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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
G. Edward Welmaker, Circuit Court Judge

Opinion No. 2014-UP-282 (S.C. Ct. App. filed 7/9/2014)
11-GS-23-09939

THE STATE,

RESPONDENT,

V.

DONALD MARQUICE ANDERSON,

PETITIONER

APPENDIX

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

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

The State, Respondent,

v.

Donald Marquice Anderson, Appellant.

Appellate Case No. 2012-212499

Appeal From Greenville County
G. Edward Welmaker, Circuit Court Judge

Unpublished Opinion No. 2014-UP-282
Heard June 17, 2014 – Filed July 9, 2014

AFFIRMED

Appellate Defender Carmen Vaughn Ganjebsani,
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mary Shannon Williams, both of
Columbia, for Respondent.

PER CURIAM: The State indicted Donald Marquice Anderson for possession with intent to distribute cocaine base. Anderson moved to suppress the cocaine, arguing the detention and subsequent pat-down was unlawful under the Fourth Amendment. The trial court denied his motion after a pretrial hearing, and

following his bench trial, found him guilty as charged. On appeal, Anderson raises two issues to this court: (1) the police lacked reasonable suspicion to detain him and (2) the police did not have a reasonable belief that he was armed and dangerous to justify the pat-down. As to these two issues, we affirm.

Detective Keith Cothran of the Greenville Police Department obtained a search warrant for a house on 106 Dobbs Street based on its connection with drug transactions. At the suppression hearing, Det. Cothran testified drug "runners" used a footpath¹ near the house to sell drugs that came from 106 Dobbs. Based on his belief that the footpath was "associated with [the drug activity at] 106 Dobbs," Det. Cothran ordered officers "to secure and detain any persons located . . . [on] the [footpath]" while the search warrant was being executed.

Detectives Kevin Hyatt and Gary Rhinehart with the Greenville Police Department testified they were stationed at the footpath during the search and were ordered "to take control of any persons on the [footpath]" during the search of the house. According to Det. Hyatt, he saw Anderson and a woman "approximately half-way up the [footpath]" during the search. He claimed that when Anderson noticed the police stationed on the footpath, he "immediately veered to the right in a quick manner." Det. Rhinehart confirmed this, stating when Anderson noticed the officers, "he made an obvious gesture to divert his path from the way he was walking." Det. Hyatt ordered Anderson "to stop and get on the ground," and Det. Rhinehart handcuffed him. Det. Hyatt then performed a pat-down and found a plastic bag in Anderson's pocket containing crack cocaine.

Anderson asserted two grounds for suppressing the evidence at the pre-trial hearing. First, he argued Det. Cothran's order to Det's. Hyatt and Rhinehart that they seize any person on the footpath, apparently without suspicion of criminal activity, constituted "a warrantless search that required probable cause" because it "simply was not a *Terry*² stop." The trial court denied the motion on this ground, explicitly finding "that this was a *Terry* stop." We are unable to address the merits of the trial court's ruling on this argument, however, because it was not presented to this court on appeal. *See* Rule 208(b)(1)(B), SCACR ("[N]o point will be considered which is not set forth in the statement of the issues on appeal."); *S.C.*

¹ Det. Cothran, as well as the officers who testified at the hearing, referred to the footpath as "the cut."

² *Terry v. Ohio*, 392 U.S. 1 (1968).

Dep't of Transp. v. M & T Enters. of Mt. Pleasant, LLC, 379 S.C. 645, 659, 667 S.E.2d 7, 15 (Ct. App. 2008) ("[E]ven if an issue is preserved at the trial court level, it must still be properly raised and argued to the appellate court."). Instead, we are confined to addressing the issues appealed by Anderson: (1) whether the police had reasonable suspicion to detain him and (2) whether the police had a reasonable belief that he was armed and dangerous to justify the pat-down.

We find there is evidence to support the trial court's finding that Det. Hyatt had reasonable suspicion to justify the stop. *See State v. Taylor*, 401 S.C. 104, 108, 736 S.E.2d 663, 665 (2013) (stating "[a] trial court's Fourth Amendment suppression ruling must be affirmed if supported by any evidence"); *State v. Corley*, 383 S.C. 232, 240, 679 S.E.2d 187, 191 (Ct. App. 2009), *aff'd as modified*, 392 S.C. 125, 708 S.E.2d 217 (2011) (stating an officer may detain a person "when [he] has a reasonable suspicion supported by articulable facts . . . that the person is involved in criminal activity"). Det. Hyatt possessed personal knowledge of the high-crime area in which Anderson was detained and its association with drug traffic. *See United States v. Lender*, 985 F.2d 151, 154 (4th Cir. 1993) (stating "an area's propensity toward criminal activity is something an officer may consider" in determining the existence of reasonable suspicion, which includes personal knowledge that an area "ha[s] a large amount of drug traffic"). Specifically, he knew the footpath served as a thoroughfare for drug "runners" and was associated with the known drug activity at 106 Dobbs. *See Corley*, 383 S.C. at 242, 679 S.E.2d at 192 (relying on defendant being at a "known drug house where several cases had been made and search warrants executed" to find reasonable suspicion existed). Additionally, Det. Rhinehart testified Anderson was "coming from the area of the search warrant," and when he noticed the officers, he made a suspicious movement "to divert his path." *See Taylor*, 401 S.C. at 110, 736 S.E.2d at 666 ("Evasive conduct, although stopping short of headlong flight, may inform an officer's appraisal of a street corner encounter." (quoting *Lender*, 985 F.2d at 154)). Considering this evidence in combination, we find the evidence supports the trial court's finding that reasonable suspicion existed to detain Anderson. *See State v. Khingratsaphon*, 352 S.C. 62, 69, 572 S.E.2d 456, 459 (2002) ("In determining whether reasonable suspicion exists, 'the totality of the circumstances—the whole picture—'must be considered." (quoting *United States v. Cortez*, 449 U.S. 411, 417, 101 S. Ct. 690, 695 (1981))).

Anderson cites *Bailey v. United States*, 133 S. Ct. 1031 (2013), to argue his detention was unlawful because the footpath was outside the scope of the search warrant. We find *Bailey* inapplicable. In that case, the Supreme Court considered the constitutionality of a detention incident to the execution of a search warrant and

explicitly declined to address whether the detention was justified by the existence of reasonable suspicion under *Terry*. See 133 S. Ct. at 1043 (stating the Court "expresses no view" as to whether "stopping [the defendant] was lawful under *Terry*").

We also find evidence to support the trial court's finding that Det. Hyatt had a reasonable belief that Anderson was armed and dangerous to justify the pat-down. See *Khingratsaiphon*, 352 S.C. at 69, 572 S.E.2d at 459 (stating an officer may conduct a pat-down for weapons when "the officer has reason to believe the person is armed and dangerous"). Our supreme court has recognized that because of the "indisputable nexus between drugs and guns," when an officer has reasonable suspicion that drugs are present, "there is an appropriate level of suspicion of criminal activity and apprehension of danger" to justify a pat-down of an individual. *State v. Banda*, 371 S.C. 245, 253, 639 S.E.2d 36, 40 (2006). Given (1) "the frequent association between drugs and guns," 371 S.C. at 254, 639 S.E.2d at 41, (2) the fact that the search warrant was being executed when the pat-down occurred, and (3) the officers' belief that the occupants of 106 Dobbs possessed weapons, we find it was reasonable for Det. Hyatt to conduct the pat-down. Additionally, we rely on Det. Hyatt's testimony that he performed the pat-down in search of weapons, not "narcotics or anything [else]."

Anderson asserts the pat-down was unlawful because at the hearing, Det. Hyatt agreed that he "didn't see anything that looked like a weapon on [Anderson]" when he ordered him to the ground. As expressed by our supreme court, "[i]n assessing whether a suspect is armed and dangerous, '[t]he officer need not be absolutely certain that the individual is armed.'" *Khingratsaiphon*, 352 S.C. at 69-70, 572 S.E.2d at 459 (quoting *Terry*, 392 U.S. at 27, 88 S. Ct. at 1883, 20 L. Ed. 2d at 909). Instead, the test is whether an officer can "point to specific and articulable facts which, taken together with rational inferences from those facts," create a reasonable "belief that his safety or that of others was in danger." *Id.* Based on our above analysis, we find the pat-down was justified by "specific and articulable facts" implicating Det. Hyatt's safety, as well as the safety of the other officers. *Id.*

AFFIRMED.

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

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
G. Edward Welmaker, Circuit Court Judge

Opinion No. 2014-UP-282 (S.C. Court of Appeals filed July 9, 2014)

THE STATE,

RESPONDENT,

V.

DONALD MARQUICE ANDERSON,

APPELLANT.

APPELLATE CASE NO. 2012-212499

PETITION FOR REHEARING

The Appellant, Donald Marquice Anderson, respectfully petitions the Court for a rehearing of its Opinion No. 2014-UP-282 pursuant to Rule 221(a), SCACR based upon the following points overlooked or misapprehended by the Court:

On July 9, 2014, this Court filed its unpublished opinion affirming Appellant's conviction for possession with intent to distribute cocaine base. In his appeal, Appellant argued that the Trial Court erred in ruling that the police officers had reasonable suspicion of criminal activity to justify stopping Appellant and reasonable suspicion to conduct a pat-down search of Appellant for weapons.

The police officers in this case had no justification for stopping and detaining Appellant under the stop and frisk exception to the Fourth Amendment set forth in Terry v.

Ohio, 392 U.S. 1 (1968). The State stated at the suppression hearing that four primary facts, taken together, provided the officers the basis for a reasonable suspicion of criminal activity: (1) the high crime neighborhood; (2) the execution of a search warrant of a suspected crack distribution house that was unconnected to Appellant; (3) the fact that Appellant was seen in the cut area between the home being searched and Sullivan Street, an area which was not covered by the search warrant; and (4) that Appellant changed direction and walked away upon seeing police officers. R. 42, l. 11 – 44, l. 18.

In making the determination that the officers had a particularized and objective basis for suspecting the particular person stopped of criminal activity, the courts must consider the totality of the circumstances as they existed at the time of the stop. United States v. Beauchamp, 659 F.3d 560, 569-70 (6th Cir. 2011). This does not, however, prevent a court from discussing each factor one by one as each are put into the mix. United States v. Sprinkle, 106 F.3d 613, 617 (4th Cir. 1997).

First, the fact that the officers spotted Appellant in a high crime neighborhood at dusk before it was dark does not provide independent or freestanding grounds for reasonable suspicion. See id. “Were we to treat the dangerousness of the neighborhood as an independent corroborating factor, we would be, in effect, holding a suspect accountable for factors wholly outside his control.” United States v. Perrin, 45 F.3d 869, 873 (4th Cir. 1995); see also Brown v. Texas, 443 U.S. 47, 52 (1979) (“The fact that appellant was in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that appellant himself was engaged in criminal conduct. In short, the appellant’s activity was no different from the activity of other pedestrians in that neighborhood.”).

Although being seen in a high crime neighborhood carries no weight standing alone, “an area’s disposition toward criminal activity is an articulable fact’ . . . that may be considered along with more particularized factors to support a reasonable suspicion.” Sprinkle, 106 F.3d at 617 (internal citations omitted). In this case, there are no other particularized factors to support a reasonable suspicion as discussed further below.

The second and third factors the State pointed to as justifying the officers’ stop of Appellant was the execution of a search warrant at a suspected crack distribution house nearby and Appellant’s location in a cut area between the home searched and Sullivan Street, an area that was not covered by the search warrant. The United States Supreme Court, however, has recently held that the seizure of a person stopped and detained beyond the immediate vicinity from the premises to be searched is invalid where the only justification for the detention was to ensure the safety and efficacy of the search. Bailey v. United States, 133 S. Ct. 1031 (2013).

That is what the officers did in this case. A perimeter was set up beyond the immediate vicinity of the house to be searched, and officers were to detain individuals in this area even though it was outside of the scope of the search warrant. R. 11, ll. 8-15; 16, ll. 13-15. When the officers saw Appellant in the cut area, they knew nothing in particular about Appellant except that he was present in the cut area between Dobbs Street and Sullivan Street. Appellant made no gestures indicative of criminal conduct or movements that might have suggested an attempt to conceal contraband.

There was no reason for these officers to have believed that Appellant was committing or about to commit a crime. That Appellant was located in an area that the officers had deemed relevant to the execution of the search warrant is a factor that should

be dismissed in determining whether the officers had reasonable suspicion to detain Appellant. See Ybarra v. Illinois, 444 U.S. 85 (1979) (holding that although search warrant gave police officers authority to search premises of public tavern and to search bartender for narcotics, pat-down search and seizure from tavern patron was not constitutionally permissible where there was no reasonable belief that patron was involved in any criminal activity or that patron was armed and dangerous).

The last factor the State points to as suspicious is that Appellant changed direction and walked away upon seeing the officers. Even assuming that Appellant walked away at a quick pace as Detective Hyatt testified, this alone, without more, is not an indication of criminal activity.

Walking away, even hurriedly, from an officer does not create reasonable suspicion. See Beauchamp, 659 F.3d at 570; see also United States v. Camacho, 661 F.3d 718, 726-27 (1st Cir. 2011) (holding that facts fell short of an objectively reasonable, particularized basis for suspecting defendant of criminal activity where “the most that can be said is that the two men were observed in a high crime area walking away from the vicinity of a street fight that one caller reported as involving Latin Kings”); United States v. Patterson, 340 F.3d 368, 372 (6th Cir. 2003) (stating that walking away from police “constitutes a factor to be outrightly dismissed”); United States v. Davis, 94 F.3d 1465, 1468 (10th Cir. 1996) (finding defendant’s actions “in exiting the car, making and then breaking eye contact with the officers, and then walking away from the officers” does not furnish the valid basis for a Terry stop); State v. Pugh, 826 N.W.2d 418, 423-24 (Wis. Ct. App. 2012) (finding crooked manner in which defendant walked away from officer did not give rise to reasonable suspicion of criminal activity necessary for a stop).

“Evasive conduct can, of course, assist an officer in forming reasonable suspicion,” but here there was no evasive conduct by Appellant. Sprinkle, 106 F.3d at 618. In cases in which courts have found that walking away from police does contribute to reasonable suspicion, specific facts have shown that the defendant’s behavior was otherwise suspicious. See United States v. Bumpers, 705 F.3d 168, 175-76 (4th Cir. 2013) (holding officer possessed reasonable suspicion to detain defendant where upon being caught by officer in the act of trespassing, defendant attempted to evade police by leaving premises at a quick pace); United States v. Pearce, 531 F.3d 374, 382-83 (6th Cir. 2008) (finding where officer observed defendant “exit a vehicle, glance towards him, hunch over, place his right hand in the small of his back, and start backing away,” officer had a reasonable basis for believing defendant had a weapon and was getting ready to fire); United States v. Caruthers, 458 F.3d 459, 466-67 (6th Cir. 2006) (finding reasonable suspicion when the defendant hurried away from an officer and “hunched down” by a wall as if to conceal contraband or reach for a weapon); State v. Taylor, 401 S.C. 104, 107, 111-13, 736 S.E.2d 663, 664, 667 (2013) (finding reasonable suspicion where officers observed defendant “huddled up” with another male in what looked like a drug transaction before the two men immediately split up upon seeing the officers).

There is absolutely no evidence in this case that Appellant’s behavior was otherwise suspicious. He was merely standing in the cut area with a female friend and turned and walked away upon seeing the police officers. This factor cannot form the basis of a reasonable suspicion on behalf of the officers to stop Appellant.

In its Opinion, this Court relied upon State v. Corley, 383 S.C. 232, 679 S.E.2d 187 (Ct. App. 2009), *aff’d as modified*, 392 S.C. 125, 708 S.E.2d 217 (2011) for the proposition

that Appellant's location in a cut area sometimes used by drug runners supported the Trial Court's finding that the officers had reasonable suspicion to stop Appellant. In Corley, the officer was conducting surveillance of a known drug residence and observed the defendant approach the residence in his vehicle at 2:50 a.m. The defendant exited his vehicle, walked to the rear of the residence, remained there for less than two minutes, and then returned to his vehicle and left. The officer initiated a traffic stop when the defendant failed to use a turn signal. Id. at 236, 679 S.E.2d at 189. This Court held that the officer's observation of defendant walking to the rear of the known drug residence, remaining there for a short period of time, and then promptly returning to his automobile, all which occurred in the early morning hours, supported a finding that the officer had reasonable suspicion to stop and investigate the defendant based on the officer's suspicion of drug activity. Id. at 242-43, 679 S.E.2d at 192-93.

In Corley, the officer actually saw the defendant approach the known drug residence during the early morning hours and remain there for a short period of time – activity apparently consistent with engaging in a drug transaction. In Appellant's case, the officers never saw Appellant approaching or leaving the house where the search warrant was being executed. The officers merely saw Appellant in the dead center of the cut area, which while also allegedly used by drug runners, was also just a shortcut pathway from Dobbs Street to Sullivan Street that anyone in the neighborhood could use. Simply put, this cut area was located in a high crime area, which as explained above, without anything more, is not sufficient to support reasonable suspicion of criminal activity to justify stopping Appellant.

Therefore, the factors provided by the State gain little, if any, strength when put together. Together, they did not give the officers in this case the necessary reasonable,

articulable suspicion of criminal activity. The stop of Appellant was not justified, and the motion to suppress the evidence of the crack cocaine should have been granted.

In addition, the officers did not have reasonable suspicion to conduct a pat-down search of Appellant for weapons where the officers did not articulate any specific facts which led them to believe that Appellant may have been armed or dangerous other than a generalized concern for their own safety.

Under Terry, “a law enforcement officer, for his own protection and safety, may conduct a pat-down to find weapons that he reasonably believes or suspects are then in the possession of the person he has accosted.” Ybarra v. Illinois, 444 U.S. 85, 93 (1980). “Nothing in Terry can be understood to allow a generalized cursory search for weapons The “narrow scope” of the Terry exception does not permit a frisk for weapons on less than reasonable belief or suspicion directed at the person to be frisked” Id. at 93-94.

Detectives Hyatt and Rhinehart offered no articulable reasons why Anderson needed to be frisked for weapons other than generalized concerns for the safety of themselves. To justify a pat-down search for weapons, an officer needs to articulate specific facts that led him or her to believe that the detained person was armed and dangerous. Terry, 392 U.S. at 21, 27; State v. Fowler, 322 S.C. 263, 267, 471 S.E.2d 706, 708 (Ct. App. 1996). A mere general concern for officer safety is not sufficient. Westmoreland v. State, 965 N.E.2d 163, 167 (Ind. Ct. App. 2012) (finding where defendant did not make any furtive movements and was not hostile or belligerent, officers were not justified based on a general concern for their own safety in patting down defendant); Commonwealth v. Preacher, 827 A.2d 1235, 1239-40 (Pa. Super. Ct. 2003).

The testimony of the officers indicated that Appellant made no movements or gestures indicating he was in possession of a weapon or about to commit an assault or otherwise acted threatening in any way. Instead, Appellant immediately complied with the officer's demands to get on the ground and was thereafter almost instantaneously handcuffed by Detective Rhinehart. Appellant was not wearing bulky clothing which could have concealed a weapon. Rather, he was wearing a shirt and shorts. Detective Hyatt further testified that he did not see anything that looked like a weapon on Appellant. Detective Hyatt only conducted the pat-down out of a general concern for officer safety. R. 17, ll. 19-21; 18, ll. 8-18; 23, ll. 6-10; 26, ll. 13-18 See Ybarra, 444 U.S. at 93 (holding that although search warrant gave officers the authority to search premises of tavern, pat-down of tavern patron was invalid where patron gave no indication or made any gestures suggesting he had a weapon).

This Court relies upon State v. Banda, 371 S.C. 245, 639 S.E.2d 36 (2006) for the proposition that when an officer has reasonable suspicion that drugs are present, there is an appropriate level of suspicion of criminal activity to justify a pat-down of an individual. In Banda, the South Carolina Supreme Court found that the police clearly had reasonable suspicion to suspect that drugs were present in the vehicle of which the defendant was a passenger. The police had observed the vehicle leave the residence of a known drug dealer. Additionally, the vehicle displayed stolen Georgia license tags and the police knew from a confidential informant that the target's drug shipments came from Georgia. Even though the police realized that the defendant was not their target, the Supreme Court found that the fact that the activity observed at the target's house corroborated the informant's statements was enough to give the officers a reasonable

suspicion that the defendant was in some way involved with the target's drug activity and that drugs might therefore be in the vehicle. Given the frequent association between drugs and guns, the Supreme Court held that the officer's frisk for weapons was appropriate under Terry. Id. at 253-54, 639 S.E.2d at 40-41.

In Banda, the officers had sufficient information that drugs would likely be found in the vehicle in which the defendant was a passenger and therefore with this information plus the nexus between drugs and guns, the officers had reasonable suspicion that the defendant might have been armed and dangerous. In Appellant's case, he was merely seen by officers in the middle of a cut through path in the neighborhood. The officers never saw him approaching or leaving the house being searched. The officers had no reason to believe that Appellant would have had drugs on his person. Therefore, without any reasonable belief that he had drugs on him, there was no reason for the officers to believe that Appellant was armed and dangerous.

Accordingly, the pat-down search of Appellant was invalid where the officers lacked a reasonable suspicion that Appellant was armed and dangerous. The Trial Court's denial of Appellant's motion to suppress the cocaine evidence should be reversed.

CONCLUSION

For the reasons set forth herein, Appellant Donald Marquice Anderson respectfully requests that the Opinion of the Court of Appeals be withdrawn and his conviction be reversed.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

This 24th day of July, 2014.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
G. Edward Welmaker, Circuit Court Judge

Opinion No. 2014-UP-282 (S.C. Court of Appeals filed July 9, 2014)

THE STATE,

RESPONDENT,

V.

DONALD MARQUICE ANDERSON,

APPELLANT.

APPELLATE CASE NO. 2012-212499

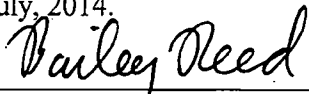
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Mary Shannon Williams, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 24th day of July, 2014.



Carmen V. Ganjehsani
Appellate Defender
ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 24th day
of July, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 24, 2021.

The South Carolina Court of Appeals

The State, Respondent,

v.

Donald Marquice Anderson, Appellant.

