

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Appeal from Abbeville County  
Frank R. Addy, Circuit Court Judge

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**RECEIVED**

DEC 15 2015

**S.C. Supreme Court**

Opinion No. 2015-UP-485 (S.C. Ct. App. filed 10/14/2015)

13-GS-01-00015

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THE STATE,

RESPONDENT,

V.

ALFONZO ALEXANDER,

PETITIONER

---

A P P E N D I X

---

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Appellate Defender

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

ATTORNEY FOR PETITIONER

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ATTORNEYS FOR RESPONDENT

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

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

The State, Respondent,

v.

Alfonzo Alexander, Appellant.

Appellate Case No. 2013-002636

---

Appeal From Abbeville County  
Frank R. Addy, Jr., Circuit Court Judge

---

Unpublished Opinion No. 2015-UP-485  
Submitted September 1, 2015 – Filed October 14, 2015

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**AFFIRMED**

---

Appellate Defender LaNelle Cantey DuRant, of  
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant  
Attorney General Mary Williams Leddon, both of  
Columbia; and Solicitor David M. Stumbo, of  
Greenwood, for Respondent.

---

**PER CURIAM:** Affirmed pursuant to Rule 220(b), SCACR, and the following  
authorities:

1. As to whether the trial court erred in admitting the crack cocaine into evidence: *State v. Taylor*, 401 S.C. 104, 108, 736 S.E.2d 663, 665 (2013) ("A trial court's Fourth Amendment suppression ruling must be affirmed if supported by any evidence."); *State v. Bailey*, 276 S.C. 32, 36, 274 S.E.2d 913, 915 (1981) (holding a person's status as a resident gave him the authority to consent to a search of the premises); *Terry v. Ohio*, 392 U.S. 1, 30 (1968) ("Where a police officer observes unusual conduct which leads him to reasonably conclude in light of his experience that criminal activity may be afoot and that 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."); *State v. Provet*, 405 S.C. 101, 113, 747 S.E.2d 453, 460 (2013) ("A warrantless search is reasonable within the meaning of the Fourth Amendment when voluntary consent is given for the search.").

2. As to whether the trial court erred in qualifying Lieutenant John Gray as an expert witness: *State v. Chavis*, 412 S.C. 101, 106, 771 S.E.2d 336, 338 (2015) ("The qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's sound discretion. A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion. An abuse of discretion occurs when the conclusions of the circuit court are either controlled by an error of law or are based on unsupported factual conclusions." (citations omitted)); *State v. Robinson*, 396 S.C. 577, 586, 722 S.E.2d 820, 825 (Ct. App. 2012) ("To be competent to testify as an expert, a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.").

**AFFIRMED.**<sup>1</sup>

**SHORT, GEATHERS, and MCDONALD, JJ., concur.**

---

<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

THE STATE,

RESPONDENT,

V.

ALFONZO ALEXANDER,

APPELLANT

APPELLATE CASE NO. 2013-002636

---

Appeal from Abbeville County

Frank R. Addy, Circuit Court Judge

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Opinion No. 2015-UP-485

---

PETITION FOR REHEARING

---

The Court of Appeals affirmed the above named appellant's conviction and sentence on October 14, 2015. In support of this petition for rehearing, which is being submitted on today's date pursuant to Rules 221 and 224 of the South Carolina Appellate Court Rules, Appellant submits the following:

Appellant Alexander raised two issues on appeal: (1) the trial court erred in denying Appellant Alexander's motion to suppress the crack cocaine based on a violation of his Fourth Amendment rights because there was not sufficient reliability of the anonymous call to conduct an

investigative stop; the police did not have reasonable suspicion based on specific and articulable facts that Alexander was armed and dangerous before conducting a Terry<sup>1</sup> frisk; and the police did not have cause to pull any objects from Appellant Alexander's pocket after the officer said nothing felt like a gun during the pat-down: (2) the trial court erred in qualifying Lieutenant John Gray of the Abbeville Police Department as an expert in the field of narcotics investigation which was not specialized knowledge outside the purview of the average juror and which did not meet the requirements of Rule 702, SCRE.

On Issue One, the Court of Appeals cited State v. Taylor, 401 S.C. 104, 108, 736 S.E.2d 663, 665 (2013), for the proposition that a trial court's Fourth Amendment suppression ruling must be affirmed if supported by any evidence. This Court also cited Terry v. Ohio, 392 U.S. 1 (1968), for the holding that when a police officer observes unusual conduct which leads him to reasonably conclude that based on his experience that criminal activity may be afoot, and that persons with whom he is dealing may be armed and dangerous, he is entitled for the protection of himself and others to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons.

On Issue Two, this Court held that the qualification of an expert witness and the admissibility of his testimony were matters within the trial court's sound discretion. A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion which occurs when the trial court's conclusions are either controlled by an error of law or are based on unsupported factual conclusions.

Respectfully, the Court misapprehended these issues.

---

<sup>1</sup> Terry v. Ohio, 392 U.S. 1 (1968).

**Issue One:** The South Carolina Supreme Court wrote in State v. Taylor, *supra*, citing United States v. Perrin, 45 F.3d 869, 871 (4<sup>th</sup> Cir. 2008) that the required reasonable suspicion can arise from an anonymous tip provided that the totality of the surrounding circumstances justifies acting on the tip.

In State v. Green, 341 S.C. 214, 532 S.E.2d 896 (Ct. App. 2000), the Court of Appeals held that the uncorroborated anonymous tip did not provide officer with reasonable suspicion to stop the defendant's automobile. In Green's case, the police received a dispatch call that a black male by the name of Alonzo Green was leaving Bayside Manor with a large sum of money and narcotics driving a gray four door Maxima. The officer saw a gray Maxima drive by and stopped it based solely on the anonymous tip. The Court of Appeals said that was not enough.

In Terry v. Ohio, *supra*, the U.S. Supreme Court held that when a police officer reasonably concludes that that criminal activity is occurring and the person with whom he is dealing may be armed and dangerous, and there is fear for his own or others' safety, he is entitled for the protection of himself and others to conduct a **carefully limited search** of the outer clothing of such person in an attempt to discover weapons which might be used to assault him. [Emphasis added].

In Minnesota v. Dickerson, 508 U.S. 366 (1993), the police officer stopped Dickerson as he was leaving a known crack house. When he saw the police, Dickerson abruptly started walking in the opposite direction. When the officer did a pat-down search, he found no weapons but found a lump in Dickerson's jacket that he suspected to be crack. The officer reached into Dickerson's pocket and pilled out the small plastic bag that contained crack. The U.S. Supreme Court held that this search was "not authorized by Terry or any other exception to the warrant requirement." The Court held that this further search was constitutionally invalid and therefore, the seizure of the cocaine was unconstitutional.

Alexander's case is similar to Minnesota v. Dickerson, Id., but the police in Dickerson's case actually had more facts supporting reasonable suspicion than in Appellant's case. All the officers in Alexander's case had was the uncorroborated anonymous tip. The officer did not know Alexander and had not heard of Alexander carrying weapons. The officer admitted that Alexander did not act nervous or fidgety; did not make any strange movements; did not look nervous; and there was no mention of names or weapons in the 911 call.

The anonymous tip provided no description of a particular person, and there were numerous people in the apartment. No information was provided as to the source of the anonymous tip to determine its reliability. The officer expressed no concern for safety but only patted Alexander down after seeing the baggies in his pocket. No weapons were found on Alexander.

The officer exceeded the scope of a Terry frisk when he reached into Alexander's pocket and pulled out the baggies although Alexander allegedly consented. His "consent" only came after the unlawful Terry frisk. Although the officer said he saw the baggie before the pat down, he did not include this significant piece of information in his report. He also said he saw the baggie when he looked into Alexander's pocket.

The investigative stop, the Terry frisk, and the search of Alexander's pocket were unconstitutional and the drugs should have been suppressed. The only evidence against Alexander were the baggies because there was other marijuana in the room. There was a bag under the table where the card players were sitting.

**Issues Two:** In State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), the Supreme Court wrote in Footnote 5 that they could envision no circumstances where it was appropriate for a forensic interviewer of children to be qualified as an expert because their work was not appropriate for the courtroom. The Court cited State v. Douglas, 380 S.C. 499, 671 S.E.2d 606, 607 (2009)

which held that it was unnecessary for the forensic interviewer to be qualified as an expert because no specialized knowledge was required there.

In State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009), the Supreme Court held that the trial court has a gate keeping function in assuring the reliability of expert testimony as it applies to nonscientific evidence. The same would be true for scientific evidence. The trial court did not clarify whether Lt. Gray was qualified as a scientific expert or non-scientific expert since the qualification was in narcotics investigation and paraphernalia.

This Court cited State v. Chavis, 412 S.C. 101, 106, 771 S.E.2d 336, 338 (2015) which stated two threshold determinations from White, supra, which must be made for non-scientific experts. First, the qualifications of the expert must be sufficient. Second, there must be a determination that the expert's testimony will be reliable.

Defense counsel argued that Lt. Gray's qualifications did not meet the requirements of Rule 702. R. 74, ll. 11 – R. 77, ll. 23. His special training was in the area of meth lab cleanup and Homeland Security and some classes in drug investigation. Defense counsel argued:

Our response would be that that's not something that the jury needs any sort of specialized testimony ---specialized scientific or other testimony about. I think he can testify, obviously, to what he found on our client. But the purpose of expert witnesses is to explain something that's outside the purview of the average juror. And I—I just don't think that this case rises to that level and requires any sort of specialized knowledge as would be required by an expert.

R.73, ll. 17 – R. 74, ll. 1.

It was not harmless error for Lt. Gray to give his expert opinion that Alexander intended to distribute or sell the crack cocaine. The Supreme Court wrote in Kromah that “although an expert's testimony theoretically is to be given no more weight by a jury than any other witness, it is an

inescapable fact that jurors can have a tendency to attach more significance to the testimony of experts."

The prejudice suffered by Alexander was that Lt. Gray's opinion related to the inference of distributing crack rather than just possession as there were no witnesses who said he sold or distributed crack. The officer did not witness any drug transaction. This offense carried a much longer prison sentence than just possession.

WHEREFORE, we respectfully request this Court to reconsider its ruling, and remand Alexander's case for a new trial.

Respectfully submitted,

  
LaNelle Cantey DuRant  
Appellate Defender

This 27th day of October, 2015.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

## Appeal from Abbeville County

Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT.

V.

ALFONZO ALEXANDER,

APPELLANT

APPELLATE CASE NO. 2013-002636

# 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 W. Leddon, Esquire, this 27th day of October, 2015.

  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 27th day  
of October, 2015.

\_\_\_\_\_(L.S.)  
Notary Public for South Carolina  
My Commission Expires: October 30, 2022.

# The South Carolina Court of Appeals

The State, Respondent,

v.

Alfonzo Alexander, Appellant.

Appellate Case No. 2013-002636

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## ORDER

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

Paul E. Shortz, Jr. J.

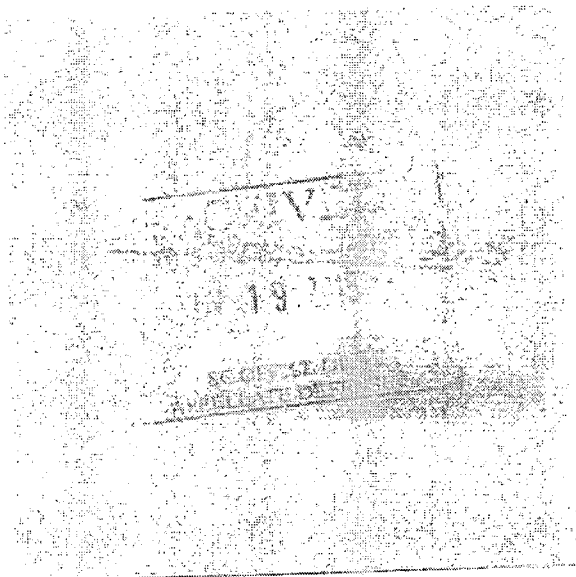
John D. Beathan J.

Stephanie P. McInnis J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire  
LaNelle Cantey DuRant, Esquire  
Mary Williams Leddon, Esquire  
David Matthew Stumbo, Esquire  
The Honorable Frank R. Addy, Jr.



21734

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal From Abbeville County  
The Honorable Frank R. Addy, Circuit Court Judge

Appellate Case No: 2013-002636

---

THE STATE,

Respondent,

v.

ALFONZO ALEXANDER,

Appellant.

---

**SUPPLEMENTAL  
RECORD ON APPEAL**

---

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Attorneys For Respondent

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1 anonymous tip. Ms. Brown opened her door to her apartment.  
2 And that is when he did see criminal activity taking place.  
3 And at that time for his safety, he did pat down Alfonzo  
4 Alexander, along with the other folks that were in the  
5 apartment complex at that time.

6 THE COURT: Okay. Solicitor, I tend to agree with you  
7 on the question of standing. It would appear that Ms.  
8 Brown would be the one who would have standing to challenge  
9 the general scope of the search of her apartment. And  
10 clearly, she -- from what has been represented by both the  
11 state and the defendant, it appears that everyone agrees  
12 that she had given consent for the officers to search the  
13 apartment.

