paint can that was next to a rusty pipe at a
24 bend in the road.

25 Q. At this point, had you told him about the paint

State versus Young

1 can that you found?

2 A. No.

3 Q. At this point, had you told him about the rusty
4 pipe?

5 A. No.

6 MR. STEINBERG: I beg the Court's indulgence.

7 BY MR. STEINBERG:

8 Q. After hearing this statement from the defendant,
9 who did you next speak with?

10 A. We spoke with the brother -- the driver was
11 determined to be his younger brother.

12 Q. What is his name?

13 A. Adias(ph) Glen, I believe.

14 Q. I'm not going to ask you to repeat any statements
15 that he may have said to you but I'm going to ask you a
16 couple of questions about the statement.

17 Who spoke with him?

18 A. I spoke with him and Deputy Holman.

19 Q. Was he cooperative with you?

20 A. Yes. He was pretty scared and his brother had
21 said he had never been in trouble before so he appeared
22 pretty nervous.

23 Q. You said his brother said he never been any
24 trouble before. Did this defendant make any other
25 statements about his own culpability in this case?

State versus Young

1 A. He just told me that his brother had nothing to
2 do with it, didn't know anything about it, that he had
3 just told his brother to drive him down there and take a
4 piss, that his brother was a good kid, that he was in
5 college and he had never been in trouble before and he had
6 nothing to do with this incident.

7 Q. How much did he say he was paid or going to be
8 paid for this?

9 A. I believe he said he was going to be \$50. And
10 that was the other thing he said that he needed the money.
11 I said don't you think it was odd that somebody would pay
12 you \$50 to go in the woods and get a paint can.

13 Q. What did he say to that?

14 A. He said he needed the money, man.

15 Q. Did the defendant's brother, Mr. Glenn, ever
16 write any statements?

17 A. He did.

18 Q. And did you witness the statement?

19 A. Yes.

20 Q. Did he write his own statement?

21 A. He initially started to write his own statement.
22 He had told him what his version of the story is when he
23 was separated from his brother and he arrived at a pretty
24 detailed statement and he was given a form to actually
25 write the statement down but his handwriting was pretty

State versus Young

1 bad because he was nervous or whatever and he only wrote
2 like two sentences but obviously he told us a lot more
3 information.

4 Deputy Holman articulated down for him what
5 he had told us.

6 Q. When he said articulated down, who actually wrote
7 the statement?

8 A. I believe Deputy Holman wrote the statement.

9 Q. Did the defendant have an opportunity to see the
10 statement, read the statement?

11 A. Yes. I had a chance to review it. He initialed
12 off on different points of the statement for particular
13 information and he was provided a copy before he left the
14 scene.

15 Q. Okay.

16 A. I had made a determination at that point that the
17 little brother was not going to be charged.

18 Q. Did any other law enforcement units arrive?

19 A. I believe before I got there Deputy Moore had
20 asked for a K-9 unit to come out. I believe it was Deputy
21 Rivera.

22 Q. What did K-9 unit do?

23 A. His K-9 partner came out and I believe they did a
24 free air sniff, but again I wasn't focused on that because
25 I was talking to the defendant.

State versus Young

1 Q. And just to be fair to the defendant, was
2 anything crack or cocaine related found in that car?

3 A. Not to my knowledge. I believe the dog hit on
4 the vehicle, but I don't believe there was any contraband
5 found.

6 Q. Did you ever speak with the defendant again at
7 that time?

8 A. While he was on the roadside?

9 Q. Yes, on the roadside.

10 A. At the roadside, I don't believe. I can refresh
11 my memory with the statement but I don't have an
12 administrative card so I don't have a cage and I couldn't
13 transport him once it was determined he was going to be
14 charged.

15 Q. Whose patrol car was going to transport this
16 defendant?

17 A. That was Deputy Mike Moore.

18 Q. And when did you take control of the suspected
19 crack cocaine?

20 A. There at the roadside because at that point
21 Deputy Moore hadn't been able to make it to property and
22 evidence when he stopped at my house because he stopped
23 the defendant's car. So the determination was made that
24 he would take the defendant in, get him booked in, start
25 the warrants and I would take the contraband and any other

State versus Young

1 evidence and put it in property and evidence and then meet
2 up to serve the warrants.

3 Q. Did you speak with the defendant again while at
4 the Detention Center?

5 A. I did.

6 Q. Please tell us what he told you at the Detention
7 Center?

8 A. Can I refresh my memory with the report?

9 Q. Yes, sir.

10 A. I need to add that back on the scene about the
11 uncle and I also asked him about the employee of the
12 Citgo. I tried to get further detail. White male
13 employee at the Citgo which was determined to be the Citgo
14 Corner Market 2608 Woodruff Road. That was located across
15 from the BiLo Grocery Store.

16 The defendant advised me that ---

17 MR. ROBINSON: Your Honor, I think that is
18 unresponsive to the question.

19 THE COURT: Why don't you just review it and
20 then testify.

21 THE WITNESS: Okay. Again, I asked for
22 specifics regarding this subject at the Citgo. He
23 described him as a white male in his 20's with tattoos up
24 and down his arm. I then asked him about his uncle that
25 he was working with that day and then he said it wasn't

State versus Young

1 his real uncle, that it was someone that had raised him.

2 So then I asked for his uncle's name and
3 address and he couldn't provide it. I confronted him on
4 that it was kind of weird that this gentleman raised him
5 and yet he doesn't know his name?

6 Q. How did he respond to that?

7 A. No answer.

8 Q. Did you provide the defendant the opportunity to
9 provide a written statement?

10 A. I did. Once we got to the Detention Center I met
11 up with him again. At that point he declined to provide a
12 written statement and declined to cooperate further.

13 Q. For the purposes of this hearing, that's all the
14 questions I have at this time. Please answer any of
15 opposing counsel's questions.

16 A. Yes, sir.

17 MR. ROBINSON: If it please the Court. I
18 have passed up and given these cases to opposing counsel.
19 The cases that would be applicable to this motion for
20 suppression. If I could pass these up. I have given
21 copies to the solicitor in this case.

22 CROSS-EXAMINATION

23 BY MR. ROBINSON:

24 Q. I have a few questions for you that I'm kind of
25 interested in.

State versus Young

1 A. Yes, sir.

2 Q. You looked at your report; is that correct?

3 A. Yes, sir.

4 Q. You don't say anything in your report about the
5 defendant being in the woods, do you?

6 A. I believe I do.

7 Q. You talk about the wood line but you don't talk
8 about being in the woods, do you?

9 A. I believe the wood line being physically in the
10 woods.

11 Q. The wood line is what you said, correct?

12 A. That's correct.

13 Q. You don't say that he was in the woods. You said
14 he was in the wood line, correct?

15 A. Correct.

16 Q. Now, you would agree with me that this is not his
17 land, correct?

18 A. That's correct.

19 Q. Doesn't own the land.

20 A. Correct.

21 Q. Also in the second page of your report you
22 mention that when you came upon this can in the woods, it
23 was an old paint can; is that correct?

24 A. That's correct.

25 Q. And also with that old paint can was several

State versus Young

1 bottles of beer; is that correct?

2 A. Beer bottles. I don't know if there was actually
3 beer.

4 Q. Now, let me talk about this area that we're
5 speaking of here. There's a Soccer field, correct?

6 A. It's a large complex.

7 Q. I think that the prosecutor gave you several
8 exhibits in this case. This is what time of year by the
9 way?

10 A. Summertime.

11 Q. July, is that about right?

12 A. End of July.

13 Q. Would you agree with me that the trees are still
14 in bloom or are they?

15 A. Absolutely.

16 Q. You would agree with me as well there's a woods
17 in front of your property, between your property and the
18 roadway; is that correct?

19 A. That's correct if I'm understanding you correct.

20 Q. How much woods are we talking about?

21 A. Between where I was and where I saw the
22 defendant?

23 Q. Yes.

24 A. It's probably about a 20 yard swath of woods that
25 kind of jets out. I can point that out on the map there

State versus Young

1 and that's where I viewed him through there. There was a
2 little bit of a clearing at least two years ago.

3 Q. I'm going to show you State's 2 if you can kind
4 of point that out.

5 A. There's another one that shows a little bit
6 closer.

7 Q. This is State's No. 4.

8 A. Yes, that's it. You want me to point it out to
9 you?

10 Q. Yes, sir.

11 A. The defendant was here and as I was jogging up
12 the road here, you can see him through here. There's
13 actually a little bit of a drain swell here and you can
14 see him through this swap of woods and the it maybe 20 or
15 30 years.

16 Q. Let's go back a little bit here. You just said
17 you were jogging up the woods. I thought you said or just
18 testified a few moments ago that you were mowing the lawn?

19 A. I was mowing the lawn and then I got off the
20 mower to approach the defendant.

21 Q. So you're coming home on a Friday and this is
22 around 6:00 7:00 at night, correct? You're catching up on
23 some chores before the weekend, you're mowing your lawn
24 and you see this tinted window car slowly driving in the
25 area that you're in and you get off the lawn mower.

State versus Young

1 A. Uh-hum.

2 Q. You got to the woods and you're standing there
3 looking through the woods at this car?

4 A. Do you want me to explain it to you?

5 Q. Yeah.

6 A. Okay. I'm cutting grass here parallel to the
7 roadway. The vehicle initially comes in and drives slowly
8 down the road, disappears through the woods here, seconds
9 later drives slowly back out as I'm cutting the grass here
10 parallel to the road. He goes up, he stops here. At that
11 time I am cutting grass parallel and I am facing Thompson
12 Road. He attempts to make a left hand turn and
13 immediately stops. That's when your client gets out of
14 the vehicle and runs into the wood line.

15 Q. Wood line.

16 A. You can see there's a distinct line that's the
17 best way I can describe it. Does that make more sense?
18 Once he stopped the car then I had to get off the mower
19 from here and jog up the roadway here.

20 Q. So you would admit that there were trees between
21 you and the defendant, correct?

22 A. Yes.

23 Q. And I think you testified that it was at least 30
24 yards, correct?

25 A. Thirty yards of woods between the two of us in

State versus Young

1 that little section, that island between us?

2 Q. Yes.

3 A. Yes, 20 to 30 yards, best guess.

4 Q. You would also admit that you never saw this
5 defendant around this can did you?

6 A. I didn't see the defendant and the can together,
7 no.

8 Q. In fact, I think there was testing done on this
9 particular can, correct, to determine whether the
10 defendant ever held this can; is that correct?

11 A. I did not test the paint can. The fingerprints
12 were requested on the pill bottle. But my experience with
13 our forensic unit is anything that's been exposed,
14 especially the cans, to the weather that fingerprints
15 wouldn't be retrieved from that. So, no, I did not submit
16 that for fingerprints.

17 Q. Would it surprise you that his fingerprints were
18 never found on this?

19 A. His fingerprints were not found on the paint
20 bottle.

21 Q. And the can was never tested, correct?

22 A. I did not test the can.

23 Q. So you're 30 feet away and you see him at the
24 wood line. You don't see him around the can and so forth
25 but you see him bending over at some point; is that

State versus Young

1 correct?

2 A. Yeah, he's bent over at the waist as best I could
3 tell. Again, looking through the trees one of the things
4 is he had a white tank top on which allowed him to be seen
5 a little more clearly through the wood line, but to answer
6 your question, no, I did not see him around the paint can.

7 Q. And I think you probably -- I think you said on
8 direct examination ---

9 A. You mean afterwards?

10 Q. Yeah, afterwards.

11 A. When I went over to the area where I last saw
12 him, that was the general vicinity of the paint can. At
13 the time I ran up there, I didn't see the paint can, but
14 then when I examined the area after they left that's
15 where.

16 Q. So he was not near the can and he wasn't around
17 the can, you're not sure -- when the car stop did you see
18 him going to the bathroom?

19 A. Unless he was going bathroom while he was bent
20 over at the waist with his britches up, but, no, I didn't
21 see him urinating or going to the bathroom.

22 Q. That was how many feet away from the paint can?

23 A. Where I saw him standing?

24 Q. Uh-hum.

25 A. I would say upon examination at least five feet

State versus Young

1 or at least what I could determine after they left the
2 scene and they went over and examined where I last saw him
3 standing. Does that make sense?

4 Q. It does but I thought you just said you never saw
5 him around the can.

6 A. I didn't see the can and him in the area at the
7 same time. I went over to the area where he was standing
8 after I left.

9 Q. I just want to make sure I got this right. You
10 would agree with me that he was not near the can, correct,
11 when you saw him?

12 A. After further review when I back there after they
13 left, yes, he was in the vicinity of the can. At the time
14 I didn't realize it was a paint can there where he was
15 standing.

16 Q. You actually saw him through all these trees in
17 July of that year; is that correct?

18 A. Absolutely. I mean I'm not telling you this with
19 a wide open swap. There was definitely trees. Now, the
20 undergrowth on those trees was up so that allowed me -- so
21 I'd say maybe the first four to six feet in some of the
22 areas in that particular time which allowed me to see
23 somewhat physically and definitely allowed me to see him
24 bent over at the waist.

25 Q. Are there businesses located in this area that

State versus Young

1 we're talking about?

2 A. Yes, there is an engineering or construction type
3 business and subdivisions that are across the street and
4 their towers are under construction.

5 Q. And they have several -- a double wide trailer
6 park in the same vicinity, don't they?

7 A. I believe there are trailer parks up on Anderson
8 Ridge Road.

9 Q. So would you describe this as a busy area as far
10 as a lot of traffic?

11 A. Definitely during Soccer tournaments.

12 Q. And this was in July, is that when the Soccer
13 tournaments are?

14 A. It was a Soccer tournament that night. It was
15 probably hundreds of vehicles at that Soccer complex.

16 Q. So that night when you were doing cutting the
17 grass, a Soccer tournament was going on at that time?

18 A. Soccer tournament was going on at the Soccer
19 fields, yes.

20 Q. Which is how many yards away?

21 A. It's less than a quarter mile. One of the
22 entrances was less than 100 yards from where the defendant
23 was. They actually had to drive pass two entrances, I
24 believe.

25 Q. You described in your report and if you don't

State versus Young

1 agree with me, tell me, but you described in your report
2 an old paint can, correct?

3 A. Uh-hum.

4 Q. So you don't know how long the paint can had been
5 there, do you?

6 A. No.

7 Q. You don't know how long the bottles had been
8 there or anything like that, do you?

9 A. The beer bottles?

10 Q. Yes.

11 A. No.

12 Q. Okay. Now, let's go back to this. You live in
13 that area, you live where those trees are and so forth.
14 You don't have the opportunity -- do you go and inspect
15 and look around, do you? How often do you go through the
16 woods?

17 A. My son and I will go through there periodically.
18 I don't consistently, visually, inspect the roadside.

19 Q. So you don't have any idea how long the old can
20 had been there, do you?

21 A. No.

22 Q. Now, you testified a few moments on direct
23 examination with Mr. Steinberg, the Detention Center, he
24 did not want to give a statement, correct?

25 A. He did not want to give a written statement.

State versus Young

1 Q. Now, in the vehicle, after you ran the tag and
2 called the other deputies or you got a call saying this
3 particular vehicle was someplace and stopped, correct?

4 A. After my initial contact?

5 Q. Right.

6 A. Yes. I received a call from dispatch.

7 Q. At that point, you put your uniform on, you go
8 over there, you would agree that both Mr. Young and his
9 brother are both in custody at that time, correct?

10 A. Yes. Deputy Mike Moore had them at the rear of
11 their vehicle, right.

12 Q. You would agree with me at that time that the dog
13 did not alert on any drugs or anything like that, correct?

14 A. Right. The dog did not come until later. I
15 think Deputy Moore had contacted them or requested that
16 they respond to the scene while I was in route, but again
17 I wasn't paying a whole lot of attention to the K-9 but he
18 showed up after everybody was detained.

19 Q. You provided all the information that you had in
20 this case to the solicitor; is that correct?

21 A. That's correct.

22 Q. And you never provided to him a copy of any sort
23 of Miranda warnings ---

24 A. The card?

25 Q. Yes, the card.

State versus Young

1 A No, I didn't provide that. That's part of our
2 uniform for the most part.

3 Q. Is it customary policy in the Greenville County
4 Sheriff's Office that when a person is detained --
5 Mr. Young was in custody at the time you questioned him,
6 you agree with him, correct?

7 A. After he was Mirandized or when I first arrived
8 on scene?

9 Q. When you first arrived, he was in the back of the
10 car, correct?

11 A. He was placed in the back of the car after I
12 arrived. When I arrived, Deputy Moore had them out of
13 their vehicle, standing at the rear of their vehicle.

14 Q. Could they leave?

15 A. Probably not at that time because we were
16 conducting an investigation in regards to -- their vehicle
17 matched the description of we believed at the time to be a
18 narcotics situation.

19 Q. Let's talk about that. You testified that you
20 are primarily in the technical department, an
21 administrative kind of thing, right?

22 A. Right.

23 Q. You're not in the vice or anything?

24 A. No.

25 Q. So you don't have the experience in the drug or

State versus Young

1 vice area, do you?