Appellate Case No. 2012-212499

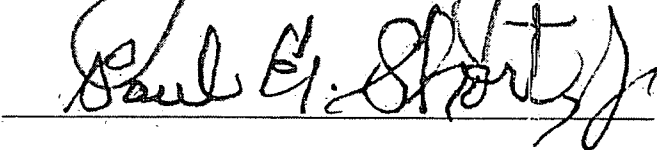
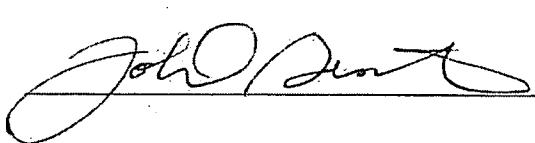
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ORDER

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

 C.J.
 J.
 J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
Mary Shannon Williams, Esquire
Carmen Vaughn Ganjehsani, Esquire
The Honorable G. Edward Welmaker

FILED

August 25, 2014 

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DONALD MARQUICE ANDERSON,

APPELLANT

APPELLATE CASE NO. 2012-212499

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 DONALD MARQUICE ANDERSON,)
)
 DEFENDANT.)
 _____)

2011-GS-23-09938 and 09939

JULY 10, 2012

TRANSCRIPT OF RECORD

B E F O R E:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

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

HOWARD STEINBERG, ESQUIRE
ATTORNEY FOR THE STATE

STUART SARRATT, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

1 that.

2 I look forward to working with you. I'm honored to
3 have this privilege. It makes me proud that you've
4 accepted this responsibility to be the fact-finders in this
5 particular case for these parties.

6 Before we have the opening statements of the
7 attorneys, I am going to send you back to your jury room.
8 You can get acquainted with one another. Don't discuss the
9 case. You don't have any idea what it's about, nor do I.
10 What I read to you off the indictment is certainly not
11 evidence in and of itself. We have some preliminary
12 matters we need to take care of. Hopefully, it won't be
13 very long. We'll call you back and be ready for you to
14 hear the opening statements of the attorneys. But don't
15 discuss the case or speculate on the case while you're back
16 now. I'll let you go with Mr. Frasier. He'll show you
17 where your jury room is.

18 (WHEREUPON, the jury exited the open court at
19 approximately 10:05 a.m.)

20 THE COURT: All right. Are there any -- I
21 understood yesterday that there were some matters that we
22 need to take care of outside the presence of the jury. Is
23 that a *Jackson versus Denno* hearing, or those matters?

24 MR. SARRATT: Yes, sir, Your Honor. I also have
25 a motion to suppress the introduction of the drugs in this

1 case based on the fact that it was a warrantless search not
2 supported by probable cause.

3 THE COURT: All right.

4 MR. SARRATT: Also, Your Honor, during the motion
5 to suppress, I would ask that the other witnesses be
6 sequestered.

7 THE COURT: And from the State, it's just a
8 statement?

9 MR. STEINBERG: Yes, sir. We're going to try to
10 combine them. I spoke with opposing counsel. We're going
11 to try to combine the facts of both the *Jackson versus*
12 *Denno* and the search at the same time since they're the
13 exact same one minute circumstances.

14 THE COURT: Okay.

15 MR. STEINBERG: We would also ask that all
16 witnesses be excused, not just the State's witnesses.

17 THE COURT: All right.

18 All right. Anybody who's going to be a witness in the
19 case or a potential witness if you can just step outside,
20 please, and we'll take some testimony.

21 MR. STEINBERG: Your Honor, the State's first
22 witness will be Detective Keith Cothran of the Greenville
23 City Police Department.

24 THE COURT: Come around and be sworn, please,
25 sir.

1 THE CLERK: Place your left hand on the bible and
2 raise your right.

3 Do you solemnly swear or affirm the testimony you're
4 about to give will be the truth, the whole truth and
5 nothing but the truth, so help you God?

6 THE WITNESS: Yes, I do.

7 THE CLERK: Thank you. You may be seated.

8 KEITH COTHRAN,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. STEINBERG:

12 Q. Detective Cothran, please tell the Judge how long
13 you've been in law enforcement, how long you've worked with
14 the vice unit?

15 A. I've been in law enforcement since February of 2006.
16 I've been in -- I was in vice for approximately two years
17 and a few months.

18 Q. What do you currently do?

19 A. I am currently an investigator in the property crimes
20 unit.

21 Q. In relation to the case we're here for today, what was
22 your role, what was your involvement?

23 A. My role was -- I was a case agent for an investigation
24 into Dobbs Street, which is in the city limits of
25 Greenville. During the course of that investigation, we

1 made numerous -- or conducted surveillance numerous times,
2 watched the area from, you know, concealed locations. Did
3 trash pulls, used confidential informants that were
4 documented and reliable to purchase cocaine-based
5 substances from Dobbs Street.

6 Q. What street address on Dobbs Street?

7 A. Number .

8 Q. And how familiar were you with this location on Dobbs
9 Street and the surrounding roads?

10 A. Very familiar. We had -- the vice and narcotics unit
11 for Greenville Police had conducted numerous controlled
12 narcotic buys or drug buys in that area, both on Dobbs,
13 Sullivan, Dean, Burns and in that whole general area.

14 Q. Had you, yourself, done surveillance on this property?

15 A. Yes.

16 Q. And tell us some of the things that you saw?

17 A. Some of the things I noted was, in a lot of
18 circumstances, people would -- or drug buyers would either
19 walk up, drive up, some means of transportation, either
20 vehicular or foot, would walk up to, you know, Sullivan
21 Street area, enter the intersection of Dobbs or near
22 Sullivan or in between Sullivan and -- there's like a
23 vacant lot where there is a path that is worn that goes
24 from Sullivan Street to Dobbs. And during my
25 surveillance, it was clear to me that drug buyers would

1 come down Sullivan Street, be approached by, what street
2 terms would be considered like a runner. A runner would
3 talk to the drug buyer and then go back to my incident
4 location, which was Dobbs, and receive the drugs from
5 someone there holding the drugs, and then return to the
6 buyer there on Sullivan Street, using that cut.

7 Q. I'm going to show you what's marked State's Exhibit
8 Number 4 -- pardon me. Yeah, State's Number 4. Please
9 identify what this is?

10 A. This is the search warrant that I obtained through my
11 investigation for Dobbs Street.

12 Q. I'm going to point out to you, on the second page of
13 the search warrant, the reasons for affiant's belief -- I
14 would like for you to read to the Court everything outside
15 of the preliminary information, starting with the word,
16 affiant states?

17 A. Okay. I was the affiant for this. And it says,
18 Affiant states that he received information on or about 3/1
19 of 2011 from a confidential informant. And in parenthesis
20 I have CI. The CI stated that there were large quantities
21 of cocaine inside the residence located at Dobbs Street
22 in Greenville, South Carolina. The CI does have knowledge
23 of the substance and could recognize the substance on
24 sight. Affiant states that on or about 3/1 of 2011 he
25 received a Crime Stoppers complaint regarding drug

1 activities at Dobbs Street. The complaint mentions
2 constant traffic in and out of the location. Affiant
3 states that he conducted surveillance of the location and
4 did observe traffic, both foot/vehicular. Subjects would
5 arrive and stay for a short period of time and leave the
6 residence. This type of activity is common with the drug
7 trade. Affiant states that on a separate occasion he
8 observed subjects at the residence that he has knowledge of
9 as drug traffickers. Affiant states that between 5/1/11
10 and 5/15 of 2011, a documented proven reliable CI went to
11 Dobbs Street. The CI was able to purchase a quantity
12 of cocaine base. The buy was a controlled buy and
13 monitored by the affiant. Affiant states that on 7/25/2011
14 he conducted a trash pull at Dobbs. During a search of
15 the trash, the affiant located pieces of torn plastic bags
16 consistent with paraphernalia and green plant material
17 consistent with the affiant's training and experience to be
18 marijuana. Due to the above listed reasons, it is your
19 affiant's belief that more drugs will be located in the
20 residence at Dobbs Street, Greenville, South Carolina.
21 Due to the possibility of the destruction of evidence and
22 the illicit connection of violence and weapons to the drug
23 trade, and subjects that are associated with this location
24 have priors for attempted murder, resisting arrest and
25 weapons crimes, knocking and announcing would jeopardize

1 officers' safety. And, therefore, this warrant is to be
2 executed as a no-knock warrant.

3 MR. STEINBERG: Your Honor, we'd hand this up to
4 Your Honor for Your Honor to refer to the affiant's
5 reasons.

6 Q. I'm going to ask you to look at State's Exhibit Number
7 1. Please identify what this item is?

8 A. This is -- it looks like an aerial view of Sullivan,
9 Trotter and Dobbs Street.

10 Q. And please point out Dobbs Street.

11 A. It's right here.

12 Q. And please point out what you called the path that
13 people took.

14 A. All right. The path is right in this area.

15 Q. Okay. I'm going to ask you to take this red marker,
16 ask you to take this red marker and put an "A" next to what
17 you marked as Dobbs Street.

18 A. Okay.

19 Q. And please place a "B" where you say the start of the
20 path was.

21 A. Like right in here. You can't really see it very
22 well.

23 Q. Where does the path go to? Put a line to where the
24 path goes?

25 A. (Witness complies.)

1 Q. Knowing what you know about this case, what did you
2 assign officers to do? How did you design the execution of
3 this raid?

4 A. There was a lot of things I had to take into
5 consideration, obviously first being officer safety. Due
6 to the nature of the crimes and the people that are known
7 to be located at Dobbs, the Greenville Police SWAT team
8 executed the search warrant. The vice and narcotics unit
9 was to secure and detain any persons located within the
10 curtilage or the cut area that leads from Sullivan to Dobbs
11 Street. The crime response team was to assist in
12 controlling those persons if anyone attempted to flee from
13 either the cut or the curtilage or the house at Dobbs
14 Street. And our uniform patrol division were to block off
15 the road and maintain an external perimeter.

16 Q. What role did you have assigned for Detectives Kevin
17 Hyatt and Gary Rhinehart?

18 A. They are in the vice and narcotics unit and during the
19 briefing I had advised them to go to the cut and if there
20 was anybody in that cut to stop them and detain them
21 because we knew, and I have knowledge and other officers
22 have knowledge, that this cut is associated with Dobbs,
23 that I had personally observed people go from Sullivan
24 Street using this cut to Dobbs and receive crack and
25 then bring it back and sell it to unknown individuals. In

1 addition, on one occasion, I took a confidential informant
2 to that location, and the location being Dobbs, and
3 they were advised by the residents at Dobbs to go to a
4 person that was standing right at the cut and purchase --
5 they actually did purchase cocaine base from an
6 unidentified subject. We were never able to identify who
7 that person was.

8 Q. Thank you, Detective. Please answer any of opposing
9 counsel's questions.

10 THE COURT: Mr. Sarratt.

11 **CROSS-EXAMINATION**

12 **BY MR. SARRATT:**

13 Q. Detective Cothran, do you have a copy of that search
14 warrant or did you hand it up?

15 A. I gave it to the Judge.

16 Q. I have a copy for you.

17 A. Okay.

18 Q. If you'd look on that first page, the very top -- no
19 the cover page. What's the address listed?

20 A. It's Dobbs Street.

21 Q. All right. Now, if you'll turn to that second page
22 that you were reading from earlier where it says the
23 description of premises to be searched. I believe it's the
24 third paragraph. What's the address in the very first
25 sentence?

1 A. Dobbs Street, Greenville, South Carolina.

2 Q. All right. And then on that last sentence. It's a
3 long sentence. I don't know if we need to read all of it,
4 but it starts with, the search is to include ... Would you
5 read the very last part starting with outbuildings?

6 A. The search is to include.

7 Q. It goes into, you know, crawl spaces, lock boxes, all
8 that kind of stuff.

9 A, Yeah.

10 Q. That's all the stuff inside and outside ---

11 A. Yeah. I was looking. I was trying to find it.

12 Q. Right.

13 A. Outbuildings and any persons and vehicles located
14 within the curtilage of the residence.

15 Q. Within the curtilage of the residence and that
16 residence is Dobbs Street; correct?

17 A. Correct.

18 Q. Anywhere in this search warrant does it say
19 Sullivan Street?

20 A. It does not.

21 Q. And Sullivan Street is the cut; correct?

22 A. Sullivan Street, the cut is located beside it.

23 Q. Right.

24 A. It's a path that goes between residences that leads
25 from Sullivan to Dobbs.

1 Q. So when you're talking about the cut and observing
2 people in the cut, that's not Dobbs Street; correct?

3 That's a separate property?

4 A. Correct.

5 Q. In fact, there are about three or four houses in
6 between Dobbs Street and the cut; correct?

7 A. No, there's ---

8 Q. Well, they're not adjoining properties; are they?

9 A. No. You've got Sullivan Street runs this way.

10 Q. Right. Dobbs Street kind of bends around; doesn't it?

11 A. Yeah. Dobbs Street comes down here like this. The
12 house would be here, Sullivan Street's here.

13 Q. So you've got to go up around the bend to get to the
14 cut; correct?

15 A. No, no. You walk -- from Sullivan Street you walk at
16 an angle and it leads -- that cut leads from Sullivan
17 Street, beside Sullivan, straight to Dobbs. It is
18 a path that is just between houses. It's not a residence.
19 It's just a -- simply a cut, which has been made by foot
20 traffic from people walking from Dobbs to Sullivan
21 Street.

22 Q. Well, again, but the cut is not Dobbs Street?

23 A. Correct.

24 Q. So the cut was not included in this search warrant?

25 A. Correct.

1 Q. Okay.

2 MR. SARRATT: No further questions, Your Honor.

3 THE COURT: Any redirect?

4 MR. STEINBERG: No, sir, Your Honor.

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

7 MR. STEINBERG: The State would call Detective
8 Kevin Hyatt.

9 THE COURT: Come around and be sworn, please,
10 sir.

11 THE CLERK: Place your left hand on the bible and
12 raise your right.

13 Do you solemnly swear or affirm the testimony you're
14 about to give is the truth, the whole truth and nothing but
15 the truth, so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Thank you. You may be seated.
18 Please state your name for the record.

19 THE WITNESS: Kevin Scott Hyatt.

20 THE CLERK: Thank you.

21 KEVIN HYATT,

22 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MR. STEINBERG:

25 Q. Detective Hyatt, please tell the Judge how long you've

1 been in law enforcement and how long you've worked in
2 narcotics?

3 A. I've been in law enforcement for nine years. I've
4 been in narcotics for three, three years and six months.

5 Q. And even before you were in narcotics, were you
6 familiar with the Sullivan Street area?

7 A. Yes, sir, very.

8 Q. Have you been through any specialized training as far
9 as law enforcement or narcotics?

10 A. I've been through basic undercover detective,
11 narcotics detective.

12 Q. What was your involvement in this case?

13 A. Being in vice and narcotics, I was assigned by
14 Detective Cothran to take control of any persons on the cut
15 that leads from Sullivan Street to Dobbs Street.

16 Q. Before this case, were you familiar with this exact
17 area? Had you ridden on this road before?

18 A. Yes. I've seen a number in a patrol car or our
19 unmarked vehicles, which most people in the drug trade are
20 familiar with our unmarked vehicles, I've seen people run
21 through this cut, running from or toward -- from Dobbs or
22 towards Dobbs. I've been advised by informants that
23 subjects hang out in this cut and sell narcotics. And also
24 being along with Detective Cothran, I've observed subjects
25 go to Dobbs and come back from Dobbs with narcotics, on the

1 cut.

2 Q. What was your role in this matter?

3 A. To take control of any subjects on the cut.

4 Q. Let me show you what's been marked as State's Exhibit
5 Number 1. From Dobbs, where were you in relation to
6 that? Where did your vehicle stop?

7 A. I stopped in the curve on Dobbs, right at the cut.

8 Q. Which Detective drove your car?

9 A. Detective Brown.

10 Q. Okay. And just point on this map where you made your
11 -- where your vehicle stopped, where you got out?

12 A. We stopped right here in the curve, right next to the
13 cut.

14 Q. And where did you confront Donald Marquice Anderson?

15 A. I saw Donald Marquice Anderson approximately half-way
16 up the cut between Dobbs and Sullivan.

17 Q. What was he doing at the time?

18 A. He was walking away from Dobbs.

19 Q. And what was he wearing at the time?

20 A. I want to say black shorts. I don't recall exactly
21 what kind of shirt he was wearing.

22 Q. And as he was walking, did he ever notice you, look in
23 your direction?

24 A. We stopped on Dobbs, other officers stopped at
25 Sullivan. He appeared to observe the officers at the end

1 of Sullivan, and then looked back and saw us.

2 Q. Okay. And what direction did he go when he saw you?

3 A. Once he saw us -- we were wearing our police vests,
4 clearly marked police in large bold letters. He
5 immediately -- he wasn't running, but he immediately veered
6 to the right in a quick manner to go towards Sullivan.

7 Q. At that point what did you do?

8 A. I ran towards Mr. Anderson with my duty weapon drawn,
9 based on being on a search warrant, for safety issues. I
10 asked him to stop and get on the ground. He then stopped.
11 He was with a female. They both stopped and got on the
12 ground.

13 Q. At that point, what did you do?

14 A. Detective Rhinehart came over. We -- on search
15 warrants, we detain all subjects. Detective Rhinehart
16 cuffed Mr. Anderson. At this time, I had Mr. Anderson
17 stand up and patted down his outer clothing, making sure he
18 had no weapons.

19 Q. Tell us, how is this pat-down different from a search?

20 A. I'm not going through anything looking for any
21 narcotics or anything. I'm looking for weapons. I pat his
22 clothing down hard so I can feel any clothing -- I mean,
23 any items such as guns, knives, box cutters, needles,
24 anything that may harm me.

25 Q. When you patted down his pants or shorts, what did you

1 notice?

2 A. As I moved my hand down his right pocket, I felt, --
3 in his pocket, I could feel plastic crumbling, felt
4 multiple hard objects, rock-like objects in the bag. But
5 through my experience and knowledge, being on the road and
6 in narcotics, what in my experience felt to be crack
7 cocaine.

8 Q. Let me just break that down real quick. In the past
9 when you had felt those items, and you've retrieved those
10 items, what did you determine them to be?

11 A. Crack cocaine.

12 Q. How is crack cocaine -- texture-wise how is it
13 different from any other small item like a BB or something
14 like that?

15 A. It has -- it's mostly square-shaped, jagged-shaped.
16 It's not just a clear shape. It's, I mean, sharp feeling.

17 Q. As you found this, what, if anything, did the
18 Defendant, Mr. Anderson, say?

19 A. As I felt it, Detective Rhinehart was standing besides
20 me, and I said, I believe he has some crack in his pocket.
21 Once I said that, Mr. Anderson immediately said, man, these
22 are not my shorts.

23 Q. Were you asking Mr. Anderson any questions?

24 A. No, sir.

25 Q. Did you retrieve anything from his shorts?

1 A. I did. I retrieved a plastic bag from his right
2 shorts pocket that contained eight beige rock-like
3 substances that did field test positive as cocaine base.

4 Q. In your experience, what is the value of one gram of
5 crack cocaine?

6 A. One hundred dollars.

7 Q. Is that pretty much the standard cost in Greenville,
8 South Carolina for one gram of crack cocaine?

9 A. Yes, sir.

10 Q. That's all the questions I have. Please answer any of
11 opposing counsel's questions.

12 **CROSS-EXAMINATION**

13 **BY MR. SARRATT:**

14 Q. Detective Hyatt, do you have a copy of your police
15 report with you now?

16 A. I do not.

17 Q. Here's a copy of it, if you'd like to review that.

18 A. Thank you, sir.

19 Q. Now, Detective Hyatt, I'm going to read a sentence off
20 of this report and you tell me if it's -- if I'm reading it
21 correctly. All right?

22 A. All right.

23 Q. I'm looking at the second sentence here. It starts
24 with Detective C.K. Cothran. All right. Detective C.K.

25 Cothran advised beforehand that the cut beside Dobbs

1 Street that lead to Sullivan Street was also part of the
2 search warrant. He advised myself, Detective Rhinehart,
3 and Detective Brown to cover the Dobbs side of the cut and
4 detain any subjects on the cut. Is that correct?

5 A. Yes, sir.

6 Q. Okay. So when you jumped out of the car -- I'm sorry.
7 Well, when you pulled up on the Dobbs side of the cut and
8 you stepped out of your car, you immediately saw my
9 Defendant, or the Defendant in this case, my client, Mr.
10 Anderson?

11 A. Yes, sir.

12 Q. And you ordered him to get on the ground; correct?

13 A. Yes, sir.

14 Q. And then as soon as -- he did, he complied?

15 A. Yes, sir.

16 Q. He got on the ground. And as soon as he got on the
17 ground, you put him in handcuffs; correct?

18 A. Yes, sir.

19 Q. Now, in your statement -- well, when you testified
20 just a second ago, you testified that he was sort of
21 walking away from the cut. Is that correct?

22 A. He was walking up the cut. Once he saw us on both
23 ends, he immediately tried to veer to the right in a quick
24 manner.

25 Q. All right. Now, look down at this second paragraph in

1 your report. I'm going to read this sentence and you tell
2 me if it's correct. Upon arrival, Detective Brown stopped
3 our vehicle at the edge of the cut and I observed the above
4 subject, along with a female, standing about half-way up
5 the cut between Dobbs Street and Sullivan Street. Is that
6 what you wrote?

7 A. Yes, sir.

8 Q. Okay. So you didn't mention that he was walking away
9 from the cut. You just simply said that he was standing
10 there. Now you say that the subject veered away when you
11 approached him; correct?

12 A. Yes, sir.

13 Q. Was he running away?

14 A. No, sir.

15 Q. No.

16 A. He just quickly veered, walking quickly.

17 Q. He just sort of changed directions?

18 A. Yes.

19 Q. Like he didn't want to encounter you?

20 A. Yes, sir.

21 Q. All right. So, again, your report says that you jump
22 out of the car and you saw him standing there and you
23 ordered him on the ground and placed him in handcuffs?

24 A. Yes.

25 Q. Before you ordered him on the ground, did you observe

1 any kind of bulges in his pocket that you thought might
2 contain weapons?

3 A. His back was actually to me. He turned to the right.
4 I just saw him from the side view. Once I ordered him on
5 the ground, he got on the ground.

6 Q. So you didn't order him on the ground because you
7 thought maybe -- I mean, you didn't see anything that
8 looked like a weapon on him?

9 A. No, sir. Just when we execute search warrants,
10 everybody's ordered to the ground for our safety.

11 Q. Right.

12 MR. SARRATT: Give me one second. I'm sorry.

13 All right. No further questions.

14 THE COURT: Redirect?

15 MR. STEINBERG: Not for this witness. I do have
16 one or two more witnesses, Your Honor.

17 THE COURT: Thank you. You may step down. All
18 right.

19 MR. STEINBERG: Your Honor, the State's next
20 witness is Gary Rhinehart.

21 THE COURT: Come around and be sworn, please,
22 sir.

23 THE CLERK: Place your left hand on the bible and
24 raise your right.

25 Do you solemnly swear or affirm the testimony you're

1 about to give is the truth, the whole truth and nothing but
2 the truth, so help you God?

3 THE WITNESS: Yes, I do.

4 THE CLERK: Thank you. You may be seated. State
5 your full name for the record, please.

6 THE WITNESS: Sergeant Gary Rhinehart.

7 GARY RHINEHART,

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MR. STEINBERG:

11 Q. Sergeant Rhinehart, will you please tell the Judge how
12 long you've been in law enforcement and how long you've
13 worked in the vice unit?