14 So the central -- or the initial question is: Were  
15 the police in an area where they had a right to be? The  
16 answer to that question appears to be yes. And that's  
17 despite the nature of the anonymous tip.

18 I understand the defense position concerning the  
19 anonymous tip. I would agree that that tip would be  
20 insufficient to support a search warrant or an affidavit  
21 for a search warrant of the residence because of its  
22 anonymous nature and the lack of corroboration by the  
23 officers. But again, we're dealing with a consent search  
24 by Ms. Brown, the tenant of that apartment, whereas Mr.  
25 Anderson [sic], it appears everyone agrees, was not a

## STATE OF SOUTH CAROLINA

## IN THE COURT OF GENERAL SESSIONS

COUNTY OF Abbeville  
STATE VS.  
Rafonzo Alexander

AKA:

Race: AA Sex: M Age: 34DOB: [REDACTED] SS#: [REDACTED]Address: 613-B Green StreetCity, State, Zip: Greenwood, SCDL#: [REDACTED] SID#: [REDACTED]\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Manufacture, distribution, etc. of cocaine base, 3rd or sub. OffenseINDICTMENT/CASE#: 13GS01-0015A/W#: 2012A0120100041Date of Offense: 8/12/2012S.C. Code §: 44-53-0375CDR Code #: 3039

## SENTENCE SHEET

*Trial in Absence*☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0375 of the S.C. Code of Laws, bearing CDR Code # 3039  
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS/CSC ☐ §17-25-45  
w/minor 1st or Lowd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY

*John D. Yates*  
Brown, C. YatesSC Bar# 78607

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 29 (Twenty-nine) days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years

and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment

of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. *Audit 38 days: paid.*☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-23-20 or 16-25-65 (Child Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

☐ Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine:

|                                        |         |           |
|----------------------------------------|---------|-----------|
| § 14-1-206 (Assessments 107.5 %)       |         | \$        |
| § 14-1-211(A)(1) (Conv. Surcharge)     | \$100   | \$ 100.00 |
| § 14-1-211(A)(2) (DUI Surcharge)       | \$100   | \$        |
| § 56-5-2995 (DUI Assessment)           | \$12    | \$        |
| § 56-1-286 (DUI Breath Test)           | \$25    | \$        |
| Proviso 47.9 (Public Def/Prob)         | \$500   | \$        |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ 25.00  |
| § 14-1-213 (Drug Court Surcharge)      | \$150   | \$ 150.00 |
| § 50-21-114(BUI Breath Test Fee)       | \$50    | \$        |
| § 56-5-2942(I) (Vehicle Assessment)    | \$40/ea | \$        |
| Proviso 90.5 (SCCA Surcharge)          | \$5     | \$ 5.00   |
| 3% to County (if paid in installments) |         | \$ 8.40   |
| TOTAL                                  |         | \$ 288.40 |

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

*Emily Y. McMahon**Maya Newers*

Presiding Judge

Judge Code:

Sentence Date:

*Julie B. [Signature]*  
2155  
May 30, 2013**TRUE COPY**  
*[Signature]*  
JUDICIAL CLERK OF COURTObtain GED ☐

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other:

*Note: Sentence processed and pronounced on September 18, 2013.*☐ Appointed PD or appointed other counsel, 47.12 requires \$500 be paid to Clerk during probation.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Abbeville County  
The Honorable Frank R. Addy, Circuit Court Judge

Appellate Case No. 2013-002636

---

THE STATE,

Respondent,

v.

ALFONZO ALEXANDER,

Appellant.

---

**CERTIFICATE OF COUNSEL**

---

The undersigned certifies that this Supplemental Record On Appeal complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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MARY W. LEDDON  
Assistant Attorney General

David M. Stumbo  
Solicitor, Eighth Judicial Circuit

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ATTORNEYS FOR RESPONDENT

March 13, 2015

STATE OF SOUTH CAROLINA

In The Court of Appeals

---

APPEAL FROM ABBEVILLE COUNTY

Frank R. Addy, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

ALFONZO ALEXANDER,

APPELLANT

APPELLATE CASE NO. 2013-002636

---

RECORD ON APPEAL

---

LANELLE CANTEY DURANT  
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Attorneys for Respondent

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State of South Carolina ) In the Court of General Sessions  
 ) Eighth Judicial Circuit  
County of Abbeville ) 2013-GS-01-0015  
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State of South Carolina,                    )  
                                                  )  
                  Plaintiff,                    )  
                                                  )  
vs.                                                )       Transcript of Record  
                                                  )  
Alfonzo Alexander,                            )  
                                                  )  
                  Defendant.                    )  
                                                  )  
                                                  )

May 28 - 30, 2013  
Abbeville, South Carolina

B e f o r e:

The Honorable Frank R. Addy, Jr., Judge; and a jury

A p p e a r a n c e s:

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Christopher Andrew Morrow, Assistant Solicitor  
Attorneys for the Plaintiff

Janna A. Nelson, Esquire  
Patricia A. Bolen, Esquire  
Attorneys for the Defendant

Maryann S. Nevers, CVR-M-CM  
Circuit Court Reporter

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E X H I B I T S

| NO. | DESCRIPTION                     | I.D. | EVID. |
|-----|---------------------------------|------|-------|
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| C-2 | Rap Sheet                       | 55   |       |
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1 TRIAL DAY 2 - 05/29/13

2 (Whereupon, the proceedings were resumed at 11:24 a.m.)

3 THE COURT: All right. If we may, we're going to go  
4 back on the record on Cases 13-GS-01-14 and -15, the *State*  
5 *v. Alfonso Alexander*. The record should reflect that the  
6 state is present, represented by Mr. Brown. The defense is  
7 present as well, with the exception of Mr. Alexander.

8 I assume, Ms. Bolen, y'all have not had any success in  
9 contacting him?

10 MS. BOLEN: I have not, Your Honor. My last contact  
11 with the bondsman was earlier this morning. And I -- I  
12 don't believe he's had any contact with him either.

13 THE COURT: All right. No leads as far as his mother  
14 or anything like that?

15 MS. BOLEN: I've spoken with his sister; and through  
16 her, his mother. His mother's very hard of hearing, so  
17 it's sort of a tag conversation over the phone. And  
18 neither of them know where he is.

19 THE COURT: All right. I've released the jury; asked  
20 them to come back at twelve o'clock. I sent the clerk in  
21 there to do that. It's, of course, about 11:25 at this  
22 point in time. I know that we're going to take up motions.  
23 At this point, Ms. Bolen, I'm happy to hear from you on any  
24 motions that you have.

25 MS. BOLEN: Thank you, Your Honor. I'd make a motion

1     that the drugs in this case be suppressed on the basis of a  
2     Fourth Amendment violation. I believe we can do this by  
3     way of testimony, or I can make my argument based on what's  
4     in the incident report. But our -- our position is that  
5     the -- the drugs were unlawfully seized and, as a result,  
6     should be suppressed under the exclusionary rule.

7           THE COURT: All right. I'm unfamiliar with the facts  
8     of this case, so maybe a little bit of a background would  
9     help me understand the -- the basis for your motion a  
10    little bit better, Ms. Bolen.

11           MS. BOLEN: Just to sort of sum up the incident  
12    report, Your Honor?

13           THE COURT: (Nodded head up and down.)

14           MS. BOLEN: Okay.

15           THE COURT: Please.

16           MS. BOLEN: And just -- just to go off of what has  
17    been provided to me by the state, which is a three-page  
18    incident report, the text is really only two pages; and the  
19    CAD report from a 911 call, which I was given yesterday;  
20    and the 911 call, which I was also given yesterday: At  
21    about 1:30 a.m. -- 1:15 a.m. an anonymous caller called 911  
22    to report that a lot of people -- quote, a lot of people  
23    were doing drugs and gambling in Apartment 401. The  
24    anonymous caller said that half the people were on  
25    trespass. He does not know whose apartment it was; did not

1 believe is crack. They also find scales and some plastic  
2 baggies and some money.

3 No one else was arrested, with the exception of one of  
4 the individuals -- one of the original six individuals who  
5 was arrested for trespass. But no one else in the -- in  
6 the home of the -- I think there's at least ten people in  
7 there. No one else was arrested.

8 Your Honor, the basis of our motion is actually a -- a  
9 twofold -- twofold argument. Number one, this is clearly  
10 an -- an anonymous call. And both our state courts and the  
11 Supreme Court have held that anonymous calls are held to a  
12 higher standard in terms of reliability; that there needs  
13 to be sufficient indicia of reliability before police have  
14 reasonable suspicion to conduct an investigative stop.

15 And, Your Honor, this is found in -- from our state  
16 Supreme Court, *State v. Taylor*. From the United States  
17 Supreme Court, it's *in re: J.L.* I believe it's a juvenile  
18 case involving a report of a black man with a gun and  
19 officers see three black boys standing at a bus stop and  
20 they *Terry*-frisk them. And that was found to be  
21 unconstitutional.

22 So our first argument is that the anonymous tip alone  
23 -- and -- and there needs to be some sort of corroboration  
24 by the officers before they can do an investigatory stop.  
25 Here, there was no -- no corroboration of this anonymous

1 tip prior to them questioning Ms. Brown. Officers didn't  
2 see any drugs; didn't see any gambling.

3 The caller -- we'd argue that his tip is -- is not  
4 reliable. Some of the things that he says in it, that half  
5 the people are on trespass, that's -- can't be true,  
6 because only one person was arrested for trespass. He  
7 doesn't even know whose apartment it is. He doesn't see  
8 any drugs or money exchanged. So where he's getting the  
9 information that they're selling is -- is unclear.

10 But there's certainly indications of unreliability in  
11 this tip. And without the officer corroboration, we'd  
12 argue that that's not enough for the investigative stop.  
13 And although the investigative stop was of Ms. Brown, we'd  
14 argue that under the "fruit of the poisonous tree"  
15 doctrine, that everything resulting from that unlawful stop  
16 should be suppressed.

17 Additionally, Your Honor, our -- our second grounds  
18 for suppression is the *Terry* frisk. Our -- again, our  
19 Supreme Court, as well as our state courts, have  
20 consistently held that officers don't need just reasonable  
21 suspicion of criminal activity to do a *Terry* frisk. They  
22 need reasonable suspicion based on specific and articulable  
23 facts that the person they're about to *Terry*-frisk is armed  
24 and dangerous. There has to be actual officer fear.

25 And to quote some cases, Your Honor, the -- the United

1 States Supreme Court that is probably the most on point is  
2 *Minnesota v. Dickerson* in which the Court says that the  
3 purpose of a *Terry* pat-down is not to discover evidence but  
4 to allow officers to pursue their investigation without  
5 fear of violence. And the Court has some pretty strong  
6 language against there being a fishing expedition, for lack  
7 of a better term, using a *Terry* frisk to find evidence,  
8 rather than simply to maintain officer safety.

9 *State v. Butler* is a state case, Your Honor, 353 S.C.  
10 383, in which our -- our Court said that there must be  
11 actual fear shown on behalf of the officer, reasonable  
12 suspicion that the person is armed and dangerous.

13 And to -- to go back to the anonymous tip, Your Honor,  
14 the -- the state case on that is *State v. Green*, 341 S.C.  
15 214; as well as *State v. Taylor*. There are a -- a -- a few  
16 cases where the -- the Court says there is reasonable  
17 suspicion to believe that someone is armed and dangerous,  
18 but there's more to those cases than there is here.

19 For example, in *State v. Robinson*, officers smelled  
20 marijuana. And the Court says that's not enough. But  
21 then, they see a pistol sticking out of the defendant's  
22 pocket. And the Court says that becomes enough to have a  
23 reasonable fear that the person is armed and dangerous.

24 There's also case law, Your Honor that -- that  
25 officers need to have some reason to think the person is

1 armed and dangerous. It can't be just speculation. I can  
2 just pull up the case again, Your Honor.

3 For example, *State v. Fowler*, 322 S.C. 263, our state  
4 courts say that there must be reasonable, articulable  
5 suspicion that the purpose -- that the person is armed and  
6 dangerous. Officers' testimony the defendant had a history  
7 of possessing weapons was not enough to create reasonable  
8 suspicion that a frisk was necessary to -- to protect  
9 themselves. There were no -- in that case the person had  
10 no prior weapons charges and they did not find any -- find  
11 any weapons.

12 And the *Fowler* court quotes the United State Supreme  
13 Court in *Ybarra v. Illinois*: The officer must believe the  
14 -- the frisk was necessary to preserve the officer's  
15 safety. An officer must be able to specify the particular  
16 facts on which he or she based his or her belief that the  
17 suspect was armed and dangerous. And again, there is the  
18 sort of fishing-expedition language that officers are not  
19 entitled just to search anyone looking for evidence.

20 There's also a state's -- a -- another South Carolina  
21 case, *State v. Woodruff*, 344 S.C. 537, in which our state  
22 Court says that *Terry* frisks are strictly circumscribed --  
23 circumscribed; they have strong limits and cannot be used  
24 as a fishing expedition.