2 A. I do when I was on the road.

3 Q. And how many years ago was that?

4 A. At that time it was probably two years, a year
5 and a half I'd been off the road.

6 Q. There is a Miranda card that you use, but isn't
7 there a sheet or a list that the Greenville County
8 Sheriff's Office goes through where you advise of things
9 and they sign off on it?

10 A. There is a sheet I know the investigators have
11 used in the past when they are conducting like a formal
12 interview. On the roadside, he is advised of his rights
13 and he understood his rights and chose to answer questions
14 at that time.

15 Now, once we got down to the law enforcement
16 center, I gave him an opportunity to put his statement on
17 paper, he refused to do that. That would have been an
18 opportunity for one of those sheets to come into play.
19 Does that make sense?

20 Q. Was this conversation you had recorded or video
21 taped?

22 A. Not to my knowledge.

23 Q. In the sheriff's car they have those cameras in
24 the back.

25 A. There's cameras in the front windshield for those

State versus Young

1 that are working properly or have been installed. I don't
2 believe and you'll have to ask Dr. Holman that, I don't
3 believe his vehicle had a camera installed or audio visual
4 system of any type.

5 Q. So there's no audio or video, correct?

6 A. No.

7 Q. And there's no sheet of paper with Miranda
8 warnings or any of that nature that we've got?

9 A. No, sir.

10 Q. So we've got a soccer tournament going on and
11 you're in this subdivision.

12 A. It's generally about four miles from my
13 residence.

14 Q. And you would agree there are several roads going
15 in and out of this area, correct?

16 A. Just two, Thompson and Branlin.

17 Q. Okay. You never saw any gloves or mitts on
18 Mr. Young, did you?

19 A. No, sir.

20 Q. Let's talk about the time, how much time this all
21 took. You see someone through the woods with a white
22 shirt on and then you run or your jog up to there and when
23 you get there, Mr. Young was on the side of the road,
24 correct?

25 A. Once I was jogging up, I could see him come out

State versus Young

1 of the wood line and jump back up on the road. He was
2 headed towards, I guess, his mother's or his brother's
3 vehicle.

4 Q. How much time did all this happen?

5 A. From the time I got off the mower, is that what
6 you're talking about?

7 Q. Yes.

8 A. It's probably seconds. It was a fairly brief
9 encounter.

10 Q. Mr. Young, when you initially questioned him
11 about what he was doing there, he said he was taking a
12 pee; is that correct?

13 A. Correct.

14 Q. Isn't it pretty common for some to take a pee not
15 to take a pee right in the road?

16 A. I can't testify to the habits.

17 Q. It's not unusual for someone to go off and take a
18 pee on the side of the road, that's not unusual?

19 A. That's your opinion.

20 Q. My opinion.

21 A. If that's your opinion, I can't speak to that, if
22 it's common or uncommon.

23 Q. In your experience, is it typical for people when
24 they have to use the bathroom, is it typical for them to
25 urinate in the middle of the road or is it typical for

State versus Young

1 them on the side of the road?

2 A. I think it's typical for them to use a restroom
3 especially if they're coming from someone's house or they
4 are within 100 yards of a public facility rather than next
5 to a guy who is mowing his grass. Wouldn't you agree with
6 that?

7 Q. Let's just say that there is no place around to
8 go in that situation in your experience that you have,
9 isn't it normal for urinate on the side of the road
10 instead of in the middle of the road?

11 A. Not in that situation. I will disagree.

12 Q. Is there a night club near by?

13 A. Not that I'm aware of. Currently or at the time?

14 Q. At the time.

15 A. At the time I believe there was a residence that
16 was acting as what they call the Boom Boom Room that I
17 believe was on the other side of Anderson Road.

18 Q. The Boom Boom Room, what is that?

19 A. I didn't know it existed until there was a
20 homicide about three months after this. It was a domestic
21 related shooting incident homicide there and it was
22 brought to everyone's attention and since then it's been
23 shut down.

24 Q. To your knowledge, that was actually open then?

25 A. I don't know if it was open then but three month

State versus Young

1 later there was an incident there and there was folks at
2 this house drinking and that incident that I just referred
3 to occurred.

4 Q. So we may have a night club named the Boom Boom
5 Room, is that right?

6 A. That's what they tell me.

7 Q. We have a Soccer tournament at the time and you
8 didn't expect this property before this day to see if
9 there was anything in there to your knowledge?

10 A. Not out of the ordinary, no.

11 MR. ROBINSON: I beg the Court's indulgence
12 for one second.

13 BY MR. ROBINSON:

14 Q. I do notice you are wearing glasses, were you
15 wearing glasses at the time? Is your eyesight 20/20?

16 A. I wear glasses for night time driving that I just
17 the prescription in the last three months, but at the
18 time, no, two years ago no prescription.

19 Q. When did you start having optical issues?

20 A. Probably within the last six months.

21 Q. Now, you testified a moment ago that you left the
22 camera there to see if a person who had the can would come
23 back. It was a set up, correct?

24 A. The set up was a decoy. When I contacted the DPU
25 unit and explain what we had, the contraband had also been

State versus Young

1 taken out of it so we left it back in the spot where we
2 found it.

3 Q. What was the result of putting this can back and
4 having it sit there? Did you ever catch someone?

5 A. No, 15 or 20 minutes later we had the defendant
6 so I cancelled -- once I got the phone call from dispatch
7 and asked to respond to the location where the defendant
8 was, I called DPU and cancelled it. I said, look, we got
9 the vehicle stopped so I just cancelled it all together
10 and I'd let them know if I needed them in the future. I
11 left the can there because obviously I was in a hurry to
12 get up there.

13 Q. You left the can there?

14 A. Yes, the can stayed in that location while I
15 responded to Deputy Moore's location.

16 Q. Was the bottle still in the can?

17 A. No. The contraband, as I testified to earlier,
18 was already -- after it was tested and packaged, it was
19 put in the custody of Deputy Moore that was going to be
20 transported to property and evidence in the Law
21 Enforcement Center.

22 MR. ROBINSON: That's all I have. Thank you,
23 Your Honor.

24 THE COURT: Yes, sir.

25 MR. STEINBERG: Very briefly, Your Honor.

State versus Young

REDIRECT-EXAMINATION

BY MR. STEINBERG:

Q. Was there any cars from the Soccer complex parked at the same location where this defendant's brother's car was parked?

A. No, sir. There were no visitors.

Q. Were there any revelers from the Boom Boom Room present? Was there an overflow from the Boom Boom Room into this area?

A. Not at that time. I didn't even know the Boom Boom Room existed. It sat back in the woods and it was something that was going on at the late night hours so a lot of the residents didn't even realize until this homicide occurred that that thing even existed. So I did not have knowledge of the Boom Boom Room at the time.

Q. At this location where the paint can was found, crack cocaine was found, did you have a problem with people relieving themselves at this location?

A. Not to my knowledge. I have never seen anybody relieved themselves while I was cutting my grass or before then.

MR. STEINBERG: That's all the questions I have.

THE COURT: Anything further?

MR. ROBINSON: I have no further questions.

State versus Young

1 MR. STEINBERG: Your Honor, I have one more
2 officer for the purposes of the hearing.

3 THE COURT: We'll take a 15 minute break.

4 (Short break.)

5 THE BAILIFF: Please remain seated. The
6 Honorable William H. Seals presiding.

7 THE COURT: Thank you.

8 MR. STEINBERG: Your Honor, for the purpose
9 of this hearing, the State's next witness will be Mike
10 Moore.

11 THE CLERK: Come forward to be sworn in.
12 Place your left hand on the Bible and raise your right.

13 MIKE WILLIAM MOORE, having been duly sworn,
14 testified as follows:

15 Thank you. You may be seated. Please state
16 your name for the record.

17 THE WITNESS: My name is Mike William Moore.

18 DIRECT EXAMINATION

19 BY MR. STEINBERG:

20 Q. Deputy Moore, please tell the Court what you
21 current do and what is your current occupation.

22 A. I am currently semi-retired and I am a sales
23 consultant for a local firm in dealing with firearms.

24 Q. When you say semi-retired, what was the bulk of
25 your career? What did you do?

State versus Young

1 A. I did 24 years with the United States military,
2 the Army, and I did 12 years with the Greenville County
3 Sheriff's Office.

4 Q. At the time of this incident, in July, 2010, what
5 was your roll and what was your title?

6 A. My roll was a uniformed patrol officer. I was
7 Adam 43 and I was assigned to Area 3 where the incident
8 occurred.

9 Q. What part of time is Area 3?

10 A. Area 3 is the Woodruff Road, Scupletown(ph) area,
11 Batesville. It basically goes all the way from Fountain
12 Inn to the east side of 385.

13 Q. Is that the east side of Greenville, sir?

14 A. Yes, sir.

15 Q. I'm going to bring you to approximately 7:00,
16 8:00 p.m. time period. What were you doing and where did
17 you respond to?

18 A. I basically just got out of roll call and I got a
19 call from dispatch to go to the corner of Thompson Road.
20 I can't think of the other road, but it was Deputy
21 Mitchell. I'm familiar with where he lived so I went over
22 to the address and spoke with him.

23 Q. What did you see when you were there?

24 A. There was a can of paint and a rock like
25 substance. The substance field tested for crack cocaine.

State versus Young

1 Q. I'm going to show you State's Exhibit 1 and
2 State's No. 3. Does State's 1 accurately reflect the area
3 you went to?

4 A. Yes, sir.

5 Q. What is this item in the middle of the page?

6 A. It's like a poster geometry.

7 Q. And what color is it?

8 A. Like a red.

9 Q. I'm going to show you State's 3, does this
10 picture accurately reflect the paint can that you saw?

11 A. Yes, sir.

12 Q. Did you take possession of this suspected crack
13 cocaine?

14 A. Yes, we did. We actually tested it. It was a
15 Friday evening and he wasn't going to come until Monday.
16 He told me part of the ---

17 MR. ROBINSON: Objection, Your Honor,
18 hearsay.

19 THE COURT: Any response to that?

20 MR. STEINBERG: It has no effect on this case
21 whether or not it comes in.

22 THE COURT: Hearsay is hearsay.

23 MR. STEINBERG: I have no objection to it
24 being ruled hearsay.

25 THE COURT: Sustained.

State versus Young

1 BY MR. STEINBERG:

2 Q. Did you take the item and where did you bring it?

3 A. I took the possession of the time and I was going
4 to turn it into property and evidence.

5 Q. And where in the vehicle did you place the item?

6 A. In the trunk of my car, sir.

7 Q. Did you speak with Deputy Mitchell about the
8 vehicle?

9 A. Yes, sir. He described the vehicle, described
10 the young man who he was talking to in the wood line. He
11 described the vehicle as an older Crown Vic. I just
12 remember DMX and I do believe it is DNX versus DMX and 428
13 was the tag number.

14 Q. What did you do after you left that location?

15 A. I immediately drove to the closest way to get on
16 385 to take the property and place it in property and
17 evidence and I drove from Batesville Road on to Roper
18 Mountain where I saw the suspect vehicle.

19 Q. Did it fit the description?

20 A. Yes, sir. I fit the description. I looked at
21 the rear view mirror and I saw the tag. I turned around
22 and I verified the information that was previously
23 discovered when I was speaking to Deputy Mitchell.

24 Q. Was there anything unusual about this car?

25 Anything as an officer that concerns you?

State versus Young

1 A. The windows were so dark you can't see through it
2 so based on the fact of reasonable suspicious and probable
3 cause because the windows were tinted -- there's a sticker
4 that has to show the amount of tint so I didn't see that.
5 Couldn't see through the vehicle so I detained the
6 vehicle.

7 Q. Tell us how you detained the vehicle. Tell us
8 what did you do to stop this vehicle and where you stopped
9 it?

10 A. I turned on my blue lights and I may have hit the
11 siren. From Roper Mountain, he turned right on to
12 Batesville as if he was going towards Woodruff Road.

13 I detained the vehicle when he pulled over in
14 a grassy area that was pretty suitable for a good stop. I
15 approached the vehicle and once I approached the vehicle,
16 I couldn't see inside the vehicle at all. For officer
17 safety reasons, I brought both the passenger and the --
18 first the operator and then the passenger out of the
19 vehicle and had them sit on the rear of the vehicle.

20 Q. When you first made the stop, did you have any
21 partner with you in your vehicle?

22 A. No, sir.

23 Q. Any units arrived when you first got them out of
24 the vehicle?

25 A. No, sir.

State versus Young

1 Q. So you were by yourself?

2 A. Yes, sir.

3 Q. I'm going to show you what's been marked as
4 State's Exhibit No. 2. Does this accurately reflect the
5 roads as they exist at the time of this incident?

6 A. Yes, sir.

7 Q. When it says suspect vehicle stop, what road is
8 that on?

9 A. Batesville.

10 Q. Before they were on Batesville, what road were
11 they on?

12 A. On Roper Mountain, sir, headed towards
13 Batesville.

14 Q. Were they driving in the direction of Neil
15 Mitchell's house or the opposite direction?

16 A. They were driving opposite direction where the
17 incident occurred.

18 Q. When Deputy Mitchell arrived, were you present
19 during any interviews?

20 A. I was really a cover officer at the time so we
21 separated the parties to allow Deputy Mitchell, he used my
22 card, to read them their rights and other than that he
23 conducted the investigation.

24 Q. Do you remember hearing the rights waiver?

25 A. Yes, sir, he used -- like I said he used my blue

State versus Young

1 Q. What did you hear this defendant say?

2 A. I can't recall word for word. All I remember is
3 something about a white guy at the Citgo and the Citgo is
4 in relative to at the end of Batesville and Woodruff Road.

5 Q. For the purposes of this hearing, I have no
6 further questions. Please answer any of opposing
7 counsel's questions.

8 THE COURT: Mr. Robinson.

9 MR. ROBINSON: Thank you.

10 CROSS-EXAMINATION

11 BY MR. ROBINSON:

12 Q. Officer Moore, you were the officer that pulled
13 the car over?

14 A. Yes, sir.

15 Q. And you were the one that got the defendant out
16 of the car and his brother, correct?

17 A. Yes.

18 Q. You never gave them a ticket, though, for tint,
19 did you?

20 A. No, sir, I gave them a written warning.

21 Q. A warning.

22 A. It's a code 3.

23 Q. Did you provide that to the Solicitor's Office?

24 A. No, sir. No one ever asked me for it.

25 Q. No one asked you and you never did decide to give

State versus Young

1 card that I always keep in my vest pocket.

2 Q. Did he give it back to you when he was done?

3 A. Yes, sir.

4 Q. Did you hear any statements made by the
5 defendant?

6 A. At that point in time I overheard something in
7 the jail, something about a white guy ---

8 MR. ROBINSON: Objection, Your Honor.

9 THE COURT: Sustained.

10 BY MR. STEINBERG:

11 Q. When you say you heard something in the jail, did
12 you hear this defendant talk about this case at all?

13 A. He was talking to Deputy Mitchell at the time,
14 something about a white guy ---

15 MR. ROBINSON: Objection. Your Honor, again.

16 MR. STEINBERG: Your Honor, he's saying what
17 this defendant said. It's clearly not going to be
18 hearsay.

19 THE COURT: It still could be hearsay. Why
20 would it not be hearsay?

21 MR. STEINBERG: It's a statement by a party
22 opponent. It's admission by a party opponent.

23 THE COURT: Overruled.

24 MR. STEINBERG: Thank you, Your Honor.

25 BY MR. STEINBERG:

State versus Young

1 that to the Solicitor's Office?

2 A. No one asked me for it. It's in the book, I'm
3 sure.

4 Q. You searched the defendant to make sure he had
5 nothing on him.

6 A. I may have did a Terry Pat, yes, sir, for officer
7 safety reasons, yes, sir.

8 Q. You didn't find any money, did you? You didn't
9 find \$50, did you?

10 A. No, sir.

11 Q. Now, you were describing a second ago at the
12 onset of direct examination, you talked about this area
13 that you were in you would agree with me this is a high
14 traffic area, isn't it?

15 A. Roper Mountain.

16 Q. General area?

17 A. Yes, sir.

18 Q. And you would agree with me that it's right off
19 of 385; is that correct?

20 A. It was on the corner of Roper Mountain and
21 Godfrey which is off more towards Batesville. So it's
22 probably about five to six miles from 385.

23 Q. 385 is a pretty busy area, isn't it?

24 A. Yes, sir.

25 Q. And that side of town is pretty busy, a lot of

State versus Young

1 traffic and so forth?

2 A. Friday night.

3 Q. So this was a Friday, correct?

4 A. Yes, sir. I'm pretty sure it was.

5 Q. How long did it take you once the officer called
6 you to find this vehicle?

7 A. It probably took me about 30 minutes to leave the
8 LEC and arrive at Mitchell's. We drug tested which
9 probably took about another 15 to 20 minutes, so it could
10 have been anywhere from 8:00 to 8:30.

11 Q. Okay. Now, you had an opportunity to go out to
12 the scene, didn't you? You actually went out to where
13 this officer lives, correct?