14 A. I've been in law enforcement now for almost ten years.
15 I was in vice narcotics for the past four.

16 Q. And what rank are you right now?

17 A. I'm a Sergeant. I just recently got promoted last
18 week.

19 Q. Congratulations.

20 A. Thank you.

21 Q. How familiar are you with the Sullivan Street, Dobbs
22 Street area?

23 A. Very familiar. Even before vice narcotics, even
24 before I got moved there, I spent a good bit of time over
25 in that area.

1 Q. And what was your role in this particular case?

2 A. We were supposed to -- for the search warrant, we were
3 supposed to go over to the Dobbs Street area, coming in
4 from the Sullivan Street side and secure any persons coming
5 from the Dobbs, that search warrant area, from that house,
6 in that general vicinity right there because of the known
7 activity.

8 Q. And how familiar were you with this, what they refer
9 to a cut, or an alley, I guess?

10 A. The cut is -- we're real familiar with it because
11 that's -- in vice narcotics, we've done jump-outs over
12 there. We've -- what we call jump-outs is where we're
13 riding through -- we get complaints about a certain area,
14 so we'll go out and we'll get out with different people in
15 the area because of the complaints from the neighborhood
16 about that type of activity. So the cut is a place that
17 they use to go back and forth between Dobbs Street and
18 Sullivan Street.

19 Q. And at this point, in this case, who were you actually
20 paired up with?

21 A. Detective Hyatt.

22 Q. And did you happen to see Mr. Anderson on this day?

23 A. Yes.

24 Q. Was there anything unusual about Mr. Anderson, about
25 his size or anything?

1 A. Well, he was coming from the area of where the search
2 warrant was taking place. He was coming from. As we were
3 coming down, he was walking toward us. And as he appeared
4 to realize who we were, as we started getting out, he made
5 an obvious gesture to divert his path from the way he was
6 walking.

7 Q. Okay. And did you confront Mr. Anderson?

8 A. By the time I got out of the vehicle, Detective Hyatt
9 had already got over there to him and had him laying on the
10 ground.

11 Q. What did you do then?

12 A. I handcuffed him.

13 Q. And after you handcuffed him -- how long was he on the
14 ground for?

15 A. Not long. Just long enough to be handcuffed and then
16 we stood him up.

17 Q. And when he was stood up, who searched him?

18 A. Detective Hyatt.

19 Q. And did Detective Hyatt make any statements?

20 A. He told me that he felt what he believed to be
21 possibly crack in his pocket.

22 Q. What, if anything, did Mr. Anderson have to say at
23 that point?

24 A. As soon as Detective Hyatt said that, the Defendant,
25 he immediately said, these are not my shorts.

1 Q. Was anything retrieved at that point from the shorts?

2 A. Yes, Detective Hyatt pulled out a plastic baggie
3 containing beige rock-like substance, several, several
4 beige rock-like substances, which did later field test
5 positive for cocaine base.

6 Q. That's all the questions I have. Please answer any of
7 opposing counsel's questions.

8 **CROSS-EXAMINATION**

9 **BY MR. SARRATT:**

10 Q. I'm going to hand you a copy of your police report
11 that you wrote. So you just testified that as you
12 approached my client, he was sort of walking away and then
13 he diverted in a different direction; correct?

14 A. He was -- yes. He appeared to be coming from the area
15 of the search warrant because the SWAT truck was coming up
16 through there. They were jumping off. He was coming
17 straight toward us.

18 Q. Okay.

19 A. And as we got out of our vehicle, he turned and
20 diverted from his path that he was walking.

21 Q. All right. Well, I'm going to read from your report
22 and you tell me if what I'm reading is correct; okay?

23 A. Okay.

24 Q. I'm looking at the first paragraph. It's kind of a
25 long sentence, but it's -- it looks like it's the second

1 one. It starts with, we turned on Dobbs Street. Okay? We
2 turned onto Dobbs Street from Sullivan Street and noticed
3 that the SWAT team had arrived at Dobbs Street, so
4 Detective Hyatt and I went to the area of an open trail
5 that people walk from Dobbs Street to Sullivan Street.
6 There were two subjects, one black male and one black
7 female standing there. So we had them go to the ground and
8 placed them under investigative detention. Is that
9 correct?

10 A. That's the way it reads, yes.

11 Q. All right. Yeah. So in your statement that you wrote
12 on the date of the incident you said that he was just sort
13 of standing there. You didn't mention that he was walking
14 away or anything?

15 A. When he, he was walking that way, Detective Hyatt
16 called and told him to stop.

17 Q. Okay. Well, all right. So then you said that you had
18 him go to the ground. And that's like you walk up, you see
19 him and you're saying he turns his direction ---

20 A. Uh-huh (affirmative).

21 Q. --- and then you immediately order him to the ground;
22 right? And the next thing you say in your report is, I
23 handcuffed the male and had him stand to his feet.

24 A. Uh-huh (affirmative).

25 Q. Right. So you put him in handcuffs before you -- I'm

1 sorry. It wasn't you. It was Detective Hyatt that did the
2 pat-down.

3 A. Right.

4 Q. But he was in cuffs; correct?

5 A. Yes.

6 Q. Yes. Okay. Now, so you've got my client -- you order
7 him to the ground and you've got him in handcuffs and then
8 you do this pat-down. And then I'm looking at this last
9 sentence -- well, the second to last sentence in that
10 paragraph. And it says, as we were checking him for
11 weapons, I asked the subject if he had anything illegal in
12 his pockets and he said, no. Now, at that point, had you
13 read him his *Miranda* Rights?

14 A. No.

15 Q. No, okay. But he was in custody because he was in
16 handcuffs; correct?

17 A. He was investigative detention.

18 Q. Okay. But he was in handcuffs? All right.

19 MR. SARRATT: No further questions.

20 THE COURT: Any redirect?

21 MR. STEINBERG: No, sir, Your Honor.

22 THE COURT: All right. Thank you, sir. You may
23 step down, Officer Rhinehart.

24 MR. STEINBERG: Your Honor, while I'm waiting on
25 our next witness, I'm going to see if this comes in. I'm

1 going to introduce for purposes of this hearing, marked
2 State's Exhibit -- the drug analysis report.

3 THE COURT: Is that for purposes of the hearing?

4 MR. STEINBERG: Yes, sir. To show the value of
5 the drugs.

6 (WHEREUPON, State Exhibit Number 5 was marked for
7 identification.)

8 MR. STEINBERG: And the purpose of that is to
9 show that this is -- what we just heard, ninety-four
10 dollars worth of crack cocaine.

11 The State's next witness is Detective Pat Brown.

12 THE CLERK: Please come forward to be sworn.
13 Place your left hand on the bible and raise your right.

14 Do you solemnly swear or affirm the testimony you're
15 about to give is the truth, the whole truth and nothing but
16 the truth, so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Thank you. You may be seated.

19 PAT BROWN,

20 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. STEINBERG:

23 Q. Detective Brown, would you please tell the Judge how
24 long you've been in law enforcement and how long you've
25 been in vice, your total experience in vice?

1 A. I've been in law enforcement since 2001. I've been in
2 vice, currently, for the last year and a half.

3 Q. What was your role in this particular case?

4 A. This particular case I was driving two of the vice
5 narcotics detectives to the incident location. Our job was
6 to -- well, just secure that particular area.

7 Q. How familiar are you with this -- it's been referred
8 to as a cut between Dobbs and Sullivan?

9 A. Somewhat familiar. As a uniform patrol officer, I
10 worked that area for four years, so I was somewhat familiar
11 with that particular area.

12 Q. And what did your experience there tell you about this
13 little cut?

14 A. It's normally used by a runner to go from one street
15 to another street to retrieve narcotics.

16 Q. When you stopped your car, where did -- what did you
17 do and who did you confront?

18 A. When I stopped the car, I exited the driver's seat,
19 obviously, went towards the house where the search warrant
20 was initially for.

21 Q. Did you see anybody leave that location?

22 A. Yes. I had a young man running from the house towards
23 me, looking back at SWAT. When he saw me, he stopped and
24 laid down on the ground.

25 MR. STEINBERG: Your Honor, I'm not going to

1 belabor this point. I think the other officers have
2 answered these questions. I have no further questions,
3 unless opposing counsel has any questions.

4 MR. SARRATT: Briefly.

5 THE COURT: Yes, sir.

6 **CROSS-EXAMINATION**

7 **BY MR. SARRATT:**

8 Q. The young man that you saw running from the house, it
9 was not this client, it was not Mr. Anderson?

10 A. No, it was not.

11 Q. All right.

12 MR. SARRATT: No further questions.

13 THE COURT: Thank you, sir.

14 MR. STEINBERG: Your Honor, I have no further
15 questions.

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

17 MR. STEINBERG: The State's not going to call the
18 next witness, but we do tender Joey Gault that's going to
19 testify to essentially the same thing as Kevin Hyatt. We
20 will tender him if you have any questions for him.

21 MR. SARRATT: I do.

22 MR. STEINBERG: Okay.

23 THE CLERK: Please come forward to be sworn.

24 Place your left hand on the bible and raise your right.

25 Do you solemnly swear or affirm the testimony you're

1 about to give is the truth, the whole truth and nothing but
2 the truth, so help you God?

3 THE WITNESS: Yes, I do.

4 THE CLERK: Thank you. You may be seated.

5 JOEY GAULT,

6 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. STEINBERG:

9 Q. Detective Gault, would you please just very briefly
10 tell the Court what your role was in this case?

11 A. I was assigned to the crime response team at the time
12 and my role was to detain any subjects in the area of the
13 cut at Dobbs.

14 Q. I'm going to show you what's been -- this says State's
15 Exhibit Number 1. Where did you park your car?

16 A. On Sullivan Street, right here almost to -- right past
17 Sullivan Street.

18 Q. I see there's a "B" written right there. How close
19 were you to that "B"?

20 A. Our vehicle was parked on the road, so we were a
21 little bit of distance from where that "B" is marked.

22 Q. Okay. And which direction were you supposed to go?

23 A. Driving in?

24 Q. As you parked, where did you ---

25 A. As we parked, we were to go in -- this is the cut

1 here.

2 Q. Yes, sir.

3 A. We were to go and detain any subjects that were in
4 this area. So we went towards Dobbs Street from Sullivan.

5 Q. Please answer any of opposing counsel's questions.

6 **CROSS-EXAMINATION**

7 **BY MR. SARRATT:**

8 Q. So you were under orders -- you came up to the cut
9 from Dobbs Street and your orders were simply to just
10 arrest everybody that you saw in the cut; correct?

11 A. That's incorrect.

12 Q. Well, it's to detain anyone that you saw?

13 A. That's still incorrect.

14 Q. That's what you just testified to.

15 A. We were to come from Sullivan towards Dobbs.

16 Q. I'm sorry. You're right. You're coming from the
17 opposite as Hyatt and Rhinehart. So your orders were to
18 detain anyone that you found in the cut; correct.

19 A. Correct.

20 Q. All right.

21 MR. SARRATT: No further questions.

22 MR. STEINBERG: I have no further questions, Your
23 Honor.

24 THE COURT: All right. Thank you. You may step
25 down.

1 THE WITNESS: Thank you, sir.

2 MR. STEINBERG: Your Honor, we have no further
3 witnesses unless there's any witnesses that the Defense
4 intends to call.

5 THE COURT: Any witnesses from the Defense?

6 MR. SARRATT: No, Your Honor.

7 THE COURT: All right. I'll be glad to hear your
8 position, Mr. Sarratt, on the suppression and on the
9 statement.

10 MR. SARRATT: Your Honor, if I may hand up one
11 case in reliance, *Taylor*. It's a Court of Appeals case
12 from South Carolina. The majority of this case deals with
13 an anonymous tip. The information I'm referring to,
14 starting with the analysis section, is just on these first
15 two pages.

16 Your Honor, you should grant this motion to suppress
17 for two reasons. The second has two parts to it. The
18 first is that simply -- this simply was not a *Terry* stop.
19 This was a warrantless search that required probable cause,
20 an exception to the warrant requirement. And this is not a
21 *Terry* stop. And the second issue that I have here is that
22 even if you do find this was a *Terry* stop, it was improper
23 for two reasons. The first being that there was no
24 reasonable suspicion to stop my client. And then second,
25 in the *Terry* analysis, when there's a pat-down, there are

1 two layers of reasonable suspicion. One, in order to first
2 make the initial stop. And the second, to determine
3 whether or not the subject is armed and dangerous. There
4 was no reasonable suspicion to stop my client. And second,
5 there was no reasonable suspicion to believe that he was
6 armed.

7 Your Honor, the officers testified and Detective Hyatt
8 testified that Detective Cothran told him that we have a
9 search warrant for Dobbs Street and also the cut beside
10 Sullivan. That turned out to be untrue. But when the
11 officers arrived on the scene, they were under the mistaken
12 belief they had a search warrant and so they didn't need
13 to, you know, look for any kind of reasonable suspicion or
14 probable cause. They were just going to arrest anyone they
15 found and that's what they testified to, that they were
16 just going to detain anyone found at the cut at
17 Sullivan Street.

18 Now, when they approached my client, you know, the
19 reports state that he was standing halfway up the cut. And
20 I think they said that he was standing, when they didn't
21 need a reason to stop him because they thought they had a
22 warrant. But now, on the stand they're saying that he was
23 walking away, and started walking away from Dobbs Street
24 and changed his direction. But regardless, as soon as they
25 saw him, they ordered him to the ground and they put him in

1 handcuffs. Now, when you put someone in handcuffs, this is
2 not -- this is outside the scope of a *Terry* stop. This is
3 not sort of a stop and talk on the street and asking him
4 questions. He's immediately ordered to the ground, placed
5 him in handcuffs, effectuating an arrest at that point.
6 And because this is an arrest and they had no warrant for
7 the cut at Sullivan, it was a warrantless arrest and
8 it's unsupported by probable cause.

9 So for that reason, I would argue this is not a *Terry*
10 stop. Because, again, my client was under arrest. He was
11 in handcuffs. He was not a danger to the officers. He
12 immediately complied. He was on the ground in cuffs and he
13 couldn't reach for any weapons, therefore, the pat-down,
14 instead of characterized as just a *Terry* stop is really a
15 search that must be supported by probable cause, which they
16 did not have.

17 Now, if Your Honor is inclined to believe that this
18 was instead a *Terry* stop and not a full search, which
19 requires probable cause, then, of course, the standard is
20 lower. It's a mere reasonable suspicion. However, even if
21 you do find this was a *Terry* stop, it was not even
22 supported by that lower standard of reasonable suspicion.
23 First, they had to have a reasonable suspicion to stop my
24 client. And what they're saying is that -- well, their
25 testimony today, not in their reports, was that he sort of

1 changed direction, walked away. Not that he ran away.
2 That's a crucial distinction. If my client had turned and
3 run, then there is case law out there that says that, you
4 know, flight from an officer is a factor to consider in
5 supporting reasonable suspicion. However, they're not
6 testifying that my client ran away. He didn't. He simply
7 changed his direction. And in doing so, what he was
8 attempting to do is to essentially walk away from the
9 police officers, not run away, but to walk away. And
10 people suspected of crimes always have the right to walk
11 away from the police officers. I mean that's an axiom in
12 the law of arrest is that you're not detained and you're
13 not under arrest as long as you're free to walk away.
14 That's exactly what my client tried to do. He simply tried
15 to walk away from what he saw was this giant SWAT raid
16 going on. I mean, I'm sure this was potentially a very
17 dangerous situation and he didn't want to be a part of it,
18 so he changed the direction and he tried to leave the
19 scene. But he was trying to walk away, not run away.

20 Now, on this case I gave you, *State v. Taylor*, on page
21 three, the second column near the bottom, the second to
22 last paragraph, it says, headlong flight is a conscious
23 action of evasion and that's suggestive of wrongdoing. But
24 that's like if you're running away from the cops, if you
25 turn and run. But it says in the next sentence, when an

1 officer approaches an individual without reasonable
2 suspicion or probable cause, the individual can lawfully
3 ignore the officer. And in a parenthetical it says, any
4 refusal to cooperate without an order does not furnish the
5 minimal level of objective justification needed for a
6 detention or a seizure. So, again, you're free to simply
7 ignore the officer and that's a lawful act for any citizen
8 to do. That's exactly what my client did. He wasn't
9 trying to run. He was simply trying to ignore these police
10 officers, change his direction and walk away so as not to
11 encounter them. You'll notice in the footnotes to that,
12 they cite a case from -- it's footnote 9. They cite a case
13 from out of the Virginia Court of Appeals and that case is
14 *Jones v. Commonwealth*. And it says in parenthetical,
15 finding the Defendant's refusal to heed officer's request
16 to stop failed to serve as justification for seizure
17 because citizens who are not under arrest or otherwise
18 detained have every right to refuse or ignore requests from
19 law enforcement officers. So, again, the Court of Appeals
20 cited that case to justify their position that you're
21 always free simply to ignore officers and walk away.

22 So, because of that, the fact that my client diverted
23 his direction, which is the only reason cited for their
24 stopping my client, does not give rise to reasonable
25 suspicion and, therefore, should not be moved to the second

1 analysis. However, if Your Honor is inclined to find, one,
2 that this is a Terry stop and not an arrest; and two, they
3 do have reasonable suspicion to stop my client, the State
4 still lacks the second prong to that analysis, which is
5 that they did not have reasonable suspicion to believe that
6 my client was armed and dangerous. There's no testimony
7 that they saw a bulge, that he reached into his pockets,
8 that he, you know, handed anything off. There's simply no
9 testimony that my client was armed. There was no reason
10 for them to believe so. Therefore, once he was in
11 handcuffs, they no longer have any fear for officer safety,
12 there was no reason in even patting him down, so they
13 failed in the second stage of the analysis. It was an
14 improper pat-down and the motion for suppression should be
15 granted.

16 Now, if you'll notice in that case *State v. Taylor*, on
17 the same page as the quote that I read earlier about being
18 able to ignore an officer, in that top paragraph on the
19 left column, it says, an individual's presence in an area
20 of expected criminal activity standing alone is not enough
21 to support a reasonable particularized suspicion that the
22 person is committing a crime. Again, the fact that my
23 client was standing in an area near a place where they were
24 executing a search warrant is not enough for the officers
25 to have reasonable suspicion to stop him. It's not enough

1 for them to have reasonable suspicion that he was armed.

2 So, again, to recap, they thought they had a search
3 warrant. They didn't think they needed a reason to stop
4 him so they were just going to arrest everybody on site.
5 But that's what they did. They put my client in handcuffs
6 and said this is a search that didn't require probable
7 cause. It was not a Terry stop.

8 However, if you're inclined to find it was a Terry
9 stop, they lacked reasonable suspicion in stopping my
10 client simply because he changed his direction and walked
11 in a different direction. And, furthermore, they lacked
12 any reasonable suspicion that my client was armed. His
13 near proximity in a location of where a warrant was being
14 served is simply not enough to believe that he was armed.
15 And, therefore, you should grant a motion to suppress.
16 Thank you.

17 THE COURT: How about the statement? Do you have
18 an objection to the statement?

19 MR. SARRATT: Oh, I'm sorry, yes. I apologize.
20 Yes. He was in custody. He was in handcuffs. He was not
21 free to leave. Therefore, it was custodial and he was
22 being interrogated because the officer asked, do you have
23 anything in your pocket? At that point, he initiated an
24 interrogation. And my client's statement that, you know,
25 those aren't my pants, was in response to a custodial

1 interrogation. He had not yet been *Mirandized* and,
2 therefore, we would ask that you suppress that statement as
3 well.

4 THE COURT: Which officer asked him what's in
5 your pocket?

6 MR. SARRATT: Yes, Your Honor.

7 THE COURT: Which officer asked him that?

8 MR. SARRATT: That was Detective Hyatt. No, it
9 wasn't. I'm sorry. That was Detective Rhinehart.

10 THE COURT: All right. Mr. Steinberg.

11 MR. STEINBERG: Thank you, Your Honor. The
12 officers were executing a search warrant in a high crime
13 neighborhood. That's actually an understatement. This
14 particular neighborhood, as you heard from all the
15 officers, is a crack distribution house that has runners.
16 The officers aren't worrying about the other side, away
17 from Sullivan Street, above or below Sullivan Street. They
18 have concerns about the Sullivan Street to Dobbs Street,
19 Dobbs Street connection. They go there in force. The
20 SWAT team goes to the house because they do have security
21 issues. You heard the testimony of the reading of the
22 affidavit where they had concerns of people that commit
23 violent crimes at this location.

24 In addition to the nexus between guns and crimes, we
25 have particular concerns at this location. The officers

1 also were looking for runners. They decided that this is
2 how they're going to do the execution. SWAT team to the
3 house; Vice Unit to what's referred to as the cut; the
4 Crime Response Unit, which is Deputy Gault, goes to the top
5 of the cut; and Uniform Patrol in the neighborhood. This
6 is very evident that they are trying to make sure there's
7 security for all their officers. You can't have officers
8 executing a search warrant and have people behind you that
9 might have weapons. This Defendant goes from the beginning
10 of the cut near Dobbs Street, walking away. That itself is
11 not unlawful.

12 But Your Honor is allowed to consider all the facts to
13 include this neighborhood. The fact that the officer has
14 identified the cut-through as the runners cut-through
15 between Dobbs and Sullivan. He sees officers and he then
16 -- he doesn't run away. He just simply walks in a
17 different direction. That's different from simply saying,
18 I'm ignoring officers. He has a right to say, officers, I
19 don't want to cooperate. However, the same case that
20 opposing counsel has handed up, *State vs. Sylvester Taylor*,
21 talks about evasive conduct always stopping short of
22 headlong flight, made for an officer's appraisal of a
23 street corner encounter. That's one of the many cases that
24 deals with officer safety and officer's experience. The
25 officer said he patted down for weapons. He didn't pat

1 down for anything else. He didn't do a full search. He
2 didn't have him turn his pockets inside out. He simply had
3 a pat-down for weapons. He found what he knew to be an
4 amount of crack cocaine. So this case is to include *State*
5 *versus Sylvester Taylor* and some of the cases that orbit
6 *Taylor* and that *Taylor* relies on, and that rely on *Taylor*,
7 talk about officers relying on their experience. They say,
8 that experience alone, if it's only a hunch, it would be
9 insufficient. The reason I called, not just Detective
10 Hyatt, I called all these officers, I wanted you to
11 understand what's in the mindset of these officers. The
12 planning officer, Detective Cothran, and all the other
13 officers are so familiar with this area. They have to be
14 very experienced and they have to realize that someone
15 walking away down the cut from the search warrant target
16 site, seeing officers and then veering to the side, that
17 obviously is going to be reasonable suspicion. The
18 officers cannot just let them go through.