25 Your Honor, with respect to this case, there is simply

1 nothing in the incident report which has all been given to  
2 indicate that they had any reasonable fear, any reasonable  
3 officer safety. My client has no weapons convictions on  
4 his record. There has been nothing provided to say that he  
5 is known for carrying a weapon.

6 The anonymous tip mentions nothing about weapons.  
7 There's no weapons seen. There's no mention of weapons.  
8 They don't -- they don't mention anything about him being  
9 squirrely or darting around or reaching in his pocket or  
10 trying to evade them or any of the sort of behavioral cues  
11 that we sometimes see as reasons for thinking someone might  
12 have a gun. None of that is in here.

13 And our position is they simply did not meet the  
14 constitutional burden to conduct a *Terry* frisk on him in  
15 that they -- there's no -- no articulable facts upon which  
16 they can put a reasonable, objective fear of officer  
17 safety.

18 And, Your Honor, I -- I anticipate that the state will  
19 say it's fruit of the -- that it's a inevitable discovery  
20 problem. And argument against that, Your Honor, is that,  
21 you know, if they try say, "Well, he was going to be  
22 arrested anyways and they would've had the right to search  
23 him," it's true that if someone is lawfully arrested,  
24 there's the right to search.

25 But our position is he would not have been arrested

1 Lt. John Gray.

2 (Whereupon, the witness came forward.)

3 JOHN GRAY, having been first duly sworn,  
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BROWN:

7 Q Lt. Gray, do you work with Abbeville Police  
8 Department?

9 A Yes, sir, I do.

10 Q Okay. Were you working -- just to -- for the purpose  
11 of this hearing, were you working -- what's your position  
12 there with the Abbeville Police Department?

13 A Now?

14 Q Now and at the time of this ---

15 A At the time ---

16 Q --- arrest.

17 A --- I was a lieutenant shift supervisor.

18 Q And were you the lieutenant shift supervisor back on  
19 October -- or in August 12th, 2012?

20 A Yes, sir.

21 Q And did you regularly investigate any kind of  
22 narcotics investigations?

23 A Yes, sir.

24 Q And on that night, August 12th, 2012, did you receive  
25 a call through dispatch?

1 A Yes, sir.

2 Q And when you did receive that call, what was the  
3 nature of that call?

4 A The nature of the call was from an anonymous tipster;  
5 that in [REDACTED] in Oakland Apartments in Abbeville  
6 City, that inside that apartment there was people gambling,  
7 using drugs, and selling drugs inside that apartment -- was  
8 the complaint.

9 Q After you got that call over dispatch, what did you  
10 do?

11 A Me and my shift, we went to that apartment and went to  
12 knock on the door. Ms. Brown was outside the door.

13 Q And Ms. Brown, is that Ms. Ella ---

14 A Ms. Ella ---

15 Q --- Brown?

16 A --- Brown. Yes, sir.

17 Q And who is Ms. Ella Brown?

18 A Ms. Ella Brown at that time told us that that was her  
19 apartment and she was the renter of the apartment.

20 Q Did you speak with Ms. Brown?

21 A Yes, sir, I did.

22 Q What was that conversation like?

23 A I advised Ms. Brown of the complaint that we had got  
24 through the 911 dispatch from the anonymous tipster. And I  
25 asked her could we look inside of her apartment.

1 Q What did Ms. Brown do?

2 A She said we could, and she opened the door.

3 Q So she -- did she voluntarily open the door for you?

4 A Yes, sir, she did.

5 Q And once she opened the door, what did you observe?

6 A When I opened up the door -- when she opened the door  
7 to let us in, I noticed that there was a crowd of people in  
8 there. It was probably ten or so people. But you could  
9 smell a strong smell of marijuana through the living room  
10 area. You could see back at the kitchen. There -- I  
11 believe there was four or five people sitting there. It  
12 appeared to be that some of them was engaged in some type  
13 of game -- card game, gambling. And the rest of the people  
14 was in the living room area.

15 Q Did -- did you notice any type of drugs in the  
16 apartment?

17 A Yes. Once we stepped inside the doorway there through  
18 the threshold, I could see a small bag of marijuana that  
19 was on the floor beside where Mr. Alexander was sitting.

20 Q And where was Mr. Alexander sitting in that apartment?

21 A When you go through the front door of the apartment,  
22 there was a couch there immediately to the left. It looked  
23 like a two-seater couch. He was sitting in the left-far  
24 side of the couch.

25 Q What else did you observe of Mr. Alexander?

1 A Mr. Alexander was -- was sitting there on the couch.  
2 He had a large sum of money in his hand. I didn't know the  
3 amount at that time, but he had a large sum of money in his  
4 hand. And you could see plastic baggies coming out of his  
5 left pocket ---

6 Q' So you could ---

7 A --- his right pocket.

8 Q You could clearly see plastic baggies coming out of  
9 his pocket?

10 A Yes.

11 Q What did you do after you saw Mr. Alexander there on  
12 the couch?

13 A Mr. Alexander was patted down for officer safety.

14 Q All right. And for officer safety, why would you do  
15 that?

16 A A lot of times, there's -- guns and drugs go together.

17 Q So you patted him down to make sure he was not armed  
18 with a weapon?

19 A That's correct.

20 Q And when you did pat him down, you already said that  
21 you saw plastic baggies in his -- in his pants pocket,  
22 which -- what else did you find when you patted him down?

23 A When the frisk was done, I could feel in his pocket  
24 that there was additional bulge under the baggie that you  
25 could see through his pocket that felt to be more baggies.

1 And in his other pocket, you could just feel a -- a hard  
2 square. Wasn't sure what it was at that time.

3 Q Did you remove those baggies, or did you ---

4 A I ---

5 Q --- ask him ---

6 A I did remove the baggies and stuff from his pocket  
7 with the consent of Mr. Alexander.

8 Q So Mr. Alexander gave you consent to remove those  
9 items?

10 A Yes, sir. Once I had felt the object in his pocket, I  
11 asked him could I remove it from his pocket. And he stated  
12 yes.

13 Q And at that time what did you do?

14 A I removed the plastic baggies from his pocket.

15 Q Was Mr. Alexander ever placed under arrest?

16 A Not at that time. No, sir. When we removed the  
17 baggies from his pocket -- and along with them baggies was  
18 a -- a quantity of an off-white, rocklike substance that we  
19 believed to be crack cocaine -- he was arrested then.

20 Q Okay. And what else was in his pocket? You said that  
21 there was a bulge in his left pocket. What was that bulge?

22 A Yes, sir. That turned out to be a small set of  
23 digital scales.

24 Q Okay. And also, you did mention there was cash. You  
25 said it was large sum of cash. Did you ever figure out how

1 much that was?

2 A Yes, sir. After everything was cleared and everything  
3 was done, it was counted. And I believe it was 830-  
4 something dollars -- 839.

5 Q And kind of what was the makeup of that money in -- in  
6 bill form?

7 A It was mostly twenties.

8 Q Okay. And during your investigation of that  
9 apartment, what else did you find? Was there anybody else  
10 arrested?

11 A There was one other person arrested there, John  
12 Decarlos Gray. He's known to -- I've known him for many  
13 years and know him to be on trespass at that apartment  
14 complex.

15 Q And he -- what was he arrested for?

16 A Trespassing.

17 Q Was there anybody else arrested for any drugs in that  
18 apartment?

19 A No, sir.

20 Q And why not?

21 A The drugs that was found in the floor, I -- I could  
22 not pin them to one person. You know, there was -- it was  
23 one small bag of marijuana in the floor at his feet. I --  
24 I couldn't -- I couldn't pin it to one person.

25 Q But he -- what was he charged with?

1 A He was charged with possession with intent to  
2 distribute crack cocaine and within proximity of a school  
3 or playground.

4 Q All right.

5 MR. BROWN: Judge, I think that covers his search and  
6 entering the ---

7 THE COURT: All right.

8 MR. BROWN: --- the apartment.

9 THE COURT: Cross-examination, Ms. Bolen?

10 MS. BOLEN: Thank you, Your Honor. Lt. Gray, I just  
11 got a couple questions for you.

12 CROSS-EXAMINATION

13 BY MS. BOLEN:

14 Q Where was Ms. Brown? Was she outside the apartment?

15 A When we approached the apartments, there was several  
16 people sitting outside the apartment. And Ms. Brown was  
17 one of the people sitting outside the front door of her  
18 apartment.

19 Q Okay. And she told you she lived there, right?

20 A That's correct.

21 Q Okay. And Alfonso, you said, was sitting on the  
22 couch, right?

23 A That's correct.

24 Q And he didn't get up at all, right?

25 A That's correct.

1 Q He was just sitting there?

2 A That's right.

3 Q Let me just grab your report. This report -- the --  
4 is this report -- you -- you wrote this ---

5 A I ---

6 Q --- as the lead officer?

7 A Can I ---

8 Q If I ---

9 A --- see it?

10 Q --- can hand it up -- yeah. Sorry. It's a little bit  
11 scribbled on.

12 A That's all right.

13 Q Okay.

14 A Yes, ma'am. That appears to be the report from that  
15 incident.

16 Q Okay. And so you wrote this report, right?

17 A Yes, ma'am.

18 Q Okay. And you wrote this soon after the incident?

19 A Yes, ma'am.

20 Q So it's fair to say that this is probably the best --  
21 the best recollection since you did it right after the  
22 incident ---

23 A Yes, ma'am.

24 Q --- right?

25 Okay. And this was a good couple months ago?

1 A Yes.

2 Q Okay. And you don't mention in your report and you  
3 didn't testify at all that Alfonzo was fidgety or making  
4 any kind of movements, right?

5 A That's correct.

6 Q Okay. So he was just sitting on the couch?

7 A That's correct.

8 Q And you didn't put anything about him threatening you  
9 in any way?

10 A That's correct.

11 Q He didn't reach for his pocket?

12 A No, ma'am.

13 Q He didn't make any sharp movements?

14 A No, ma'am.

15 Q He didn't look nervous?

16 A No, ma'am.

17 Q He didn't look sweaty -- anything indicating he wanted  
18 to get out of there or anything like that that you  
19 mentioned?

20 A No, ma'am.

21 Q Okay. And in the 911 call, there was no mention of  
22 guns, right?

23 A That's correct.

24 Q Okay. And in your report -- let's go back to the --  
25 where you -- the baggies that -- that you found. In your

1 report you say that you -- you don't see the baggies until  
2 you're patting him down, right?

3 A I'd need to read the report. But I could -- I could  
4 see the baggies while he was sitting on the couch. I could  
5 see them in his right pocket -- one of them protruding from  
6 his pocket.

7 Q Okay. But that's not in your report, right?

8 A I will need to ---

9 Q Okay.

10 A --- read the report, but I don't ---

11 MS. BOLEN: If I can ---

12 A --- remember.

13 MS. BOLEN: --- approach, Your Honor?

14 THE COURT: Please.

15 A The report does not state I seen them before.

16 Q Okay. If I can just grab -- that's my only copy,  
17 unfortunately.

18 A That's okay.

19 Q If I could just grab it back, thank you.

20 Okay. And you don't mention in the report or in  
21 testimony today that you had any prior knowledge of Alfonzo  
22 carrying a gun, right?

23 A I did not know Mr. Alexander before this ---

24 Q So you ---

25 A --- incident.

1 Q --- didn't know him before?

2 A No.

3 Q Okay. So you wouldn't know if he had any kind of  
4 propensity to carry a gun or any ---

5 A No, ma'am.

6 Q Okay. And so it's fair to say, since you didn't know  
7 him, that you wouldn't have heard people saying he carried  
8 a gun, right?

9 A No, ma'am.

10 Q Okay. It's also fair to say that the baggies you felt  
11 did not feel like a gun?

12 A That's correct.

13 Q Okay. And the other item you felt also didn't feel  
14 like a gun?

15 A That's correct.

16 Q Okay. Did you know it was a scale before you pulled  
17 it out? Could you tell ---

18 A No, ma'am.

19 Q Okay. So when you pulled it out, you knew it was a  
20 scale?

21 A (No audible response.)

22 Q And I think you say it was a -- I think you said on  
23 testimony it was a sort of square object, so not -- not a  
24 gun or weapon?

25 A That's correct.

1 Q Okay. And, in fact, you didn't find a gun on Alfonzo,  
2 right?

3 A No, ma'am.

4 (Whereupon, Ms. Bolen and Ms. Nelson conferred.)

5 Q And you didn't -- you didn't actually find a gun on  
6 anyone in that apartment ---

7 A No, ma'am.

8 Q --- right?

9 A There was no weapons found in the apartment.

10 Q Okay. And again, there's no mention in the report of  
11 any of these other named individuals being known for  
12 carrying guns or having guns? There's no mention of that  
13 in your report ---

14 A That's correct.

15 Q --- right?

16 And in terms of the -- what you pulled out of his  
17 pocket, you didn't know that it was crack until you pulled  
18 it out of his pocket, right?