14 A. Yes. That's where he called me to. He lives
15 there.

16 Q. And he showed you where this alleged incident
17 occurred, correct?

18 A. Yes, sir.

19 Q. Would you describe these woods as being pretty
20 heavy woods?

21 A. It's particularly vegetated.

22 Q. How far his lawn is or his property is to the
23 woods, that's probably around how many yards, do you
24 think?

25 A. It's anywhere from 25 to 30 yards thick through

State versus Young

1 from the corner to Deputy Mitchell's yard.

2 Q. If you were standing where this incident occurred
3 on that side of the road, standing -- you know where that
4 is, right? You know where that location is he said he
5 happened?

6 A. Where he found the paint can, sir?

7 Q. Where he said the person was standing on the
8 wood line on the side of the road?

9 A. I can't say for sure where the person was
10 standing on the wood line, sir. All I know is where he
11 said he found the paint can with the contraband. That's
12 where I met him at not -- he did not describe to me where
13 he was. He said the guy was searching the wood line of
14 what appeared to him when he was cutting his grass.

15 Q. Would you agree with me that it would be
16 difficult for someone to see -- for him to see from his
17 property through the woods to that wood line?

18 MR. STEINBERG: I would have to object,
19 that's sheer speculation of what someone else would have
20 seen.

21 THE COURT: Sustained.

22 BY MR. ROBINSON:

23 Q. You testified on direct examination about this
24 statement that you overheard at the jail. Is that you
25 personally? Did you actually overhear Mr. Young say

State versus Young

1 anything about this incident?

2 A. They were talking in the jail and I went to go
3 get the warrant. While I was walking through, Deputy
4 Mitchell was talking to the defendant and that's when I
5 heard those two say something about the Citgo and
6 something about a white guy and that's all I heard.

7 Q. And you're not sure who said this, correct?

8 A. The defendant was talking at that point in time,
9 sir.

10 Q. Did you have an opportunity to speak to this
11 officer, the officer sitting next to Mr. Steinberg in
12 preparation for this case?

13 A. Did I speak to Deputy Mitchell?

14 Q. Yes.

15 A. I read my report. I read his report and I talked
16 to Mr. Steinberg about the case, but other than that at
17 the point of the first trial was coming up I was actually
18 in the midst of another job learning all the nuances about
19 it, so when it actually came up I had already forget a
20 majority of it. So I couldn't tell you, you know,
21 intricate details about everything. However, I do
22 remember what happened.

23 Q. Let's go back to your time at the jail when you
24 may have overheard this conversation. Were they both in a
25 room, he and Mr. Young?

State versus Young

1 A. I don't know where they were located at that
2 point in time. I know I went in to talk to Neil about the
3 warrant because I was getting the warrant to help them
4 out. I don't know where they were at that point in time.

5 Q. So you're not sure where you were or where they
6 were?

7 A. We were at the Detention Center, sir. There is
8 three holding cells and two rooms for BA so I can't say
9 for sure.

10 Q. Was there a lot of noise going on when you were
11 there?

12 A. No, I think we were -- I can't say for sure how
13 many people were there but I know I was there and Neil was
14 there and I know that the defendant was there.

15 Q. And how many other people were there, would you
16 say? At that time when you were there and you just told
17 us a minute ago you were there and other people were
18 around you when you were there.

19 A. I don't know if anybody else was in there. I
20 know who was there. I stuck my head in and talked to
21 Deputy Mitchell real quick and went back to the warrant.

22 Q. You said you were in the BA room, is that right?

23 A. I don't know, sir. I can't recall to this day.
24 At that point in time there were four BA rooms. The new
25 BA room was outside so I don't know if they had already

State versus Young

1 made that transfer or not. It was one of those two rooms
2 or it could -- I don't know. I know it was in the
3 Detention Center. It's smaller than this room.

4 Q. And there are actually cameras in those rooms,
5 too, aren't they?

6 A. They are cameras. The jail has cameras in the
7 ceiling in every room so the jail can monitor what's going
8 on. If you're doing a BA you actually have to put a tape
9 in and press a button. Now, it's all digital so therefore
10 all you have to go in there and start the BA and it
11 automatically starts recording.

12 Q. And that recording would record a conversation or
13 any sort of statement that was given?

14 A. If it is exactly turned on for purposes of a BA.
15 So if you're doing a BA, the defendant would have to be
16 seated here and you would have to be seated here and the
17 microphone would pick everything up if the system is
18 activated.

19 Q. To your knowledge, do you have any knowledge if
20 the system was not operating?

21 A. No, sir, not at this point. No, sir, I don't.

22 Q. Also in the BA rooms there is also a written form
23 or typed out forms for alleged defendants can sign off on
24 before they are questioned by the police; is that right?

25 A. Only for DUI. They have the standardized forms

State versus Young

1 for the DUI, one in english and one in spanish. Normally
2 we keep a rights waiver form and suspect statement form in
3 the trunks of our car so we can, you know, conduct those
4 investigations.

5 Q. That's all the questions I have. Thank you.

6 MR. STEINBERG: Just briefly to dispel the
7 idea that the State is hiding anything.

REDIRECT EXAMINATION

8
9 BY MR. STEINBERG:

10 Q. On Page 2 of your report, did you include that
11 you gave a written warning for the traffic violation?

12 A. Yes, sir, I did.

13 MR. STEINBERG: I have no further questions.
14 Your Honor, the State has no other witnesses as far as the
15 Jackson versus Denno and as far as the stop and the
16 arrest.

17 THE COURT: Mr. Robinson, anything from you?

18 MR. ROBINSON: I would call Mr. Brad Baxter,
19 Your Honor.

20 THE CLERK: Mr. Baxter, please come forward
21 to be sworn in.

22 Place your left hand on the Bible and raise
23 your right.

24 LARRY BRADLEY BAXTER, having been duly sworn,
25 testified as follows:

State versus Young

1 Thank you. You may be seated. State your
2 name for the record.

3 THE WITNESS: Larry Bradley Baxter.

4 DIRECT EXAMINATION

5 BY MR. ROBINSON:

6 Q. Mr. Baxter, to whom are you employed?

7 A. I'm a licensed private investigator from SLED,
8 license number 1921.

9 Q. How many years have you been an investigator?

10 A. Approximately 10 years.

11 Q. And prior to you being an investigator, were you
12 in the sheriff's department someplace?

13 A. I worked at the Anderson County Sheriff's
14 Department where I was a supervisor of narcotics and I
15 also worked North Charleston Police Department where I
16 worked in uniform patrol and in narcotics.

17 Q. How many drug cases do you participated in?

18 A. I don't know if I can answer that precisely but
19 hundreds.

20 Q. And have you been called to testify in court
21 before?

22 A. Yes, sir.

23 Q. What courts have you been qualified to testify?

24 A. Family court, general sessions court in
25 Charleston, Anderson.

State versus Young

1 Q. And how many different times have you been called
2 to testify, if you can answer?

3 A. Sorry.

4 Q. How many times have you been qualified as an
5 expert in these different courts, how many times?

6 A. Once.

7 Q. Mr. Baxter, you were called by my office to go
8 and inspect the property in the area for which this
9 incident occurred, correct?

10 A. Yes, sir, yesterday.

11 Q. Did you take an audio visual camera with you?

12 A. Yes.

13 Q. Do you have that with you today?

14 A. In my hand.

15 Q. Now, is that camera in good working condition?

16 A. Yes, it's fairly new.

17 Q. Is that tape that you took in the same condition
18 as last night when you took a tape?

19 A. It's on a digital SD camera and it's inside the
20 camera.

21 Q. Tell the Court what you did when you went out to
22 that area? What time of night was that?

23 A. When I started the camera it was 6:00. On the
24 video it says was 6:22 or 6:20 and that was wrong. It was
25 6:00.

State versus Young

1 Q. Tell me what you did out there? You just
2 testified you video taped this scene, but what did you do
3 when you got out there?

4 A. I surveilled the area to see what it looked like.
5 It was heavily wooded. It was in a neighborhood where
6 there was a soccer field very close to there, some
7 traffic. It was shown where that officer lives and I
8 can't remember his name. It was a nice neighborhood.

9 Q. Who showed you where this was?

10 A. Lisa Nieto(ph).

11 Q. In my office?

12 A. Yes.

13 Q. When you were out there, did you measure the
14 distance from the officers yard to where Mr. Young was?

15 A. I visually measured it, yes, sir.

16 Q. How many feet did you estimate it to be?

17 A. From the speed limit sign approximately 15 yards
18 to his drive way was about 150 yards to where the steel
19 poles were at the other side of the wooded area.

20 Q. Did you happen to look from his property, from
21 his report, to where this incident allegedly occurred?

22 A. Yes.

23 Q. Is your vision pretty good?

24 A. Yes, sir.

25 Q. Is it 20/20?

State versus Young

1 A. Yes, sir. I use glasses to read with. I'm
2 almost 50 now.

3 Q. And could you at that time of night 6:00 was the
4 sun still up?

5 A. Yes. Yesterday -- if y'all remember it was
6 really warm this summer and yesterday was the coldest day
7 I've had in a long time and it was overcast.

8 Q. Could you see from the officer's house from that
9 lawn where he was at, could you see through there from
10 where this incident occurred?

11 A. You could see where he was talking about but you
12 couldn't -- Lisa was standing in the woods and I have a
13 video of it and you couldn't see her.

14 Q. So from where you were standing, could you see
15 where this incident occurred?

16 A. Yes.

17 Q. Did you put together a tape in this matter when
18 you did your investigation?

19 A. Yes, I did a short video.

20 Q. Is it the same working condition that it was last
21 night?

22 A. Yes, sir.

23 Q. Anything wrong with the tape, anything wrong with
24 that?

25 A. No, sir.

State versus Young

1 MR. ROBINSON: For the purposes of this
2 hearing, I'd like to introduce this tape as an exhibit if
3 I could in this matter.

4 THE COURT: Any objection?

5 MR. STEINBERG: No objection.

6 THE WITNESS: I've got to take a minute to
7 figure this out because I've never used this particular
8 tape in court.

9 MR. ROBINSON: Before he begins, I'd like to
10 have him identify that and enter it as an exhibit for this
11 hearings purposes.

12 THE WITNESS: This is a JVC video camera and
13 fire wire that come with it and inside of it here, there's
14 a small SD card.

15 MR. ROBINSON: Let's get this marked as an
16 exhibit.

17 (SD card marked as Defendant's Exhibit No. 1
18 for identification and admitted into evidence.)

19 THE WITNESS: Can I let you see it on the
20 video?

21 THE COURT: If you can't get it to run over
22 there, I'll look at it on there. Is that okay with y'all?

23 MR. STEINBERG: I have no objection.

24 (Video played for the Court.)

25 MR. ROBINSON: I don't have any further

State versus Young

1 questions for Mr. Baxter.

2 CROSS-EXAMINATION

3 BY MR. STEINBERG:

4 Q. Mr. Baxter, you said you could not see from
5 Deputy Mitchell's house someone in the woods; is that
6 correct?

7 A. I could not see anyone in the woods from the
8 speed limit sign. Do you know where that speed limit sign
9 is from the drive way?

10 Q. Sir, you can't ask him.

11 A. From the speed limit sign to where the drive way
12 is that's where I stood. That's a good reference point
13 and it's right before his driveway where he was cutting
14 grass and I could not see Lisa in the woods on the video
15 with my naked eye.

16 Q. Do you know exactly where he was cutting grass?
17 Where he was physically positioned two years ago?

18 A. No, sir. I was just right before his driveway,
19 before his yard.

20 Q. Would you agree that from his yard, you would be
21 able to see a car that was parked on the road?

22 A. You could see cars go by and you could see them
23 mash the brakes, but my car, I drive a white Tahoe, it was
24 parked right on the other side. If you look hard at the
25 video, you could see my car.

State versus Young

1 Q. You could see a car that was stopped?

2 A. You could see my white top.

3 Q. You said something earlier about 150 yards. Why
4 did you say it was 150 yards?

5 A. From that speed limit sign and I think it's a
6 curve sign saying it's a curve here, it's approximately
7 150 yards from that sign to that steel pole that's in the
8 woods.

9 Q. 150 yards or 150 feet?

10 A. I would say 150 yards. I played football in
11 college and I had to run that many times.

12 Q. I was a soccer player and we had to use y'all
13 football field. Did you measure it? Did you get a
14 measure out?

15 A. No, sir, I didn't.

16 Q. You are just eye balling it.

17 A. I would say it was about 150 yards.

18 Q. Did you video the scene two years ago?

19 A. No, just yesterday.

20 Q. Just yesterday.

21 A. At 6:00.

22 Q. Would you agree it was a bit cloudy, not rainy
23 but cloudy, at 6:00 in Greenville County?

24 A. Yesterday it was about 50 something degrees and
25 it was overcast.

State versus Young

1 Q. And you don't know what the woods were like two
2 years ago, do you?

3 A. I've never seen that area before until yesterday,
4 but if it was like it was in July, the foliage, the leaves
5 and the undergrowth, it pretty bad yesterday. In July it
6 probably would have been worse.

7 Q. You're assuming it would be worse, but you
8 weren't familiar with this area at all until yesterday?

9 A. I'm just assuming.

10 Q. And you don't know what it would have been like
11 on a clear day with no overcast, do you?

12 A. No, two years ago if it was overcast, it probably
13 would have been close to the same.

14 MR. STEINBERG: I have no further questions.

15 THE COURT: Any redirect?

16 MR. ROBINSON: No, sir.

17 THE COURT: Call your next witness.

18 MR. ROBINSON: Your Honor, that's our case as
19 far as the Jackson v. Denno hearing.

20 THE COURT: Why don't you argue your motions
21 for me.

22 MR. ROBINSON: I'd be happy to, Your Honor.
23 Your Honor, I've provided the Court several cases. I went
24 back through this case and there's this red herring that
25 appears with this officer taking a statement from my

State versus Young

1 client that he says that he told him about meeting and
2 this man was going to pay him \$50 to go get something in
3 the woods for him.

4 Officer Moore testified he didn't find \$50 in
5 his car or on his person. Also the two officers are
6 different in terms of their statement at the jail that
7 supposed to have went on because Officer Moore says he
8 overheard him giving a statement to this officer but if
9 I'm hearing the officer's testimony correct, the officer
10 who is seated to Mr. Steinberg's right, he testified that
11 he wouldn't say anything at the jail. Which is kind of
12 unusual in a case with two officers and I think Mr. Moore
13 may have been sitting in the courtroom at the time I'm
14 sure.

15 If we take that red herring in this case, the
16 basic premises, basic idea, is this guy from Citgo paid
17 him \$50 to go and get this paint can with the drugs. That
18 might be conspiracy possible, but it's not trafficking.
19 They've got to show ---

20 THE COURT: They were not arguing the case of
21 sale. They were arguing the motion to suppress so if you
22 could just argue the case to suppress.

23 MR. ROBINSON: Yes, sir. The suppression,
24 Your Honor, as the Court is aware they have to show
25 dominion and control over these drugs, the pill bottle

State versus Young

1 that was found in this paint can. The first officer
2 testified that he didn't know how long the paint can had
3 been there. It was an old paint can. He also said that
4 he had not inspected the property prior to this time to
5 see if anyone had been there or had been around the paint
6 can.

7 He testified as well, Your Honor, that he
8 could not put him at the paint can. He said he could have
9 been in the vicinity or the area that he saw from his
10 property into the woods, but he can't say he was actually
11 bending over this paint can. And once more, when they did
12 some sort of testing of this pill bottle, there was no
13 evidence that they ever found his fingerprints on
14 anything.

15 Just because he's present in the area mere
16 presence is not enough to get the State pass this dominion
17 and control they need in this matter. I think they can't
18 show dominion and control by Mr. Young over this paint
19 can, this old paint can with beers bottles around it
20 that's off the road and we don't know how far it was off
21 the road. There's no evidence that he had dominion and
22 control over this paint can and these drugs.

23 Two, as the Court's aware in the examination
24 of the officer he testified that a soccer game was going
25 on that night or some sort of soccer tournament going on.

State versus Young

1 He also testified there was a place called -- he found out
2 later there was a Boom Boom restaurant nearby. He knows
3 that because three years after that there was some murder
4 or some sort of incident that. He's not sure but he
5 thinks that that Boom Boom restaurant was there. He's not
6 sure when it opened or anything like that, but, Your
7 Honor, in these matters in a suppression hearing the
8 burden really is on me and I would submit to the Court
9 that there is no evidence or inference that could be taken
10 at the scene that Mr. Young had dominion and control over
11 the property. Mere presence is not enough in this matter.

12 Because of that I would submit to the Court
13 that these drugs should be suppressed because we don't
14 know who they belong to.

15 THE COURT: Okay.

16 MR. STEINBERG: I'm only going to address the
17 Jackson versus Denno and the stop and arrest portion of
18 this. The actual possession would require more
19 testimony and is actually not proper for a suppression
20 hearing. It's proper for a directed verdict or a
21 judgment.

22 As for the Jackson versus Denno, the initial
23 statement was not made to a state actor. The deputy may
24 have been off duty but that initial statement that I'm
25 just going here to relieve myself, that obviously doesn't

State versus Young

1 fall under Jackson versus Denno.