19 I do want to bring up one or two small issues that
20 opposing counsel raised. He says once he was handcuffed,
21 he can't get to a weapon. That's incorrect. Because we're
22 not going to keep him there. He's only in investigative
23 detention. You cannot release the handcuffs and have him
24 walk away if he has a weapon. In this case, it turns out
25 he does not have a weapon, but we do not know until we do

1 the pat-down. He is free to leave. He is not under
2 arrest. We agree with all of this. We just cannot allow
3 him to get past another perimeter. We have to make sure
4 that he is not a threat to any of the officers towards
5 Dobbs Street or behind towards Sullivan Street. That's
6 simply an unfair standard to allow the officers to be in.
7 You can see how serious we took this particular raid, the
8 number of officers we used and we cannot have someone with
9 a possible weapon walking in the neighborhood.

10 I'd also point out, the handcuffing issue is a bit of
11 an extraneous issue because let's say we remove the
12 handcuffing totally, we stopped him, we put him on the
13 ground, we got him back up, we pat him down. The
14 handcuffing doesn't come in. He either does -- he is
15 subject to a valid pat-down or he's not, regardless of the
16 handcuffing.

17 As far as the statement, it appears the statement was
18 simply a blurted response. It sounds like he made a
19 statement at first to Detective Hyatt of, it's not my
20 shorts. Even if this statement was made after Detective
21 Rhinehart's statement, it's still a permissible statement.
22 That is not interrogation. That is so officers do not
23 injure themselves. Officers do not want to be sticking
24 their hands looking for blades, syringes, knives, anything
25 that can cut them, let alone a firearm, when they're doing

1 the search. That's why they ask those questions.

2 That's all the State's response, Your Honor.

3 THE COURT: All right. Thank you. Let's take a
4 short break and then I'll look over the case and then we
5 will be ready to start with your opening statements.

6 MR. STEINBERG: Thank you, Your Honor.

7 (WHEREUPON, the court stood at recess for a short
8 break.)

9 THE COURT: Well, I have reviewed my notes and
10 reviewed the case and I note, Mr. Sarratt, that the *Taylor*
11 case, which both of you seem to rely on, I guess we'll have
12 a final word on that from our Supreme Court. That's been
13 ---

14 MR. SARRATT: Yes, sir.

15 THE COURT: Cert's been granted on that, so we'll
16 find out what the -- both of you have words of reliance on
17 that. I find in this case that this was a *Terry* stop, that
18 there were -- under the totality of the circumstances,
19 there were articulatable reasons for this based upon what
20 the officers have testified to. While there was no
21 running, you know, the cases -- even in the *Taylor* case say
22 that evasive behavior can be considered a pertinent factor.
23 And all the factors taken together with the fact that a
24 raid was being made, I think that's certainly a major
25 factor here. It's not just a stopping someone on the

1 street when nothing's happening next door. And the fact of
2 the safety of these officers. We never heard exactly how
3 many were involved in this going on. I'm sure it was a
4 high tension with that taking place. This is a --
5 certainly articulable reasons, I think, have been elicited
6 from the testimony to show there was reasonable suspicion
7 to stop and to certainly do the pat-down under the case law
8 of *Minnesota and Dickerson*. And I heard no evidence of any
9 manipulation of trying to find what drugs were there. It
10 was just really for safety precaution for the officers.
11 I'll allow the evidence. And your objections are certainly
12 noted, Mr. Sarratt, for the suppression.

13 Likewise, on the statement, I don't see how that could
14 possibly be considered an interrogation from the evidence
15 that I've heard. Certainly, there's on-the-scene
16 questioning taking place and if there was questioning,
17 again, this was for officer safety purposes and not for
18 getting information from that particular individual about
19 the drug activity. So I will allow the statement in, as
20 well as under -- I think by the preponderance of the
21 evidence it has been established that it was freely and
22 voluntarily given. Obviously, the jury can make the
23 ultimate determination of whether that statement was
24 voluntarily given.

25 All right. Gentlemen, anything else before we bring

1 our jury back and have them sworn?

2 MR. STEINBERG: No, sir, Your Honor.

3 MR. SARRATT: Your Honor, just for the record,
4 just to be clear, I understand you're ruling this was a
5 Terry stop and that this evasive action -- there was
6 reasonable suspicion for the stop. Are you saying that the
7 reasonable suspicion would be found -- further pat-down for
8 the weapons was the fact that this was a drug raid and
9 that's what the nexus of the ---

10 THE COURT: That's right. You know, I didn't say
11 the evasive action was the -- I said the totality of all
12 the circumstances of what the officers have testified to,
13 you know, the area, the location, the time, the raid going
14 on, the fact that he moved away. And, really, I'm just
15 taking the language from the *Taylor* case that you
16 submitted, all those things; the fact that drugs and
17 weapons go together and they had a higher level of
18 intensity, perhaps, with this going on. And I'm not making
19 my ruling in any way on the search warrant. Only on that
20 it was a *Terry* stop.

21 MR. SARRATT: I just wanted to make sure I had a
22 ruling on both of those.

23 THE COURT: Okay. We'll have our jury sworn.

24 MR. SARRATT: Your Honor, if you'd permit me just
25 a brief moment. We're trying to decide how to proceed.

1 We're considering going ahead just as a bench trial.

2 THE COURT: All right. We'll take a few more
3 minutes and that'll be fine. We'll take a short break.

4 (WHEREUPON, the court stood at recess for a short
5 break.)

6 THE COURT: All right. Are you ready to proceed,
7 gentlemen?

8 MR. STEINBERG: Yes, Your Honor. Counsel will --
9 Stuart, correct me if I'm wrong. We're going to do a bench
10 trial and we're going to stipulate to essentially all the
11 facts and testimony and the State agrees that every
12 statement made during the initial suppression hearing is
13 preserved and part of the record so that we can keep all
14 the testimony thus far. Is that your understanding, Mr.
15 Sarratt?

16 MR. SARRATT: Well, I'm sorry. I may have
17 misunderstood what you said. My client would like to
18 testify. He does contest small parts of the testimony.
19 And so I guess I won't stipulate to all the facts.

20 MR. STEINBERG: I agree. Let's say we don't have
21 to recall the witnesses that I've already called. He also
22 has the right to call his own witnesses. We're going to
23 ask that the chemist report be ---

24 MR. SARRATT: That, we obviously stipulate to.

25 MR. STEINBERG: And jurisdiction is Greenville

1 County?

2 MR. SARRATT: Right.

3 MR. STEINBERG: And I'm going to introduce those
4 items they were a part of the State's Exhibit that have not
5 been introduced. I'm just not going to recall law
6 enforcement officers unless I need to as rebuttal. I think
7 the case has been made. We all agree on the jurisdiction
8 and the drugs themselves. But if your client wishes to
9 take the stand, obviously ---

10 THE COURT: Well, would he want a right to
11 further cross-examine. In other words, the testimony
12 that's been offered is only for the suppression hearing.

13 MR. SARRATT: Right.

14 THE COURT: Does he want to waive his right to
15 have a full and complete cross-examination of all the
16 witnesses.

17 MR. STEINBERG: I'm going to tender any witness
18 he wishes. I'm just not going to call them. I think I've
19 asked all the questions I need to. Every witness I have is
20 available to be tendered. I'm just not going to call them
21 again to repeat what they've already testified to. They're
22 available. I will tender them as witnesses as he requests.

23 (WHEREUPON, off-record discussions were held between
24 counsel.)

25 MR. STEINBERG: Your Honor, I think we've got an

1 agreement on the stipulation. I guess if you want to
2 release the jury, go ahead and release them. But after
3 conferring with opposing counsel, I think we're not going
4 to need a jury for this trial.

5 THE COURT: Okay. So there's going to be a bench
6 trial?

7 MR. SARRATT: Yes, sir, Your Honor.

8 THE COURT: All right. Mr. Anderson, if you
9 would come forward with your attorney. I need to be
10 satisfied in my own mind you understand what you're doing
11 here.

12 (WHEREUPON, Mr. Sarratt and the Defendant approached
13 the bar.)

14 THE COURT: If you would raise your right hand.

15 (WHEREUPON, the Defendant raised his right hand.)

16 THE COURT: Do you swear or affirm the testimony
17 you're about to give me will be the truth, the whole truth,
18 and nothing but the truth, so help you God?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Your attorney has indicated to me
21 that you want a waive your right to a jury trial and I need
22 to be satisfied in my own mind that you understand what
23 you're doing. If you understand our Constitution, the
24 United States Constitution gives you a right to a trial by
25 a jury. That's that every person accused of any crime in

1 this State, in America, has a right to a jury, a jury of
2 your peers, to decide what the facts are. That's a
3 substantial right that you have, that every citizen has,
4 that your peers decide factually your guilt or innocence.
5 You're telling me through your attorney now that you want
6 to give that right up. Is that true?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand if you give that
9 right up, that things could occur during the course of the
10 trial that would allow certain Appellate issues to perhaps
11 be presented for your benefit before a jury that would not
12 be presented to me alone, that you may lose the benefit of
13 errors that may occur, that I make legally in front of the
14 jury, that might not be preserved with me alone. Do you
15 understand that?

16 THE DEFENDANT: I understand.

17 THE COURT: You understand that? You understand
18 that if a trial by jury were held, you would have a right
19 to examine the witnesses, even as you will in a trial
20 before the Court ---

21 THE DEFENDANT: I didn't understand it.

22 THE COURT: You didn't understand that you would
23 have a chance to examine witnesses through your attorney?

24 THE DEFENDANT: I mean, so I can ...

25 THE COURT: Yeah, through your attorney.

1 THE DEFENDANT: I'm sorry.

2 THE COURT: When you have an attorney, you -- of
3 course, you can talk with your attorney and you can consult
4 with him about asking questions of the witnesses. Do you
5 understand those rights that you have?

6 THE DEFENDANT: I understand.

7 THE COURT: And you would have the same rights
8 before the jury, you know, as lay people could be impressed
9 with that questioning. Certainly, you have a right to
10 testify in your own behalf either way.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: But you want to give this substantial
13 right that you enjoy up and not have a jury determine your
14 -- the facts of your guilt or innocence? Is that what
15 you're telling me today?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You're sure that that's your
18 decision?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: If you have any hesitancy whatsoever,
21 the jury's ready to go and they can hear the facts of this
22 case.

23 THE DEFENDANT: Well, considering the time, I
24 can't get more witnesses to come up to the stand, so I
25 won't be able to prove to the jury that I -- I can't prove

1 my innocence.

2 THE COURT: Well, the State has to prove your
3 guilt. You understand that, don't you? You don't have any
4 burden of proof whatsoever. The State of South Carolina
5 will have to convince that jury beyond a reasonable doubt,
6 unanimously. All twelve of them will have to agree. If
7 all twelve don't agree then, of course, there won't be a
8 conviction.

9 MR. SARRATT: I think he was referring to the
10 fact that either way he's going to be unable to call more
11 witnesses, to subpoena more witnesses. We're going to go
12 forward today, either as a bench trial or jury trial,
13 regardless.

14 THE COURT: So you want to proceed without your
15 jury. Is that what you're telling me?

16 THE DEFENDANT: (No verbal response.)

17 THE COURT: What's the reason you want to give up
18 your jury trial?

19 THE DEFENDANT: What's the reason I want to give
20 up my jury trial? Because, to be honest with you, if I do,
21 if I do lose the jury trial, I don't, I don't -- I want to
22 have some kind of leniency. That's the honest truth. I
23 just think I'll get more leniency towards not having a jury
24 trial and going ahead and getting it out of the way.

25 THE COURT: Well, I want you to understand that

1 this Judge -- I don't think I ever have; I know I don't
2 intend to ever punish a person for having a trial, a jury
3 trial. That's everybody's right to have a jury trial. And
4 the fact -- if you feel like that any sentence, if you're
5 convicted, would be more lenient because of the fact that
6 you've waived a jury trial, I will assure you this judge --
7 I'm not -- I don't consider that -- you have a right to a
8 trial before the Court or before a jury. And the fact that
9 you have a trial, that's not going to influence me in any
10 way on what your sentence might be if you're convicted.

11 THE DEFENDANT: Yes, sir. If only, if only I had
12 more time -- if I only had one more day to get more
13 witnesses and bring all the witnesses that was around ---

14 THE COURT: Well, this case was up yesterday, Mr.
15 Anderson.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Are you ready to proceed?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you want a jury or you don't want
20 a jury?

21 THE DEFENDANT: I don't want a jury.

22 THE COURT: You don't want a jury. Okay. You're
23 voluntarily giving up your right to a jury and you know
24 what I've explained to you are the benefits that you have
25 with a jury?

1 THE DEFENDANT: (Affirmative nod.)

2 THE COURT: All right, sir. You can return to
3 your seat.

4 All right. Let's have our jury come back out, please?

5 (WHEREUPON, the jury entered the open court at
6 approximately 11:56 a.m.)

7 THE COURT: Ladies and gentlemen, you've been
8 patient with us. We've been working on some matters that
9 are -- of necessity have to be taken care of before we're
10 ready to start a case before a jury. We're not quite
11 completed with that yet. I don't want you to have to be
12 waiting forever. What I'm going to ask you to do, I'm
13 going to give you an extended break now. I'm going to ask,
14 if you would, to call back at two o'clock to the number
15 that you've been given and there will be instructions then
16 from Ms. Olson as to whether you need to report back or
17 whether you need to call back at another time.

18 You haven't been sworn in this case. Even though you
19 haven't been sworn in to try this case, I've given you
20 instructions. And, again, I'll remind you, you shouldn't
21 be discussing anything about this case that you've heard a
22 little bit about to anyone in the event that we need to get
23 you back this afternoon after the legal matters are taken
24 care of. If you are called upon to be the fact-finders in
25 this case that you've been designated for today, then we

1 need to make sure we maintain the purity of the process,
2 and that you don't have any discussions with anyone about
3 this particular case. If you'll call back at two o'clock,
4 there'll be instructions for you as to when you need to --
5 we'll certainly give you time to get from wherever you are
6 at that time if you do need to come back today. It may be
7 tomorrow. I don't know when it will be. But if you'll
8 just maintain that importance of the process we're in now
9 and not discuss this case with anyone, and don't let anyone
10 discuss the case with you. You'll certainly have an
11 opportunity, as I told you before, when you're discharged
12 from this case, to share your experiences with others.
13 While this case is in progress, even though you've not been
14 sworn as a juror, I do ask you to maintain that innocence
15 of any factors relating to this case.

16 You're dismissed at this time. If you'll go with the
17 bailiff. Just call back at two o'clock to that designated
18 number. She'll have instructions for you then.

19 (WHEREUPON, the jury exited the open court at
20 approximately 11:58 a.m.)

21 THE COURT: All right. Solicitor, I believe
22 we're not in a suppression hearing now. I realize that's a
23 large part of the case, but if I'm going to be the fact-
24 finder, I would like to hear the testimony of the officers
25 again.

1 MR. STEINBERG: Yes, sir.

2 THE COURT: And certainly I don't want to hamper
3 the Defense attorney to things that he might want to cross-
4 examine on the case in chief that have been waived by not
5 cross-examining the first time.

6 MR. STEINBERG: Yes, sir.

7 THE COURT: And I'm not going to require him to
8 call witnesses. The State has the burden of proof.

9 MR. STEINBERG: Yes, sir.

10 THE COURT: Present your case now.

11 MR. STEINBERG: Your Honor, the State's first
12 witness will be Keith Cochran.

13 THE COURT: Come around and be sworn, please,
14 sir.

15 THE CLERK: Place your left hand on the bible and
16 raise your right.

17 Do you solemnly swear or affirm to tell the truth, the
18 whole truth and nothing but the truth, so help you God?

19 THE WITNESS: Yes.

20 THE CLERK: Thank you.

21 KEITH COCHRAN,

22 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MR. STEINBERG:

25 Q. Detective Cochran, please tell the Court what your

1 current role is and what you did back on August 4th of
2 2011?

3 A. My current position is with the Greenville Police
4 Department, criminal investigation division, property
5 crimes investigations. At the time of the incident, August
6 the 4th of 2011, I was assigned to the vice and narcotics
7 division.

8 Q. And what was your particular role on the case in
9 question today?

10 A. My particular role, I was conducting a drug
11 investigation into information I had received from
12 confidential informants, Crime Stoppers and through
13 surveillance and knowledge of the area, about drug
14 complaints at Dobbs.

15 Q. And approximately what time of night did you go to
16 Dobbs?

17 A. Give me one second to -- it was approximately seven
18 forty-five in the evening.

19 Q. And in what jurisdiction did this occur?

20 A. The City of Greenville.

21 Q. And is the City of Greenville located within the
22 County of Greenville?

23 A. It is.

24 Q. In preparation for this trial -- pardon me. In
25 preparation for this case, what sort of surveillance and

1 other intelligence gathering did you perform?

2 A. I spoke with confidential informants, documented,
3 reliable confidential informants that I'd received
4 information from. In reference to surveillance in the
5 area, I did personally surveil this area on numerous
6 occasions where I did observe and confirm what I had
7 received in Crime Stoppers and based off CI information I'd
8 received, that there is a numerous amount of foot traffic
9 in and out of the area from Sullivan Street to Dobbs Street
10 and adjacent streets, as well.

11 Q. And what was your role during the actual execution, or
12 the planning of the execution of the search warrant?

13 A. I was the case agent for the execution of the search
14 warrant at Dobbs. My initial role was as a SWAT
15 operator to make entry. During the briefing I had asked
16 that CRT, vice and narcotic investigators and uniform
17 patrol assist. Uniform patrol's primary responsibility at
18 the time was to provide an outer perimeter, that being
19 obviously the furthest most points of the perimeter. CRT
20 was to assist with the Sullivan Street side, near Dobbs and
21 Sullivan, and make sure no one fled through a cut that
22 leads from Dobbs Street to Sullivan Street. And then vice
23 and narcotics was also supposed to secure any persons
24 located within that cut. And as I said, the SWAT team was
25 to actually execute the search warrant on the residence.

1 Q. I'm going to show you what's been marked as State's

2 Exhibit Number 4. Can you identify it?

3 A. This is a search warrant I obtained for Dobbs Street,
4 Dobbs.

5 Q. And I'm going to point you to page two. I'm not going
6 to have you read this, but is this your affiant's
7 statement?

8 A. Yes, this is my statement.

9 Q. Is that the statement that you read out loud earlier
10 today?

11 A. It is.

12 MR. STEINBERG: I move to introduce the State's
13 Exhibit Number 4 into evidence.

14 MR. SARRATT: No objection, Your Honor.

15 THE COURT: Without objection, Exhibit 4 is
16 admitted.

17 (WHEREUPON, State Exhibit Number 4 was admitted into
18 evidence.)

19 MR. STEINBERG: Thank you, Your Honor.

20 Q. Let me show you this document. Please identify it.

21 A. This is the aerial photo that you displayed to me
22 earlier. I marked Dobbs with an "A", the area of the
23 cut with a "B", and a line indicating the direction of the
24 cut.

25 MR. STEINBERG: The State moves State's Exhibit

1 Number 1 into evidence.

2 MR. SARRATT: No objection, Your Honor.

3 THE COURT: Without objection, Exhibit 1 is
4 admitted.

5 (WHEREUPON, State Exhibit Number 1 was admitted into
6 evidence.)

7 Q. Thank you, Detective Cothran. Please answer opposing
8 counsel's questions.

9 A. Okay.

10 **CROSS-EXAMINATION**

11 **BY MR. SARRATT:**

12 Q. Detective Cothran, this is a SWAT team raid; correct?

13 A. At Dobbs, yes.

14 Q. Right. And you were sort of the leader of this raid?

15 A. I'm the case agent and I'm also on the SWAT team, so
16 my initial role was to secure the residence, secure persons
17 inside and located in the immediate entry point. And after
18 that, I switched roles back to the case agent.

19 Q. Okay. This was a fairly large operation; wasn't it?

20 A. Yes, sir.

21 Q. It involved numerous officers?

22 A. Yes, sir.

23 Q. Do you know about how many officers were involved, I
24 mean, roughly?

25 A. The SWAT team was -- their primary mission was the

1 house. We don't deal with perimeter issues, we deal with
2 whatever the specific house is that we're going to make
3 entry into. At the time, I think CRT, which is the crime
4 response team, may have three -- may have had three. Maybe
5 three and a supervisor. I can't recall each individual
6 person. Vice and narcotics would have had, I want to say
7 three, maybe four at the time, and then uniform patrol. We
8 had uniform patrol set up at various locations.

9 Q. And you testified that you had sort of set up a
10 perimeter. So you covered several areas in the vicinity of
11 Dobbs Street. It's not like you just hit Dobbs. I
12 mean, you had officers posted ---

13 A. We had officers posted at strategic locations that we
14 could associate with Dobbs based off our surveillance,
15 information received from Crime Stoppers and from
16 confidential informants and based off the controlled buys
17 that we did in that area.

18 Q. So once the sort of raid was underway, it was a very
19 visible event; correct?

20 A. I'm sure it was to the community, yes.

21 Q. And, also, you know, as part of SWAT when you're
22 making a raid into a house, do you typically use like a
23 battered ram to break the door in?

24 A. Yes. With no knock warrants, we typically will not
25 knock on the door, for officer safety reasons. We'll

1 usually breach the door with a breaching tool and make
2 entry into the residence, yes.

3 Q. And one of the reports stated there was a distraction
4 device that was deployed?

5 A. Right.

6 Q. Can you briefly describe what that ---

7 A. A distractionary device is a device that we use to,
8 based off obviously the definition, it distracts subjects
9 inside or wherever it's deployed. It makes a loud banging
10 sound and a bright flash of light to distract them for our
11 safety so that we can either close the gap between us
12 without being fired upon. It's used exactly based off what
13 it said it is. It's a distraction device.

14 Q. Okay.

15 MR. SARRATT: No further questions.

16 MR. STEINBERG: Nothing else from the State, Your
17 Honor.

18 **EXAMINATION**

19 **BY THE COURT:**

20 Q. What time of day or night did this take place,
21 Officer?

22 A. Your Honor, this -- at approximately 7:45 in the
23 evening. It was dusk. It wasn't dark, but it was dusk at
24 the time.

25 Q. All right. Thank you. You may step down.

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1 A. Thank you.

2 MR. STEINBERG: The State calls Detective Pat
3 Brown.

4 THE CLERK: Do you solemnly swear or affirm to
5 tell the truth, the whole truth and nothing but the truth,
6 so help you God?

7 THE WITNESS: I do.

8 THE CLERK: Thank you. You may be seated. State
9 your full name for the record, please.

10 THE WITNESS: Patrick Brown.

11 PATRICK BROWN,

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MR. STEINBERG:

15 Q. Detective Brown, would you please tell the Judge what
16 your role was in this particular case?

17 A. In this case, my role was to drive two other
18 detectives to the incident location and then secure anybody
19 running from that particular incident location.