19 A That's correct.

20 Q Okay.

21 MS. BOLEN: I don't have anything further. Thank you,  
22 Your Honor.

23 THE COURT: All right. Redirect?

24 MR. BROWN: Judge, just a few more questions.

25

## REDIRECT EXAMINATION

BY MR. BROWN:

Q Lt. Gray, you stated once Ms. Brown opened the door for you, you saw -- how many people were in the apartment?

A I -- it was probably a good ten people.

Q And how many officers were there?

A It was just three.

Q Three officers and ten people?

A Yes, sir.

Q And when you entered this apartment, you said that it had the smell of marijuana and folks gambling. Why'd you say you patted down Alfonzo Alexander?

A For officer safety.

Q So at that point did you know they had weapons -- they didn't have weapons on them?

A No, sir. We did not know if any of them had weapons on them or not.

Q And also, Ms. Bolen asked did you know him -- know Mr. Alexander prior to this occurrence.

A Did I know Mr. -- no, sir. I didn't know Mr. Alfonzo before this.

Q So there would be no reason for you treat him in any other manner, other than just to make sure of your safety? You weren't ---

A I -- I ---

1 Q --- targeting ---

2 A --- wanted ---

3 Q --- this fella?

4 A I wanted to protect me and the other two officers that  
5 was there in that apartment.

6 Q So there was no ---

7 A There ---

8 Q --- reason to ---

9 A --- we was ---

10 Q --- target him?

11 A --- outnumbered 10 to 3.

12 Q And Ms. Bolen asked, when you did pat him down --  
13 after you saw the baggies and patted him down, did you just  
14 pull the baggies out yourself?

15 A No, sir. I didn't remove nothing from his pocket. I  
16 asked Mr. Alexander could I remove it from his pocket after  
17 I felt it, and he said yes.

18 Q So it ---

19 A And it ---

20 Q --- was ---

21 A --- was removed.

22 Q --- it was consensual?

23 A Yes, sir.

24 MR. BROWN: No further questions.

25 MS. BOLEN: Can I have one very brief follow-up?

1 THE COURT: (Nodded head up and down.)

2 MS. BOLEN: Thank you, Your Honor.

3 RE CROSS-EXAMINATION

4 BY MS. BOLEN:

5 Q Lt. Gray, the consent by my client was only after you  
6 Terry-frisked him, right? You didn't -- you -- there's no  
7 mention of him giving consent to be Terry-frisked ---

8 A That's correct.

9 Q --- right? Okay.

10 THE COURT: All right. Just a couple of questions for  
11 clarification. You -- you had mentioned that there were  
12 about ten people in the apartment. Did you frisk any other  
13 individuals for weapons there?

14 THE WITNESS: Yes, sir. Everybody in the apartment  
15 was -- was frisked for weapons.

16 THE COURT: Okay. And the -- again, the justification  
17 for doing this was what?

18 THE WITNESS: Officer safety.

19 THE COURT: All right. And expand upon that. What  
20 were your concerns?

21 THE WITNESS: Concerns is -- is usually, a lot of  
22 times, that drugs and weapons go hand in hand. A lot of  
23 times, I've -- through my experience, I've noticed that we  
24 made a lot of drug cases where there were guns. And for my  
25 safety and my other fellow officers, we patted down the --

1 the people in the apartment.

2 THE COURT: All right. So it's not a -- well, were  
3 you drawn immediately to Mr. Alexander when you came in or  
4 did -- was it ---

5 THE WITNESS: Seeing -- seeing Mr. Alexander in the  
6 apartment, sitting on the couch with the large sum of money  
7 in his hand and the baggies coming out of his pocket, that  
8 kind of lead me to believe that he was the one that was  
9 possibly actually selling the drugs. Because large money  
10 and plastic baggies -- usually, marijuana and other drugs  
11 are sold in the plastic bags.

12 THE COURT: All right. And I think this has been  
13 said, but you did not find weapons on anyone else in the  
14 apartment?

15 THE WITNESS: There -- there was no weapons in the  
16 apartment on anybody there. That's correct.

17 THE COURT: All right. Additional questions I'm sure  
18 the defense has based upon what I have asked, Ms. Bolen?

19 (Whereupon, Ms. Bolen and Ms. Nelson conferred.)

20 MS. BOLEN: I think we're all set. Thank you, Your  
21 Honor.

22 THE COURT: All right. Anything?

23 MR. BROWN: No, sir.

24 THE COURT: Thank you. You can step down.

25 THE WITNESS: Thank you, sir.

1           (Whereupon, the witness exited the witness stand.)

2                       (Off the record briefly.)

3           THE COURT: y'all want to speak to your positions on  
4 the case now that the officer has testified, Ms. Bolen?

5           MS. BOLEN: Thank you, Your Honor. Our position is  
6 the same: that I think with the officer testimony, coupled  
7 with the report, there has still been no actual fear or  
8 suspicion or any specific articulable facts distinctive to  
9 this situation that gave the officer reasonable fear of --  
10 of his own safety. Again, the -- the cases say that there  
11 has to be reasonable suspicion that someone is armed and  
12 dangerous.

13           Cases where that -- that standard is found have much  
14 more than this case. They have, you know, a visible gun in  
15 someone's pocket, that sort of thing.. That -- that's what  
16 our courts have been found to justify a -- a Terry frisk.

17           THE COURT: I -- I do understand. The Fourth Circuit,  
18 however, has ruled that -- that, for lack of a better word,  
19 that, you know, guns are tools of the drug trade. And so  
20 you're going into a house at night; marijuana, you're  
21 smelling that. You've got a number of people who outnumber  
22 the officers. You want to speak to that?

23           And -- and I'm trying not to -- to mix the issues  
24 here. This obviously is not a plain-feel case. You have a  
25 pat-down. You have the officer observing baggies sticking

1 out of the pockets. And then, you have consent by the  
2 defendant, supposedly given, to remove the bags from his  
3 pockets. It's clearly not a plain-feel situation in that  
4 the officer testified he did not know it was scales; he did  
5 not know it was crack until such time as he obtained  
6 consent to search the defendant.

7 I'm not -- I'm wanting to try to avoid mixing ---

8 MS. BOLEN: Right. And we -- we were going to raise  
9 plain-feel, Your Honor ---

10 THE COURT: Go ahead.

11 MS. BOLEN: --- as well.

12 THE COURT: Yeah.

13 MS. BOLEN: But ---

14 THE COURT: I -- I agree ---

15 MS. BOLEN: --- under ---

16 THE COURT: --- with you on plain-feel, then, because  
17 it's not plain-feel.

18 MS. BOLEN: It is not -- right -- that there's not  
19 been any testimony to that.

20 Some of the -- the facts elicited during Lt. Gray's  
21 testimony is that there was no prior knowledge of my client  
22 having guns, no prior knowledge of anyone there having  
23 guns; no mention in the 911 report that there were any kind  
24 of weapons involved. I think very notably, Your Honor, my  
25 client is just sitting on the couch. Sure, he's got money

1 in his hand. But there's ample testimony that there was  
2 gambling going on.

3 I think there's some dispute about when the plastic  
4 bags were seen, as it's in the report. That does not  
5 happen until after the *Terry* frisk. But there's definitely  
6 not a gun seen. There's been no mention of a gun by  
7 anyone.

8 My client doesn't make any of the sort of  
9 stereotypical, you know, furtive movements -- what our  
10 courts would call the "furtive movements" to say that he  
11 was trying to cover something up. He doesn't reach for his  
12 pocket. He doesn't make any kind of threats. He doesn't  
13 make any sharp moves. He's literally just sitting on the  
14 couch.

15 And I -- I just think that that does not, in and of  
16 itself, give rise to a reasonable suspicion, based on  
17 suspicious articulable facts, that the *Terry* frisk was  
18 necessary to protect the officer. Again, no prior weapons  
19 that they knew about; no reputation for weapons. I think  
20 the language in *State v. Fowler* is -- is very important in  
21 this case, Your Honor.

22 Before police may frisk a defendant, they must have a  
23 reasonable belief that the defendant is armed and  
24 dangerous. That's *Fowler* quoting *Ybarra v. Illinois*. And  
25 I -- I -- I think that the -- the testimony and the

1 incident report simply do not support that there's a  
2 reasonable belief that Alfonzo, who is completely unknown  
3 to this officer, is armed and dangerous. There has been  
4 nothing to indicate that to him. And in fact, Alfonzo was  
5 not armed.

6 There's been nothing to -- to say that the frisk was  
7 necessary to preserve his safety. And -- and our position,  
8 Your Honor, is that the frisk itself was unconstitutional.  
9 I think -- well, if my client were here, we'd be in a  
10 different situation altogether. But the consent -- I -- I  
11 understand that although we may dispute that, the testimony  
12 will be that he consented.

13 But again, I think the -- the "fruit of the poisonous  
14 tree" doctrine applies and that the unlawful,  
15 unconstitutional Terry frisk -- any evidence seized as a  
16 result of that should be suppressed.

17 THE COURT: All right, Mr. Brown.

18 MR. BROWN: Your Honor, I know we've already kind of  
19 hashed this out a lot. Our position, again, is -- I know  
20 we've already gotten to the whole thing about being allowed  
21 into the apartment. The whole thing on Terry frisk now.

22 Your Honor, with the totality of circumstances with  
23 Lt. Gray, along with only two other officers, when they  
24 enter this apartment building, they -- approximately ten  
25 other individuals there, marijuana smoke; see a baggie on

1 the floor next to Mr. Alexander, he did say that he did --  
2 he patted him down for weapons. And I think it's all --  
3 right now everything's turned on that it has to be a gun in  
4 Mr. Alexander's pocket. And I think it's just -- that he's  
5 armed. And I think we need to look at is also -- and cited  
6 in -- let's see here -- *State v. Blassingame*, which is a  
7 South Carolina case, 1999, that the officer need not be  
8 absolutely certain that the individual was armed. The  
9 issue is whether a reasonable, prudent man in the  
10 circumstances would be warranted in the belief that his  
11 safety or that the others was in danger.

12 And I think, as we already said, gathering on Lt.  
13 Gray's experience -- past experience, that he drew from  
14 that that a lot of times when you have drugs, that guns or  
15 other weapons are usually associated, being outmanned 10 to  
16 3, he clearly stated in his incident report and has also --  
17 as he's testified that he was patting him down for officer  
18 safety to make sure there was no weapons. And I think,  
19 with the totality of circumstances and not knowing what Mr.  
20 Alexander had on him, it's not like he was targeting him.  
21 But he did, you know, see a bulge in his pocket. It may  
22 not have been a gun, but it could've been another weapon.  
23 It could be brass knuckles or anything like that that can  
24 be used as a -- as a deadly weapon. But under those --  
25 under the totality of circumstances, believe that a -- that

1 frisk was -- was a valid frisk.

2 THE COURT: All right. Solicitor, let's assume for a  
3 moment that I agree with you and we follow *Blassingame* and  
4 that the -- which for benefit of the court reporter is  
5 spelled B-l-a-s-s-i-n-g-a-m-e; it's at 338 S.C. 240. Let's  
6 assume for a moment we follow that line. I agree that the  
7 officer had a reason to conduct a pat-down to make sure  
8 that no one in the home or the apartment was armed.

9 We have the pat-down taking place. He feels the lump.  
10 It's clearly not a plain-feel case in that the officer did  
11 not immediately recognize that it was crack. Where does  
12 that leave us?

13 So we have a -- we have a pat-down. We have a baggie.  
14 Is it the state's position that the consent takes care of  
15 that?

16 MR. BROWN: That's correct, Your Honor: that he  
17 consented. He asked; he did not ultimately take it upon  
18 himself to pull the baggie and the -- the scales out of his  
19 pocket, but that he asked and Mr. Alexander consented and  
20 removed those himself.

21 But before that it is all based on officer safety and  
22 making sure there were no weapons involved. Not only did  
23 he pat down Alfonzo Alexander, but everyone in the  
24 apartment was checked for weapons to make sure there was no  
25 weapons in the apartment.

1 THE COURT: All right. Anything further from anyone?

2 MS. BOLEN: Your Honor, I -- our position would just  
3 be that once -- I mean, he testified that none of these  
4 things felt like weapons; that once he determines that  
5 they're not weapons, he didn't have the right to ask to  
6 pull anything out.

7 THE COURT: I understand. I think that the officer  
8 may not have known or apparently was not entirely sure what  
9 the two items were. And again, we're dealing with a crack  
10 -- the crack on one hand and the scales on the other. If  
11 he had asked the individual, "May I search you?" and the  
12 individual said, "No," and then the search took place  
13 nonetheless, you know, absent an arrest -- and again, we're  
14 not dealing with a search incident to arrest at this point,  
15 because the testimony appears to be that he was not under  
16 arrest and wasn't going to be arrested for the marijuana.  
17 So we're dealing with a consent situation. The only  
18 evidence that we have in the record in the case is that the  
19 defendant did give consent to search. And because of that  
20 consent, the officer then discovered the crack on the  
21 defendant.