2 The first time when statement can be
3 suppressed is when he does identify himself and he is in
4 custody and he does give Miranda. Two officers said this
5 deputy Neil Mitchell advised him of his Miranda warnings.
6 There was no testimony of any threats, coercion. The
7 defendant did not take the stand and allege threats or
8 coercion therefore the statement should come in and Your
9 Honor should make the decision as to credibility.

10 THE COURT: I'm going to find that the
11 statement was freely and voluntarily given and he was
12 properly Mirandized.

13 MR. STEINBERG: Thank you, Your Honor.

14 THE COURT: You want to argue the
15 suppression?

16 MR. STEINBERG: I think the suppression is
17 going to require more testimony. In my opinion I don't
18 it's appropriate for a suppression hearing pretrial. At
19 the end we'll have ours.

20 THE COURT: Any response to that?

21 MR. ROBINSON: The census is a bench trial.
22 I think that the Court -- I would be glad to put my client
23 up. The solicitor is arguing that the Court can't make a
24 determination based on the law in this case based on this
25 testimony, I would be glad to do that but I think this is

State versus Young

1 a bench trial and I think the Court can make a
2 determination as far as suppression goes.

3 MR. STEINBERG: Your Honor, I was told very
4 specifically he did not want to combine the two. He
5 wanted a separate suppression hearing. I have given him a
6 suppression hearing. As the trial progresses I have more
7 witnesses to call and Your Honor will hear from other
8 witnesses.

9 THE COURT: I'll leave the record open and
10 let's come back at 2:00 and I will rule.

11 (Whereupon, there was a lunch break.)

12 THE BAILIFF: All rise, the Honorable William
13 H. Seals presiding.

14 THE COURT: Thank you. The State ready to
15 proceed.

16 MR. STEINBERG: Yes, Your Honor. The State
17 is going to call some of the same witnesses and some might
18 overlap. And we also have some stipulations. Can we have
19 this marked. It's the drug analysis report, a stipulation
20 regarding evidence.

21 THE COURT: 5 and 6 are in evidence.

22 MR. STEINBERG: Number 7 is not in evidence.
23 It's going to be marked for identification only at this
24 point.

25 THE COURT: Without objection?

State versus Young

1 MR. ROBINSON: Yes, Your Honor.

2 THE COURT: Let me have y'all come up here
3 one second real quick.

4 (Whereupon, there was a bench conference.)

5 Okay.

6 MR. ROBINSON: Your Honor, may we approach
7 again?

8 THE COURT: Sure.

9 (Report marked as State's Exhibit No. 5 for
10 identification and admitted into evidence.)

11 (Evidence marked as State's Exhibit No. 6 for
12 identification and admitted into evidence.)

13 (Photograph marked as State's Exhibit No. 7
14 for identification.)

15 THE COURT: We'll take a brief recess.

16 THE BAILIFF: Come to order, court is now in
17 session, the Honorable William Henry Seals, Jr.,
18 presiding.

19 THE COURT: Thank you. Please be seated.

20 THE CLERK: Your Honor, this is Case No.
21 2010-GS-23-9215A, State versus Edward Rorecuse Young
22 indictment for trafficking cocaine base, pleading to
23 trafficking in Ice, second offense. It is a True Bill.

24 Would you please raise your right hand?

25 EDWARD YOUNG, having been duly sworn,

State versus Young

1 testified as follows:

2 THE COURT: Mr. Young, you are pleading
3 guilty to trafficking 10 grams or more but less than 28
4 grams, second offense, which has a minimum of five years
5 and a maximum of 30 years in jail; is that correct?

6 DEFENDANT YOUNG: Yes, sir.

7 THE COURT: Speak up.

8 DEFENDANT YOUNG: Yes, sir.

9 THE COURT: I also I want you to understand
10 that, of course, you have a right to finish this bench
11 trial if you would like or if you would like to have a
12 jury trial, I'd be more than happy to give you one. In
13 fact we have a jury in this courthouse present now to give
14 you one should you want one. Do you understand that?

15 DEFENDANT YOUNG: Yes, sir.

16 THE COURT: You understand that if you did
17 have a jury trial, you would have nothing to prove. The
18 burden of proof is on the State of South Carolina to prove
19 you guilty beyond a reasonable doubt.

20 Furthermore if you had a jury trial, I want
21 you to understand, you would be sworn in and you could
22 testify if you would like; however, you do not have to
23 testify because you have the constitutional right to
24 remain silent, do you understand that?

25 DEFENDANT YOUNG: Yes, sir.

State versus Young

1 THE COURT: You understand that if you chose
2 to exercise your right to remain silent, I will tell the
3 jury they can not use that against you in any way, any
4 manner whatsoever, do you understand that?

5 DEFENDANT YOUNG: Yes, sir.

6 THE COURT: Do you understand I would tell
7 the jury that could not even talk about the fact that you
8 did not testify in the jury room should you exercise that
9 right, do you understand that?

10 DEFENDANT YOUNG: Yes, sir.

11 THE COURT: Also if you had a trial you would
12 have a jury made up of 12 people and it would have to take
13 all 12 people to agree unanimously to convict you before
14 the Court can sentence you. Your lawyer would have the
15 right to cross-examine and confront all of the State's
16 witnesses, do you understand that?

17 DEFENDANT YOUNG: Yes, sir.

18 THE COURT: If you had a jury trial and you
19 were not happy with something that took place, you could
20 appeal but you would have to do so within 10 days. The
21 same with this guilty plea. Do you understand that?

22 DEFENDANT YOUNG: Yes, sir.

23 THE COURT: Do you want to give up your
24 rights to this bench trial and jury trial and go ahead and
25 plead guilty today?

State versus Young

1 DEFENDANT YOUNG: Yes, sir.

2 THE COURT: Are you satisfied with your
3 lawyer?

4 DEFENDANT YOUNG: Yes, sir.

5 THE COURT: Has he answered all of your
6 questions?

7 DEFENDANT YOUNG: Yes, sir.

8 THE COURT: And done everything you've asked
9 him to do?

10 DEFENDANT YOUNG: Yes, sir.

11 THE COURT: Has anybody promised you any type
12 of reward or gift to get you to plead guilty?

13 DEFENDANT YOUNG: No, sir.

14 THE COURT: Is anybody coercing you into
15 pleading guilty?

16 DEFENDANT YOUNG: No, sir.

17 THE COURT: Have you understood all of my
18 questions?

19 DEFENDANT YOUNG: Yes, sir.

20 THE COURT: Are you under the influence of
21 any drugs or alcohol at this time that would effect your
22 ability to understand what you're doing?

23 DEFENDANT YOUNG: No, sir.

24 THE COURT: Thank you very much.

25 MR. STEINBERG: Thank you, Your Honor.

State versus Young

1 On July 30, 2010 this defendant got out of
2 the vehicle on Brammet(ph) Road and entered the woods.
3 Unbeknownst to him, and off-duty deputy was mowing his
4 lawn next door and thought it was suspicious because of
5 recent break-ins in that area.

6 The deputy approached the suspected who
7 stated he was simply relieving himself in the woods. He
8 appeared to be nervous and then left.

9 The deputy then searched in the area and
10 found 100 grams of crack in a pill bottle near where the
11 suspect was standing stooped over.

12 Deputies then stopped this defendant
13 approximately an hour later who had first continued to
14 state he was just relieving himself. He was then
15 confronted with the unlikelihood of that story. He then
16 stated he was going to pick up an unknown item in exchange
17 for \$50 but that story was later disproved.

18 He later said a white male with tattoos in
19 his 20's did this. We actually got the Citco video. It
20 does not show anything of this sort.

21 We do have an expert witness who has not
22 testified yet who would testify that the value of 11 grams
23 is approximately \$100 per gram and the volume of 11 grams
24 could be in the \$800 to \$1000 range.

25 Those are the facts the State would present,

State versus Young

1 Your Honor.

2 THE COURT: I'll accept the plea and find
3 that he is entering this plea freely and intelligently
4 with the vice of competent counsel.

5 Mr. Robinson.

6 MR. ROBINSON: If it please the Court, we
7 intended to do this as an Alford plea in this matter and
8 we appreciate the Court taking the time to listen to the
9 testimony in this matter.

10 Edward is 25, he works full-time. I've got
11 his mother in the court with me today along with his
12 former girlfriend, Porchia(ph).

13 We thought we had a good case in this matter,
14 however, in order to save judicial economy and the
15 expenses that go along with a jury trial and so forth, we
16 felt it was best to enter a plea of guilty at this time
17 under North Carolina versus Alford. I explained to him
18 Alford goes down just like a conviction goes down and I
19 would ask the Court for the minimum sentence in this case
20 of five years and in that range, Your Honor.

21 He is doing well now. I am sure he's
22 planning his education but he's a young man and this
23 shouldn't be something that's going to be with him the
24 rest of his life.

25 THE COURT: Anything you want to add to it?

State versus Young

1 MR. STEINBERG: Your Honor, the State has no
2 objection. I told you during the bench conference we did
3 make a very reasonable offer. It was accepted and then
4 turned down. I then reopened it for judicial economy so
5 the State does not make any offer.

6 He does have a prior record if you would like
7 to hear it at this time.

8 THE COURT: Sure.

9 MR. STEINBERG: He has a 2004 unlawful use of
10 a weapon. This was perhaps the sticking point, Judge, he
11 has a 2006 trafficking in cocaine for which he received a
12 three-year sentence. Four years after that he is found
13 with 11 grams of crack cocaine. Again, he received a
14 three-year sentence and he has been convicted of
15 possession of marijuana, I presume simple possession, and
16 receiving stolen goods.

17 He has two pending charges that are unrelated
18 to this matter. He has a Spartanburg County unlawful
19 carrying of a pistol in General Sessions, and a Greer
20 municipal charge also unrelated to his on drug
21 paraphernalia.

22 THE COURT: Okay. The sentence of the Court
23 is that the defendant is committed to the State Department
24 of Corrections for a term of seven years.

25 MR. ROBINSON: Thank you, Judge.

State versus Young

1 MR. STEINBERG: Thank you, Your Honor.

2 ---END OF TRANSCRIPT RECORD---

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State versus Young

1 I, the undersigned Caroline Hiskell, Official
2 Court Reporter for the Thirteenth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate, and complete transcript of
5 record of all the proceedings had and evidence introduced
6 in the trial of the captioned case, relative to appeal, in
7 the General Sessions, Greenville, South Carolina on the
8 9th day of October, 2012.

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

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14 Caroline Hiskell
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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

EDWARD YOUNG, 314830

PLAINTIFF,

V.

STATE OF SOUTH CAROLINA,

DEFENDANT.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

2013-CP-23- 5236

APPLICATION FOR
POST-CONVICTION RELIEF

2013 SEP 27 P 1:40

FILED CLERK OF COURT
DO S C
GREENVILLE
PAUL B WILKINSON
CLERK

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention: ^{Evans} ~~Wateree~~ Correctional Institution
2. Name and location of Court which imposed sentence: Greenville County General Sessions Court – 305 East North Street, Greenville, South Carolina
3. Name(s) of co-defendant(s) (if any): N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

- (a) 2010-GS2309215A Drugs/Trafficking in ice, crank or crack- 10g or more but less than 28g – 2nd Offense
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) October 9, 2012 – seven (7) years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (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? No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed :
- (b) the result in each such Court to which you appealed:
- (c) the date of each such result:
- (d) if known , citations of any written opinion or orders entered pursuant to such results:
9. If you answered "no" to (7), state your reasons for not so appealing: Applicant was unaware of any potential appealable issues during the time to appeal.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of counsel
- (b) Involuntary guilty plea
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Attorney's performance was deficient and unreasonable under professional norms.

Further, attorney's deficient performance prejudiced the Applicant such that there is a reasonable probability that but for his deficient performance, the result of the proceedings would have been different.

- (b) Attorney failed to call witnesses who would have testified favorably on the behalf of the Applicant.
- (c) Attorney was ineffective for failing to discuss the elements of constructive possession (of drugs). Therefore, effectively denying him of a potential defense to his charge
- (d) Attorney was ineffective for using invalid strategic reasoning
- (e) Applicant's plea was involuntary because Attorney's representation fell below an objective standard of reasonableness and there is a reasonable probability that, but for trial counsel's errors, the defendant would not have plead guilty but gone to trial.

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: N/A

- (b) the name and location of the Court in which each was filed: N/A
 - (c) the date of each such disposition: N/A
 - (d) if known, citations of any written opinions or orders entered pursuant to each such disposition: N/A
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented: N/A
 - (b) the proceedings in which each ground was raised: N/A
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) A claim of ineffective assistance of counsel is usually raised in an Application for Post Conviction Relief.
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
 - (b) your trial, if any? Yes (pre-trial motions)
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A
 - (e) Preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
18. If you answered "yes" to one or more parts of (17), list:

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

Scott Robinson
101 Lavinia Ave.
Greenville, SC 29601

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

Pre-Trial Motion(s) and Guilty Plea and Sentencing

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

The Applicant seeks to have his conviction vacated, or set aside.

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

No

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

)
)
)

VERIFICATION

I, Edward Young, 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.

Edward Young

SWORN TO and subscribed before me this 20th

day of September, 2013

Christy Hopewell (SEAL)

Notary Public for South Carolina

My Commission expires: Feb. 9th 2020

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Edward Rorecuse Young,)
 S.C.D.C. No. 314830,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2013-CP-23-5236

RETURN

In response to the post-conviction relief application filed September 27, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the November 2010 term of General Sessions for trafficking cocaine base (2010-GS-23-9215A). Scott D. Robinson, Esquire represented the Applicant.

On October 9, 2012, the Applicant pled guilty as indicted. The Honorable William H. Seals, Jr. sentenced the Applicant to seven years imprisonment for trafficking cocaine base (10-28 grams), second offense. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

II.

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

1. Ineffective assistance of counsel:
 - a. Failed to call witnesses who would have testified favorably on the Applicant's behalf.
 - b. Failed to discuss the elements of constructive possession.
 - c. Utilized invalid strategic reasoning.
2. Involuntary guilty plea.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a 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).

IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would have insisted on going to

trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248.

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 the issues raised in the PCR application.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

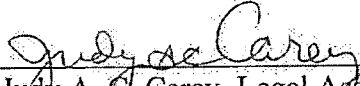
March 26, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2013-CP-23-5236
	)	
EDWARD RORECUSE YOUNG, 314830	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

Brian P. Johnson, Esquire
522 North Church Street
Greenville SC 29601

DATED this 26th day of March, 2014.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS

2013-CP-23-05236

EDWARD RORECUSE YOUNG,
APPLICANT,)

VS.)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,
RESPONDENT.)

COPY

December 16, 2014
Greenville, South Carolina

B E F O R E:

THE HONORABLE EUGENE C. GRIFFITH, JR., JUDGE.

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

BRIAN P. JOHNSON, ESQ.
Attorney for the Applicant

KAREN C. RATIGAN, ESQ.
Attorney for the Respondent

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

Page No.

<u>(AW) SCOTT DAVID ROBINSON:</u>	
Direct Examination by Mr. Johnson.....	4
Cross-Examination by Ms. Ratigan.....	15
<u>(AW) EDWARD RORECUSE YOUNG:</u>	
Direct Examination by Mr. Johnson.....	19
Cross-Examination by Ms. Ratigan.....	31
<u>(AW) ADIDAS RASHAD GLENN:</u>	
Direct Examination by Mr. Johnson.....	36
Cross-Examination by Ms. Ratigan.....	44

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	(Applicant's Exhibits)		
A-1	Statement of Adidas Glenn.....	43.....	43

All Exhibits were retained by the Clerk of Court for Greenville County.

P R O C E E D I N G S

THE COURT: Ms. Ratigan, whenever you're ready.

MS. RATIGAN: Thank you, Your Honor.

May it please the Court.

This is the case of Edward Young v. the State of South Carolina. The docket number is 2013-CP-23-5236. It's, actually, a very lengthy transcript, Your Honor. It, actually, started out as a bench trial. They had a suppression hearing and a Jackson v. Denno hearing from Page 3 to Page 70. It converted to a plea around Page 76. Mr. Young was indicted for trafficking cocaine base. He was represented on this charge by Mr. Robinson.

On October 9th, 2012, after the aforementioned suppression hearing and Jackson v. Denno, he entered an Alford plea before Judge Seals. He received a seven-year sentence for trafficking cocaine base 10 to 28 grams second offense.

He did not file an appeal.

And the State is ready to proceed.

THE COURT: All right. We're ready to go?

MR. JOHNSON: Yes, sir, Your Honor.

THE COURT: All right.

MR. JOHNSON: I'm, actually, going to start by calling Mr. Robinson to the stand, Judge.

THE COURT: Mr. Robinson, come around and be sworn.

1 THE CLERK: Mr. Robinson, step around to the witness
2 booth, please.

3 And place your left hand on the Bible and raise your
4 right hand.

5 WHEREUPON,

6 SCOTT DAVID ROBINSON,
7 after first having been duly sworn, testified as follows:

8 THE CLERK: Thank you.

9 Please state your full name for the record.

10 THE WITNESS: Scott David Robinson.

11 THE CLERK: Thank you.

12 You may be seated.

13 DIRECT EXAMINATION

14 BY MR. JOHNSON:

15 Q Mr. Robinson, do you recall representing Edward Young
16 regarding this criminal charge?

17 A I do.

18 Q Can you relate to the Court what's your recollection
19 of why he was charged?

20 A They found a paint can. It was really bad luck on
21 his part, I would say. They found a paint can. There was
22 a paint can in the woods in front of an officer's house.