20 Q. And when you stopped your car, what did you do?

21 A. I proceeded towards the house where the search warrant
22 was for.

23 Q. And did you detain anybody?

24 A. Yes, I did. An individual was running from the house
25 as he looked back at the SWAT team that was making entry

1 into the house.

2 Q. And did you see what Detective Rhinehart and Detective
3 Hyatt were doing?

4 A. Yes, they made their way to the Defendant who was in
5 the cut and I continued on to the house.

6 Q. You're talking about this Defendant here?

7 A. Yes, sir.

8 Q. And did you ever have any contact with the Defendant
9 at this point or afterwards?

10 A. I dealt with the individual that I was with, after
11 which I walked back up there, but they were finished doing
12 what they were doing.

13 Q. I have no further questions. Please answer any of
14 opposing counsel's questions.

15 **CROSS-EXAMINATION**

16 **BY MR. SARRATT:**

17 Q. The individual that you saw running from the house on
18 Dobbs was not Donald Anderson; was it?

19 A. No.

20 MR. SARRATT: No further questions.

21 MR. STEINBERG: Thank you, Your Honor.

22 THE COURT: You may step down.

23 MR. STEINBERG: Your Honor, the State calls
24 Sergeant Gary Rhinehart.

25 THE CLERK: Sergeant Rhinehart, come forward to

1 be sworn in. Place your left hand on the bible and raise
2 your right.

3 Do you swear or affirm that the testimony you're about
4 to give is the truth, the whole truth and nothing but the
5 truth, so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Thank you. You may be seated.

8 GARY RHINEHART,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. STEINBERG:

12 Q. Sergeant Rhinehart, please tell us what your role was
13 in this particular case?

14 A. Detective Hyatt and myself and Detective Brown, we
15 were assigned to come in from the Sullivan Street side of
16 Dobbs and we were supposed to detain anyone coming from the
17 Dobbs Street area, as they normally do. That area is
18 very well known for drug activity.

19 Q. And did you see anybody at that location?

20 A. Yes.

21 Q. And what did you do once you saw them?

22 A. When we pulled onto the street, we stopped to exit our
23 vehicle. Detective Hyatt got out before I did and he
24 started -- he began instructing the Defendant to stop and
25 get on the ground. And that's when I went around to assist

1 Detective Hyatt.

2 Q. And how did the Defendant act at that point?

3 A. How did he act?

4 Q. Yeah?

5 A. He complied. He got down on the ground.

6 Q. And was he ever placed into handcuffs? And if so, by
7 whom?

8 A. Yes. He was placed in handcuffs by me. I put
9 handcuffs on him. And shortly after he was handcuffed, we
10 had him stand up on his feet. We helped him to his feet.

11 Q. And was there a pat-down in this case?

12 A. Yes.

13 Q. And who performed that pat-down?

14 A. Detective Hyatt.

15 Q. What, if anything, did the Defendant say at that
16 point?

17 A. Well, when Detective Hyatt made the statement that he
18 felt something in his pockets, he said -- he immediately
19 ---

20 MR. SARRATT: Objection, Your Honor. I renew my
21 previous objection.

22 THE COURT: Okay. Overruled.

23 Q. Please continue.

24 A. When he felt something in his pocket, he automatically
25 -- the Defendant stated that those were not his shorts. He

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1 said, these are not -- he said, these ain't my shorts.

2 Q. And were those shorts then searched at that point?

3 A. Yes.

4 Q. And what was removed from those shorts?

5 A. Detective Hyatt pulled a plastic bag out that had
6 several beige rock-like substances in it. It did later
7 field test positive as cocaine base.

8 Q. That's all the questions I have. Please answer any of
9 opposing counsel's questions.

10 MR. STEINBERG: Your Honor, the State would
11 introduce ---

12 Q. Well, let me get you to identify this first. This is
13 State's Exhibit Number 2.

14 A. Okay.

15 Q. Does that accurately depict that the incident occurred
16 here?

17 A. Yeah, this is the Sullivan Street area. Here's Dobbs.
18 And this is the cut right in here.

19 MR. STEINBERG: I'm going to introduce this
20 document. Opposing counsel may wish to ask you a couple of
21 questions. The State would move to introduce State's
22 Exhibit Number 2.

23 MR. SARRATT: No objection.

24 THE COURT: Without objection, State's Exhibit 2
25 is admitted.

1 (WHEREUPON, State Exhibit Number 2 was admitted into
2 evidence.)

3 MR. SARRATT: Your Honor, if you'd permit me just
4 one second.

5 THE COURT: Yes, sir.

6 CROSS-EXAMINATION

7 BY MR. SARRATT:

8 Q. Officer Rhinehart, I'm going to show you what's been
9 marked as Exhibit 1. You stated that this area marked as
10 "A" is Dobbs Street; correct?

11 A. Yes.

12 Q. And the line you drew earlier, that's ---

13 A. No, I didn't draw anything.

14 Q. I'm sorry. But the line that was drawn on there was
15 indicated to be the cut; correct?

16 A. Yeah. It appears to be, yes.

17 Q. Okay. And three -- and you did not draw on there, but
18 what's been drawn as "3" is where my client was found;
19 correct?

20 A. The vicinity. The actual -- right here, this is where
21 the cut is. You see the house here and the house here?

22 Q. Uh-huh (affirmative).

23 A. The cut goes -- you can see the bushes on the sidewalk
24 here. This cut goes right down through here and cuts right
25 across, over straight to that house.

1 Q. Okay. So your testimony is that he was standing in
2 that cut. He was not standing in this yard?

3 A. Let me show you right here where he come up through.
4 When we come around, and as we're approaching here, he was
5 coming in this direction. As we approached him, he turned
6 and diverted and came up through this cut right here. Now,
7 when he actually laid down, he laid down right there on the
8 edge of that cut, which is the edge of the yard, back yard
9 of this house.

10 Q. Okay.

11 A. But he was coming from that area and laid down where
12 he did.

13 Q. Okay.

14 MR. SARRATT: No further questions.

15 MR. STEINBERG: No further questions from the
16 State, Your Honor.

17 THE COURT: Thank you, sir. You may step down.

18 MR. STEINBERG: Your Honor, the State is not
19 going to call Detective Gault. We have tendered him as a
20 State's witness. I'm informed that there are no questions
21 for Detective Gault. The State does call Detective Kevin
22 Hyatt at this point.

23 THE CLERK: Detective Hyatt, do you swear to tell
24 the truth, the whole truth and nothing but the truth, so
25 help you God?

1 THE WITNESS: I do.

2 THE CLERK: Thank you. You may be seated.

3 KEVIN HYATT,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. STEINBERG:

7 Q. Detective Hyatt, would you please tell the Court,
8 again, how long you've been in law enforcement?

9 A. I've been in law enforcement for nine years.

10 Q. And are you familiar with the Dobbs Street, Sullivan
11 Street area?

12 A. Very familiar.

13 Q. And which is the primary road in that area?

14 A. Sullivan Street.

15 Q. How were you dressed on the day in question, August
16 4th, 2011?

17 A. I was dressed in my tactical vest, black vest that
18 does have police in large, white, bold letters, front and
19 back.

20 Q. Have you done surveillance on this particular, what's
21 been referred to as the cut?

22 A. Yes, Your Honor. I'm sorry. Yes.

23 Q. What was your role in the execution of this search
24 warrant?

25 A. I was tasked by Detective Cothran to detain any

1 subjects on the cut coming from Dobbs Street, Dobbs, to
2 Sullivan Street.

3 Q. And how did this Defendant appear when you first made
4 contact with him, first saw him?

5 A. He was actually on the cut going away from Dobbs
6 towards Sullivan.

7 Q. And did he have an opportunity to see you or see other
8 officers?

9 A. We were behind him. There were other officers at the
10 other end, so he looked at them and then looked back
11 towards us.

12 Q. What did he do then at that point?

13 A. He immediately veered to the right off of the cut
14 towards the house at Sullivan.

15 Q. Did you confront him?

16 A. I did. I ran towards him advising him to stop and get
17 on the ground. He immediately dropped to the ground.

18 Q. And was he handcuffed? And if so, by who?

19 A. He was immediately handcuffed by Detective Rhinehart.

20 Q. And once he was handcuffed, did he ever get back to
21 his feet?

22 A. He was helped up to his feet by myself and Detective
23 Rhinehart.

24 Q. How long, in your opinion, do you think he was on the
25 ground for?

1 A. No time at all, just seconds.

2 Q. Okay. And at that point, once he was standing up,
3 what did you then do?

4 A. I then began to pat down his outer clothing for
5 weapons for safety reasons.

6 Q. Do you normally do that in these type situations?

7 A. Every time.

8 Q. And did you feel anything unusual?

9 A. I did. In his right front pocket I felt, which I knew
10 to be plastic, the crumbling of plastic, and also felt
11 multiple hard objects, small hard objects in his pocket
12 that felt consistent to be crack cocaine.

13 Q. In your opinion as an experienced officer, why did you
14 think that was crack cocaine?

15 A. Just from feeling it so many times, I knew -- I know
16 the feel of it and that's exactly what it felt like, in the
17 shape of crack, square shaped, sharp corners.

18 MR. STEINBERG: Your Honor, we're not going to
19 bring the chemist in here. I agree that Mr. Sarratt has
20 preserved the issue involving admissibility. He agrees
21 this is crack cocaine, and the weight, we're going to skip
22 over the chemist and Mr. -- but we do agree everything is
23 preserved as far as ---

24 MR. SARRATT: And I just would renew my previous
25 objection to the introduction of the drugs.

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1 THE COURT: All right.

2 Q. I'm going to show you what been -- what I'll have
3 marked as State's Exhibit.

4 (WHEREUPON, State Exhibit Number 6 was marked for
5 identification.)

6 Q. I'm going to show you what's been marked as State's
7 Exhibit Number 6, and please identify this.

8 A. This is the bag that contained eight beige rock-like
9 substances that I did retrieve from the subject's right
10 pants pocket.

11 Q. I'm going to show you -- I'm going to point to, in
12 particular, right here, this smaller item. Is that the bag
13 that you pulled out?

14 A. It is.

15 Q. What is this larger bag that's inside the biggest bag?

16 A. It's the bag that we sealed it in to place it into
17 property and evidence.

18 Q. And did you follow the Greenville City Police
19 Department ---

20 A. I did.

21 Q. --- their policy on this?

22 A. Yes.

23 MR. STEINBERG: Your Honor, the State would move
24 to introduce State's Exhibit Number 6.

25 THE COURT: Subject to the objection, it's

1 admitted.

2 (WHEREUPON, State Exhibit Number 6 was admitted into
3 evidence.)

4 MR. STEINBERG: And the State -- under the same
5 stipulation, the State does move to introduce State's
6 Exhibit Number 5, the drug analysis report, cocaine base
7 found, point nine four grams.

8 MR. SARRATT: And I renew my previous objection
9 to that.

10 THE COURT: Subject to objection.

11 (WHEREUPON, State Exhibit Number 5 was admitted into
12 evidence.)

13 Q. Detective Hyatt, when you located these drugs or first
14 found them, before you pulled it out, what, if anything,
15 did you say to your fellow officer?

16 A. I immediately -- I looked at Detective Rhinehart who
17 was standing right beside me. I said, I believe he has
18 crack in his pocket. At that time, Mr. Anderson
19 immediately said, man, these are not my shorts.

20 Q. And was he, in fact, wearing shorts at the time?

21 A. He was wearing shorts.

22 Q. In your experience as a law enforcement officer, what
23 is the value of approximately one gram of crack cocaine?

24 A. Approximately one hundred dollars.

25 Q. How long has that been the current going rate for

1 crack cocaine?

2 A. I've been in vice three and a half years now and it's
3 been the price ever since.

4 Q. Just for the Court's edification, what is the status
5 or the handling of the case involving the owner of
6 Dobbs?

7 A. As far as I know, it's still pending in court.

8 MR. STEINBERG: Your Honor, the State has no
9 further questions. We do ask opposing counsel -- our
10 witness to answer any of opposing counsel's questions.

11 **CROSS-EXAMINATION**

12 **BY MR. SARRATT:**

13 Q. Detective, you're testifying that my client was
14 walking from Dobbs Street; correct?

15 A. He was in the cut between Dobbs and Sullivan,
16 going away from Dobbs.

17 Q. And the cut is different from Sullivan; correct?

18 A. Yes.

19 Q. And Sullivan is just a house with a yard and
20 everything?

21 A. Yes.

22 Q. The cut is a trail that runs beside it?

23 A. Yes.

24 Q. Okay. But your testimony is that my client was
25 walking along the cut, away from Dobbs Street towards

1 Sullivan?

2 A. He was going towards Sullivan Street on the cut. Once
3 we -- he observed us, he immediately veered right off of
4 the cut, going towards the house. Actually, when I advised
5 him to get on the ground, he was in the yard between the
6 cut and the house.

7 Q. But your testimony is not that he started out in the
8 yard?

9 A. No, he was ---

10 Q. On the move?

11 A. --- dead center of the worn path.

12 Q. Okay. Despite the fact that in your report you
13 recognize that you initially wrote that he was standing in
14 the cut. You didn't mention he was walking in any
15 direction?

16 A. He was in the cut, walking away from.

17 MR. SARRATT: No further questions.

18 MR. STEINBERG: Your Honor, the State has no
19 further questions.

20 **EXAMINATION**

21 **BY THE COURT:**

22 Q. How far was it, Officer Hyatt, from the house to where
23 he was stopped?

24 A. I would say a good fifty yards.

25 Q. Fifty yards. Okay. Thank you.

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1 THE COURT: You may step down.

2 MR. STEINBERG: Your Honor, the State has no
3 further witnesses. And the State does rest at this point,
4 Your Honor.

5 MR. SARRATT: Your Honor, at this point, I would
6 make a motion for a directed verdict.

7 THE COURT: Well, I think the State has
8 sufficiently proved it's case by the standard I'm required
9 to look at with all the evidence in the light most
10 favorable to the State. I'll be glad to hear from any
11 witnesses the Defense wishes to offer.

12 MR. SARRATT: Yes, Your Honor. The Defense calls
13 Bruneysa Addison.

14 THE CLERK: Would you please come forward to be
15 sworn in. Place your left hand on the bible and raise your
16 right.

17 Do you solemnly swear or affirm to tell the truth, the
18 whole truth and nothing but the truth, so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Thank you. You may be seated. Would
21 you please state your full name and spell it for us?

22 THE WITNESS: Bruneysa, B-r-u-n-e-y-s-h-a,
23 Addison, A-d-d-i-s-o-n.

24 BRUNEYSHA ADDISON,

25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

2 BY MR. SARRATT:

3 Q. Ms. Addison, how old are you?

4 A. I'm nineteen.

5 Q. Nineteen. And how do you know my client, Mr.
6 Anderson?

7 A. He's my neighbor.

8 Q. He's your neighbor. And where do you live?

9 A. Street.

10 Q. Street.

11 THE COURT: Wait a minute. I can't hear you.

12 I've got to be able to hear what you have to say, so please
13 speak up a little bit; okay?

14 Q. So you're Mr. Anderson's neighbor; correct?

15 A. Yes.

16 Q. And were you at home on the night of August the 4th,
17 2011?

18 A. No, I was at his aunt's house.

19 Q. You were at his aunt's house?

20 A. Yes.

21 Q. And do you know the address of his aunt's house?

22 A. Sullivan Street.

23 Q. Sullivan Street, okay. And where were you in the
24 vicinity of your aunt's house? Were you inside?

25 A. Sitting on the front -- we were sitting on the front

1 porch.

2 Q. Sitting on the front porch. So were you able to hear
3 sort of the commotion of this drug raid that was going on
4 at Dobbs Street?

5 A. We just heard like a loud boom.

6 Q. Okay. And then what did you do?

7 A. We looked to see what was going on. And I seen the
8 Defendant, he was on the ground and he was standing with
9 one of my friends. They were both on the ground and we
10 were kind of confused as to what was going on.

11 Q. Okay. So just -- let's step back a second. You
12 started out on the front porch?

13 A. Yes.

14 Q. And then you heard a loud boom. Did you stay on the
15 front porch or did you move?

16 A. We moved.

17 Q. And where did you move to?

18 A. We moved like by the side of the house to kind of see
19 what was going on.

20 Q. So from the side of the house, were you able to get a
21 good view of sort of the cut, the trail that leads from --
22 between Sullivan and Dobbs Street?

23 A. Yeah.

24 Q. And where was the Defendant?

25 A. He was actually in his aunt's yard. Like, he was by

1 his aunt's yard.

2 Q. He wasn't walking away from Dobbs Street?

3 A. No.

4 Q. He was just standing in his aunt's yard?

5 A. Yeah.

6 Q. And that's where he was when the police approached
7 him?

8 A. Yeah. He was sitting on the car with my friend Keisha
9 and they were talking. And when the boom happened we
10 looked and they were both on the ground in handcuffs.

11 Q. Okay. When the officers approached him?

12 A. Yeah.

13 Q. Did they have their weapons drawn?

14 A. I didn't see.

15 Q. Okay. But regardless, your testimony is that he was
16 standing in his aunt's yard at Sullivan Street?

17 A. Yeah. Yeah.

18 Q. Thank you.

19 MR. SARRATT: No further questions.

20 MR. STEINBERG: Your Honor, the State has no
21 further questions -- no questions at all for this witness.

22 THE COURT: All right. Thank you, ma'am. You
23 may step down.

24 MR. SARRATT: Your Honor, the Defense calls
25 Donald Anderson.

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1 THE CLERK: Would you please come forward. Place
2 your left hand on the bible and raise your right.

3 Do you solemnly swear or affirm the testimony you're
4 about to give is the truth, the whole truth and nothing but
5 the truth, so help you God?

6 THE WITNESS: Yes, ma'am.

7 THE CLERK: Thank you. You may be seated. State
8 your full name for the record, please.

9 THE WITNESS: Donald Anderson.

10 DONALD ANDERSON,

11 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MR. SARRATT:

14 Q. Mr. Anderson, how old are you?

15 A. I'm thirty years old.

16 Q. Thirty years old. And where did you go to school?

17 A. Wade Hampton High School.

18 Q. Wade Hampton. And where do you currently live?

19 A. I currently live at Street.

20 Q. Okay. And do you have any relatives that live in the
21 area of Dobbs Street or Sullivan Street?

22 A. I have two aunts that live at Sullivan Street.

23 Q. Okay. And where were you on the night of August 4th,
24 2011?

25 A. Well, at the beginning I was -- it was me, her and her

1 friend and my aunt. We was on -- we was in the front yard.

2 Q. I'm sorry. The front yard of?

3 A. Sullivan Street. I'm sorry. Okay, so I, you
4 know, I wanted to talk to her because I guess she wanted to
5 talk to me. We had moved to the back yard. We was sitting
6 on my aunt's car. My aunt yelled out the window, get off
7 my car. And I'm saying, okay. So, you know, I guess we
8 was still kind of staying back there, you know what I'm
9 saying, talking, talking. Next thing you know, I mean, I
10 saw some cars up the street, kind of thought they was the
11 police. But then, again, I don't know. At the same time,
12 I thought it was -- they started arriving fast. I thought
13 it was of my -- one of his home boys, what's his name, Mr.
14 Dobb or Mr. Cobb.

15 Q. Kendrick Cobb.

16 A. Yeah. I thought it was one of his people going crazy
17 again. So, I'm like, man. At the same time, okay, I'm
18 back with her now. Then I heard a big boom. Then it kind
19 of scared me, you know what I'm saying? Kind of threw me
20 off the car. But I never ---

21 Q. Okay. Let me stop you real quick.

22 A. I'm sorry.

23 Q. The car is in the back yard of your aunt's house?

24 A. Yes, sir. It kind of like scared me off the car
25 because I thought, oh, my goodness, they shooting. I got

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1 to get the hell out of here. So then I heard, you know
2 what I'm saying, the police. I said, oh, whew. You know
3 what I'm saying? I felt safe. But at the same time, I
4 don't know if the police shooting because my aunt was --
5 she got a big kerosene or gas container in her back yard
6 that if they shoot that now, we in big trouble. So I kind
7 of moved, you know what I'm saying, to kind of move from --
8 I didn't -- I did not, I did not step foot in the cut, but
9 I kind of moved towards the front, the front yard, so I
10 can, you know what I'm saying, be clear of that gas jar. A
11 officer pointed a gun at both of us. She, she went down
12 immediately. I'm like, I'm shocked like, oh, don't shoot
13 me. You know what I'm saying. I got down. He came. I
14 got down on the ground, hands up and came -- I guess
15 regular police apprehension, put his knee's on my neck and
16 they actually still had the guns pointed to me, you know
17 what I'm saying, me and her. I had never stepped foot -- I
18 never stepped foot in that cut. And as far as Michael
19 Dobbs is concerned, I'm not even associated or friends with
20 him.

21 Q. I'm sorry. Are you talking about Kendrick Cobb?

22 A. I'm sorry. Kendrick, whatever his name.

23 Q. The guy who lives at Dobbs Street?

24 A. Yeah.

25 Q. You do not have any association with him?

1 A. I know him by a nickname.

2 Q. Well, I mean, other than that he lives close to your
3 aunt?

4 A. Yeah.

5 Q. And apparently, you know, he has on-going charges
6 against him and this drug raid was against him and they
7 were looking for sort of associates of him.

8 A. Yeah.

9 Q. You're not a part of his operation?

10 A. I really don't even -- I don't associate with them,
11 period.

12 Q. Okay.

13 A. As far as that go and it was kind of -- he kind of
14 explained how he was frisking me down, but that was another
15 statement that was not true. I was on the ground for about
16 a minute. It wasn't too long. One of the officers picked
17 me up and kind of tussled with me a little bit, like this
18 is -- you know, what I'm saying. I guess I'm a big dude.
19 I guess you got to tussle with me. And when I ---

20 Q. But you aren't resisting?

21 A. I'm not resisting at all.

22 Q. You complied with all their commands?

23 A. All of them because they got guns, you know what I'm
24 saying.

25 Q. Yeah.

1 A. I don't want to get shot. Okay. So he wasn't
2 frisking me, you know what I'm saying, he actually went in,
3 he went in my third pocket on the front and he -- you know
4 what I'm saying? I ain't have no drawers on at the time so
5 I guess he didn't need to go in, but he actually -- the
6 first place he stopped, he went in my third pocket that was
7 in the front. I guess y'all call it your first pocket,
8 that little bitty pocket that's in your blue jean pants?

9 Q. Your change pocket?

10 A. Yeah. He went in there; that's where he found the
11 stuff at.

12 Q. Okay. Anything else you want to say?

13 A. Other than they try to get me to tell on some people,
14 you know what I'm saying. Other than that, no, uh-uh
15 (negative).

16 Q. Please answer any questions that the State may have.

17 A. Cool.

18 **CROSS-EXAMINATION**

19 **BY MR. STEINBERG:**

20 Q. Mr. Anderson, were you convicted of possessing
21 approximately one point one two grams of crack cocaine just
22 a year before this incident?