22 Again, I do rule that this is not a plain-feel  
23 situation. But the *Terry* frisk was legitimate. When the  
24 officer did not realize what it was he was feeling, he  
25 asked for consent. The defendant gave consent. And

1 accordingly, I will permit the drugs to come into evidence,  
2 subject, of course, to the exceptions by the defense.

3 MS. BOLEN: Thank you, Your Honor.

4 THE COURT: Any other motions?

5 MS. BOLEN: Very, very, very briefly, Your Honor. We  
6 -- we would make a motion to sequester witnesses.

7 THE COURT: I typically grant those. You can have Mr.  
8 Gray. I know we have some SLED agents. I'm really ---

9 MR. BROWN: Judge, I don't think -- I mean, I think  
10 just as long as we have Mr. Gray here as our lead  
11 investigator, SLED officers, I think, are fine ---

12 THE COURT: All right.

13 MR. BROWN: --- staying out of the courtroom.

14 THE COURT: Okay. That's fine.

15 MS. BOLEN: And just as a matter of housekeeping, I'm  
16 -- I'm really doing this since my client's not here to make  
17 sure we've got everything in the record. We brought up  
18 yesterday that my client had been represented by you. And  
19 I -- I think we need some sort of, I guess, adjudication on  
20 that issue.

21 He -- he tells me that he was represented by you for,  
22 I believe, his first drug offense. And it looks, from his  
23 record, like he -- he got some time on that. And -- and  
24 just so you -- you're aware of the nature of our  
25 conversation, he was the one to bring this up; I did not

1 ask him who -- who his attorneys on the other charges were.

2 THE COURT: All right. I appreciate your position.  
3 In anticipation of that motion, I asked my clerk to do some  
4 quick research. And the research that he's provided me  
5 with would indicate that I do not have a conflict.

6 I -- I don't know -- it -- it had to have been  
7 sometime, I guess, in '97 or '98 ---

8 MS. BOLEN: I believe ---

9 THE COURT: --- that I ---

10 MS. BOLEN: --- it was '98. Yes, sir.

11 THE COURT: --- '98. Are you sure it was me and not  
12 Richard Gustafson?

13 MS. BOLEN: He said Frank Addy.

14 THE COURT: Okay.

15 MS. BOLEN: Yeah.

16 THE COURT: It may have been me.

17 MS. BOLEN: I -- I don't ---

18 THE COURT: I -- I know ---

19 MS. BOLEN: --- think he ---

20 THE COURT: --- that ---

21 MS. BOLEN: --- was aware that you were a judge. I  
22 think he was kind of telling me to figure out who was still  
23 in our office.

24 THE COURT: I -- good enough. I don't -- I -- I will  
25 tell you, I have no specific recollection of Mr. Alexander.

1 And obviously, I did not retain his file. I don't know him  
2 from Adam's house cat.

3 MS. BOLEN: Right.

4 THE COURT: And I don't remember anything ---

5 MS. BOLEN: Right.

6 THE COURT: --- that he said to me 15 years ---

7 MS. BOLEN: Right.

8 THE COURT: --- ago. It's possible, if I saw him,  
9 maybe I would remember his face. Sometimes I'm much better  
10 with faces than I am with names. But I will tell you, I  
11 remember absolutely nothing about the underlying  
12 representation that I engaged in for Mr. Alexander.

13 And the reason that I asked that question about "Are  
14 you sure it was me?" is that the individual that I hired on  
15 while I was public defender, he -- his primary  
16 responsibility were -- were drug cases and CSC cases.  
17 Those were the ones he wanted. And that's the reason I --  
18 I -- I may very well have represented him and we did sort  
19 of switch back and forth between the two of us when I had  
20 your job. But I don't recall Mr. Alexander in any way,  
21 shape, or form.

22 I've looked at, so far -- and clearly, under South  
23 Carolina law, Section 14-1-130 would not apply because I'm  
24 not, of course, related to Mr. Alexander. Canon 3 of Rule  
25 501: "A judge shall perform judicial duties without bias

1 or prejudice. A judge shall not, in the performance of  
2 judicial duties, by words or conduct manifest any bias or  
3 prejudice, etc."

4 I don't know him. I -- I cannot honestly say I don't  
5 like him. I don't dislike him. So I think I'm about as  
6 neutral as I can be with regard to Mr. Alexander.

7 You know, Rule 407 of the professional-conduct rules  
8 relates to -- Rule 1.9 of that rules relates to duties to  
9 former clients. This is not a substantially related  
10 matter, as I can see it, nor is it -- nor is the crime he's  
11 on trial for today the same one I represented him on or the  
12 same -- it does not arise out of the same factual  
13 background of the one I represented him on.

14 There's the *Krause* case -- it's K-r-a-u-s-e -- at 381  
15 S.C. 55, stating the proposition, essentially, that the  
16 fact that a trial judge had a previous relationship with a  
17 party is insufficient evidence standing alone of bias or  
18 prejudice. And then, there's a case that's actually on  
19 point out of Texas: *Cantu* -- C-a-n-t-u -- v. *State*,  
20 represented at 802 S.W.2d 349 from the Texas Appellate  
21 Courts of 1990, dated 1990, basically dead-on. And the  
22 Court of Appeals in Texas concluded that the -- the trial  
23 court could hear the case, despite the previous  
24 representation.

25 For those reasons I'll deny your motion, to the extent

1     that you're making a motion, for me to recuse myself.  
2     Certainly, it's -- it's a strange kind of a situation  
3     because, obviously, the state would probably be more  
4     prejudiced. And to the extent the state would permit -- or  
5     to the -- to the extent I've got a previous relationship  
6     with the defendant, it would seem that the state perhaps  
7     would be the one bringing the motion. But it is what it  
8     is.

9             And so that is my ruling. And I assume, Mr. Brown,  
10     you're okay with me hearing the case?

11            MR. BROWN: Yes, Your Honor. We're ready to roll.

12            THE COURT: All right. Very good.

13            MS. BOLEN: Your ---

14            THE COURT: We'll take a few moments for ---

15            MS. BOLEN: Oh.

16            THE COURT: --- ourselves. You have ---

17            MS. BOLEN: I was ---

18            THE COURT: --- something else?

19            MS. BOLEN: --- was -- yeah. We -- we have one  
20     motion, just to be done after the jury is sworn.

21            THE COURT: Okay. Relating to the indictment or -- if  
22     it relates to the indictment, it needs to be made ---

23            MS. BOLEN: It's not ---

24            THE COURT: --- prior to the ---

25            MS. BOLEN: --- an indictment ---

1 THE COURT: Okay.

2 MS. BOLEN: --- motion.

3 THE COURT: All right. Let's take five minutes for  
4 ourselves. We'll bring the jury in. We may not get any  
5 further than openings. So if you want to tell the SLED  
6 folks to go ahead and grab a bite for lunch, we can resume  
7 around 2/2:15. Ask them to be back here. I assume you  
8 wouldn't have an objection to taking the witnesses out of  
9 order?

10 MS. BOLEN: No. And I -- actually, now that we're  
11 kind of talking about scheduling, is -- I was not  
12 anticipating being in trial this week. And I -- if -- if  
13 there's any way that we can break at 5 or close to, I've --  
14 I've got kids I've got to pick up. This is my one day a  
15 week to pick them up. And I ---

16 THE COURT: I have an ---

17 MS. BOLEN: --- I understand ---

18 THE COURT: --- obligation ---

19 MS. BOLEN: --- if that ---

20 THE COURT: We will -- we will break at 5. I have ---

21 MS. BOLEN: Okay.

22 THE COURT: --- as well. I've got to be in Ninety-Six  
23 at 6 so ---

24 MS. BOLEN: Okay.

25 MS. NELSON: Thank you.

1 MS. BOLEN: Thank you, Your Honor. I appreciate that.  
2 That didn't come up until yesterday.

3 THE COURT: Certainly.

4 (Off the record from 12:19 p.m. until 12:31 p.m.)

5 THE COURT: All right. If we may, we'll go ahead and  
6 go back on the record. The state is present, represented  
7 by Mr. Brown. The defense attorneys are here. I assume  
8 that the jury is present. We'll go ahead and bring them in  
9 at this point in time.

10 I'll have the clerk swear them. I'll give them the  
11 opening instructions. That'll give us enough time,  
12 probably, for a brief opening argument. I'll release them  
13 for lunch. And then, if it's okay, I'll take up your  
14 motion that you wanted to make after the jury is sworn.

15 MS. BOLEN: I -- yeah. That's fine, Your Honor.

16 THE COURT: Good enough.

17 MS. BOLEN: That's fine. Thank you.

18 THE COURT: (To the bailiff) Let's have the jury in,  
19 please.

20 (Whereupon, the jury entered the courtroom at 12:32  
21 p.m.)

22 THE COURT: All right. Let the record reflect that  
23 the jury is here and seated. Ladies and gentlemen of the  
24 jury, first of all, thank you for your patience this  
25 morning. I apologize for keeping you waiting. I know that

1     you all were here at 11 and I promptly dismissed you. I  
2     hope you had an opportunity to tour the square on this  
3     beautiful day and maybe do a little bit of light shopping.

4     I had some pleas that I had to take up this morning  
5     that, in all candor, took a lot longer. They were matters  
6     unrelated to this particular case. And because attorneys  
7     and people from SCDC had been here, I needed to get those  
8     out of the way, just for the convenience of all concerned.  
9     So I apologize for conveniencing them and inconveniencing  
10    you.

11    We're about to start the trial of the *State v. Alfonzo*  
12    *Alexander*. And at this point in time -- who is Juror No.  
13    33, Mr. Clary? If you'd raise your ---

14    JUROR: (Raised hand.)

15    THE COURT: I'm going to make you the foreperson of  
16    the jury, Mr. Clary, if that's okay with you. When we  
17    resume the case -- you don't have to switch seats now. But  
18    when we resume, the spot that you're in, ma'am -- you're  
19    wearing the -- the flower -- floral-print shirt -- that'll  
20    be his seat. The rest of you, feel free to move about as  
21    you choose to.

22    The seats down front are usually a little bit better  
23    in terms of hearing. So if it comes to your attention, Mr.  
24    Clary, that any of the jurors are having trouble hearing,  
25    you might ask that they be afforded the -- the front seats.

1           Mr. Roundtree, you're the alternate. If you'll just  
2 stay in that seat throughout the trial too, but again, the  
3 rest of y'all, feel free to move around if you choose to do  
4 so or need to do so.

5           If you have any trouble hearing the testimony while  
6 the case is going on or you have difficulty hearing me or  
7 the attorneys, simply raise your hand. And that'll be my  
8 cue or my clerk's cue to ask them to speak up or talk a  
9 little bit louder for you. I want to make sure that y'all  
10 can hear anything that's said. So again, you can't hear;  
11 hand goes up; I'll ask them to speak up.

12           At this point in time, I'm going to ask that you stand  
13 where you are, if you could, and just raise your right hand  
14 while the clerk -- clerk administers her oath to you.

15           JURORS: (Complied.)

16           (Whereupon, the jury was duly sworn at 12:34 p.m.)

17           THE COURT: All right. Now, ladies and gentlemen,  
18 again, we're about to try the case of the *State of South*  
19 *Carolina v. Alfonzo Alexander*. And before we begin the  
20 trial, I want to let you know that this case is probably  
21 going to be a little bit different from what you've come to  
22 expect from reading about cases in books or trials in books  
23 or seeing them depicted in the movies or on TV. From what  
24 you see on TV or in the -- the movies, you -- you might get  
25 the impression that trials are filled with riveting drama

1 and intense action and that everything is neatly resolved  
2 inside of an hour or two hours.

3 And sometimes we have cases of that duration. But  
4 more often than not, cases last a lot longer than that.  
5 And that's because, based upon the procedure that we  
6 operate under, ladies and gentlemen, the rules of evidence  
7 often require us to take much more than just an hour or two  
8 hours to get all the information to you. And again, the  
9 rules of evidence are designed in such a way as to try and  
10 provide you with the best possible evidence. And so that's  
11 the reason that -- that sometimes cases take a lot longer  
12 from -- than what you may have come to expect from reading  
13 about them in books or seeing them on TV.

14 Your role as jurors is very, very important. And our  
15 criminal justice system could not function without people  
16 willing to come in and do their civic duty and serve as  
17 jurors. And so I want to begin by thanking you for your  
18 service here today on this particular case.

19 Now, ladies and gentlemen, what I now say to you is  
20 intended to serve as an introduction to the trial of this  
21 case. And these remarks should not be construed as a  
22 charge on the law that applies. I'll instruct you on the  
23 law that applies at the conclusion of the trial before you  
24 retire to deliberate your verdict. Again, these remarks  
25 are merely an explanation on the procedure that we'll

1 follow so that you can better understand what's going on as  
2 the trial progresses.

3 Now, the defendant in this case, Mr. Alexander, is  
4 charged by indictments filed in this Court with the  
5 offenses of possession of crack cocaine with intent to  
6 distribute; and possession of crack cocaine with intent to  
7 distribute within the proximity to a school, park, or  
8 playground. I'll explain the elements of these offenses to  
9 you later before you have to deliberate your verdict.