23 Mr. Young and -- I'm not sure who was with him.
24 Maybe his brother was with him. They were riding in the
25 area. He goes -- according to him, he goes to the

1 bathroom. The officer is mowing his lawn and sees him
2 through the woods, or whatever it is, bent over in that
3 area. And this is a case where they're saying that drugs
4 were found later on in that can -- in that paint can. And
5 that's why he was charged with the offense he was charged
6 with, based on that --

7 Q So if I understand you correctly, it's your
8 recollection that an officer saw him in an area where
9 drugs were later found?

10 A Yes, in a paint can. It was a paint can, yes.

11 Q Now, after being hired by Mr. Young, at some point,
12 you had a trial date; is that correct?

13 A We did.

14 Q And, at that trial date, there were -- there was a
15 suppression hearing, wasn't there?

16 A As Ms. Ratigan said, there was a suppression hearing
17 and a Jackson v. Denno hearing, based on -- according to
18 the officer's [sic] statements that he gave the officer at
19 the jail.

20 Q Okay. Now, with regards to the suppression hearing
21 itself, can you tell the Court what was your goal with the
22 suppression? Were you simply trying to keep the drugs
23 out? Or maybe if you can communicate to us what your
24 trial strategy was.

25 A In any -- the goal in the constructive possession

1 suppression hearing was that we were trying to keep the
2 drugs out, the drugs that were found in the paint can.

3 According to Mr. Young, he was going to the bathroom
4 and wasn't anywhere near that can. They didn't get
5 fingerprints off the can, nothing. All we had was an
6 officer that saw him bent over at some point, and said he
7 saw him in the area of that can.

8 Q Okay. So --

9 A It should have been -- our goal was to keep the drugs
10 out. That was the goal of the case, to keep the drugs
11 out. Basically, it was a constructive possession. We
12 said he did not have dominion and control over that paint
13 can.

14 Q Okay. Now, is it your recollection that you
15 discussed constructive and, I suppose, actual possession
16 with Mr. Young?

17 A This was not an actual possession case. It wasn't --
18 they didn't find any drugs on Mr. Young. It was a
19 constructive possession case regarding the drugs found in
20 the paint can.

21 Q So you're admitting that you did not discuss actual
22 possession with Mr. Young; is that correct?

23 A These drugs were not found on Mr. Young, so I don't
24 know why I would discuss with him actual possession. I
25 mean, since -- because this was a constructive possession

1 case.

2 Q Okay. So you didn't -- so you're saying that you
3 explained constructive possession to Mr. Young?

4 A Oh, yeah. Sure.

5 Q Okay. What type -- what was the gist of the
6 explanation you gave him for what constructive possession
7 is?

8 A Are you asking for a legal definition of constructive
9 possession?

10 Q In your opinion, how you would say it.

11 A I can just go by the law as far as what actual
12 possession is. Actual possession is when you're -- when
13 you have the drugs on you, that kind of thing.

14 Constructive possession is when you have some sort of
15 dominion and control, those kind of things. That's,
16 basically, the --

17 Q Now, you told him dominion and control over the
18 drugs?

19 A Did I tell him dominion? Now, I would just -- this
20 is what I would do. I would discuss all this information
21 with him regarding legally what these concepts are, of
22 course.

23 Q Now, with regards to this situation, the drugs were
24 not suppressed; correct?

25 A They weren't, correct.

1 Q Do you recall what your argument was for keeping the
2 drugs out, the suppression?

3 A I think I -- he was -- my position was that he did
4 not have dominion and control over these drugs that were
5 found in this -- in the woods. Because I think that what
6 he -- what -- he parked his car and went into the woods to
7 go to the bathroom, according to him, to take a -- to go
8 to the bathroom.

9 Q So --

10 A He says he -- I think Mr. Young would say he wasn't
11 near this can in this case. But the officer on the lawn
12 mower was off-duty. I think he was an administrative cop,
13 or something.

14 He said that he saw him in that vicinity, and that he
15 saw him bent over. As far as where he was, I don't think
16 he testified to that. But he, actually, confronted him,
17 went out there, confronted him. And Mr. Young said he was
18 going to the bathroom.

19 Q Okay. So your basis for suppression was that the
20 drugs were not found on Mr. Young. Is that my
21 understanding of what you're stating to the Court?

22 A That's not what I said --

23 Q Oh --

24 A -- what I said was that he did not have dominion and
25 control over that paint can where the drugs were --

1 Q So your argument was --

2 A -- if they were in the woods -- that didn't belong to
3 Mr. Young. They were not anywhere near Mr. Young. Our
4 position -- but that officer said he saw him bent over at
5 some point -- something. He wasn't sure what it was.

6 Q Okay. So if I understand correctly, your basis for
7 suppression was that he did not have dominion and control
8 over the drugs?

9 A Yes.

10 Q And that was your suppression argument as far as
11 legally keeping the drugs out of the court case; is that
12 correct?

13 A I think I just went by -- I think if you read the
14 transcript, you'll see how -- the direction I went in when
15 I was going in the constructive possession part of it.
16 Correct.

17 Q Now, so I understand, you went a little bit further.
18 Are you stating that you argued constructive possession as
19 a basis for suppression?

20 A I think that's what I just said.

21 Q Is that what you said --

22 A Yeah.

23 Q Okay. I'm just confirming.

24 A Yeah.

25 Q So you argued constructive possession as the basis

1 for suppression of the drugs; is that correct?

2 A The drugs that were found in the paint can in the
3 woods, correct.

4 Q All right. Now, the drugs were allowed in; is that
5 correct?

6 A I believe that Judge Seals did not grant my
7 suppression motion.

8 Q Okay. And the drugs were going to be entered into
9 evidence in the case?

10 A Yes.

11 Q Okay. Now, was this a jury trial, or a bench trial?

12 A This was a bench trial.

13 Q Now, at this point in time, when the drugs came in,
14 is it true that you advised Mr. Young to plead guilty?

15 A Did I advise him? I don't have any recollection of
16 exactly what I would have recommended to him. It was
17 definitely a problem.

18 But I don't know if I recommended to him to plead
19 guilty. I think it was a problem for us. Because all the
20 sudden, now you have this stuff that's not going to be
21 suppressed.

22 Q Okay. So I understand your strategy, did you and
23 Mr. Young discuss what might happen if the drugs were not
24 suppressed?

25 A Yes. We would have talked about that prior to that

1 time, though.

2 Q Okay. You would have talked about that before trial?

3 A Oh, yeah.

4 Q Do you recall what your understanding was as far as
5 the plan was concerned if the drugs were going to be
6 allowed in?

7 A I didn't know prior to trial if the drugs were going
8 to be allowed in or not. If the drugs were allowed in, I
9 think it would have been prudent to consider a guilty
10 plea.

11 Q Okay.

12 A But that is up to the client, not up to the attorney.
13 You can make recommendations to the client. And, in this
14 case, what I think some of the problems were, I believe if
15 I recall this correctly, this would be his third drug
16 offense on the trafficking.

17 This carried -- this was seven to 25 what he pled
18 to -- or excuse me, seven to 25. If he had been found
19 guilty, the State could -- since it would have been a third
20 offense trafficking, he could have gotten a mandatory
21 25 years in this case. 25 years in this matter for a third
22 offense trafficking, I think.

23 Q Do you recall whether you advised him to plead guilty
24 on that basis?

25 A I don't recall independently if I did that. But that

1 would have been something we would have discussed.
2 Because that is a problem -- that was a problem for him
3 because he had two prior -- if I can look at the NCIC real
4 quick.

5 Yeah. He had -- I'm looking at the NCIC. He,
6 actually, had, in 2006, a trafficking cocaine. And he,
7 also, had another offense for possession 28 grams or more
8 of marijuana. And, also, a trafficking again in 2006.

9 So he could have if the -- and he could still -- if
10 he were granted a PCR, he could still come back if the
11 Prosecutor wanted to -- I don't know that -- but he could
12 be looking at a mandatory 25 years in this case. Because
13 it's, basically -- this would be a third offense
14 trafficking for him.

15 Q But you don't, specifically, recall that you --
16 whether you discussed that particular --

17 A I would have discussed -- we would go through the
18 record, everything he had to discuss options, you know, as
19 far as like if you go to trial and they don't suppress,
20 this is what you can do.

21 And, again, this is all the client's decision. I can
22 make recommendations to the client, and so forth. I mean,
23 it's a chance you take in any matter, of course. But, you
24 know, this was, ultimately, Mr. Young's decision in this
25 matter as far as what he wanted to do.

1 Q All right. But to sum it up -- and see if you agree
2 with what I'm going to say.

3 A Okay.

4 Q Your plan was to try to get the drugs suppressed
5 based upon constructive possession. And then if the drugs
6 were to come in, then you would have discussed a plea with
7 Mr. Young; is that correct?

8 A I would have -- based on the fact that it carried --
9 you just don't know what's going to happen. Because it
10 carried between seven to 25. And, based on his prior
11 record, if he had been convicted, this judge -- any judge
12 could have sentenced him to the upper range of
13 trafficking, which could have been a lot more than what he
14 received in this matter.

15 Because he received, in this case, with the plea with
16 Judge Seals -- the eight [sic] years is what he received.
17 And he could have received up to 25 with this. And if the
18 Prosecutor, Mr. Steinberg, felt that -- if he had a wild
19 hair and he thought, well, I want to give this guy a third
20 offense, he could be looking at a 25-year mandatory.
21 25 -- and that's a lot of time for a young guy like him.
22 He's a very nice young man, I thought.

23 Q Do you recall how many times you met with Mr. Young?

24 A I don't. He was not in jail at the time. So he
25 would have come by the office. I was his second attorney.

1 There was -- Mr. Ray was the first attorney from
2 Spartanburg.

3 Q Do you remember meeting with Mr. Young, though?

4 A Yes.

5 Q And do you recall going over trial strategy?

6 A We'd go over everything. We'd go over the discovery,
7 any discovery. He already had the discovery from Mr. Ray,
8 I believe. But we would have -- we -- I, normally, don't
9 like to rely on the other counsel's discovery. I like to
10 do everything myself. Then we'd go over the discovery, of
11 course. Anytime -- he could come anytime he wants to.

12 But he would sit down with me and go over all these
13 options, and the stuff. And he did have a problem. He
14 did have an issue with his priors. That was his big
15 issue. He had some pending stuff, I believe. But he did
16 have a record, some baggage that would really hurt him if
17 this prosecutor had had a wild hair, based on his two
18 prior trafficking charges he had. Actually, it was two
19 trafficking charges and one 28 grams or less on another
20 charge.

21 Q Per your review of the NCIC, do you see when he was
22 charged with the marijuana charge?

23 A The marijuana charge?

24 Q Yes.

25 A The marijuana would have been 2006 as well.

1 Q Okay. And that's listed as a conviction?

2 A 30 days or \$565, TIAJW [phonetic].

3 Q Now, the other charge was possession; is that
4 correct?

5 A He's got two traffickings [sic]. One was done in --
6 on 4/11. One is trafficking cocaine 10 grams or more,
7 less than 28 first. He was convicted. He got three
8 years, CFTS [phonetic], 33 days. And later on -- two
9 months later, he got trafficking cocaine 10 grams or more,
10 three years -- yeah, three years.

11 MR. JOHNSON: Your Honor, I have no further questions
12 at this time.

13 THE COURT: All right. Ms. Ratigan.

14 MS. RATIGAN: I'll come a little closer so I can,
15 actually, be heard.

16 CROSS-EXAMINATION

17 BY MS. RATIGAN:

18 Q Mr. Robinson, were you retained in this case?

19 A Yes.

20 Q And you were the second attorney involved?

21 A I was.

22 Q Did you file your own discovery motions?

23 A Yes.

24 Q To the best of your knowledge, did you receive full
25 discovery from the State?

1 A Yes. That's their practice here, yes.

2 Q And your testimony is that you reviewed these
3 materials with your client?

4 A Yes.

5 Q Did you review the elements and the sentencing ranges
6 for the charge?

7 A Yes.

8 Q Did Mr. Young tell you his version of events?

9 A Yes.

10 Q And after hearing his version of events and reviewing
11 the discovery, that's when you decided to try and argue
12 constructive possession?

13 A Yes. Edward is -- I thought he was a very good guy.
14 I enjoyed talking to him, very good family. The paint can
15 in the woods, to me, you know, it just was bad luck. He
16 had an officer -- an off-duty officer that sees him in the
17 woods bent over. And it was just bad luck, I thought,
18 just a bad subdivision, but...

19 Q In your opinion, did you meet with him enough times
20 to be ready for that bench trial?

21 A Yes.

22 Q Did you have enough time to discuss with him -- after
23 the drugs came in during the bench trial, did you have
24 enough time to discuss with Mr. Young his options in terms
25 of either going forward with the bench trial, or pleading

1 guilty?

2 A Yes. And it was an Alford plea, by the way, as well
3 with this particular judge.

4 Q And did you explain to Mr. Young the nature of an
5 Alford plea, what that would mean?

6 A Yes. And, actually, on the record, I thought that
7 the Judge did a great job of explaining everything. And
8 this particular judge, Judge Seals, he, actually, had a
9 sidebar with Mr. Steinberg and myself regarding this.

10 And --

11 Q Regarding what? The Alford plea?

12 A Regarding the whole case, regarding the Alford plea,
13 regarding issues in the case, and so forth. He was great.

14 Q And your testimony is it was Mr. Young's decision to
15 go ahead and plead guilty?

16 A Oh, yes, yes.

17 Q Did he express any reservations about that decision?

18 A He didn't. But, you know, any time you've got to go
19 to jail, that's a -- I think unless you're in someone's
20 shoes that's going through that, it's a difficult
21 decision.

22 But I think that based on the fact that he did have
23 a -- he had some baggage on him from the prior record, and
24 so forth, that I talked about a minute ago. That could
25 really hurt him in this matter if he had been -- gone

1 forward, got convicted. That could have hurt him. And I
2 think that that's the decision, 25 years versus eight years.
3 There's -- I think that was probably what the decision
4 making -- and I'm not sure when he's eligible to get out.

5 MS. RATIGAN: Okay. That's all I have, Your Honor.

6 THE COURT: Okay. Any other questions?

7 MR. JOHNSON: No, sir, Your Honor.

8 THE COURT: You may step down.

9 THE WITNESS: Thank you, Judge.

10 MR. JOHNSON: Your Honor, I'm going to call Edward
11 Young.

12 THE COURT: Mr. Young, come around and be sworn.

13 THE CLERK: Mr. Young, step around to the witness
14 booth, please.

15 Place your left hand on the Bible and raise your
16 right hand.

17 THE WITNESS: It's kind of hard, but I'll try.

18 THE CLERK: As best you can.

19 WHEREUPON,

20 EDWARD RORECUSE YOUNG,
21 after first having been duly sworn, testified as follows:

22 THE CLERK: Please state your full name for the
23 record.

24 THE WITNESS: Edward Rorecuse Young.

25 THE CLERK: Thank you.

1 You may be seated.

2 THE COURT: Mr. Johnson.

3 MR. JOHNSON: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. JOHNSON:

6 Q Mr. Long -- Mr. Young, where are you currently
7 living?

8 A At Evans Correctional Institution.

9 Q And you're serving a sentence?

10 A Seven years, 85 percent.

11 Q For what charge?

12 A For trafficking cocaine second offense.

13 Q And that's the charge that's the subject matter of
14 this action?

15 A Yes, sir.

16 Q Okay. In the underlying charge, who represented you?

17 A Scott Robinson.

18 Q Okay. Did you hire him, or was this an appointed
19 case?

20 A He was hired.

21 Q Do you recall what your trial date was?

22 A I think it was October the -- October 10th, if I'm
23 not mistaken.

24 Q Of what year?

25 A Of 2012.

1 Q Okay. And do you know approximately how long before
2 the trial you had retained Mr. Robinson?

3 A Maybe -- it was less than a year.

4 Q Okay. Now, along the representation with
5 Mr. Robinson, I assume that you spoke with him?

6 A Yes, sir.

7 Q And did you go over the -- you went over your case?

8 A Yes, sir.

9 Q Okay. At some point in time, did y'all discuss trial
10 strategy?

11 A We discussed the case as far as how we would take it
12 upon not taking a plea.

13 Q Okay. And elaborate on that. What do you mean by as
14 far as "not taking the plea"?

15 A At one particular time, Mr. Robinson stated that his
16 office does not do a lot of pleas. And he would like to
17 take it to trial because of the lack of evidence that the
18 State had. And we said we was going to take -- because I
19 wasn't -- I denied a plea at the beginning with my old --
20 with my previous lawyer. And I did not want to take a
21 plea because I didn't want to admit to guilt of something
22 I wasn't guilty of.

23 Q Okay. Now, with regards to strategy or your
24 discussions with Mr. Robinson, what was -- what's your
25 recollection of what the trial strategy was?