23 A. Repeat that question, sir?

24 Q. Were you convicted of possessing approximately one
25 point one two grams of crack cocaine about a year before

1 you were arrested on this charge?

2 A. Yes, sir.

3 Q. And you were on probation from that charge ---

4 A. Yes, sir.

5 Q. --- at the time of this crime?

6 A. Yes, sir.

7 Q. And did the officers, in fact, pull eight rocks out of
8 your pocket?

9 A. Yes, sir.

10 Q. Did you, in fact, possess eight crack -- pardon me --
11 eight rocks of crack cocaine?

12 A. No, sir. When I -- see, at the time, see, I was
13 smoking. I was never selling nothing. At the time, I was
14 smoking and it was supposed to be three, three rocks, three
15 solid rocks, and I'm swearing on the bible I'm telling the
16 truth. It was three rocks in that bag. I don't know if
17 they got somebody else and got it confused with mine, but I
18 know what I had.

19 Q. Is it possible that the rocks cracked; have you ever
20 seen that?

21 A. No, no, no, because they like real little. No, uh-uh
22 (negative), it ain't possible. It's not possible.

23 Q. So did you -- I'm going to show you the item. You
24 agree that you possessed crack cocaine, you just agree to a
25 smaller amount?

1 A. Exactly.

2 Q. Can you say that a little louder, please?

3 A. Oh, I'm sorry. Yes. Yes.

4 Q. Some are very small crumbles. Does this appear to be
5 the same amount?

6 A. No. It was like three -- it was three of them little
7 ones. I can definitely recall for I ain't saying -- I'm
8 not saying that, I'm not saying that -- they probably did
9 get some more because they arrested a whole lot of people.
10 They probably did get some drugs off somebody and between
11 the confusion -- well, like I said, I was smoking so I know
12 how much I had and I know, I know how much money I had so I
13 really can't afford eight, eight, so ...

14 Q. Would you agree you had it in that small plastic bag?

15 A. I agree that I had three small rocks ---

16 Q. In this small plastic bag?

17 A. Yeah. I wouldn't say in that plastic bag, but I had
18 three small rocks in a bag.

19 MR. STEINBERG: I have no further questions.

20 MR. SARRATT: No redirect.

21 THE COURT: All right. Thank you, sir. You may
22 step down.

23 MR. SARRATT: At this point the Defense rests.

24 THE COURT: Anything in reply from the State?

25 MR. STEINBERG: No, sir, Your Honor.

1 MR. SARRATT: I'm also renewing my motion for a
2 directed verdict.

3 THE COURT: I'll be glad to hear from either of
4 the attorneys if they'd like to make any kind of statement.
5 Anything from the State?

6 MR. STEINBERG: I think opposing does his closing
7 argument first because he put up some evidence.

8 THE COURT: All right. Well, I -- do you wish to
9 address -- I'll be glad to hear from you if you want to
10 make a closing statement.

11 **CLOSING STATEMENT**

12 **BY MR. SARRATT:**

13 I would just point out, Your Honor, that my client,
14 Mr. Anderson, he admits to what he did. I know we've gone
15 through this trial -- we had a special hearing to put up
16 once he's on the stand. It is what it is. However, we ask
17 you to consider that he was at his own house -- I'm sorry,
18 at his aunt's house, minding his own business. And he
19 wasn't a part of this drug operation. And I'd ask that you,
20 find him not guilty.

21 MR. STEINBERG: Your Honor, the State waives
22 closing argument.

23 THE COURT: Well, obviously, the burden's on the
24 State to prove possession beyond a reasonable doubt and
25 I've heard all the testimony. And I think based upon the

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1 prior ruling on the suppression hearing that it's not, Mr.
2 Sarratt, whether this individual was part of a drug cartel,
3 but it's all about what was going on in the officer's mind
4 at the time of the boom. It seems like there's been
5 consistency that everybody heard a boom, which was the
6 light and the noise that was used to detract, again, for
7 officer's safety. And I think clearly, under the *Terry v.*
8 *Ohio* case, that they would have a right to detain him, as
9 they did, and certainly to do the actions they did for
10 their own safety. They could certainly have a reasonable
11 suspicion based on where he was and what was taking place
12 just a few yards away, and I think they've expressed
13 articulately the facts on which they relied in order to
14 make this detention and this stop. And I think it was
15 clear that the pat-down search did reveal the drugs.

16 So I find that he was unlawfully in possession of
17 crack cocaine on this particular date. He certainly had
18 the full power and control over the particular drugs.
19 Apparently, there was a dispute as to the amount, whether
20 it was eight rocks or three rocks, but I understand the
21 charge either way. Under a gram? Is that correct?

22 MR. STEINBERG: Yes, sir, Your Honor.

23 THE COURT: I find that he is guilty of the crime
24 charged.

25 Any matters we need to take care of before sentence is

1 imposed?

2 MR. STEINBERG: Not from the State, Your Honor.

3 THE COURT: Defense?

4 MR. SARRATT: Nothing from the Defense.

5 MR. STEINBERG: He has a prior record. I'll have
6 a short statement at sentencing, but nothing pre-
7 sentencing.

8 THE COURT: Excuse me?

9 MR. STEINBERG: I'd like to say some things at
10 sentencing, but nothing pre-sentencing.

11 THE COURT: All right. If you'd come forward,
12 Mr. Anderson.

13 (WHEREUPON, Mr. Steinberg, Mr. Sarratt and the
14 Defendant approached the bar.)

15 MR. STEINBERG: Your Honor, I'm handing up the
16 sentencing sheet.

17 THE COURT: Mr. Anderson, if you would, I want to
18 find out a little more information about you. You told me
19 you went to Wade Hampton High School. Did you graduate
20 from there?

21 THE DEFENDANT: No, I didn't graduate from Wade
22 Hampton. I was attending Greenville Literacy Association.
23 I'm still going, sir.

24 THE COURT: How far did you go before you dropped
25 out of school?

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1 THE DEFENDANT: Eleventh.

2 THE COURT: What kind of work have you primarily
3 done since you've been out of school?

4 THE DEFENDANT: I did lawn work, painting,
5 roofing, a little bit of plumbing and some other type jobs.

6 THE COURT: Where did you last work?

7 THE DEFENDANT: I worked at a lawn company with
8 my uncle, Pat Anderson.

9 THE COURT: How long ago?

10 THE DEFENDANT: He actually owned his own
11 business.

12 THE COURT: What kind of work were you doing
13 there?

14 THE DEFENDANT: He cut grass and rake leaves and
15 he cut, trim hedges, clean gutters and stuff like that.

16 THE COURT: How long ago was it that you worked
17 there?

18 THE DEFENDANT: Recently, I'd say probably about
19 a week ago the last time I worked with them. Probably
20 about five days ago.

21 THE COURT: Do you have children?

22 THE DEFENDANT: I have one and two on the way.
23 Twins.

24 THE COURT: When are they due?

25 THE DEFENDANT: They are due either October -- I

1 think October. October 10th, something like that,
2 September 10th. I can't remember which one. Or November
3 10th.

4 THE COURT: Have you ever had any alcohol or drug
5 treatment in the past?

6 THE DEFENDANT: I went to Voc Rehabilitation.

7 THE COURT: How long ago was that?

8 THE DEFENDANT: It was recent. I'd say about
9 maybe three weeks ago.

10 THE COURT: How many times did you go?

11 THE DEFENDANT: I completed the class.

12 THE COURT: You completed it? One class?

13 THE DEFENDANT: I went there eight classes.

14 THE COURT: When did you start using drugs? How
15 old were you?

16 THE DEFENDANT: When I first start, I actually --
17 when I first start -- started smoking marijuana, I first
18 tried it at age sixteen.

19 THE COURT: Sixteen?

20 THE DEFENDANT: Didn't like it.

21 THE COURT: When did you start using crack?

22 THE DEFENDANT: I was thirty.

23 THE COURT: Thirty?

24 THE DEFENDANT: I'm thirty now, Your Honor. I
25 was either twenty-nine or thirty at the time. I think I

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1 was thirty, though. I tried that once and I was in a
2 depressed -- I was in a bad place. My -- I was paying
3 child support and my -- and I never got the chance to
4 actually see my son. And I didn't think nobody cared so I
5 just stopped caring too.

6 THE COURT: So you're telling me that you didn't
7 start using crack until you were thirty years old?

8 THE DEFENDANT: Yeah, just one time. Yes, sir.

9 THE COURT: All right. But you got convicted in
10 2010? You were almost thirty then. You were born in '82?

11 THE DEFENDANT: I was born in 1982, yes, sir.

12 THE COURT: Okay. So in 2010, you were twenty-
13 eight years old?

14 THE DEFENDANT: Oh, 2010 when I started selling
15 it? I actually, yeah, I sold it at twenty-eight years old.

16 THE COURT: Sold it when you were twenty-eight,
17 you didn't ever use it, didn't know what your ---

18 THE DEFENDANT: I was almost to the point where I
19 wanted to, the truth of the matter being, I had actually
20 stole it from another person to use it because I was having
21 relationship problems. I was ---

22 THE COURT: And you went all the way through your
23 twenties without using drugs?

24 THE DEFENDANT: All the way.

25 THE COURT: Didn't you know better at age thirty?

1 THE DEFENDANT: Yeah. I was -- when I was in
2 that depression, I ain't have nobody to like help me or
3 talk to me. It seemed like everybody was bringing me down.

4 THE COURT: Your aunts too?

5 THE DEFENDANT: My Aunt prayed for me, but at the
6 time I didn't want to hear that.

7 THE COURT: Have you sought any counseling from
8 anyone?

9 THE DEFENDANT: My drug and alcohol teacher.

10 THE COURT: But not before that?

11 THE DEFENDANT: Other than going -- other than
12 sitting in church with my pastor -- what's her name?
13 Pastor -- she, she's a real good friend of my grandma and
14 she told me to step into church. She prayed for me, you
15 know, and she actually showed me there's another way, you
16 know what I'm saying, by just trusting God all things will
17 be answered, you know what I'm saying. I'm trying to
18 straighten up that way. I mean, as far as drugs and stuff
19 is concerned, I'm not -- I left that behind and going to
20 leave it -- I'm going to leave it behind. And as far as
21 ---

22 THE COURT: You were going to do that in 2010
23 when you got caught the first time, though, weren't you?

24 THE DEFENDANT: It's always -- I ain't going to
25 lie to you. I mean, it's always something catching me.

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1 And that's a good thing too.

2 THE COURT: Are you an addict?

3 THE DEFENDANT: No. No, sir.

4 THE COURT: You're not? You can take it or leave
5 it? Drugs, you can take it or leave drugs, you don't have
6 to have them?

7 THE DEFENDANT: At some time I thought I did have
8 to have them. No, I don't feel no -- I don't feel no way
9 -- I can't go back there. At the time, I thought I had to
10 have it, but with some special treatment and some special
11 friends, I know I don't need it. They got me back, like I
12 said, straight.

13 THE COURT: Mr. Sarratt, anything you want to
14 tell me?

15 MR. SARRATT: Your Honor, I would just add, Mr.
16 Anderson has always been up front with me, very pleasant to
17 work with. And he, from the beginning, has always stated
18 that he was not involved with Kendrick Cobb. And I know he
19 was swept up in this drug raid. But he has always
20 maintained that he was not associated with Kendrick Cobb
21 and wasn't any sort of a dealer for Kendrick Cobb. And,
22 you know, I understand he was charged once with possession
23 with intent to distribute, but, you know, I think this is
24 consistent -- it's under a gram, it's consistent with
25 personal use. It was in one bag. He didn't have any

1 scales, didn't have a large amount of cash on him. So I do
2 believe that he was just using at the time. And so I would
3 ask that you take that into consideration and be as lenient
4 as possible with your sentence. Again, he does have twins
5 on the way and we would ask, if at all possible, possibly
6 two years of house arrest, or if not then just as lenient
7 and close to the low-end of that year to five range as you
8 can.

9 THE COURT: Anything else you want to tell me,
10 Mr. Anderson?

11 THE DEFENDANT: Yes, sir. Well, ever since we
12 been coming to court back and forth here, I did make some,
13 I did make some advancements. I had joined the committee
14 against drugs and against shooting. I had a best friend of
15 mine, he had, I guess, I don't know what's going on, but
16 knowing him, his name is -- we called him J-Rock. He died
17 on Sullivan Street. Knowing him, he'd probably been on
18 some kind of drug, some kind of -- I don't know what he got
19 shot for; he got killed. It's just been a big turnaround
20 for me, you know what I'm saying. I know I end up being in
21 jail, if I -- I mean, probably, probably even dead if I
22 keep it up with doing what I'm doing, doing what I did. I
23 got my best friend, and he was a drug dealer, he was the
24 coolest person in the world. So I'm with a committee right
25 now that's against drugs and violence on the street. I

1 actually did that for myself. I've been in that. I'm
2 trying to keep -- I'm trying to talk to little kids, keep
3 them off the street, let them know what I'm going through
4 and let them know what I've been through. Other than that,
5 just working, keeping my mind off certain things.

6 THE COURT: All right. Thank you, Mr. Anderson.

7 Any time served, Solicitor, on this case?

8 MR. STEINBERG: Your Honor, he served five days.

9 And the Defendant does have a record, Your Honor.

10 THE COURT: What's the prior record?

11 MR. STEINBERG: Thank you, Your Honor. He had a
12 2003, malicious injury; 2004, simple assault and battery;
13 2005, disorderly conduct; 2006, a CDV. He had a probation
14 violation, for which I don't have a date. I want to talk
15 about the ---

16 THE COURT: Wait a minute. You're going really
17 fast.

18 MR. STEINBERG: Sorry about that, sir.

19 THE COURT: '03 was malicious injury to personal
20 property?

21 MR. STEINBERG: Yes, sir.

22 THE COURT: And the '05 was what?

23 MR. STEINBERG: '04.

24 THE COURT: '04?

25 MR. STEINBERG: Yes, sir. 2004, simple assault

1 and battery.

2 THE COURT: What was '06 or '05?

3 MR. STEINBERG: '05 was disorderly conduct.

4 THE COURT: CDV in '06?

5 MR. STEINBERG: Yes, sir.

6 THE COURT: All right.

7 MR. STEINBERG: And he has a probation violation,
8 I'm not sure of the date on that. The incident where he
9 was convicted in 2010 occurred when he was twenty-seven
10 years old in 2009. He was arrested with over a gram of
11 crack cocaine. He admitted he sold it at the time. I
12 could not reduce the charge to probation, but did agree to
13 reduce it down to possession. That's what we had. We told
14 the Defense attorney in that case, which was Mr. Bannister,
15 that we would tell the court we were asking for
16 incarceration. We asked for incarceration on that last
17 case, Your Honor, although we did reduce it. We are,
18 again, asking for incarceration in this case. I don't want
19 there to be a possession of third, with this Defendant
20 simply not getting the message. He knows how bad Sullivan
21 Street -- of all the crime areas of Greenville, I can say
22 Sullivan Street and Trotter Street and Dobbs Street are the
23 worst, but they are among the very worst and it causes all
24 other sorts of problems in the neighborhoods. And we've
25 just got to put a stop to it, Judge.

State of South Carolina -vs- Donald Marquice Anderson (2011-GS-23-09938 and 09939)
Closing Statement by Mr. Sarratt

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1 THE COURT: So is he off probation now or is he
2 still on probation?

3 THE DEFENDANT: I was off probation -- I was
4 supposed to be off probation the 15th of July. But I'm not
5 entirely sure. I still owe some money, so I'm not entirely
6 sure about that.

7 MR. STEINBERG: Judge, I think he received sixty
8 days active sentence followed by eighteen months of
9 probation. He got three years suspended upon sixty days
10 and eighteen months of probation on his last sentence. I'm
11 looking to see -- I don't have his current probation
12 status.

13 THE COURT: What was the date of the sentence in
14 2010?

15 MR. STEINBERG: He was sentenced in 2010, on
16 October 6th of 2010, and he had three years.

17 THE COURT: You realize this conviction
18 jeopardizes your probation?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do we need to take care of that today
21 or not?

22 MR. STEINBERG: I'm not sure of the answer to
23 that, Your Honor.

24 THE COURT: Probation hasn't been notified?

25 MR. STEINBERG: No, sir.

1 THE COURT: Maybe Friday we can do that.

2 So you had a three year sentence over your head on the
3 other charge.

4 THE DEFENDANT: I'm not sure. I'm not sure
5 exactly.

6 THE COURT: Do you have any violations on your
7 probation? They haven't had you back up to court for
8 anything?

9 THE DEFENDANT: No, sir.

10 THE COURT: Are we still having plea court? We
11 need to get that taken care of now, too.

12 MR. STEINBERG: Yes, sir.

13 THE COURT: Are they coming?

14 MR. STEINBERG: They're on their way.

15 THE COURT: Okay. Good.

16 THE DEFENDANT: I remember probation saying I owe
17 them some money. I don't know if I violated, but they said
18 I need to pay them some money. I can't remember exactly.

19 THE COURT: They'll tell us in a minute.

20 THE DEFENDANT: Okay.

21 THE COURT: Where are you going to be staying?

22 THE DEFENDANT:

23 THE COURT: Who do you stay with there?

24 THE DEFENDANT: My grandma. I help her pay bills
25 as long as I keep working.

State of South Carolina -vs- Donald Marquice Anderson (2011-GS-23-09938 and 09939)
Closing Statement by Mr. Sarratt

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1 THE COURT: Excuse me?

2 THE DEFENDANT: I said I -- yeah. I'm around to
3 help her pay bills, you know what I'm saying, and stuff
4 like that. She needs my help a little bit to pay bills and
5 stuff, so I guess I'll be staying with her.

6 THE COURT: Mr. Sarratt, do you need some time to
7 go over with Mr. Anderson the probation matters, you think?
8 Are you ready to take care of that now, too?

9 MR. SARRATT: No, I think we're ready to proceed,
10 Your Honor.

11 THE COURT: You understand this will violate your
12 probation?

13 PROBATION AGENT: It looks like he was sentenced
14 10/6/2010 for possession of crack cocaine, three years
15 suspended to sixty days, and eighteen months probation.

16 THE COURT: Is it due to expire this month?

17 PROBATION AGENT: It would be in October of 2012.
18 I think it went past that maybe sixty days. Probably
19 around December.

20 THE COURT: He was sentenced in October of '10
21 and he had eighteen months probation.

22 PROBATION AGENT: Oh, yeah. I was thinking two
23 years.

24 THE COURT: Any other violations?

25 PROBATION AGENT: There's a Form 9 in here from

State of South Carolina -vs- Donald Marquice Anderson (2011-GS-23-09938 and 09939)
Closing Statement by Mr. Sarratt

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1 June 29th of this year, which was Judge Miller. He was to
2 continue on, extended one year on probation. There's a
3 violation for failure to complete substance abuse
4 counseling. Fee arrearages. Most all the rest of it is
5 money.

6 THE COURT: That was two weeks ago you appeared
7 before Judge Miller?

8 THE DEFENDANT: (Negative nod).

9 THE COURT: 6/29 of this year or '11?

10 PROBATION AGENT: No, this year. It could have
11 been paperwork.

12 THE COURT: Who sentenced him?

13 PROBATION AGENT: Originally?

14 THE COURT: Originally.

15 PROBATION AGENT: Judge Hill.

16 THE COURT: Well, I find that there has been a
17 willful violation of the terms and conditions of probation
18 by this conviction.

19 What was -- the sentence you said was two years,
20 suspended on sixty days?

21 PROBATION AGENT: Three years.

22 THE COURT: Three years?

23 PROBATION AGENT: Suspended on sixty days.

24 THE COURT: You said that was 10/16, the sentence
25 on the other one?

State of South Carolina -vs- Donald Marquice Anderson (2011-GS-23-09938 and 09939)
Closing Statement by Mr. Sarratt

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1 PROBATION AGENT: Yes, sir.

2 THE COURT: All right. As far as the probation,
3 I'm going to find that there has been a willful violation.
4 I'm going to extend the probation for two years, continue
5 him on probation two years, in addition to the one year
6 recently extended last month.

7 This is case 2011-GS-23-9939. The sentence of the
8 Court is Defendant be committed to the State Department of
9 Corrections for a period of five years, provided upon the
10 service of ninety days, the balance is suspended, placed on
11 probation for forty months. That sentence is to be
12 consecutive to the probation case he's now under.

13 Which means, Mr. Anderson, there's eight years over
14 your head if you violate your probation. A condition of
15 the probation is going to be that he perform two hundred
16 hours of public service employment, which will be suspended
17 upon him maintaining gainful employment, obtain his GED and
18 have substance abuse counseling and random alcohol and drug
19 testing. I'm recommending the drug program, that he be
20 enrolled in that while at LEC. Once his probation starts
21 upon his release, it's to be intensive probation for six
22 months and that will include house arrest with electronic
23 monitoring for twelve months following probation --
24 completing probation.

25 All right, sir. I wish you the best.

WITNESSES

K. S. Hyatt

Greenville Police Department

8/4/2011

DOCKET NO. 2011-GS-23- 009939

HLS

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May TERM 2011

THE STATE

VS.

DONALD MARQUICE ANDERSON

ARREST WARRANT NUMBER

M802146

ACTION OF GRAND JURY
INDICTMENT

Donald Marquice Anderson
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Hoskins

Indictment for

3014

POSSESSION OF COCAINE BASE WITH INTENT
TO DISTRIBUTE

VIOLATION § 44-53-0375

RECEIVED

DEC 28 2011

Clerk of Court
Greenville County

Foreperson of Petit Jury

Date:

101

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
POSSESSION OF COCAINE BASE WITH INTENT TO
DISTRIBUTE

At a Court of General Sessions, convened on

29 2012

the Grand Jurors of Greenville

County present upon their oath:

That DONALD MARQUICE ANDERSON did in Greenville County, on or about the 4th day of August 2011, possess with intent to distribute or aid, abet, or conspire to possess with the intent to distribute a quantity of Cocaine Base (Crack Cocaine), a controlled substance, such possession not having been authorized by law. 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

STATE OF SOUTH CAROLINA

County of GREENVILLE

DOBBS ST

Case # 2-11-66110

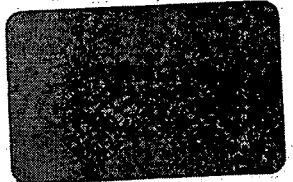
SEARCH WARRANT

Date 7/25/11

Officer COTHRAN CK

UG
205370
7-25-11

state 4



STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

AFFIDAVIT

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

DESCRIPTION OF PROPERTY SOUGHT

COCAINE OR COCAINE BASE, A SCHEDULE II CONTROLLED SUBSTANCE, AND, PARAPHERNALIA, INCLUDING BUT NOT LIMITED TO CONTAINERS OF VARIOUS TYPES COMMONLY ASSOCIATED WITH THE STORAGE AND MANUFACTURING OF COCAINE BASE. IMPLEMENTS USED IN THE ADMINISTERING OR INGESTING COCAINE BASE. BOOKS, CELLULAR PHONES, AND RECORDS ASSOCIATED WITH THE PURCHASE AND SALE OF COCAINE BASE AS WELL AS ITEMS OF PERSONAL PROPERTY TENDING TO ESTABLISH THE IDENTITY OF PERSONS IN CONTROL OF AREAS SEARCHED, ANY AND ALL MONIES GAINED IN THE DISTRIBUTION OF COCAINE BASE.