10 I instruct you, ladies and gentlemen, that these  
11 indictments are simply the charges by which the cases are  
12 brought into this Court. And these indictments, of course,  
13 are not evidence in any sense of the word of any of the  
14 allegations contained in the indictments. The defendant,  
15 Mr. Alexander, has pled not guilty to these indictments.  
16 The state, therefore, has the burden of proving each and  
17 every element of the indictments beyond a reasonable doubt.  
18 It'll be your duty, ladies and gentlemen, to -- to  
19 determine whether the -- the state has met that burden.

20 Now, ladies and gentlemen, your purpose as jurors is  
21 to find and determine the facts in this case. You're the  
22 sole judges of the facts. So if at any time, I make any  
23 comment concerning the facts, you must disregard my  
24 comment. You will -- you're to determine the facts from  
25 the testimony that you hear and the other evidence which is

1 introduced during the course of the trial. It will be up  
2 to you to determine the inferences which you feel may  
3 properly be drawn from the evidence presented. It's  
4 especially important that you perform your duty of  
5 determining the facts diligently and conscientiously.  
6 Because ordinarily, there is no way to correct an erroneous  
7 determination of facts by the trial jury.

8 Now, on the other hand and with equal emphasis, the  
9 same law that makes you the judge of the facts of this case  
10 makes me the judge of the law. The law as given by the  
11 Court is the only law that you can consider. You have to  
12 accept it and apply it even though you may disagree with  
13 it.

14 Again, I'm not permitted to tell you what the facts  
15 are or to express to you any opinion as to what the facts  
16 are. And you're not allowed to disagree with me about what  
17 the law is or what the law should be. Your job will be to  
18 take the law as I give it to you, apply it to the facts as  
19 you find them to be, and render a true and just verdict  
20 under the oath that you have just taken.

21 Now, ladies and gentlemen, until I advise you to begin  
22 your deliberations, please don't discuss this case with  
23 anyone: not friends, family members, not even your fellow  
24 jurors. Once the case is submitted to you, you should  
25 discuss it only in the jury room in the presence of all 12

1 jurors.

2 Now, the parties in this case have been advised that  
3 they're not to have any contact with you. So if you happen  
4 to see one of them -- one of the lawyers coming or going  
5 from the courthouse or one of the witnesses coming or going  
6 from the courthouse and they don't even say hello to you,  
7 please understand they're not being rude; they're simply  
8 following my instruction not to have anything to do with  
9 you while the case is going on.

10 The reason for this is very simple. Often, innocent  
11 conversations -- an innocent hello or "how are you doing"  
12 or something like that -- can be misinterpreted by the  
13 other side as an effort at jury tampering. So the easiest  
14 way to prevent that question from even coming up is just to  
15 say jurors are off limits while the trial is going on. So  
16 again, if you -- if you see them and they're not saying  
17 hello to you, please understand, again, they're not being  
18 rude.

19 (Off the record briefly.)

20 THE COURT: Now, ladies and gentlemen, it'll be very  
21 important that you keep an open mind throughout the trial  
22 of this case and not decide any issue until all the  
23 evidence has been presented, the parties have made their  
24 closing arguments, and I've instructed you on the law that  
25 applies. It'll be your solemn responsibility to determine

1 the guilt or the innocence of the defendant. And your  
2 verdict must be based solely on the evidence as it is  
3 presented to you in this trial and on the law that I  
4 instruct you at the close of the trial.

5 And in a moment, ladies and gentlemen, the solicitor  
6 will make what's known as his "opening statement" or  
7 "opening argument," in which he will explain to you what he  
8 believes the issues are in this case. Ms. Bolen, the  
9 attorney for the defendant, will also be able to make an  
10 opening statement, although she is not required to do so.

11 I instruct you that what the lawyers say during their  
12 opening statements and during their closing statements is  
13 not evidence in this case. Again, you'll judge the  
14 evidence based upon the testimony of sworn witnesses.  
15 Their openings and their closings are merely their  
16 contention as to what will be proven or what has been  
17 proven.

18 Now, the evidence, again, in this case will be  
19 presented by the testimony of sworn witnesses. And I will  
20 tell you that in determining the facts of this case, you  
21 have to determine whether or not the testimony of these  
22 witnesses is believable or not. It'll be my responsibility  
23 to rule as a matter of law on whether certain testimony is  
24 admissible. But whether or not you believe that testimony,  
25 once it's admitted, is solely for you to determine.

1           In deciding whether to believe a witness, you have the  
2 right to consider the interest of any witness, the bias of  
3 any witness, the prejudice of any witness, the opportunity  
4 for the witness to have seen the matters and things about  
5 which the witness testifies, as well as the way the witness  
6 acts on the witness stand. You have the right to consider  
7 anything that's in the record in this case that will help  
8 you evaluate the credibility and the -- of the testimony.

9           That means it's your duty to pay close attention to  
10 the witnesses, listen to them, observe them, and pay close  
11 attention to the attorneys in the court. Try and keep your  
12 thoughts from wandering, but give strict attention to the  
13 testimony so at the close of the case, after you've heard  
14 the argument of counsel and you've received my instruction  
15 on the law, you'll be in a position to render a true and  
16 just verdict under the oath that you have just taken.

17          Now, Mr. Foreman, I will instruct you as your -- as  
18 your -- your primary responsibility, sir, is to preside  
19 over the deliberations in the jury room. Obviously, your  
20 vote counts no more/no less than any other jurors -- than  
21 any other jurors. You're -- you're -- you're basically  
22 first among equals, is how it is. Additionally, your  
23 responsibility includes giving the jury's verdict once it  
24 is received; being the jury spokesperson here in court; and  
25 making sure that everybody has a fair say or a fair

1 opportunity to have their say once the deliberations begin.

2 Now, in order to preserve everyone's rights, I'll give  
3 the attorneys an opportunity to object to anything that  
4 I've said to you during these opening remarks. And then  
5 we'll proceed with the trial.

6 Any objections from the state?

7 MR. BROWN: Not from the state, Your Honor.

8 THE COURT: From the defense?

9 MS. BOLEN: No, sir, Your Honor.

10 THE COURT: All right. Very good. We'll now begin.

11 Mr. Brown, you're recognized for your opening, sir.

12 MR. BROWN: Thank you, Your Honor.

13 OPENING STATEMENT BY MR. BROWN

14 MR. BROWN: Good afternoon. Ladies and gentlemen,  
15 we're here today because of what took place last August.  
16 It was August 12th, 2012, to be exact. About 1:33 in the  
17 morning, an anonymous phone call came in to Abbeville 911.  
18 That came over dispatch to Abbeville P.D.; more  
19 specifically, Lt. John Gray, who works at Abbeville P.D.  
20 He responded. The call said there was illegal gambling and  
21 drugs going on at [REDACTED], which is in the  
22 city limits of Abbeville -- Abbeville, South Carolina.

23 Officer Gray and two other officers went to that  
24 location to investigate, just to double-check to see what's  
25 going on. When they got there, they approached the front

1 door and they met the homeowner -- or the renter, the  
2 tenant of that -- of that apartment, Ms. Ella Brown. Met  
3 her outside, and asked Ms. Brown if anything was going on,  
4 Ms. Brown; open up the door for you; take a look inside.

5 When she opened up the door, a wave of marijuana smoke  
6 hit him. He could see people inside, gambling; had cards  
7 on the table. Looked over to the couch, as you come in the  
8 front door, and there was Alfonzo Alexander, sitting there  
9 on the couch, a wad of cash in his hand, marijuana on the  
10 ground next to him.

11 Three officers went in; approximately ten people in  
12 the building -- or in the apartment. So officers patted  
13 down the -- patted down Mr. Alexander, along with other  
14 people in the apartment, for their safety. And once they  
15 did that, they did not, along with the wad of cash in Mr.  
16 Alexander's hand, baggies coming out of his pocket. They  
17 could see baggies.

18 He then got the baggies out of the pockets with Mr.  
19 Alexander's consent, and it was crack cocaine. Another  
20 pocket was a scale, along with those other baggies. At  
21 that point Mr. Alexander was arrested and the investigation  
22 continued there in the apartment.

23 Later on -- that's basically the -- the summation of  
24 the facts. That crack was later on sent down to SLED; was  
25 tested. And you'll hear later on from a forensic scientist

1 on that.

2 Now, the state has the burden of proof to prove to all  
3 of y'all the burden of proof, which is prove beyond a  
4 reasonable doubt. And what is that? That's the proof that  
5 leaves you firmly convinced of the defendant's guilt. It's  
6 not all doubt; it's not every doubt; it's not any doubt.  
7 But it's firmly convinced of the defendant's guilt.

8 And the elements that we have to prove -- and if I  
9 ever say anything that's different from what the judge --  
10 the judge is going give you the instruction later on at the  
11 end of the trial on the law. Now, if I contradict anything  
12 he says, disregard what I say and go with what the judge  
13 says.

14 But he's been charged possession with intent to  
15 distribute. But what he has -- what we have to prove is  
16 that the defendant knowingly possessed -- that he knowingly  
17 possessed a controlled substance -- crack cocaine in this  
18 case -- with the intent to transfer the crack to another  
19 person.

20 I ask you to look in this case -- look and listen to  
21 the evidence presented and to the witnesses. They are very  
22 important in this case, each one of them. And you can  
23 judge for yourself the credibility of them. But I want you  
24 to look at the weight of the evidence. Items that was also  
25 collected as evidence, take a look at that.

1           The other charge we have is possession with intent to  
2     distribute in proximity of a park, playground, school. And  
3     the elements have to prove -- part of it is the -- the  
4     elements I just read to you: possession with intent to  
5     distribute. But I also have to show that, within half a  
6     mile of Mr. Alexander being in possession of these drugs,  
7     he was within a park or playground or school; in this case,  
8     park -- public park.

9           So that's what I -- I intend to show you today -- or  
10    during this trial. I ask you to just listen carefully,  
11    take in all the evidence. At the end of the case, I will  
12    come back before you again to ask that you find Mr.  
13    Alexander guilty as charged. Thank you.

14          THE COURT: Thank you, Mr. Brown. All right. Ms.  
15    Bolen, you're recognized, ma'am.

16          MS. BOLEN: Thank you, Your Honor. May it please the  
17    Court?

18          THE COURT: Yes, ma'am.

19          MS. BOLEN: Mr. Brown.

20                   OPENING STATEMENT BY MS. BOLEN

21          MS. BOLEN: Last year's presidential election was  
22    exciting for a lot of reasons. And I'm not here to talk  
23    about politics. But I want to talk about one incident that  
24    happened during the presidential election. It was  
25    particularly exciting; got a lot news.

1           It was when actor Clint Eastwood engaged in what he  
2           called "the debate with President Obama." I don't know if  
3           any of you remember that; saw it; saw any of the late-night  
4           shows that parodied it. But if you remember, President  
5           Obama wasn't there for that debate. Clint Eastwood talked  
6           to an empty chair.

7           And similarly, we have an empty chair here today.  
8           Alfonzo, who I represent, is not present today. But I want  
9           you to remember that just like President Obama was a real  
10          person, Alfonzo -- in this case is a real person. So  
11          please don't forget, during the course of this, that even  
12          though there's an empty chair, that doesn't mean that  
13          there's not a real person involved in this and a real  
14          person who is very affected by this proceeding.

15          I mentioned yesterday when I introduced myself that  
16          I'm a public defender and that Ms. Nelson, who's sitting  
17          with me, is also a public defenders. What public defenders  
18          are: We're lawyers who represent people who are charged  
19          with crimes who can't afford to hire a private attorney.  
20          To put it simply, we're lawyers who represent poor people.

21          And what goes along with being poor? A lot of times,  
22          people who are poor don't have stable housing. They don't  
23          have reliable transportation. They don't have reliable  
24          phones. They often, you know, have to use a relative's  
25          phone.

1           Now, what's happened is we've lost track of Alfonzo.  
2       The case is proceeding anyways, but we've lost track of  
3       Alfonzo, and we've got an empty chair here. I just wanted  
4       to explain that.

5           Going on to the -- the actual case, the way Mr. Brown  
6       explained it, it seems like it -- it should be an open-and-  
7       shut case. But I want you to remember, just as he asked  
8       you to look at all the evidence, I want you to look at all  
9       the evidence; be critical of the state's presentation.

10          Mr. Brown alluded to the fact that there was gambling  
11       and -- and marijuana and a lot of people in an apartment.  
12       And one thing I want you to look at during the course of  
13       this trial and while you're hearing the state's testimony  
14       through the officers, is look at the investigation -- or  
15       really, the lack of investigation -- that was done in this  
16       particular case. Look at who the police arrested and who  
17       they didn't arrest. Look at the things that they did and  
18       the things that they didn't follow through with. I think  
19       you'll find that there's some -- some pretty big holes in  
20       this investigation.

21          And those holes lead to reasonable doubt. That is the  
22       standard that the state is held to, as Mr. Brown said.  
23       They have to prove Alfonzo guilty beyond a reasonable  
24       doubt.