1 A We was going to go in and we was going to fight
2 against the statement. Because the only thing the State
3 had was the testimony of the officer. And since they
4 didn't have no drugs or anything pertaining to any -- to
5 cause a conviction, we was going to go at it like that.
6 We was going to go at it as far as fighting for the --
7 just against the testimony, because they didn't have no
8 drugs to put in place of me.

9 Q Now, what was your understanding -- let's elaborate
10 on the drugs. What was your understanding of the drugs?

11 A I was aware that the drugs had to be, actually -- I
12 guess it was like nine-tenths of the law about the
13 possession. They couldn't find me convicted -- they
14 couldn't convict me of it -- trafficking without me having
15 possession of it.

16 Q Now, did you and Mr. Robinson discuss actual and
17 constructive possession?

18 A We discussed that they couldn't prove actual
19 possession. You know what I'm saying? They couldn't
20 prove that. So that's what I remember that we talked
21 about.

22 Q Okay. Now, were you aware that he was going to
23 conduct a suppression hearing?

24 A He came -- yeah. He told me about a suppression
25 hearing at the beginning of the trial.

1 Q And were you aware of what the suppression hearing
2 was for?

3 A He said he was trying to get the stop -- the one --
4 one of the stops -- like because I got pulled over later
5 after they -- after the drugs was found. And I got pulled
6 over later on down the line. And he said he was trying to
7 get one of the two suppressed, because they was, actually,
8 two different accidents. So he was saying that was his
9 goal, to get one of the two throwed [sic] out.

10 Q Now, when you were stopped in the car, did you have
11 drugs on you?

12 A No, sir.

13 Q Okay. And where were the drugs found, to your
14 recollection?

15 A On the side of the road where the previous -- maybe
16 four hours prior to the stop was found by an off-duty
17 officer.

18 Q Now, was any -- were you in the area?

19 A Well, not at the time that the drugs were found. I
20 was not in the area. But I was previously there. When I
21 used the restroom on the side of the road, the officer
22 asked me what I was doing there. And I told him I was
23 using the restroom. And he told me that's not a place to
24 use the restroom and I needed to leave. So I left the
25 area and -- later to be pulled over with my brother to be

1 detained.

2 Q Was your brother with you the whole time?

3 A Yes.

4 Q And your brother -- so your brother observed whatever
5 it is that took place in that area when you were there?

6 A Yes, sir.

7 Q Now, on the date of trial, the suppression hearing
8 was conducted; correct?

9 A Correct.

10 Q And the drugs were allowed in; correct?

11 A Correct. I'm not -- I don't recall him -- the
12 suppression hearing being -- I guess -- I mean finished.
13 I don't believe -- I don't know if they finished it. But
14 I know the plea was entered, I guess, at the end of the
15 suppression hearing before it was conducted -- denied.
16 And I don't recall them denying anything, though. I'm not
17 sure.

18 Q Now, why did that happen? Why did you plead guilty
19 before a decision had been made on the suppression?

20 A Once the -- we had asked for the -- well, Scott asked
21 for the statement that they had no evidence of -- no
22 record of to be suppressed out of the -- in the
23 suppression hearing. He asked for it to be suppressed.
24 And the -- I think that was denied and the suppression
25 would be held up. And it would be -- I mean the

1 suppression -- I mean the statement would be held up.

2 And he told me that since they got the statement and
3 since they're going to use the statement that I should
4 consider taking the plea. Because -- and I had already
5 denied it. And he said I should take it. And he told my
6 mother that because -- because of certain issues about the
7 statement that I should take a plea, I should consider
8 taking it.

9 Q Okay. Now, with regards to the drugs coming in, did
10 he reference the drugs with regards to your decision to
11 plead?

12 A I'm sorry. What did you say?

13 Q Did he reference the drugs and the non-suppression of
14 the drugs with regards to your consideration to plead?

15 A Well, you know, he spoke of the drugs. And I -- he
16 spoke of the drugs. But being that the drugs were there,
17 he said that since they're going to stand, it's going to
18 be hard to fight it, so I should take it.

19 Q And, based upon that advice, did you plead guilty?

20 A I pled guilty, because I didn't want -- he was saying
21 that like I was going to lose. And I didn't want to lose.
22 I mean, I'd rather fight for seven years than fight for
23 25.

24 Q So you did rely on his advice when you decided to
25 plead guilty?

1 A Yes, sir, I did.

2 Q Now, you were sentenced to eight years. I believe
3 you --

4 A It was seven years, 85, which I do five years and 11
5 months.

6 Q Now, you've now filed this application for
7 post-conviction relief?

8 A (Witness nodded.)

9 Q And you've alleged -- you've got to say "yes" or
10 "no."

11 A Yes, sir.

12 Q And you've alleged ineffective assistance of counsel?

13 A Yes, sir.

14 Q Can you relate to the Court why you think
15 Mr. Robinson was ineffective with regards to the drugs?

16 A I believe he was ineffective because he showed me no
17 defense after we took the -- at the suppression hearing.
18 He didn't give -- he really didn't fight for a defense.

19 Because if I would have known what I had known [sic]
20 about constructive possession and what the jury would have
21 had to find me guilty, I would have continued to trial.
22 Because I know for a fact they did not have no control
23 over nothing that happened. And I went off of just his --
24 the testimony. That's the only thing I really pled to was
25 the testimony of the officers, which contradicted each

1 other. Because one said one thing and the other said
2 another, if you refer back to the transcript.

3 And then he didn't do that -- I believe he was
4 ineffective because I know that the officers testimony
5 contradicted each other. And that really would have
6 brought reasonable doubt to the jury.

7 Q Okay. Now, I'm going to ask you about the officers
8 statements --

9 A Okay.

10 Q -- but I'm asking you about the drugs.

11 A Okay.

12 Q All right. Now, with regards to the drugs
13 themselves, what's your understanding of constructive
14 possession?

15 A Constructive possession is when I control the area or
16 have -- or I can predict any movements of anything that
17 goes on. I can control the area that they're found in, I
18 believe.

19 Q Now, where were the drugs found, to your
20 recollection?

21 A They was found on the side of the road near the
22 officer's residence -- or on the officer's residence,
23 really. I believe it was his residence.

24 Q Okay. Now, the -- is it your understanding that
25 constructive -- is constructive possession, in your

1 understanding, a ground for suppression of drugs?

2 A Oh, no, sir. No, sir.

3 Q Is it, instead, a legal argument?

4 A It's a legal argument. And it don't -- it's not -- I
5 don't think it constitutes the grounds of a suppression
6 hearing, though. I don't believe that's where you should
7 go with a suppression hearing. Because you have to,
8 actually, show -- you know what I'm saying -- dominion and
9 control of it. So, actually, if there's no drugs found in
10 my possession, there's no reason to suppress those drugs.

11 Q Now, with regards to the statements, let's -- because
12 we haven't talked about that at all. You said that there
13 was a statement. And what's your recollection -- what
14 statement was it alleged that you gave?

15 A Well, there was a statement that I was alleged to
16 have given. It was in the back of the police car that I
17 told him about a guy that was going to give me \$50 to
18 obtain the can out of the woods. And that statement was
19 supposed to have been gave [sic] in the back of the police
20 car to the officer at this traffic stop four hours after
21 they found the drugs.

22 Q Okay. What was the inconsistency there with that
23 statement?

24 A When they asked about the statement -- when we were
25 asked about the statement, the officer said that I gave it

1 in the back of the police car, which we was -- we asked
2 for the tape. We asked for the -- any statements that was
3 made of any -- or any records of it. And there was none.

4 And he said that another officer heard me say it.
5 But he, also, said that at the police department, I did
6 not have -- I did not give a statement or further
7 cooperate. And the officer -- the other officer who was a
8 witness to the statement said that I did not. He heard me
9 at the county -- at the detention center. And the officer
10 who said I gave the statement said I did not cooperate at
11 the county. So both of them were saying I said one thing
12 and the other -- and, you know, there was no proof of it
13 either.

14 Q So the officers gave inconsistent statements?

15 A And they was in the same -- they both was in the
16 courtroom the day that they gave it -- you know what I'm
17 saying -- at the same time. But neither one was
18 consistent with each other.

19 Q And, to be clear, you're saying one said that you
20 gave a statement, and the other one said that you didn't?

21 A Right.

22 Q And one of -- the officer that said that you gave a
23 statement said that the other officer heard it?

24 A Uh-huh.

25 Q And the other officer did not confirm that?

1 A He did not confirm that.

2 Q Now, at your suppression hearing -- at the pre-trial
3 hearings, did you testify?

4 A No. I did not testify at the pre-trial -- at the
5 preliminary -- at the preliminary, nor the PCR -- I mean
6 not the PCR, but --

7 Q The suppression hearing?

8 A The suppression hearing, I did not.

9 Q Did your brother testify?

10 A No, sir.

11 Q Do you believe that --

12 MR. JOHNSON: Strike that, Judge.

13 BY MR. JOHNSON:

14 Q If the drugs weren't suppressed and if your
15 statements, for example, were allowed in, would you have
16 wanted to proceed to trial?

17 A Yes, I would.

18 Q Do you believe that you would have -- that Scott or
19 an attorney -- an effective attorney would have been able
20 to successfully argue against constructive possession at
21 trial?

22 A At the trial, yes. Yes, sir. I believe that that
23 would have been a great defense. Because that's all that
24 they had against my -- that was the only evidence against
25 me.

1 Q And let's be specific. What was the only evidence
2 against you?

3 A The constructive possession charge. That's the only
4 thing that they said that I had was constructive
5 possession being I -- my mere presence was the only
6 evidence they had against me was mere presence. And I
7 believe that's speculation. And speculation is not
8 sufficient, I believe.

9 Q So, basically, what you're stating is it's your
10 understanding that he could have argued that you were
11 merely present in the area where the drugs were found?

12 A Right.

13 Q And the drugs weren't found on your property?

14 A Huh-uh.

15 Q They weren't found on you?

16 A No, sir.

17 Q They were found in a -- essentially, in a wooded
18 field?

19 A Right.

20 Q And your -- no prints of yours were found; correct?

21 A No, sir.

22 Q And you were apprehended four hours later?

23 A Yes, sir.

24 Q And your brother was available; correct?

25 A Yes, sir.

1 Q And your brother would back up your story?

2 A Yes, sir. He was, actually, subpoenaed to the court
3 that day.

4 MR. JOHNSON: Please answer any questions Ms. Ratigan
5 has.

6 THE WITNESS: All right.

7 CROSS-EXAMINATION

8 BY MS. RATIGAN:

9 Q Mr. Young, your testimony was that you did discuss
10 the case with Mr. Robinson?

11 A Yes.

12 Q And did you tell him what had happened that day?

13 A Yes, ma'am.

14 Q Okay. And did he explain to you, at the time, what
15 actual possession was?

16 A He -- yes, he did.

17 Q Okay. What about constructive possession? Did he
18 explain that to you?

19 A No -- well, I apologize.

20 Q Okay.

21 A He, actually, explained constructive possession. We
22 didn't -- he, basically -- we didn't never talk about
23 it -- about actual, because we didn't -- we really didn't
24 have to, I guess.

25 Q So you discussed constructive, but not actual?

1 A Uh-huh.

2 Q Okay. And you testified your brother had been
3 subpoenaed for the trial that day?

4 A Uh-huh.

5 Q Who had subpoenaed him? Was it the State, or was it
6 Mr. Robinson?

7 A I'm not sure. I just knew he received a subpoena.
8 I'm not sure who -- well, I think -- I believe it was the
9 State, though. I'm not for sure.

10 Q And did you ask Mr. Robinson to talk to your brother
11 about the case?

12 A He spoke with him once before, I believe.

13 Q Okay.

14 A He, actually, said that his statement would confuse
15 the jury, or something he was stating about it. I don't
16 know. I don't understand it.

17 Q Okay.

18 A Because his statement was, actually, wrote by the
19 arresting officer.

20 Q Okay. And the -- Judge Seals found that your
21 statement was voluntary; is that correct?

22 A Yes, ma'am.

23 Q Okay. And your testimony was that, basically, you
24 pled guilty because the statement was found to be
25 voluntary, and you were scared of getting the 25; is that

1 about right?

2 A Well, it was, basically -- he -- the only reason I
3 took the plea was because Robinson gave me -- he gave me
4 the advice, which was the wrong advice, I believe. He
5 gave me the advice to take the plea. And I believe I took
6 it because I had hired another attorney before. And I --
7 and we didn't have -- we didn't see the same strategy.
8 And I retained Scott. And once -- I didn't know if I
9 could do it again. I didn't want to --

10 Q Okay.

11 A Because it had been put off for so long. So I didn't
12 want to keep continuing to go through it. So, yes, I took
13 the plea.

14 Q So you pled guilty because Mr. Robinson advised you
15 to do so?

16 A Yes.

17 Q Did he tell you it was your choice, or did he tell
18 you that was just his advice to plead guilty?

19 A He said it was his advice. But I mean, that's what
20 I -- I mean, you know, I didn't -- I was ignorant to the
21 law at the time. And I didn't know. So I took his
22 advice on it. Because, I mean, that's what I really paid
23 him for.

24 Q Well, you say you're ignorant to the law, but you had
25 some prior convictions; right?

1 A Well, I had one trafficking back in 2006, which I
2 took -- I pled guilty because of my guilt.

3 Q Okay.

4 A You know, and I done that time.

5 Q Okay.

6 A And when I came home, I worked for it instead, so.

7 Q So you understood what a guilty plea was by the time
8 you came up on this charge?

9 A I understood what a guilty plea was.

10 Q Okay. And you knew that you would have to admit
11 that you were -- well, actually, in this case, it was an
12 Alford plea. But you would have to agree with the State's
13 facts?

14 A Well, I'm not sure if the record states it, but --
15 because Robinson -- he stated I would be pleading no
16 contest.

17 Q Yes.

18 A Which I -- and that's what -- I mean, I'm not saying
19 I was guilty.

20 Q Right.

21 A But being that I gave my rights up to do it.

22 Q Right.

23 A And I guess I did it because the stress of going --
24 getting more time than they was offering. Anybody would
25 do it, I guess, at the time.

1 MS. RATIGAN: That's all I have, Your Honor.

2 THE COURT: Anything else?

3 MR. JOHNSON: No redirect, Judge.

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

5 THE WITNESS: Thank you.

6 MR. JOHNSON: We have one more witness, Judge.

7 THE COURT: Okay.

8 MR. JOHNSON: Your Honor, I would call Adidas Glenn
9 to the stand.

10 THE COURT: Mr. Glenn, come forward and be sworn.

11 THE CLERK: Mr. Glenn; is that correct?

12 MR. ADIDAS GLENN: Yes, ma'am.

13 THE CLERK: Please place your left hand on the Bible
14 and raise your right hand.

15 WHEREUPON,

16 ADIDAS RASHAD GLENN,
17 after first having been duly sworn, testified as follows:

18 THE CLERK: Thank you.

19 State your full name for the record.

20 THE WITNESS: Adidas Rashad Glenn.

21 THE CLERK: Would you spell it?

22 THE WITNESS: Adidas, A-D-I-D-A-S. Rashad,
23 R-A-S-H-A-D. Glenn, G-L-E-N-N.

24 THE CLERK: Thank you very much.

25 You may be seated.

DIRECT EXAMINATION

BY MR. JOHNSON:

Q Mr. Glenn, where are you from?

A I'm from Woodruff, South Carolina.

Q From where?

A Woodruff.

Q Okay. Where do you currently live?

A I live in Macon, Georgia.

Q How long have you lived in Macon?

A Going on two years now.

Q What do you do in Macon? What's your employment?

A I work for the Pain Institute of Georgia.

Q What do you do there?

A I process insurance information for urine drug screens.

Q Okay. Do you have a criminal record?

A No, sir.

Q Would they allow you to work there if you had a criminal record?

A No, sir.

Q How old are you?

A I am 23 years old.

Q 23 years old?

A Yes, sir.

Q Okay. Now, I represent Edward Young in a case for

1 post-conviction relief. Do you know who Edward is?

2 A Yes.

3 Q Who is he to you?

4 A He's my brother.

5 Q He's your brother?

6 A Uh-huh.

7 Q Were you here when he testified earlier and when
8 Mr. Robinson testified earlier?

9 A Yes, sir.

10 Q Do you recall the incident where your brother was
11 arrested for drugs?

12 A Yes.

13 Q Okay. Do you still remember it here today?

14 A Yes, sir.

15 Q Can you tell the Court what your recollection of the
16 arrest was?

17 A Like a story?

18 Q Yes.

19 A Okay. I called my brother -- I talked to my brother.
20 It was early. It was early that day. And he mentioned to
21 me he needed a ride to a hotel. So I went and picked my
22 brother up. And then on the way to the hotel, he
23 mentioned to me that he had to piss -- I'm sorry.

24 Q That's what he said; correct?

25 A Yes. That's what he said.

1 Q Okay.

2 A He mentioned he had to piss. And like 10 minutes
3 down the road, I pulled over to a little neighborhood so
4 he could use the restroom. So when I pulled over, I
5 pulled into a wooded area. He got out. He probably took
6 like three to four steps out of the car.