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

DOBB ST, GREENVILLE SC 29601 is a single family dwelling. The residence is further described as a single story structure. The residence has white vinyl siding. The structure has a red cement block under pending and a covered porch that has black metal railing. The roof is a gray and black shingled roof. The residence has black shutters affixed to the front of the residence. The search is to include all rooms, closets, attics, crawl spaces, boxes, trash containers, lock boxes and safes locked or unlocked, cabinets, drawers, pantries, detached storage buildings, garages, outbuildings and any persons and vehicles located within the curtilage of the residence.

If one were traveling on Sullivan St, one would turn on Dobb St. Dobbs St will be the first residence on the right.

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

I, Detective Cothran being duly sworn and deposed say that I am a certified police officer in the State of South Carolina. Your affiant did complete Basic Law Enforcement training at the SCCJA more than 5 years ago. Your affiant has been assigned as a Vice and Narcotics investigator for the past 22 months. Your affiant has completed the following training: Narcotic Undercover Techniques (SCCJA), Meth Investigation (CICP), Tactical Drug Operations (MCTFT), Basic Narcotic Investigation (RCTA). Your Affiant has been involved in no less than 100 Drug Investigations. Your affiant is authorized to conduct searches and seizures. Affiant states that he received information on or about 3/1/2011 from a Confidential Informant (CI). The CI stated that there was a large quantity of cocaine inside the residence located at Dobb St, Greenville SC. The CI does have knowledge of the substance and could recognize the substance on sight. Affiant states that on or about 3/1/2011 he received a crime stoppers complaint regarding drug activities at Dobbs St, the complaint mentions constant traffic in and out of the location. Affiant states that he conducted surveillance of the location and did observe traffic (foot/vehicular), subjects would arrive and stay for a short period of time and leave the residence. This type of activities is common with the drug trade. Affiant states that on a separate occasion he observed subject/s at the residence that he has knowledge of as drug traffickers. Affiant states that between 5/1/11-5/15/11 a documented proven reliable CI went to Dobbs St. The CI was able to purchase a quantity of cocaine base. The buy was a controlled buy and monitored by the affiant. Affiant states that on 7/25/11, he conducted a trash pull at Dobb St. During a search of the trash the affiant located pieces of torn plastic bags consistent with paraphernalia and green plant material consistent with the affiants training and experience to be marijuana. Due to the above listed reasons it is your affiants belief that more drugs will be located in the residence at Dobb St, Greenville SC. Due to the possibility of destruction of evidence and the illicit connection of violence and weapons to the drug trade. Subjects that are associated with this location have priors for attempted murder, resisting and weapons crimes. Knocking and announcing would jeopardize officer safety and therefore this warrant is to be executed as a no knock warrant.

Sworn to and Subscribed before me

this 25th day of July, 20 11
Rashaw Reed (L.S.)
 Signature of Judge

CK COTHRAN

Affiant

Address 4 MCGEE STGREENVILLE SC 29601Phone 864-467-5333

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-13-100
March 15, 1918

0 ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF GREENVILLE

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

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

The location to be searched is DOBB ST, GREENVILLE SC 29601 a single family dwelling. The residence is further described as a single store structure. The residence has white vinyl siding. The structure has a red cement block under pending and a covered porch that has black metal railing. The roof is a gray and black shingled roof. The residence has black shutters affixed to the front of the residence. The search is to include all rooms, closets, attics, crawl spaces, boxes, trash containers, lock boxes and safes locked or unlocked, cabinets, drawers, pantries, detached storage buildings, garages, outbuildings, and any vehicles and persons located within the curtilage of the residence.

If one were traveling on Sullivan St, one would turn on Dobb St. Dobbs St will be the first residence on the right.

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

DESCRIPTION OF PROPERTY

COCAINE OR COCAINE BASE, A SCHEDULE II CONTROLLED SUBSTANCE, AND PARAPHERNALIA, INCLUDING BUT NOT LIMITED TO CONTAINERS OF VARIOUS TYPES COMMONLY ASSOCIATED WITH THE STORAGE AND MANUFACTURING OF COCAINE BASE. IMPLEMENTS USED IN THE ADMINISTERING OR INGESTING COCAINE BASE. BOOKS, CELLULAR PHONES, AND RECORDS ASSOCIATED WITH THE PURCHASE AND SALE OF COCAINE BASE AS WELL AS ITEMS OF PERSONAL PROPERTY TENDING TO ESTABLISH THE IDENTITY OF PERSONS IN CONTROL OF AREAS SEARCHED, ANY AND ALL MONIES GAINED IN THE DISTRIBUTION OF COCAINE BASE.

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

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

OWNER/OCCUPANT/MAGISTRATE

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

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

Greenville, S. C.
July 25th 20 11

Lashawn Reed

Signature of Judge

(L. S.)

RETURN

I received the attached Search Warrant 4 Aug. 20 11, and have executed it as follows:

On 4 Aug. 20 11 at 1945 o'clock P. M, I searched
(the person) described in the warrant and (the premises)

I left a copy of the warrant with OWNER/OCCUPANT/RESIDENCE
Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

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

- A) Clear plastic bag containing green plant material - found between mattresses - (CKC)
- B) \$2464.00 US Currency - found on top of bed under pillows - (CKC)
- C) \$125.00 US Currency - found on dining room table - (CKC)
- D) Purple crown Royal bag containing two plastic bags with green plant material and black digital scales - found on dining room table - (CKC)

This inventory was made in the presence of K. Cox, P. Brown, C.K. Coltraw, K. Hyatt
AND R. Irvin, M. Pomeroy, A. Skardon

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

SWORN to before me this

day of

20 11

(L.S.)

Signature of Judge

(Signature of Officer Executing Warrant)

10:12 AM JB

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 29th, 2013



Carmen V. Ganjehsani
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DONALD MARQUICE ANDERSON,

APPELLANT

Appellate Case No. 2012-212499

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. The Trial Court erred in ruling that the police officers had reasonable suspicion of criminal activity to justify stopping Appellant Anderson where Anderson was stopped simply because: (1) he was located in a high crime area; (2) a search warrant unconnected to him was being executed at a nearby house; (3) he was seen in the cut area between the home being searched and Sullivan Street, an area not covered by the search warrant; and (4) he changed direction and walked away upon seeing the officers.
- II. The Trial Court erred in ruling that the police officers had reasonable suspicion to conduct a pat-down search for weapons of Appellant Anderson where the officers did not articulate any specific facts which led them to believe that Anderson may have been armed or dangerous other than a generalized concern for their own safety.

STATEMENT OF THE CASE

On May 29, 2012, Donald M. Anderson was indicted by the Greenville County Grand Jury for possession with intent to distribute a quantity of cocaine base (crack cocaine) in violation of S.C. Code Ann. § 44-53-375. R.106

A trial was held before the Honorable G. Edward Welmaker on July 10, 2012. R. 1. Anderson was represented by Stuart Sarratt, and the State was represented by Assistant Solicitor Howard Steinberg. Id. Anderson waived his right to a jury trial, and Judge Welmaker conducted a bench trial. R. 51, l. 1 – 56, l. 2.

On July 10, 2012, Judge Welmaker found Anderson guilty of unlawful possession of less than one gram of crack cocaine. R. 91, ll. 16-24. Judge Welmaker first found that Anderson had willfully violated his probation for a previous offense, extending his probation for two more years. R. 105, ll. 2-6. Judge Welmaker then sentenced Anderson to five years imprisonment for the current possession charge, provided upon the service of ninety days, the balance is to be suspended and Anderson is to be placed on probation for forty months. R. 105, ll. 7-12.

Anderson timely served and filed his Notice of Appeal on July 17, 2012.

STATEMENT OF FACTS

In the summer of 2011, the City of Greenville Police Department was conducting surveillance of a house on Dobbs Street for drug transaction activity. R. 6, l. 19 – 8, l. 6. Detective Keith Cothran obtained a search warrant for the single family dwelling located on Dobbs Street. R. 110; R. 8, ll. 10-11.

Appellant Anderson was not connected to the Dobbs Street house or the search warrant in any way. R. 85, l. 23 – 86, l. 11.

On August 4, 2011, the Greenville Police SWAT team executed the search warrant. R. 110; R. 11, ll. 5-8. The execution of the search warrant took place at approximately 7:45 p.m. at dusk before it was dark outside. R. 64, ll. 20-24. In executing the search warrant, the vice and narcotics unit of the Greenville Police Department was to secure and detain any persons located within a path or cut area between Sullivan Street and Dobbs Street. The job of the crime response unit was to assist in controlling any person who attempted to flee from the cut or the house at Dobbs Street. The uniform patrol division was to block off the road and maintain an external perimeter. R. 11, ll. 8-15.

The search warrant, however, did not include any area to be searched other than the house located on Dobbs Street and its curtilage. R. 110; R. 12, l. 13 – 13, l. 17. The search warrant did not include the cut or path area between the residences on Sullivan Street and Dobbs Street. R. 13, l. 18 – 14, l. 25.

On the day the search warrant was executed, Detective Kevin Hyatt was assigned to take control of any person on the cut that leads from Sullivan Street to the house on Dobbs Street. R. 16, ll. 13-15. Detective Hyatt was advised by Detective Cothran that the cut

between Dobbs Street and Sullivan Street was a part of the search warrant, even though it was not. R. 20, l. 24 – 21, l. 4.

In his police report, Detective Hyatt wrote that after his police vehicle stopped at the edge of the cut, he observed Anderson, along with a female, standing about half-way up the cut between Dobbs and Sullivan Street. R. 22, ll. 2-7. While he admitted at the suppression hearing that he only said in his report that Anderson was just standing there and not walking away, he changed his testimony at the hearing to say that Anderson was walking away from Dobbs Street up the cut area and immediately veered right in a quick manner when he saw the police. R. 17, l. 10 – 18, l. 6; 21, l. 19 – 22, l. 12. Detective Hyatt noted that Anderson was not running and that he just changed directions, walking quickly, when he saw police. R. 22, ll. 13-20.

Detective Hyatt testified that when Anderson changed directions, he ran toward Anderson and the female with him with his weapon drawn and ordered them to stop and get on the ground. R. 18, ll. 7-12; 21, ll. 12-13; 22, ll. 21-23. Anderson and the female immediately complied by stopping and getting on the ground. R. 18, ll. 10-12; 21, ll. 14-15. As soon as Anderson was on the ground, Detective Hyatt's colleague, Detective Gary Rhinehart, placed Anderson in handcuffs. R. 21, ll. 16-18; 22, ll. 21-24; R. 26, ll. 7-12.

Detective Hyatt further testified that he did not see anything that looked like a weapon on Anderson. R. 23, ll. 6-10. Nevertheless, Detective Hyatt and Detective Rhinehart then stood Anderson up, and Detective Hyatt patted down Anderson's outer clothing to make sure Anderson had no weapons. R. 18, ll. 14-18; R. 26, ll. 13-18. When Detective Hyatt patted down Anderson's shorts and moved his hand down Anderson's right pocket, he felt plastic crumbling, multiple hard objects – rock-like objects – in the bag. He

testified that based upon his experience, what he felt was crack cocaine. He retrieved the plastic bag which contained eight beige rock-like substances that he determined to be crack cocaine. R. 19, l. 2 – 20, l. 3.

Pre-trial, defense counsel moved to suppress Anderson's possession of the crack cocaine because the crack cocaine was the result of an illegal search in violation of the Fourth Amendment because: (1) there was no reasonable suspicion for the officers to stop Anderson; and (2) there was no reasonable suspicion to conduct a pat-down search of Anderson for weapons. R. 35, l. 10 – 41, l. 16. The State responded that the stop and frisk was justified R. 42, l. 1 – 45, l. 9.

Judge Welmaker denied Anderson's motion to suppress the crack cocaine, finding that there was a legitimate stop under Terry v. Ohio, 392 U.S. 1 (1968) where "under the totality of the circumstances, there were articulable reasons for [the stop] based upon what the officers testified to." R. 46, ll. 17-20. Judge Welmaker also found the stop and frisk was justified for the officer's safety due to the execution of the search warrant nearby. R. 46, l. 20 – 47, l. 12.

During the bench trial, defense counsel renewed his objection to the introduction of the crack cocaine. R. 74, ll. 24-25; 75, l. 23 – 76, l. 1. At the close of the State's evidence, defense counsel moved for a directed verdict which Judge denied. R. 79, ll. 5-11. Defense counsel renewed his motion for directed verdict following the close of the defendant's case. R. 90, ll. 1-2. Judge Welmaker found Anderson guilty of possession of less than a gram of crack cocaine. R. 91, ll. 16-24.

STANDARD OF REVIEW

On appeals from a denial of a motion to suppress based on Fourth Amendment grounds, the appellate courts of this State apply a deferential standard of review and will reverse if there is clear error. State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010). This deference, however, does not bar appellate courts from conducting their own review of the record to determine whether the trial judge's decision is supported by the evidence. Id.

ARGUMENT

The Trial Court erred in refusing to suppress the crack cocaine because it was seized pursuant to an unlawful Terry stop. There are no articulable facts present in this case which show that the police officers had reasonable suspicion of criminal activity by Anderson to justify an investigative stop or that the officers had reasonable suspicion that Anderson was armed to justify a frisk.

The Fourth Amendment, made applicable to the States by way of the Fourteenth Amendment, guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. CONST. amend. IV; Mapp v. Ohio, 367 U.S. 643 (1961). The United States Supreme Court has observed time and time again that “searches and seizures ‘conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment – subject only to a few specifically established and well delineated exceptions.’” Minnesota v. Dickerson, 508 U.S. 366, 372 (1993) (emphasis in original) (internal citations omitted).

One such exception was recognized by the Court in Terry v. Ohio, 392 U.S. 1 (1968), which held that the “police may stop, and briefly detain, a person for investigative purposes when an officer has reasonable suspicion supported by articulable facts the person is involved in criminal activity.” State v. Fowler, 322 S.C. 263, 266, 471 S.E.2d 706, 708 (Ct. App. 1996).

The term “reasonable suspicion” requires a “particularized and objective basis that would lead one to suspect another of criminal activity.” State v. Woodruff, 344 S.C. 537, 546, 544 S.E.2d 290, 295 (Ct. App. 2001). The Constitution requires “‘a *particularized* and objective basis for suspecting *the particular person stopped* of criminal activity.’” United

States v. Massenburg, 654 F.3d 480, 486 (4th Cir. 2011) (emphasis in original) (internal citations omitted).

The Court in Terry also held that “where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and dangerous, . . . he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.” 392 U.S. at 30-31.

Before police may then frisk a detained person, they must have a reasonable belief the person is armed and dangerous, and “the officer must be able to specify the particular facts on which he or she based his or her belief the suspect was armed and dangerous.” Fowler, 322 S.C. at 267, 471 S.E.2d at 708.

In Terry, the United States Supreme Court recognized that “[t]he officer need not be absolutely certain that the individual is armed; the issue is whether a reasonable prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger.” 392 U.S. at 27. The Court further stated that “in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or ‘hunch,’ but to the specific reasonable inferences from which he is entitled to draw from the facts in light of his experience.” Id.

- I. The Trial Court erred in ruling that the police officers had reasonable suspicion of criminal activity to justify stopping Appellant Anderson where Anderson was stopped simply because: (1) he was located in a high crime area; (2) a search warrant unconnected to him was being executed at a nearby house; (3) he was seen in the cut area between the home being searched and Sullivan Street, an area not covered by the search warrant; and (4) he changed direction and walked away upon seeing the officers.**

The police officers in this case had no justification for stopping and detaining Anderson under the stop and frisk exception to the Fourth Amendment set forth in Terry. The State stated at the suppression hearing that four primary facts, taken together, provided the officers the basis for a reasonable suspicion of criminal activity: (1) the high crime neighborhood; (2) the execution of a search warrant of a suspected crack distribution house that was unconnected to Anderson; (3) the fact that Anderson was seen in the cut area between the home being searched and Sullivan Street, an area which was not covered by the search warrant; and (4) that Anderson changed direction and walked away upon seeing police officers. R. 42, l. 11 – 44, l. 18.

In making the determination that the officers had a particularized and objective basis for suspecting the particular person stopped of criminal activity, the courts must consider the totality of the circumstances as they existed at the time of the stop. United States v. Beauchamp, 659 F.3d 560, 569-70 (6th Cir. 2011). This does not, however, prevent a court from discussing each factor one by one as each are put into the mix. United States v. Sprinkle, 106 F.3d 613, 617 (4th Cir. 1997).

First, the fact that the officers spotted Anderson in a high crime neighborhood at dusk before it was dark does not provide independent or freestanding grounds for reasonable suspicion. See id. “Were we to treat the dangerousness of the neighborhood as an independent corroborating factor, we would be, in effect, holding a suspect accountable

for factors wholly outside his control.” United States v. Perrin, 45 F.3d 869, 873 (4th Cir. 1995); see also Brown v. Texas, 443 U.S. 47, 52 (1979) (“The fact that appellant was in a neighborhood frequented by drug users, standing alone, is not a basis for concluding that appellant himself was engaged in criminal conduct. In short, the appellant’s activity was no different from the activity of other pedestrians in that neighborhood.”).

Although being seen in a high crime neighborhood carries no weight standing alone, “‘an area’s disposition toward criminal activity is an articulable fact’ . . . that may be considered along with more particularized factors to support a reasonable suspicion.” Sprinkle, 106 F.3d at 617 (internal citations omitted). In this case, there are no other particularized factors to support a reasonable suspicion as discussed further below.

The second and third factors the State pointed to as justifying the officers’ stop of Anderson was the execution of a search warrant at a suspected crack distribution house nearby and Anderson’s location in a cut area between the home searched and Sullivan Street, an area that was not covered by the search warrant. The United States Supreme Court, however, has recently held that the seizure of a person stopped and detained beyond the immediate vicinity from the premises to be searched is invalid where the only justification for the detention was to ensure the safety and efficacy of the search. Bailey v. United States, 133 S. Ct. 1031 (2013).

That is what the officers did in this case. A perimeter was set up beyond the immediate vicinity of the house to be searched, and officers were to detain individuals in this area even though it was outside of the scope of the search warrant. When the officers saw Anderson in the cut area, they knew nothing in particular about Anderson except that he was present in the cut area between Dobbs Street and Sullivan Street. Anderson made

no gestures indicative of criminal conduct or movements that might have suggested an attempt to conceal contraband.

There was no reason for these officers to have believed that Anderson was committing or about to commit a crime. That Anderson was located in an area that the officers had deemed relevant to the execution of the search warrant is a factor that should be dismissed in determining whether the officers had reasonable suspicion to detain Anderson. See Ybarra v. Illinois, 444 U.S. 85 (1979) (holding that although search warrant gave police officers authority to search premises of public tavern and to search bartender for narcotics, pat-down search and seizure from tavern patron was not constitutionally permissible where there was no reasonable belief that patron was involved in any criminal activity or that patron was armed and dangerous).

The last factor the State points to as suspicious is that Anderson changed direction and walked away upon seeing the officers. Even assuming that Anderson walked away at a quick pace as Detective Hyatt testified, this alone, without more, is not an indication of criminal activity.

Walking away, even hurriedly, from an officer does not create reasonable suspicion. See Beauchamp, 659 F.3d at 570; see also United States v. Camacho, 661 F.3d 718, 726-27 (1st Cir. 2011) (holding that facts fell short of an objectively reasonable, particularized basis for suspecting defendant of criminal activity where “the most that can be said is that the two men were observed in a high crime area walking away from the vicinity of a street fight that one caller reported as involving Latin Kings”); United States v. Patterson, 340 F.3d 368, 372 (6th Cir. 2003) (stating that walking away from police “constitutes a factor to be outrightly dismissed”); United States v. Davis, 94 F.3d 1465, 1468 (10th Cir. 1996) (finding

defendant's actions "in exiting the car, making and then breaking eye contact with the officers, and then walking away from the officers" does not furnish the valid basis for a Terry stop); State v. Pugh, 826 N.W.2d 418, 423-24 (Wis. Ct. App. 2012) (finding crooked manner in which defendant walked away from officer did not give rise to reasonable suspicion of criminal activity necessary for a stop).

"Evasive conduct can, of course, assist an officer in forming reasonable suspicion," but here there was no evasive conduct by Anderson. Sprinkle, 106 F.3d at 618. In cases in which courts have found that walking away from police does contribute to reasonable suspicion, specific facts have shown that the defendant's behavior was otherwise suspicious. See United States v. Bumpers, 705 F.3d 168, 175-76 (4th Cir. 2013) (holding officer possessed reasonable suspicion to detain defendant where upon being caught by officer in the act of trespassing, defendant attempted to evade police by leaving premises at a quick pace); United States v. Pearce, 531 F.3d 374, 382-83 (6th Cir. 2008) (finding where officer observed defendant "exit a vehicle, glance towards him, hunch over, place his right hand in the small of his back, and start backing away," officer had a reasonable basis for believing defendant had a weapon and was getting ready to fire); United States v. Caruthers, 458 F.3d 459, 466-67 (6th Cir. 2006) (finding reasonable suspicion when the defendant hurried away from an officer and "hunched down" by a wall as if to conceal contraband or reach for a weapon); State v. Taylor, 401 S.C. 104, 107, 111-13, 736 S.E.2d 663, 664, 667 (2013) (finding reasonable suspicion where officers observed defendant "huddled up" with another male in what looked like a drug transaction before the two men immediately split up upon seeing the officers).

There is absolutely no evidence in this case that Anderson's behavior was otherwise suspicious. He was merely standing in the cut area with a female friend and turned and walked away upon seeing the police officers. This factor cannot form the basis of a reasonable suspicion on behalf of the officers to stop Anderson.

The factors provided by the State gain little, if any, strength when put together. Together, they did not give the officers in this case the necessary reasonable, articulable suspicion of criminal activity. The Trial Court therefore erred in concluding that the stop of Anderson was justified. The motion to suppress the evidence of the crack cocaine should have been granted.

II. The Trial Court erred in ruling that the police officers had reasonable suspicion to conduct a pat-down search for weapons of Appellant Anderson where the officers did not articulate any specific facts which led them to believe that Anderson may have been armed or dangerous other than a generalized concern for their own safety.