25          And I think, when you look at the investigation, the

1 things that are missing and some of the things that were  
2 done to Alfonzo that were not done to other people, you'll  
3 find that there is reasonable doubt. I think you'll also  
4 find with some of the evidence that there's a lot of  
5 difference between what the police are saying and what some  
6 of the other witnesses are going to say, particularly the  
7 SLED witnesses. And that also points to the fact that  
8 there -- there's something going on here. There's some  
9 kind of problem with this investigation.

10 And that problem, we believe, will show that there is  
11 more than reasonable doubt that -- that Alfonzo is not  
12 guilty of these charges. We're asking you to listen to all  
13 the evidence, listen carefully, listen critically. Listen  
14 again to the investigation: who was arrested, who was not;  
15 what was done, what wasn't done; what the police say, what  
16 was said. And at the end of the trial, I'm going to come  
17 back and ask you to find all of those holes in the  
18 investigation and the holes in the state's evidence means  
19 that Alfonzo is not guilty. Thank you.

20 THE COURT: Thank you, Ms. Bolen. All right. Ladies  
21 and gentlemen, we typically break for lunch around one  
22 o'clock. Because I anticipate the first witness being  
23 called going much longer than ten minutes, I'm going to go  
24 ahead and release y'all for lunch. If you could, be back  
25 in the jury room at 2:15 at the latest, please. At that

1 point in time, we'll receive the first testimony and begin  
2 the trial in earnest.

3 If you happen to go to lunch with a friend, family  
4 member, or even a fellow juror, understand what I -- or  
5 remember what I said a moment ago. It's fine if you do  
6 that, fine if y'all have lunch together or break up into  
7 groups, or what have you; just don't talk about the case  
8 with anyone. It should be amazingly simple. You haven't  
9 heard the first witness; you don't know anything about this  
10 case yet.

11 With that have a great lunch. I'll see you back here  
12 at 2:15. Thank you very much, and you are excused.

13 (Whereupon, the jury exited the courtroom at 12:52  
14 p.m.)

15 (Off the record briefly.)

16 THE COURT: All right. The record should reflect that  
17 the jury is out. Ms. Bolen, you had a motion to be made  
18 after the jury was sworn?

19 MS. BOLEN: Yes, Your Honor. Thank you. We've got a  
20 motion to exclude some evidence on the basis of a Rule 5  
21 *Brady* violation. Just as a matter of housekeeping, Your  
22 Honor, we filed our Rule 5 on December 4th, 2012. It was  
23 accepted by the solicitor's office. We have a signed  
24 receipt.

25 The particular pieces of evidence that have not been

1     turned over that we are seeking to exclude are: (1) the  
2     chain of custody; and (2) some pictures that are apparent  
3     on the solicitor's desk that we have not gotten copies of,  
4     which we're assuming they're intending to use.

5           Regarding the chain, Your Honor, not only did we file  
6     a Rule 5, but I sent Mr. Brown an e-mail on March 14th of  
7     2013, specifically asking for the chain. I know he  
8     received the e-mail because he responded that same day.

9           I received the -- in -- in that e-mail I requested the  
10    SLED analysis, as well as the chain. And in his response  
11    -- so it -- it became -- he said that it -- the drugs  
12    hadn't been analyzed yet and he would get it to me when  
13    they'd been analyzed. As I've previously said, I think in  
14    motions yesterday, I received the SLED analysis on  
15    Thursday. But I did not get the chain with it.

16           Yesterday I -- I -- I said, I think, at least twice in  
17    court that I hadn't gotten the chain. And I still don't  
18    have the chain. And this is a important piece of evidence.  
19    It is something that they're going to use in their -- their  
20    case-in-chief. It is important to us, Your Honor, because  
21    we -- there is a big discrepancy in the amount of drugs  
22    seized and the amount of drugs analyzed that I think at --  
23    at least allows us to explore that something happened to  
24    these drugs.

25           I've not been given the chain. I can't talk to any

1 chain witnesses and find out, you know, anything about how  
2 these drugs were handled.

3 And Your Honor said yesterday, when we were asking for  
4 a bench warrant -- one of the things you said -- and I -- I  
5 completely understand this position. But one thing you  
6 said was that it wouldn't be fair to allow people charged  
7 with crimes to simply get out of trial and get out of  
8 punishment by not showing up; that that wouldn't set a good  
9 example and it wouldn't be fair to everyone else.

10 And likewise, Your Honor, I'd like to make an analogy  
11 that it wouldn't be fair to allow the state to not hand  
12 over discovery after it's been repeatedly asked for and  
13 then be allowed to introduce that discovery at trial. And,  
14 Your Honor, to -- to expand on that, this is a -- a problem  
15 we've had for quite a while. And -- and we've just come up  
16 with a short list of the cases called since December. And  
17 at least in all the ones Ms. Nelson and I were involved in  
18 and -- and one more in Laurens, there's been discovery  
19 issues in all of them.

20 Last week Ms. Nelson and I were about to try an  
21 attempted murder in Greenwood and were handed a witness  
22 statement as the jury was walking in. Last term I tried a  
23 armed robbery case and was given the victim statement two  
24 days before trial. And that was not any fault of Mr.  
25 Brown; I think he just got it then too.

1           But again, Ms. Nelson and I were about to try an arson  
2 case in December and were given very material photographs  
3 after the jury was selected. Tried a CSC a couple months  
4 ago; we were given discovery -- very important discovery on  
5 a CSC first-degree, you know, right before trial. Another  
6 CSC that ended up pleading, we -- we received discovery and  
7 were not informed of -- of a important witness until two  
8 weeks for trial.

9           And -- and we're asking that this -- this chain be  
10 excluded because it hasn't been provided. And I've asked  
11 for it. I've asked specifically for it. And again, I -- I  
12 don't think it -- it sets a good example to allow the state  
13 to not comply with the rules and then still introduce  
14 evidence.

15           The other piece of evidence, Your Honor, is the -- the  
16 pictures. And again, I've not specifically asked for  
17 those. But they are in our Rule 5. Section 4 specifically  
18 asked for photographs that were intended for use by the  
19 prosecution as evidence in chief.

20           Right before -- let me see. But right before opening  
21 Ms. Nelson and I asked to see the -- one of the pictures.  
22 But we've not been given copies. And we -- we went over  
23 and initiated, asking to see. And so we'd ask that the  
24 photographs also be excluded as not having been turned  
25 over.

1 THE COURT: All right. Solicitor, care to speak to  
2 those?

3 MR. BROWN: Yes, Your Honor, I would. On May 7th I  
4 sent a letter to Sharon Hunt, who is over getting the  
5 certified chain of custody from SLED. And, you know, I --  
6 I -- it was probably my fault on this that I didn't write  
7 down that I took it down to the public defender's office.  
8 But my recollection, I took down the -- the actual results  
9 from the testing and the chain. Right when I got it, I  
10 remember making a copy; taking it down to her office.

11 You know, I think now I should document when -- when  
12 it's come to my attention it's going to be used to throw  
13 back in my face on -- that I didn't give discovery out.  
14 But I -- I remember clearly that I took it down the hallway  
15 to the public defender's office, along with the actual  
16 results of the test by Willie Smith.

17 I do have that chain of custody right here. We have  
18 put the names of those witnesses that we intend to call --  
19 Courtney Smith and Pat Crooks -- as chain witnesses. Lt.  
20 Wilkie is also a witness. He's with the Abbeville Plea --  
21 Police Department. He is -- he was just a mere -- he  
22 opened up the -- the safe where the drugs were and gave it  
23 back to John Gray.

24 I actually do not have a chain, per se, on him. But  
25 just speaking with the officer, that is where he received

1     those items.

2             With regard to these pictures, this is a map -- a GIS  
3     print-off that we printed off from our local database here  
4     in Abbeville that anybody can access. I actually just got  
5     that today -- this morning. Jeff Miller, our investigator  
6     in our office, went by the apartment complex and took a  
7     picture of this. And when we did get those, I showed -- I  
8     actually had a black-and-white copy of Mr. Alexander that I  
9     generated this morning -- a picture. Since he's not here,  
10    I need a way to identify him, so I printed off a picture.

11            And I did show that to the public defender desk's  
12    here.

13            MS. NELSON: She did ---

14            MR. BROWN: And they ---

15            MS. NELSON: --- he did ---

16            MR. BROWN: --- have seen ---

17            MS. NELSON: --- show that ---

18            MR. BROWN: --- that.

19            MS. NELSON: --- to me ---

20            MR. BROWN: And if they ---

21            MS. NELSON: --- Your Honor.

22            MR. BROWN: --- want a copy ---

23            MS. BOLEN: Uh-huh.

24            MR. BROWN: --- I'll be glad to make a copy of it for  
25    them. But it is here, and we just got them today. It was

1 not part of the law enforcement file. But it is going to  
2 be used to identify Mr. Alexander since he is not here.  
3 And this was printed off of the local GIS Web site.

4 But with -- again, with the chain of custody, I have  
5 my e-mail from Sharon Hunt that I got it on the 7th. I  
6 remember having the discrepancy that she actually sent the  
7 wrong one. I sent a e-mail back. She sent me the correct  
8 -- I made a copy. I make it a practice, every time I get  
9 something from SLED, I make a copy. Since the public  
10 defender's office is so closely situated to our office,  
11 I'll run it down there and hand it off.

12 And I'm not sure if it was just misplaced. But as  
13 officer of the Court, I can't say I did deliver that. And  
14 I should've documented in my PCMS notes that I did. But I  
15 do feel confident that I did deliver that to their office.

16 THE COURT: May I see the photos?

17 MR. BROWN: Yes, Your Honor.

18 THE COURT: And just so that I'm clear: You -- you're  
19 telling me that independent of the chain-of-custody form,  
20 you intend to offer testimony that links the links in the  
21 chain?

22 MR. BROWN: I am ---

23 THE COURT: All right.

24 MR. BROWN: --- Your Honor. I have all the witnesses  
25 here in the chain.

1           THE COURT: All right. The photos -- one of the  
2 photos is an aerial view taken from, apparently, directly  
3 over the apartment complex. It shows four units, four  
4 separate buildings, with the parking lot in the middle.  
5 The second photo shows -- or -- it shows a playground that  
6 I guess is close by to these apartment buildings. There's  
7 two yellow slides that are connected by what I would call a  
8 "gerbil tube" where kids can crawl through it to access  
9 either slide.

10           I assume that you're seeking to introduce these based  
11 -- to prove the proximity charge ---

12           MR. BROWN: That's correct ---

13           THE COURT: --- is that right?

14           MR. BROWN: --- Your Honor.

15           THE COURT: All right. Well, you'll need to prove the  
16 prox independent of these photos. In the -- in the future  
17 if you're going to offer anything along these lines, you'll  
18 -- you'll need to provide those to the defense ahead of  
19 time. So you'll ---

20           MR. BROWN: Yes, Your Honor.

21           THE COURT: --- have to prove one of those indictments  
22 without the benefit of those photographs.

23           As far as the photograph of the defendant, everybody  
24 expected him to show up. That's fair game. The state's  
25 allowed to identify him in some way, shape, or form.

1 Whether or not that comes into evidence, I'll be happy to  
2 hear those objections. But I'd be inclined to allow it to  
3 come in, just to -- I mean, I don't know if you intend to  
4 introduce it or just use it for purposes of establishing  
5 the in-court ID. I don't know that you need to introduce  
6 it necessarily.

7 But clearly, the defendant's not here. That's  
8 something that no one anticipated, including the state.  
9 That would be fair game.

10 MR. BROWN: Yes, Your Honor.

11 MS. BOLEN: And the ---

12 THE COURT: So that's my ruling.

13 MS. BOLEN: Okay. Well, the chain ---

14 THE COURT: The chain form -- I -- I -- if he's going  
15 to introduce testimony, then the form is immaterial.

16 MS. BOLEN: Okay. And just to cover -- I -- I do -- I  
17 absolutely got this -- the analysis from Mr. Brown in  
18 person last week. I don't have anything in my file or in  
19 my online file to indicate I got it any earlier. But I --  
20 I do not dispute that he walked down to the office last  
21 week to give me the analysis.

22 THE COURT: I understand. Everybody's got a scanner.  
23 In the future scan it, e-mail it; and that way if there's  
24 any question or any issue about what has been received or  
25 has not been received, there's a digital -- there's digital

1 proof that it, in fact, was delivered ---

2 MS. BOLEN: Yes, sir.

3 THE COURT: --- as well as a -- a ---

4 MS. BOLEN: It is handy.

5 THE COURT: --- a date. That, of course, creates its  
6 own problems if you use the incorrect e-mail address and it  
7 goes somewhere it shouldn't go.

8 I don't know what the solution is, people. I'd  
9 suggest document, document, document. Or as my wife says  
10 in the ER, if -- if you don't document it, it didn't happen  
11 ---

12 MS. NELSON: Didn't happen.

13 MS. BOLEN: Yes, sir.

14 THE COURT: --- even if you're sure you did it.

15 We'll be at ease for a little bit. Grab some lunch,  
16 and I'll see y'all back around 2:15.

17 MS. BOLEN: Thank you, Your Honor.

18 MR. BROWN: Yes, sir.

19 (Whereupon, the Court was in recess from 1:04 p.m.  
20 until 2:23 p.m.)