7 And I looked diagonally. And I seen somebody running
8 with a white shirt. He came running. He was screaming.
9 All my attention went to this man. I was just pretty much
10 shocked like what was he screaming for. And then I
11 noticed he was conversating [sic] with my brother, talking
12 about what are you doing, what are you doing. And my
13 brother said, I'm just trying to -- he said, I'm just
14 trying to take a piss.

15 Q Did you have any further correspondence with the --
16 with this man?

17 A Hours later.

18 Q Okay. Now, after the man told you -- you saw the man
19 conversating [sic] with your brother, did he get back in
20 the car?

21 A Yes.

22 Q Okay. And what happened after that?

23 A We drove to the motel.

24 Q Okay.

25 A We probably stayed at the motel for a couple of

1 hours. We was waiting until his girlfriend got off, which
2 was Porsche at the time. And she didn't know how to get
3 to the motel. So we was going to meet her. We was going
4 to meet her. And we was pulled over during that time.

5 Q Okay. So let's -- let me rewind you, because it
6 seems like we skipped a step.

7 A Okay.

8 Q So you went to take -- you went and took Edward to
9 meet Porsche at the hotel. Did you go directly there from
10 when -- after you had the contact with the man in the
11 woods?

12 A We went directly to the motel.

13 Q Okay. How long did it take you to get there?

14 A It was like 10 or 15 more minutes.

15 Q Were you pulled over during that period of time?

16 A No, sir.

17 Q Okay. Now, let's go to after that period of time.
18 You were at the hotel. And how long were you there?

19 A We was at the hotel a couple of hours.

20 Q A couple of hours?

21 A Yes, sir.

22 Q And what were you doing during this period of time?

23 A Nothing, just listening to music.

24 Q Okay. Now, when did you leave the hotel?

25 A When?

- 1 Q Yes.
- 2 A I'm not sure at the time.
- 3 Q But it was two hours later?
- 4 A It was a couple hours later.
- 5 Q Where were you going at that point?
- 6 A We was going to meet Porsche, his girlfriend.
- 7 Q Okay. And where were you going to meet Porsche?
- 8 A At the Bi-Lo.
- 9 Q At the Bi-Lo?
- 10 A It was at a Bi-Lo.
- 11 Q Okay. Why didn't Porsche meet you at the hotel.
- 12 A Because she didn't know how to get there.
- 13 Q But she knew how to get to the Bi-Lo?
- 14 A Yeah. She knew how to get to the Bi-Lo. It was
- 15 Woodruff Road, I believe.
- 16 Q Okay. So you were on your way to the Bi-Lo. And
- 17 what happened?
- 18 A We was pulled over.
- 19 Q Okay. Pulled over by who? Do you remember?
- 20 A I don't remember the officer's name.
- 21 Q Did the officer speak with you?
- 22 A Yeah. They spoke with me.
- 23 Q Did they speak with Edward?
- 24 A Yeah. He was in another car.
- 25 Q Okay. Now, were you arrested?

1 A Well, I was put handcuffs on, yes, sir.

2 Q Did they tell you why they pulled you over?

3 A They said that my tint was too dark.

4 Q Okay. Did they give you a ticket for it?

5 A No, sir.

6 Q They didn't write you a ticket for it?

7 A No, sir.

8 Q All right. But they did -- did they tell you why
9 that they were -- put you in handcuffs?

10 A No, sir.

11 Q Where did they take you when they put you in
12 handcuffs?

13 A They put me in handcuffs and put me on the side of
14 the road, and like told me to sit down on the side of the
15 road.

16 Q Okay. Where was Edward during this period of time?

17 A He was in the car.

18 Q What happened after the point where you were able to
19 get up off the side of the road?

20 A He got up and he was asking me what happened. And I
21 was telling him what happened. And he was telling me that
22 my story wasn't true. And I was put in the back of the
23 police car.

24 And then he asked me would I write a statement. And
25 I told him, yes, I would write a statement. I -- he was

1 telling -- he asked me, though, to write a statement. But
2 he was making me believe that if I wrote a statement that
3 I would leave. And, I mean, that's what happened.

4 Q Okay. So did you write a statement?

5 A I wrote a statement, but he balled it up.

6 Q He balled it up?

7 A Yes, sir.

8 Q Do you mean like trash?

9 A Yes, sir.

10 Q And he threw it away?

11 A Yes, sir.

12 Q Okay. Did -- what happened after that? Did you
13 write another statement?

14 A No. He -- the officer wrote it for me.

15 Q Okay. So he wrote the statement for you?

16 A Yes, sir.

17 Q Okay. And did you sign the statement?

18 A Yes, sir. But the -- I can be honest, I didn't read
19 over the statement. Because, honestly, I was scared. And
20 I had never been put in -- handcuffs on. And, I mean, I
21 didn't know what, actually, happened. And I just signed
22 it at the places that he wanted me to sign.

23 MR. JOHNSON: Your Honor, I would like to have this
24 marked as Applicant's Exhibit No. 1. This is the
25 statement from Mr. Glenn. I don't think there's any

1 objection from the State, Judge.

2 THE COURT: All right.

3 MS. RATIGAN: No objection.

4 THE COURT: No objection. It's in evidence.

5 (WHEREUPON, Applicant's Exhibit No. 1 was marked for
6 identification and admitted into evidence.)

7 MR. JOHNSON: Permission to publish, Judge?

8 THE COURT: Yes.

9 On BY MR. JOHNSON:

10 Q Now, Mr. Glenn, did you ever speak with Mr. Robinson?

11 A Yes. I spoke with him once, I believe.

12 Q What did y'all discuss?

13 A The case.

14 Q You discussed your role in the case?

15 A Yes. I believe -- I'm, actually, not sure. It was
16 so long ago. I don't remember the exact things we
17 discussed.

18 Q Okay. But were you subpoenaed to court?

19 A During the first trial?

20 Q Yes.

21 A Yes, sir.

22 Q Okay. Do you recall who subpoenaed you?

23 A No, sir.

24 Q Okay. Now, what you portrayed to the Court today, to
25 the best of your recollection, is it true?

1 A Yes, sir.

2 Q Okay. And were you aware that there was a
3 suppression hearing for your brother?

4 A No, sir.

5 Q Okay. And Mr. Robinson didn't discuss that with you?

6 A No, sir. I, actually, don't know too much about the
7 law, so.

8 Q Would you have been willing to testify if you'd been
9 asked and tell the truth of the --

10 A Yes, sir.

11 MR. JOHNSON: Your Honor, I have no further questions
12 at this time.

13 THE COURT: All right. Ms. Ratigan.

14 MS. RATIGAN: Very briefly.

15 CROSS-EXAMINATION

16 BY MS. RATIGAN:

17 Q So when your brother got out of the car, did he go
18 all of the way into the woods, or just a couple of steps?

19 A No, sir -- I mean, no, ma'am. It was a couple of
20 steps.

21 Q Okay. So you could see him the whole time?

22 A Yes.

23 Q And your testimony today is that you spoke to
24 Mr. Robinson. You just don't remember what y'all talked
25 about?

1 A Yes.

2 Q Okay. And you don't remember who subpoenaed you. It
3 was either the State or Mr. Robinson, you just don't
4 remember?

5 A I don't remember.

6 Q Okay. Did you ever speak to the Prosecutor in this
7 case? Did you ever speak to him?

8 A I didn't speak to nobody, ma'am.

9 Q Okay. So you just -- you spoke to the officers that
10 day, and that was it?

11 A Yes, ma'am.

12 Q Okay. So your testimony today is that you went to
13 pick up your brother. And then, at some point, you pulled
14 over on the side of the road. He got out, came back in.
15 Then you went to a motel. And then you left to go to the
16 Bi-Lo; is that correct?

17 A Yeah. To meet Porsche, yes, ma'am.

18 MS. RATIGAN: May I approach, Your Honor?

19 THE COURT: You may.

20 BY MS. RATIGAN:

21 Q Do you remember -- this is Applicant's Exhibit No. 1.
22 Do you remember giving this -- signing this statement?

23 A I remember signing it, yeah.

24 Q And your testimony today is that you didn't read it
25 before you signed it?

1 A I didn't read it.

2 Q So if the statement says that you went straight to
3 the Bi-Lo from having pulled over on the side of the road,
4 are you saying that's incorrect?

5 A That's incorrect.

6 Q So your testimony today is correct, but the statement
7 you gave the officer is incorrect?

8 A Incorrect, yes, ma'am.

9 Q Okay. And why didn't you read it before you signed
10 it?

11 A I was, actually, scared of him. I was scared. I had
12 never been put in a -- or been in a -- this situation and
13 a run in with the law. So he made me believe that if I
14 gave a statement, I would leave, so.

15 Q And you've never looked at it again?

16 A No, ma'am.

17 MS. RATIGAN: That's all I have, Your Honor.

18 THE COURT: Anything else?

19 MR. JOHNSON: No redirect, Judge.

20 THE COURT: So the statement -- other than the motel
21 being in between the incident in the woods and the
22 Bi-Lo -- headed to the Bi-Lo -- they never got there.
23 That's the only thing admitted. I mean, it's
24 inconsistent, other than that one fact that's admitted.

25 MR. JOHNSON: That's correct, Your Honor.

1 THE COURT: Okay. That's all I wanted to know.
2 You can step down.

3 THE WITNESS: All right.

4 MR. JOHNSON: Your Honor, that's the Applicant case.
5 If you would hear us out, I would like to make a brief
6 argument whenever she's finished.

7 THE COURT: Okay. Ms. Ratigan, are you going to call
8 anybody?

9 MS. RATIGAN: The State would rest on the record,
10 Your Honor.

11 THE COURT: All right. Summarize your position.

12 MR. JOHNSON: Thank you, Your Honor.

13 May it please the Court.

14 First of all, to clarify something with Mr. Glenn, I
15 think some of the -- basically, what the State and some of
16 the details that he may have offered may have been left
17 out as far as being able to keep his brother in his sight,
18 and things of that nature. And that's all we were trying
19 to get to there. He doesn't -- I just asked him
20 questions. I don't think he's trying to sway the Court
21 one way or the other.

22 Now, Your Honor, as far as our application for
23 relief, the basic claim, obviously, is ineffective
24 assistance of counsel. We believe that Mr. Robinson gave
25 Mr. Young the wrong advice that led to his decision to

1 plead guilty.

2 Your Honor, the main thing here is the constructive
3 and actual possession -- or constructive possession.
4 Apparently, the understanding between Mr. Young and
5 Mr. Robinson is that they were going to argue constructive
6 possession as a grounds for, I guess, Constitutionally
7 preventing the drugs from coming in. And that's what my
8 client thought that they were there to do. I think that's
9 erroneous.

10 In its natural sense, constructive possession is a
11 legal argument. It's whether you have dominion and
12 control versus mere presence. I don't think that saying
13 that there is constructive possession is a Constitutional
14 or otherwise legal ground for suppression in itself.
15 Therefore, my client was inappropriately misled. I
16 believe that he was given erroneous advice. And,
17 therefore, relying on that advice, he pled guilty.

18 Your Honor, in order to attempt to show prejudice,
19 what we were trying to state is that the case itself was
20 very viable. Where the drugs were found in some field on
21 the side of the road with his testimony and my client's
22 testimony and with the -- any admittance by my client of
23 being an inconsistent statement to the officers, I think
24 that he would have a very good chance at trial considering
25 the -- you know, constructive possession cases are

1 difficult to prove in the first place. And they're even
2 more difficult to prove when they're not in someone's car
3 or someone's house. When they're in the middle of
4 someone -- some field at someone else's property, I think
5 he would have had a good opportunity to -- in order to
6 defeat the charges themselves.

7 And if it weren't for the advice that was given to
8 Mr. Young by Mr. Robinson, my client would have proceeded
9 to trial. And, Your Honor, I think that would be the
10 prejudice aspect of it.

11 But, Your Honor, overall, again, constructive
12 possession is not a grounds for necessarily suppression of
13 the drugs. It's a grounds for a legal argument, Judge.

14 THE COURT: Well, I mean, what's the difference? I
15 mean, if the drugs don't come in, your position improves.
16 If the drugs come in, certainly, your position is
17 different. And whether a judge hears it or a jury hears
18 it, it's still the same result.

19 MR. JOHNSON: Understood, Judge.

20 But --

21 THE COURT: It's an argument.

22 MR. JOHNSON: Understood, Judge.

23 But there needs to be some sort of Constitutional
24 grounds set forth for trying to prevent -- mainly, the
25 stop was -- you've got to say the stop was illegal.

1 Obviously, that wasn't relevant here. But something has
2 to be Constitutionally violated before a judge will
3 suppress drugs, or suppress something -- some sort of
4 piece of evidence.

5 And constructive possession is not a grounds to argue
6 there. And that's -- if you look at the transcript,
7 Judge, that's all he argued. That's the only thing is he
8 argued that -- he argued constructive possession. And
9 constructive possession is never in any instance -- it's a
10 legal argument. It's a defense, rather than a
11 Constitutional argument to prevent the drugs from coming
12 in themselves.

13 THE COURT: But you're saying it's a factual
14 argument. And the jury should have considered that
15 question --

16 MR. JOHNSON: That's correct.

17 THE COURT: -- as to whether or not he was, actually,
18 in control or not legally.

19 MR. JOHNSON: That's right, Judge. That's the
20 argument.

21 THE COURT: Once you lose the suppression hearing,
22 then you argue the facts can't support the construction --
23 constructive possession.

24 MR. JOHNSON: Yes, Judge.

25 THE COURT: The jury's question of fact would resolve

1 that.

2 MR. JOHNSON: Yes, Judge. That's, essentially, what
3 I'm saying.

4 But he was doing it in the legal phase. And that was
5 something that my client relied upon. He thought he,
6 actually, had a legal ground for constructive possession.
7 And I think that sentence sums it up nicely what our
8 position is. He thought he had a legal ground for
9 constructive possession. And that never was there.

10 THE COURT: Now, if he goes to a jury trial on
11 trafficking third, his sentencing range is quite
12 different.

13 MR. JOHNSON: Judge, I understand that.

14 My -- I've discussed that at length with my client.
15 And, apparently, you know, Judge, he's willing to take
16 that risk, if Your Honor would see fit to grant his
17 application based on ineffective assistance of counsel.

18 THE COURT: The last trafficking third I took -- or
19 was presiding over at trial, it wasn't long ago. And the
20 fellow wasn't at home and showed up, his house had been
21 burglarized. He called the police, come and help me with
22 this burglary at my house. Low and behold, somebody left
23 a big wad of crack in his bedroom. The police showed up
24 to investigate the burglary and found crack in his house
25 and he got 25 years. I gave him the minimum.

1 MR. JOHNSON: Yes, sir, Judge.

2 THE COURT: He went to trial on it.

3 MR. JOHNSON: Yes, sir, Your Honor.

4 THE COURT: Your hands are tied as the judge when you
5 go to trial on 25 to 30. You've got that little narrow
6 range. I felt sorry for him.

7 MR. JOHNSON: Yes, sir, Judge.

8 THE COURT: Because 25 years is 25 years. That's a
9 long time.

10 MR. JOHNSON: Yes, sir, Judge.

11 THE COURT: That's a lot to consider when you're as
12 young --

13 You don't look 25.

14 MR. EDWARD YOUNG: Yes, sir. But --

15 MR. JOHNSON: Stand when you address the Court.

16 THE COURT: How old are you?

17 MR. EDWARD YOUNG: I'm 28.

18 THE COURT: Okay. 28. I knew you weren't 30.

19 Anyway, that's just my observation is 25 is a huge
20 risk. I mean, if you want to take that risk -- I know as
21 lawyers, all lawyers are always very fearful of their
22 clients having that kind of time staring at them and
23 85 percent when there's something less than that
24 available. That's just a huge, huge concern for most
25 lawyers. And I think it was for Mr. Robinson.

1 I understand your argument now. I've got it. I get
2 it. So let me read over everything and decide what I'm
3 going to do.

4 MR. JOHNSON: Thank you, Your Honor.

5 THE COURT: Any other further argument?

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

7 I think you understand exactly what happened.

8 THE COURT: I'm on the same page with you now.

9 MR. JOHNSON: All right.

10 THE COURT: And I know Ms. Ratigan's position is
11 Mr. Robinson gave the advice he thought was proper. I'm
12 with you there, too. So let me think about it.

13 MR. JOHNSON: Thank you, Judge.

14 MS. RATIGAN: Thank you, Judge.

15 THE COURT: You're welcome.

16 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

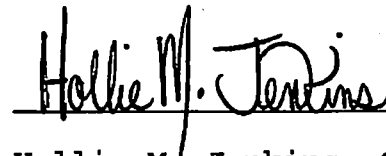
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 16th day of December, 2014.

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

May 26, 2015

A handwritten signature in cursive script that reads "Hollie M. Jenkins". The signature is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF GREENVILLE)

C.A. No.: 2013-CP-23-5236)

Edward Rorecuse Young,)
S.C.D.C. No. 314830)

Applicant,)

VS.)

State of South Carolina,)

Respondent.)