Anderson's motion to suppress the crack cocaine should have also been granted because Detective Hyatt lacked a reasonable belief that Anderson was an armed threat as necessary to support a pat-down search.

Under Terry, "a law enforcement officer, for his own protection and safety, may conduct a pat-down to find weapons that he reasonably believes or suspects are then in the possession of the person he has accosted." Ybarra v. Illinois, 444 U.S. 85, 93 (1980). "Nothing in Terry can be understood to allow a generalized cursory search for weapons . . . The "narrow scope" of the Terry exception does not permit a frisk for weapons on less than reasonable belief or suspicion directed at the person to be frisked" Id. at 93-94.

Detectives Hyatt and Rhinehart offered no articulable reasons why Anderson needed to be frisked for weapons other than generalized concerns for the safety of

themselves. To justify a pat-down search for weapons, an officer needs to articulate specific facts that led him or her to believe that the detained person was armed and dangerous. Terry, 392 U.S. at 21, 27; State v. Fowler, 322 S.C. 263, 267, 471 S.E.2d 706, 708 (Ct. App. 1996). A mere general concern for officer safety is not sufficient. Westmoreland v. State, 965 N.E.2d 163, 167 (Ind. Ct. App. 2012) (finding where defendant did not make any furtive movements and was not hostile or belligerent, officers were not justified based on a general concern for their own safety in patting down defendant); Commonwealth v. Preacher, 827 A.2d 1235, 1239-40 (Pa. Super. Ct. 2003).

From the testimony of the officers, it is apparent that Anderson made no movements or gestures indicating he was in possession of a weapon or about to commit an assault or otherwise acted threatening in any way. See Ybarra, 444 U.S. at 93 (holding that although search warrant gave officers the authority to search premises of tavern, pat-down of tavern patron was invalid where patron gave no indication or made any gestures suggesting he had a weapon). Accordingly, the pat-down search of Anderson was invalid where the officers lacked a reasonable suspicion that Anderson was armed and dangerous. The Trial Court's denial of Anderson's motion to suppress the cocaine evidence should be reversed.

CONCLUSION

Both the stop and subsequent search of Anderson contravened the requirements of the Fourth Amendment. Therefore, evidence of his possession of crack cocaine was inadmissible as fruit of the poisonous tree. Wong Sun v. United States, 371 U.S. 471 (1963); Sikes v. State, 323 S.C. 28, 448 S.E.2d 560 (1994). Accordingly, Anderson requests that this Court reverse his conviction for possession of crack cocaine.

Respectfully submitted,



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

This 12h day of September, 2013.

CERTIFICATE OF COUNSEL

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

September 12th, 2013



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DONALD MARQUICE ANDERSON,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mary S. Williams, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 12th day of September, 2013.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of September, 2013.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
G. Edward Welmaker, Circuit Court Judge
Appellate Case No. 2012- 212499

THE STATE,

RESPONDENT,

V.

DONALD MARQUICE ANDERSON,

APPELLANT

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The trial court correctly found that police officers had reasonable suspicion to stop Appellant where Appellant was present in a high drug area, was using a shortcut known from experience to be used by drug traders in connection with 106 Dobbs Street, a warrant was being executed at 106 Dobbs Street, the occupants of 106 Dobbs Street were known to be armed and dangerous, and Appellant immediately veered in the other direction after seeing police officers wearing clearly marked police vests.

II.

Because the officers had reasonable suspicion to conduct a Terry stop of Appellant, the frisk for weapons was appropriate and no additional basis to search for weapons was required. During the lawful pat-down, Detective Hyatt recognized the feel of the baggie containing rocks of crack cocaine from his experience. Therefore, the seizure was constitutionally valid.

STATEMENT OF THE CASE

Appellant was indicted during the May 2012 term of the Greenville County Grand Jury for Possession of Cocaine Base with Intent to Distribute (2011-GS-23-9939). On July 10, 2012, a jury was selected for trial. Testimony was taken pre-trial for purposes of Appellant's motion to suppress and admissibility of a statement pursuant to Jackson v. Denno.¹ Following this testimony and argument, the Honorable G. Edward Welmaker denied Appellant's motion to suppress drug evidence and found Appellant's statement admissible. (ROA. p. 46, line 9 – p. 48, line 22.) Following pre-trial motions, Appellant waived his right to a jury trial, opting to have the case heard by the bench. (ROA. p. 48, line 24 – p.57, line 20.) Judge Welmaker found Appellant guilty. (ROA. p. 91.) Appellant was sentenced to five (5) years, provided that upon the service of 90 days, the balance is suspended with probation for forty (40) months.² Conditions on probation included gainful employment or public service, substance abuse counseling, random drug and alcohol testing, and intensive probation for the first six (6) months. (ROA. p. 105, lines7-24.) This appeal follows.

¹ 378 U.S. 368 (1964).

² Appellant was also on probation for a prior drug conviction. (ROA. p. 87, line 20 – p. 88, line 6.) Judge Welmaker found a willful violation of probation and extended the probationary sentence for two (2) additional years.

STATEMENT OF THE FACTS

On August 4, 2011, at approximately 7:45 pm, the Greenville Police SWAT team executed a search warrant at 106 Dobbs Street. (ROA. p. 7.) The warrant was based on observations over time of drug transactions involving the home and the surrounding area, particularly nearby Sullivan Street. (ROA. p. 6, line 23 – p. 10, line 2.) A footpath, or “cut,” led from 106 Dobbs to Sullivan Street, passing by another home at 113 Sullivan Street. Several experienced officers had observed that the cut was used by “runners,” individuals who would purchase narcotics at 106 Dobbs Street and deliver them to buyers along Sullivan Street. (ROA. p. 7, line 17 – p. 8, line 6; p. 16, line 16 – p. 17, line 1; 48, lines 9-15.) Police officers felt that the raid of 106 Dobbs was particularly dangerous; individuals associated with the residence had prior convictions for murder, resisting arrest, and other violent acts. (ROA. p. 9, line 21 – p. 10, line 2.) Because of this enhanced concern for safety, officers secured a no-knock warrant and employed a distraction device at the moment of breach. During the raid, as planned, a team entered the home. Meanwhile, officers were placed in various points around the perimeter. (ROA. p. 11, lines 4-15.) Due to their observations of the cut between 106 Dobbs Street and Sullivan Street, police officers were placed there for security. (ROA. p. 11, line 18 – p. 12, line 7.)

Detective Kevin Hyatt, an officer with nine (9) years’ experience, three and a half (3 ½) of them in narcotics, positioned himself in the bend of Dobbs Street “right next to the cut.” (ROA. p. 16, lines 3-15; p. 17, lines 10-13.) Other officers fell into position on Sullivan Street at the end of the cut. (ROA. p. 17, lines 24-25.) Hyatt was personally familiar with the use of the cut path in the local drug trade. (ROA. p. 16, line 18 – p. 17,

line 1.) While the search warrant was being executed, Detective Hyatt observed Appellant "half-way up to the cut between Dobbs and Sullivan." (ROA. p. 17, lines 15-16.) Appellant appeared to see the officers at Sullivan Street then looked back toward the officers on Dobbs Street. (ROA. p. 17, line 23 – p. 18, line 6.) Appellant then "veered to the right in a quick manner to go towards 113 Sullivan" as if to avoid contact with police. (ROA. p. 18, lines 3-6; p. 21, lines 22-24; p. 22, lines 1-20.)

Due to the safety concerns surrounding the raid, Hyatt ran toward Appellant with weapon drawn. Appellant and a female companion complied with Hyatt's instructions to lie on the ground. (ROA. p. 18, lines 8-12.) Hyatt was then joined by Sergeant Gary Rhinehart, an officer with ten (10) years' experience, four (4) of them in narcotics. (ROA. p. 24, lines 14-15.) Rhinehart was also personally familiar with the community and particularly with the cut, having received and responded to many complaints of drug trade along the cut between Dobbs and Sullivan Streets. (ROA. p. 24, lines 21-25; p. 25, lines 10-18.) Officers placed Appellant in handcuffs and then had him return to his feet.

Hyatt then conducted a pat-down search for weapons. (ROA. p. 18, lines 16-24.) As Hyatt passed his hand over Appellant's right pocket, Hyatt felt "plastic crumbling, felt multiple hard objects, rock-like objects in the bag." (ROA. p. 19, lines 2-4.) Based on his experience, Hyatt surmised that this was crack cocaine. (ROA. p. 19, lines 4-15.) Hyatt told Rhinehart that he believed Appellant had drugs in his pocket, and Appellant immediately said, "man, these are not my shorts." (ROA. p. 19, lines 21-22; p. 26, lines 17-25.) The bag of beige rocks recovered from Appellant's pocket field tested positive for crack cocaine. (ROA. p. 27, lines 2-5.)

Appellant moved to suppress the crack cocaine found in his pocket for two reasons:

(1) The drugs were not found as part of a Terry³ stop but pursuant to the warrant executed at 106 Dobbs Street and its curtilage, and Appellant was outside the bounds of the warrant;

(2) Even if it was a Terry stop, it was improper because:

- a. Lack of reasonable suspicion to stop Appellant.
- b. Lack of reasonable suspicion that Appellant was armed.

(ROA. p. 35, line 10 – p. 36, line 6.) Judge Welmaker found this to be a legitimate stop and frisk under Terry, and denied Appellant's motion to suppress.

Later in the trial, Appellant and neighbor Brunyesha Anderson asserted that Appellant had only been hanging out at Appellant's relative's property at 113 Sullivan Street. (ROA. p. 80, line 16 – p. 82, line 17; p. 83, line 20 – p. 85, line 20.) Appellant conceded that there was crack cocaine in his pocket but stated that he only had three (3), not eight (8), rocks. (ROA. p. 88, line 7-p. 89, line 18.) Appellant denied any connection to the occupants of 106 Dobbs Street. (ROA. p. 85, line 18 – p. 86, line 11.) Appellant maintained that he saw police arrive and was initially relieved but became worried that if shots were fired a gasoline tank in the back yard of 113 Sullivan Street could ignite. (ROA. p. 85, lines 1-20.) Appellant assumed the noise was a gunshot, a sound he was not surprised to hear from the vicinity of 106 Dobbs, thinking "it was one of his people going crazy again." (ROA. p. 84, lines 9-25.)

³ Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968)

STANDARD OF REVIEW

In Fourth Amendment search and seizure cases, the appellate court is limited to determining if there is *any* evidence to support the trial court's findings and can only reverse due to clear error. State v. Flowers, 360 S.C. 1, 5, 598 S.E.2d 725, 727 (Ct. App. 2004). "[A]n appellate court may conduct its own review of the record to determine whether the trial judge's ruling is supported by the evidence." State v. Khingratsaiphon, 352 S.C. 62, 70, 572 S.E.2d 456, 460 (2002). However, an appellate court will not reverse merely because it would have reached a different conclusion than the trial judge. State v. Rivera, 384 S.C. 356, 361, 682 S.E.2d 307, 310 (Ct. App. 2009).

ARGUMENT

I.

The trial court correctly found that police officers had reasonable suspicion to stop Appellant where Appellant was present in a high drug area, was using a shortcut known from experience to be used by drug traders in connection with 106 Dobbs Street, a warrant was being executed at 106 Dobbs Street, the occupants of 106 Dobbs Street were known to be armed and dangerous, and Appellant immediately veered in the other direction after seeing police officers wearing clearly marked police vests.

Appellant contends that the trial court should have suppressed the evidence found on him as a result of his stop and frisk because the officers did not have reasonable suspicion to justify stopping him. However, looking at the totality of circumstances, the investigatory stop was justified because the officers had reasonable suspicion that criminal activity was afoot. Thus, Appellant's conviction and sentence should be affirmed.

The Fourth Amendment protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. This guarantee protects against unreasonable searches and seizures, including those involving only a brief detention. State v. Pichardo, 367 S.C. 84, 97, 623 S.E.2d 840, 847 (Ct. App. 2005). However, "[t]he purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but 'to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.'" United States v. Mendenhall, 446 U.S. 544, 553-554 (1980) (quoting United States v. Martinez-Fuerte, 428 U.S. 543, 554 (1976)).

In United States v. Weaver the Fourth Circuit advised the following:

The Supreme Court has recognized three distinct types of police-citizen interactions: (1) arrest, which must be supported by probable cause; (2) brief investigatory stops, which must be supported by reasonable articulable

suspicion; and (3) brief encounters between police and citizens, which require no objective justification.

282 F.3d 302, 309 (4th Cir. 2002). Thus, a police officer may stop and briefly detain a person if the officer has “reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity.” State v. Blassingame, 338 S.C. 240, 248, 525 S.E.2d 535, 539 (Ct. App. 1999) (citing Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968)). Reasonable suspicion is something more than an “inchoate and unparticularized suspicion” or “hunch.” Terry, 392 U.S. at 27. Instead, reasonable suspicion is founded upon “the specific reasonable inferences” the law enforcement officer “is entitled to draw from the facts in light of his experience.” Id; State v. Burton, 349 S.C. 430, 562 S.E.2d 668, 672 (Ct. App. 2002), rev 'd on other grounds, 356 S.C. 259, 589 S.E.2d 6 (2003).

When deciding whether reasonable suspicion exists, courts look at the totality of the circumstances. State v. Corley, 383 S.C. 232, 240, 679 S.E.2d 187, 191 (Ct. App. 2009); United States v. Sokolow, 490 U.S. 1, 8, 109 S. Ct. 1581 (1989) (courts must look at the “whole picture” when determining whether or not reasonable suspicion exists). Furthermore, “[f]actors which alone may be ‘susceptible of innocent explanation’ can ‘form a particularized and objective basis’ for a stop when taken together.” United States v. Glover, 662 F.3d 694, 698 (4th Cir. 2011) (quoting United States v. Arvizu, 534 U.S. 266, 277–78 (2002)).

Once an officer has detained an individual based on a reasonable articulable suspicion, the officer is permitted to use whatever steps are reasonably necessary to effectuate the detention, ensure officer safety, and maintain the status quo throughout the course of the detention. See United States v. Hensley, 469 U.S. 221, 235 (1985) (“When

the Covington officers stopped Hensley, they were authorized to take such steps as were reasonably necessary to protect their personal safety and to maintain the status quo during the course of the stop.”); see also Adams v. Williams, 407 U.S. 143, 145-146 (1972) (“The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, [Terry] recognizes that it may be the essence of good police work to adopt an intermediate response. A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time.”) (citations omitted).

In this case, officers only needed reasonable suspicion that criminal activity was afoot to detain Appellant. Factors which may be considered in determining whether there is a reasonable suspicion of criminal activity include: presence in a high crime area, the lateness of the hour, nervous or evasive behavior, flight, the existence of a tip and the quality thereof, and the officer’s experience and intuition. State v. Taylor, 388 S.C. 101, 694 S.E.2d 60 (Ct. App. 2009), rev’d based on finding that reasonable suspicion existed, 401 S.C. 104, 736 S.E.2d 663 (2013). The combination of various factors, which alone would be insufficient, may amount to reasonable suspicion. Id.

In the present case, as the trial judge noted, officers articulated several facts which, taken together, provide a reasonable suspicion:

- (1) Appellant was present in a community well-known to the officers to be rife with drug traffic;

- (2) The particular footpath being traversed had, in the officers' own personal experience, been frequently used by "runners" traveling between 106 Dobbs Street and Sullivan Street in drug transactions;
- (3) Execution of a search warrant at nearby 106 Dobbs Street had just begun, a location known to officers after thorough investigation to be used in the sale of drugs;
- (4) Based on the criminal records of the occupants of 106 Dobbs Street, it was feared that the occupants were armed and dangerous and may attempt to evade police;
- (5) After noticing officers clad in gear with "Police" clearly visible, Appellant veered to avoid contact with police.

While each factor standing alone may not provide reasonable suspicion, when these factors are taken together, the trial court correctly concluded that reasonable suspicion for a Terry stop existed. (See ROA p. 46, line 15 – p. 47, line 12; p. 91, lines 1-

15.)

II.

Because the officers had reasonable suspicion to conduct a Terry stop of Appellant, the frisk for weapons was appropriate and no additional basis to search for weapons was required. During the lawful pat-down, Detective Hyatt recognized the feel of the baggie containing rocks of crack cocaine from his experience. Therefore, the seizure was constitutionally valid.

Appellant also argues that the trial court should have suppressed the evidence found on him because the officers did not have reasonable suspicion to justify conducting a pat-down for weapons. However, since reasonable suspicion existed to justify Hyatt's investigatory stop, the subsequent Terry frisk of Appellant was justified. See United States v. Boone, 2012 WL 874832 at *6 ("Once reasonable suspicion exists to justify an

investigative stop, an officer may conduct a limited pat-down for officer safety.”) During a pat-down search for weapons, an officer may seize an item where the incriminating character of the item is immediately apparent. Minnesota v. Dickerson, 508 U.S. 366, 113 S.Ct. 2130 (1993) (contraband excluded from evidence because the officer had manipulated the object after determining that no weapons were present); see also State v. Smith, 329 S.C. 550, 495 S.E.2d 798 (Ct. App. 1998) (evidence admitted that was found during a pat-down of individual because it was apparent to officer from touch and feel of bag and from experience that it contained narcotics). Here, Hyatt felt crumpling plastic and what felt like rocks. In Hyatt’s experience, this was likely crack cocaine. Hyatt’s suspicions were only buttressed by Appellant’s exclamation that the pants he was wearing were not his own. Because Hyatt immediately recognized the criminal character of the plastic bag during his pat-down search, seizure of the bag and drugs in Appellant’s pocket was not unconstitutional.

CONCLUSION

For all the foregoing reasons, the State submits that Appellant's conviction and sentence be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

October 11, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Greenville County
G. Edward Welmaker, Circuit Court Judge

THE STATE,

Respondent,

vs.

DONALD MARQUICE ANDERSON,

Appellant.

CERTIFICATE OF COUNSEL

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

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October 11, 2013

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Honorable G. Edward Welmaker, Circuit Court Judge
Appellate Case No. 2012-212499

THE STATE,

Respondent,

v.

DONALD MARQUICE ANDERSON,

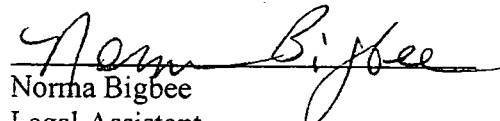
Appellant.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Carmen V. Ganjehsani, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 11 day of October, 2013.


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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DONALD MARQUICE ANDERSON,

APPELLANT

Appellate Case No. 2012-212499

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

The State argues that the frisk of Appellant Donald M. Anderson for weapons was appropriate because the officers had reasonable suspicion to conduct a stop pursuant to Terry v. Ohio, 392 U.S. 1 (1968). The State's argument is flawed for two reasons.

First, as set forth in Issue Number One of the Appellant's Brief, the officers did not have reasonable suspicion of criminal activity to justify stopping and detaining Anderson simply because: (1) he was located in a high crime area; (2) a search warrant unconnected to him was being executed at a nearby house; (3) he was seen in the cut area between the home being searched and Sullivan Street, an area not covered by the search warrant; and (4) he changed direction and walked away upon seeing the officers. See Appellant's Brief, pp. 9-13.

Second, the State suggests that whenever an officer has reasonable suspicion justifying an investigatory stop, a subsequent frisk for weapons is always automatically justified. The State cites to an unreported opinion for the proposition that "[o]nce reasonable suspicion exists to justify an investigatory stop, an officer may conduct a limited pat-down for officer safety." United States v. Boone, 2012 WL 874832, at *6 (W.D.N.C. Mar. 8, 2012).

The court in Boone, however, refers to the Fourth Circuit's opinion in United States v. Burton, 228 F.3d 524 (4th Cir. 2000) which sets forth the full standard for when an officer may conduct a limited pat-down for weapons of a detained individual: "Once an officer has a basis to make a lawful investigatory stop, he may protect himself during that stop by conducting a search for weapons *if he has reason to believe that the suspect is armed and dangerous.*" 228 F.3d at 528 (emphasis added) (internal citations omitted).

Therefore, justification for an investigatory stop is not in itself sufficient to support a pat-down frisk of the stopped individual. The officer must have a reasonable belief that the person detained is armed. The court's decision in Terry "does not allow a generalized cursory search for weapons." Ybarra v. Illinois, 444 U.S. 85, 93-94 (1980).

An officer needs to articulate specific facts that led him or her to believe that the detained person was armed and dangerous to justify a pat-down search for weapons. Terry, 392 U.S. at 21, 27; State v. Fowler, 322 S.C. 263, 267, 471 S.E.2d 706, 708 (Ct. App. 1996). A mere general concern for officer safety is not sufficient. Westmoreland v. State, 965 N.E.2d 163, 167 (Ind. Ct. App. 2012) (finding where defendant did not make any furtive movements and was not hostile or belligerent, officers were not justified based on a general concern for their own safety in patting down defendant); Commonwealth v. Preacher, 827 A.2d 1235, 1239-40 (Pa. Super. Ct. 2003).

Other than arguing that reasonable suspicion existed to justify Detective Hyatt's investigatory stop of Anderson, the State points to no specific facts articulated by Detectives Hyatt and Rhinehart as to why Anderson needed to be frisked for weapons or as to why they believed Anderson was armed and dangerous.

The testimony of the officers indicated that Anderson made no movements or gestures indicating he was in possession of a weapon or about to commit an assault or otherwise acted threatening in any way. Instead, Anderson immediately complied with the officer's demands to get on the ground and was thereafter almost instantaneously handcuffed by Detective Rhinehart. Anderson was not wearing bulky clothing which could have concealed a weapon. Rather, he was wearing a shirt and shorts. Detective Hyatt further testified that he did not see anything that looked like a weapon on

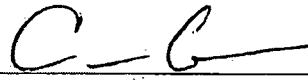
Anderson. Detective Hyatt only conducted the pat-down out of a general concern for officer safety. R. 17, ll. 19-21; 18, ll. 8-18; 23, ll. 6-10; 26, ll. 13-18. See Ybarra, 444 U.S. at 93.

Accordingly, the investigatory stop of Anderson, even if valid which Anderson contends it was not, was not enough to support the subsequent frisk of Anderson. Where the officers lacked a reasonable suspicion that Anderson was armed and dangerous, the pat-down search of Anderson was invalid. The Trial Court's denial of Anderson's motion to suppress the cocaine evidence should therefore be reversed.

CONCLUSION

Based upon the arguments set forth in the Appellant's Brief and in this Reply, Anderson's conviction for possession of crack cocaine should be reversed where both the stop and subsequent search of Anderson contravened the requirements of the Fourth Amendment.

Respectfully submitted,



Carmen V. Ganjehisani
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of September, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DONALD MARQUICE ANDERSON,

APPELLANT

CERTIFICATE OF SERVICE

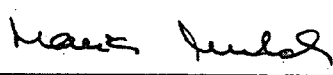
The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon Mary S. Williams, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 12th day of September, 2013.



Carmen V. Ganjehsani
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of September, 2013.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.