ORDER GRANTING
POST-CONVICTION RELIEF

ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2015 MAR 19 AM 11:35

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 27, 2013. The Respondent made its return on March 26, 2014. An evidentiary hearing into the matter was convened on December 16, 2014, at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Brian P. Johnson, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying on behalf of the Applicant was his brother, Adidas Glenn. Testifying on behalf of the State was Applicant's plea counsel, Scott D. Robinson, Esquire. The Court had before it a copy of the guilty trial transcript, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the return.

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the November 2010 term of General Sessions for

trafficking cocaine base (2010-GS-23-9215A). Scott D. Robinson, Esquire represented the Applicant.

On October 9, 2012, the Applicant pled guilty as indicted. The Honorable William H. Seals, Jr. sentenced the Applicant to seven years imprisonment for trafficking cocaine base (10-28 grams), second offense. The Applicant did not appeal.

ALLEGATIONS

In his Application, the Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. Failed to call witnesses who would have testified favorably on the Applicant's behalf.
 - b. Failed to discuss the elements of constructive possession.
 - c. Utilized invalid strategic reasoning.
2. Involuntary guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe the witnesses who testified at the hearing, and closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

INEFFECTIVE ASSISTANCE OF COUNSEL

The Applicant alleges he received ineffective assistance of counsel. For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629

SCD/

S.E.2d 353, 356 (2006).

The two-part test adopted in Strickland also "applies to challenges to guilty pleas based on ineffective assistance of counsel." Hill v. Lockhart, 474 U.S. 52, 58 (1985).

"A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial." Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009).

"To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." Roddy v. State, 339 S.C. 29, 33, 528 S.E.2d 418, 421 (2000). "The longstanding test for determining the validity of a guilty plea is 'whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.'" Hill, 474 U.S. at 56 (quoting North Carolina v. Alford, 400 U.S. 25, 31 (1970)).

The record reflects that the Applicant pled guilty after the Plea Court took testimony on plea counsel's motion to suppress the drugs. Plea counsel argued that the Court should suppress the drugs because the Applicant did not have dominion and control over the drugs. (Trial transcript, pp.71-13). Plea counsel confirmed the same at the PCR Hearing.

The Applicant testified that plea counsel told him that the Plea Court was going to deny his motion to suppress and because of that, he should plead guilty. Plea counsel admitted the same. The Applicant testified that he learned about actual and constructive possession after his guilty plea and that plea counsel erroneously explained the subject. Specifically, he learned that actual possession occurs when the drugs are found to be in the actual physical custody of the

1024

person charged with possession, and that constructive possession occurs when one has dominion and control, or the right to exercise dominion and control. The Applicant testified that he learned that constructive possession was not a ground for suppression, but rather an argument that would have been made on his behalf for the finder of fact.

The Applicant testified that he never touched the drugs. The drugs were found in a field off of the side of the road. The Applicant did not own the land. The Applicant's brother, Adidas Glenn, provided testimony that supported the Applicant's claim that he did not touch the drugs. Mr. Glenn further stated that he told plea counsel the same and was available to testify on his brother's behalf.

I find that plea counsel failed to render reasonably effective assistance under prevailing professional norms by failing to accurately explain actual and constructive possession to the Applicant and giving erroneous legal advice. As such, the Applicant has satisfied the first prong of the Strickland test—deficient performance. Furthermore, after starting a trial, the Applicant pled guilty after relying on plea counsel's advice. As such, the Applicant has satisfied the second prong of the Strickland test—prejudice.

CONCLUSION

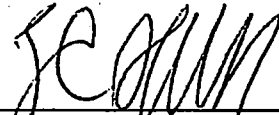
Based on all the foregoing, this Court finds and concludes that the Applicant's application for Post-Conviction Relief shall be granted.

IT IS THEREFORE ORDERED:

1. That the Applicant's application for post-conviction relief be granted; and
2. That the Applicant be given a new trial.

AND IT IS SO ORDERED this 9th day of March, 2015.

SCM



Eugene C. Griffith, Jr.

Presiding Judge

Thirteenth Judicial Circuit

Kershney, South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Edward Rorecuse Young

AKA:

Race: Sex: M Age: 25

DOB: -1986 SS#:

Address:

City, State, Zip: Woodruff, SC 29388

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Trafficking in ice, crack or crack - 10 g or more, but less than 28 g - 2nd offense

in violation of § 44-53-0375(C) of the S.C. Code of Laws, bearing CDR Code #

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSCw/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Stenberg, Howard

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code

§ 24-13-40 to be calculated and applied

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code

§17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS2309215A

A/W#: 2010GS2309215A

Date of Offense: 7/30/2010

S.C. Code § : 44-53-0375(C)(1)

CDR Code #: 0450

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

0451

(defendant's initials)

Recommendation by the State.

Defendant

Attorney for Defendant

SC Bar#

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

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months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100
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Proviso 90.5 (SCCJA Surcharge)	\$5	\$5
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2157

Sentence Date: 10-9-2012

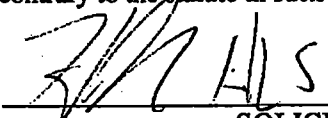
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING COCAINE BASE (CRACK COCAINE)

At a Court of General Sessions, convened on **NOV 23 2010** the Grand Jurors of Greenville
County present upon their oath:

That EDWARD RORECUSE YOUNG did in Greenville County, on or about the 30th day of July, 2010,
knowingly sell, manufacture, deliver or bring into the State of South Carolina or did knowingly provide financial
assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver or bring into the State or was
knowingly in actual or constructive possession of more than 10 grams of Cocaine Base (Crack Cocaine). This is
in violation of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

WITNESSES

T Mitchell

Bmo

Greenville County Sheriffs Office

7/30/2010

**ARREST WARRANT NUMBER
DIRECT PRESENTMENT**

REF I481794

ACTION OF GRAND JURY

TRUE BILL

Ann Soderette

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-23-
HLS

009215A

✓ The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

November

TERM 2010

THE STATE

vs.

EDWARD RORECUSE YOUNG

✓ Indictment for

0450

**TRAFFICKING COCAINE BASE
(CRACK COCAINE)**

VIOLATION § 44-53-0375

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 10/31/13
 OMCOMITA RELEASE DATE SCREEN C023981
 SCDC# > 314830 LOC: EVANS
 YOUNG, EDWARD R SCDC CLASSIFICATION... VIOLENT
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY... N
 SEXUAL PREDATOR...: NOT APP
 DNA STATUS...: COMPLETED
 GPS REQUIREMENT...: N
 PREA DECISION...:
 CURRENT SENTENCE: 007-00-000 CONSECUTIVE SENTENCE ... N
 007-00-000 CURRENT SENT START DATE: 10/09/2012
 PROJECTED COMPLETION DATES
 MAXOUT DATE: 02/21/2019 CURRENT EWC ..: NOT CURRENTLY EARNING EWC
 YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
 INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

 TOTAL GT DAYS EARNED: 000006 LABOR CREW/WORK PROG DATE: 99/99/9999
 TOTAL EARNED WORK CREDITS ...: 000030 LABOR CREW DISQ REASON:
 TOTAL EDUCATION CREDITS: 000000 CATEGORY 4 OR 5 OFFENSE
 TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00
 TOTAL SERVICE TIME EARNED ...: 000386 ISS.....:

 PFKEYS: 5:HISTORY OF DATE CHANGES
 4-© 1 Sess-1 167.7.50.33 SCDC1350 3/11

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 10/31/13

C0239

YOUNG, EDWARD R FBI # 142042FC1 SID# SC01558149 SCDC # 314830

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... EVANS CORR INST

SECURITY/CUST.: 3 ADULT-STRAIGHT SENTENCE

CURR INCARC SENT...: 7 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: NO

SOCIAL SECURITY #...: [REDACTED]

DORM.....: MA0230Z

RACE.....: B SEX....: M

PROJ MAXOUT DATE: 02/21/2019

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: NO CURRENT JOB

EDUC PGM.: NO CURR EDUC PROGRAM

EWC LEVEL: 0 REC LEVEL:

ASSIGNMENT...: LOCKED - UP

CURRENT PROGRAM...: COURT-ORD ATU

AGE...: 27 DATE OF BIRTH...: [REDACTED]/85

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE YRS MOS DYS	COUNTY	SENTENCE START	V/NV	CATEGORY
TRAFFICK METH 10-28GR 2	7 0 0	GREENVILLE	10/ 9/2012	V	4
CARRY PROHIBITED WEAPON	0 0 0	SPARTANBUR	3/ 4/20	6 N	3

PREVIOUS SCDC OFFENSES (COMPLETE)	SENTENCE YRS MOS DYS	COUNTY	SENTENCE START	V/NV	CATEGORY
RECEIVE STOLEN PROPERTY	0 0 30	SPARTANBUR	11/ 3/20	7 N	2
MARIJUANA POSSESS	0 0 30	SPARTANBUR	11/ 3/20	7 N	2
TRAF COCAINE (10-28G, 1ST)	3 0 0	SPARTANBUR	3/ 4/20	6 V	4

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD, WANTED, NOTIFY):

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

7/28/13 STRIKING AN EMPLOYEE WIT	CONVICTED	MAJOR STAFF
4/25/13 POSSESSION OF A WEAPON	DROPPED	CHARG
9/ 9/ 7 POSSESSION OF A WEAPON	CONVICTED	MAJOR
9/ 1/ 6 POSSESSION OF A WEAPON	DROPPED	MAJOR

NON-ASSAULTIVE DISCIPLINARIES:

7/28/13 POSS. OR/ATTEMPT TO POSS	CONVICTED	MAJOR
7/28/13 POSSESSION OF CONTRABAND	CONVICTED	ADMIN
7/26/13 USE, POSS NARC, MARIJ, UNAU	CONVICTED	MAJOR
7/26/13 POSSESSION OF CONTRABAND	CONVICTED	MAJOR
7/26/13 POSS. OR/ATTEMPT TO POSS	CONVICTED	MAJOR
7/ 9/13 POSSESSION OF CONTRABAND	CONVICTED	ADMIN
6/15/13 USE OBSCENE, VULGAR, PROFA	CONVICTED	ADMIN
6/ 7/13 POSS. OR/ATTEMPT TO POSS	CONVICTED	MAJOR
6/ 1/13 DISRESPECT	CONVICTED	ADMIN
5/25/13 POSSESSION OF CONTRABAND	CONVICTED	MAJOR
5/ 1/13 OUT OF PLACE		OTHER
4/25/13 POSSESSION OF CONTRABAND	DROPPED	MAJOR
4/25/13 POSSESSION OF CONTRABAND	CONVICTED	MAJOR
2/26/13 DISRESPECT	CONVICTED	ADMIN
1/11/13 GAMBLING AND LOAN SHARKI		OTHER
1/ 8/13 REFUSING OR FAILING OBEY	CONVICTED	ADMIN
12/29/12 POSSESSION OF CONTRABAND		OTHER
12/ 3/12 THREATENING TO INFLECT H	CONVICTED	MAJOR
6/ 5/ 8 POSSESSION OF CONTRABAND	DROPPED	CHARG
5/29/ 8 REFUSING OR FAILING OBEY	CONVICTED	MAJOR
11/ 4/ 7 SEXUAL MISCONDUCT	CONVICTED	MAJOR

11/ 3/ 7 POSSESSION OF CONTRABAND DROPPED

MAJOR

YOUNG, EDWARD R FBI # 142042FC1 SID# SC01558149 SCDC # 314830 (CONTINUED)

11/ 3/ 7	POSS. OR/ATTEMPT TO POSS	DROPPED	MAJOR
9/ 9/ 7	POSS. OR/ATTEMPT TO POSS	CONVICTED	MAJOR
8/29/ 7	POSSESSION OF CONTRABAND	DROPPED	MAJOR
3/12/ 7	OUT OF PLACE	CONVICTED	MAJOR
2/21/ 7	UNAUTH I/M ORGAN/PART ST	CONVICTED	MAJOR
1/18/ 7	OUT OF PLACE		OTHER
12/ 2/ 6	POSSESSION OF CONTRABAND	CONVICTED	MAJOR
10/16/ 6	REFUSING TO ATTEND COMPU	CONVICTED	ADMIN
10/ 5/ 6	DISRESPECT	CONVICTED	MAJOR
10/ 3/ 6	REFUSING OR FAILING OBEY	CONVICTED	MAJOR
9/11/ 6	OUT OF PLACE	CONVICTED	ADMIN
9/ 7/ 6	OUT OF PLACE	CONVICTED	ADMIN
8/29/ 6	VIOLATIONS WRITE/POST IN	CONVICTED	ADMIN
8/16/ 6	REFUSING OR FAILING OBEY	CONVICTED	ADMIN
6/14/ 6	REFUSING TO WORK	CONVICTED	ADMIN
6/11/ 6	CREATING UNNECESSARY NOI		OTHER

HISTORY OF MOVEMENTS:

9/ 5/13	EVANS	INCARCERATED	ADMINISTRATIVE
12/27/12	WATEREE RIVER	INCARCERATED	RETURN FROM COURT
12/ 7/12	SPARTANBURG CO	AUTH ABSENCE (AWL)	TO COURT
12/ 4/12	WATEREE RIVER	INCARCERATED	RETURN FROM COURT
12/ 3/12	SPARTANBURG CO	AUTH ABSENCE (AWL)	TO COURT
11/ 7/12	WATEREE RIVER	INCARCERATED	ADMINISTRATIVE
10/15/12	KIRKLAND	INCARCERATED	R&E PROCESSING
10/15/12	PERRY	INCARCERATED	NEW SENT W/O PR/CS/SF REV
8/ 1/ 8	SPARTANBURG CO	PROBATION	RELEASED TO PROBATION
11/ 4/ 7	LEE	INCARCERATED	RETURN FROM COURT
11/ 3/ 7	SPARTANBURG CO	AUTH ABSENCE (AWL)	TO COURT
6/12/ 7	LEE	INCARCERATED	ADMINISTRATIVE
3/28/ 7	ALLENDAL	INCARCERATED	LOCKUP-ADJUSTMENT COMM.
12/ 6/ 6	MACDOUGALL CORR	INCARCERATED	ADMINISTRATIVE
12/ 6/ 6	RIDGELAND	INCARCERATED	COURT/PAROLE HEARING VIA
10/23/ 6	MACDOUGALL CORR	INCARCERATED	ADMINISTRATIVE
5/ 1/ 6	TYGER RIVER	INCARCERATED	ADMINISTRATIVE
4/10/ 6	KIRKLAND	INCARCERATED	R&E PROCESSING
4/10/ 6	PERRY	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
WARDKEEPER ASSISTANT	01/30/13	5/17/13	DISCIPLINARY/LOCK-UP	3F5
WARDKEEPER ASSISTANT	01/16/13	1/29/13	CUSTODY REVIEW	2F5
WARDKEEPER ASSISTANT	11/09/12	12/ 7/12	COURT	2F5
GENERAL WORKER	06/19/07	9/17/ 7	PLACED IN ST/SP CUSTODY	5F5
CONSTRUCTION TRAINEE	03/15/07	3/28/ 7	DISCIPLINARY/LOCK-UP	3F5
WARDKEEPER ASSISTANT	10/06/06	10/23/ 6	INSTIT TRANSFER	3F5
WARDKEEPER ASSISTANT	09/22/06	10/ 5/ 6	ASLT/DRUG/MAJOR DISC	2F5
WARDKEEPER ASSISTANT	09/08/06	9/21/ 6	MI ELIGIBLE FOR LEVEL 2	3F5
WARDKEEPER ASSISTANT	05/05/06	9/ 7/ 6	ASLT/DRUG/MAJOR DISC	2F5
WARDKEEPER ASSISTANT	05/02/06	5/ 4/ 6	MI ELIGIBLE FOR LEVEL 2	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
LVL 3 - FULL TIME(NO EWC)	10/24/06	3/14/ 7	INMATE REQUEST
BONUS 15 OR MORE	05/18/06	10/23/ 6	INSTIT TRANSFER

***** END OF REPORT *****

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenville

VS.

Edward Rorecuse Young

AKA:

Race:

Sex: M

Age:

25

DOB:

1986

SS#:

Address:

City, State, Zip:

Woodruff, SC 29388

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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A/W#: 2010GS2309215A

Date of Offense: 7/30/2010

S.C. Code § : 44-53-0375(C)(1)

CDR Code #: 0450

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☐ CONVICTED OF or ☒ PLEADS

in violation of § 44-53-0375(C) of the S.C. Code of Laws, bearing CDR Code #

☐ NON-VIOLENT☒ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC
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(defendant's initials)

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☐ Negotiated Sentence,☒ Recommendation by the State.

Steinberg, Howard

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

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for a determinate term of

7

days/months/years of

☐ under the

Youthful Offender Act

not to exceed

years

and/or to pay a fine of \$

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Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

\$

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 56-1-286 (DUI Breath Test)

\$25

\$

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\$500

\$

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\$

§ 14-1-213 (Drug Court Surcharge)

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\$

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\$50

\$

§ 56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.5 (SCCJA Surcharge)

\$5

\$

3% to County (if paid in installments)

\$

TOTAL

\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2157

10-9-2012