21 THE COURT: All right. (To the bailiff) If we could,  
22 let's go ahead and have the jury out, please.

23 (Whereupon, the jury entered the courtroom at 2:24  
24 p.m.)

25 THE COURT: All right. Let the record reflect that

DIRECT EXAMINATION BY MR. BROWN - JOHN GRAY

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1 the jury is present and seated. Ladies and gentlemen,  
2 we're going back on the record in the *State v. Alfonzo*  
3 *Alexander*.

4 At this point, Solicitor, if you'll call your first  
5 witness, sir.

6 MR. BROWN: Thank you, Your Honor. The state calls  
7 Lt. John Gray from the Abbeville P.D.

8 (Whereupon, the witness came forward.)

9 JOHN GRAY, having been first duly sworn,  
10 testified as follows:

11 THE COURT: All right.

12 DIRECT EXAMINATION

13 BY MR. BROWN:

14 Q Lt. Gray, you're with the Abbeville Police Department,  
15 correct?

16 A Yes, sir.

17 Q How long have you been with the police department?

18 A I been with Abbeville City about five years now.

19 Q And how long have you been in law enforcement?

20 A Since 1995.

21 Q What other agencies have you worked for?

22 A I started off my law enforcement with Abbeville City  
23 as a reserve officer; did about a year there; went to Due  
24 West. And from Due West I worked with Abbeville County for  
25 about a ten-year stint. And from -- since then I been with

1 the city.

2 Q Okay. And now that you're with Abbeville Police  
3 Department, what division are you in?

4 A I'm in narcotics now.

5 Q Now, how long have you been in narcotics  
6 investigations?

7 A Ever since my start of law enforcement. I started off  
8 with the reserves. I assisted the detective there some  
9 with some cases. And I've been in it just a little bit  
10 through my whole career. But in -- with Abbeville County  
11 my last -- about my last five years there, I was in  
12 narcotics.

13 And then when I come to the city, I assisted their  
14 narcotics officer a lot. And then eventually, they put me  
15 in the slot several months ago.

16 Q Now, Lt. Gray, have you ever had any special training  
17 in the field of narcotics?

18 A Yes, sir, I have.

19 Q And what training have you had?

20 A I -- I have been certified through DEA for meth-lab  
21 cleanup. That was about a 40-hour class that the DEA put  
22 on. I've been through D -- Homeland Security, FLETC. I'm  
23 a certified drug instructor through FLETC. I've been to  
24 numerous drug classes in -- several in Charleston and  
25 Myrtle Beach. And -- I've had numerous classes.

1 Q And what did that training consist of?

2 A The DEA school was a lot of the methamphetamine-type  
3 stuff. And the other classes were just drug investigations  
4 and stuff.

5 Q Were the drug investigations access to all types of  
6 narcotics, plus anything that might be associated with  
7 narcotics investigation?

8 A Yes, sir.

9 Q Paraphernalia?

10 A Yes, sir.

11 Q Now, how long has it been since you attended a course?

12 A It's been a few years since I've attended a course.

13 Q Okay. And through those courses how many hours do you  
14 think you've attended training?

15 A I -- I couldn't tell you. It's -- it's a bunch. I --  
16 the DEA school was 40 hours. It was actually more than 40,  
17 is what -- it's 40-hour credit. The Homeland Security-  
18 FLETC class was a 40-something-hour class. And the other  
19 classes, you know, were day and two-day/three-day classes.

20 Q Now, have you ever participated in investigation of  
21 drugs or illegal narcotics used?

22 A Yes, sir.

23 Q And roughly, do you know how many times?

24 A I -- I do not know an exact number. But it's -- it's  
25 a good bit.

1 Q A good bit, like ---

2 A Yes, sir.

3 Q --- ten? twenty?

4 A I'd -- I'd say it's more than 20.

5 Q Have you ever arrested anybody for illegal narcotics  
6 use?

7 A Yes, sir.

8 Q Okay. And have you ever been called upon by members  
9 of law enforcement to get your opinion on -- as to whether  
10 certain articles are, in fact, narcotics paraphernalia or  
11 drugs?

12 A Yes, sir.

13 Q Now, you ever had the occasion to be qualified as a --  
14 in the field of narcotics paraphernalia as an expert -- as  
15 an expert?

16 A No, sir.

17 Q No?

18 A (No audible response.)

19 MR. BROWN: Your Honor, at this time, I'd like to move  
20 Lt. John Gray to be declared as an expert in the field of  
21 narcotics and paraphernalia investigations.

22 THE COURT: All right. Any objection or any questions  
23 of ---

24 MS. BOLEN: I think I have some -- some questions,  
25 Your Honor.

1 THE COURT: Certainly. Go ahead, please.

2 CROSS-EXAMINATION

3 BY MS. BOLEN:

4 Q Lt. Gray, you've been in narcotics with Abbeville  
5 Police for the past couple of months?

6 A And I've worked narcotics -- assisting the narcotics  
7 officer that was there since I started. He just recently  
8 went back to the road, and they put me in the full-time  
9 slot. But I assisted him ever since.

10 Q Okay. When -- when did you go into his full-time  
11 spot?

12 A I'll say it's probably around the end of February or  
13 so.

14 Q Okay. And until then you were working on the road?

15 A Yes. For my time at the city from then. Yes, ma'am.

16 Q Okay. And the -- the classes that you talked about  
17 with DEA, those were -- you said were general with  
18 narcotics?

19 A The DEA school was primarily -- was methamphetamine  
20 clandestine labs.

21 Q Okay.

22 (Whereupon, Ms. Bolen and Ms. Nelson conferred.)

23 MS. BOLEN: Your Honor, I think -- I hate to this  
24 early in the trial, but I think we have a matter of law to  
25 be taken up.

1           THE COURT: All right. Apologize for doing this to  
2 you, ladies and gentlemen. If you would excuse us for a  
3 few moments -- don't discuss the case -- I need to take up  
4 an issue of law with the attorneys. I hope to have you  
5 back here in five or ten minutes. Go to the jury room;  
6 I'll have you back here shortly. Thank you.

7           (Whereupon, the jury exited the courtroom at 2:30  
8 p.m.)

9           THE COURT: All right. The record should reflect that  
10 the jury is out. We'll take up this issue on expert  
11 qualification; then we'll do Mr. Shealy's plea. Go ahead.

12          MS. BOLEN: Okay, Your Honor. Thank you, Your Honor.  
13 We're -- we're -- at this point we're asking for a proffer  
14 of Lt. Graves' -- Gray's proposed expert testimony. I'm --  
15 I'm a little unclear about what he would be offering an  
16 expert opinion as to in this case. It -- without knowing  
17 what the proposed testimony is, it -- I -- I don't know  
18 exactly how to phrase our objection, other than that he has  
19 not testified that he's gotten any sort of special  
20 training. It sounds like his training was mostly in the  
21 field of methamphetamines, which was a 48-hour training;  
22 that he's been in the -- as the lead narcotics, for just a  
23 couple months. And I -- I don't see what, in the discovery  
24 I've given, would elicit any sort of opinion from this  
25 particular witness.

1 THE COURT: All right. Mr. Brown, do you want to .  
2 speak to that?

3 MR. BROWN: Yes, Your Honor. The state -- during  
4 questioning, once it gets to the facts of the case, based  
5 on his opinion as a -- as a narcotics officer, the -- the  
6 number of baggies that were found, along with the scales,  
7 it would -- it'd basically be an inference -- getting to  
8 the inference of possession with intent to distribute.

9 THE COURT: What weight are we dealing with on this?

10 MR. BROWN: The weight is 6.8 grams.

11 THE COURT: All right. And how were they packaged?

12 MR. BROWN: The drugs -- the crack was one bag. But  
13 they were all connected to these baggies. The baggies were  
14 all right there together with the crack cocaine.

15 (Off the record briefly.)

16 THE COURT: Ms. Bolen?

17 MS. BOLEN: And, Your Honor, our -- our response would  
18 be that that -- that's not something that the jury needs  
19 any sort of specialized testimony -- specialized scientific  
20 or -- or other testimony about. I think he can testify,  
21 obviously, to what he found on our -- our client. But the  
22 purpose of expert witnesses is to explain something that's  
23 outside the purview of the -- the average juror. And I --  
24 I just don't think that this rises to that level and  
25 requires any sort of specialized knowledge as would be

1 required from an expert.

2 THE COURT: All right.

3 MS. BOLEN: And ---

4 THE COURT: Well ---

5 MS. BOLEN: --- then, I ---

6 THE COURT: --- the case ---

7 MS. BOLEN: --- I ---

8 THE COURT: --- on -- the case on point is *State v.*

9 *Robinson*. Let me look at that real quick, please.

10 (Off the record briefly.)

11 THE COURT: All right. Mr. Brown, speak to the  
12 officer's credentials again. Refresh my memory as to his  
13 testimony on his experience and his training.

14 MR. BROWN: Your Honor, he's -- he said he worked ten  
15 years with Abbeville County. He's -- from there he worked  
16 mainly narcotics and helped -- if -- I think the majority  
17 of time, at Abbeville County. And since he's been with  
18 Abbeville P.D., I believe he -- he stated that he's worked  
19 a number of narcotics and now is the narcotics investigator  
20 -- even though he just was put in that title in February,  
21 he has worked and investigated narcotics cases through that  
22 time.

23 He's also -- throughout the years he's gone to  
24 training with DEA; I think he said Homeland Security;  
25 trained down in Myrtle Beach/Charleston for many hours of

1 training in narcotics. And of the DEA, he did say it was a  
2 methamphetamine . . .

3 THE COURT: All right. Lieutenant, approximately how  
4 many narcotics cases have you investigated over the course  
5 of your career, would you estimate?

6 THE WITNESS: Your Honor, it'd -- it would be really  
7 hard for me to put a number on it. It's -- it's been --  
8 assisting and making, it -- it's been a lot. It's -- you  
9 know, like in '02, we arrested 50-something people with  
10 100-and-something warrants. When we did a big drug  
11 roundup, I assisted in all them.

12 I -- since I worked with the county narcotics, it was  
13 -- I was -- it's -- it's been a lot. And then, since I  
14 been with the -- with the city, since I was hired on, I've  
15 assisted them in -- I would probably say it's probably 20  
16 cases or so with the city since I've started with them.

17 THE COURT: Okay. All total throughout your career,  
18 would you say more than 500? more than 1,000? more than  
19 250?

20 THE WITNESS: I'd probably say it'd probably be closer  
21 -- charges, I would say, would be good over 100. And  
22 actually, people charged would probably be right at a --  
23 less than 100.

24 THE COURT: Okay. And this would involve all types of  
25 narcotics offenses, from simple possession to PWID to

1       trafficking, I assume?

2               THE WITNESS: Yes, sir. I've -- I've made cases, as  
3       far as simple possession to -- one case, it was over 50  
4       pounds of marijuana and 500 ecstasy pill.

5               THE COURT: All right. Additional voir dire based  
6       upon my questioning of the lieutenant from the state or the  
7       defense?

8               MR. BROWN: No, sir.

9       Q       And your total career you -- it's been about 18 years,  
10      right, since 1995?

11      A       Some of that was done as a reserve.

12      Q       Okay.

13      A       It's been about 16 years full-time. I've been here  
14      since '95; started as a reserve.

15      Q       Okay.

16               THE COURT: All right.

17               MS. BOLEN: Thank you.

18               THE COURT: And the state is moving to qualify him as  
19      an expert in the field of narcotics investigation, correct?

20               MR. BROWN: Narcotics investigation and paraphernalia.

21               THE COURT: All right. All right. I've reviewed the  
22      requirements of 702. I've also reviewed *State v. Robinson*,  
23      reported at 396 S.C. 577. I do conclude that Officer Gray  
24      has obtained, both by experience and education, the  
25      requisite knowledge so that he could assist the trier of

1 fact in an area that an average person would not have  
2 general knowledge of. So I will qualify him as an expert  
3 in the field of narcotics investigation.

4 I do believe that his testimony would be helpful to  
5 the jury in their understanding of the nature of how drugs  
6 are packaged, etc.

7 And this clearly relates to a relevant area of  
8 inquiry. Namely, whether the amount of the drugs and the  
9 manner in which they were packaged indicated an intent to  
10 distribute goes to the very heart of the state's case. So  
11 clearly, it is relevant. And the jury will be instructed  
12 accordingly, subject, of course, to the reservation or  
13 exceptions ---

14 MS. BOLEN: Well ---

15 THE COURT: --- from the defense.

16 MS. BOLEN: And, Your Honor, I was just going to say,  
17 just for the record, that I -- when I stood up before, I --  
18 I had not made a formal -- I don't believe I ever made a  
19 formal objection as -- as to, you know, what exactly we're  
20 objecting to. But just for the record, I'd like to make an  
21 objection, both on relevancy, that this is outside of what  
22 a jury would need; as well as the qualifications, not  
23 meeting the -- the -- 702.

24 THE COURT: I understand. The issue of qualification  
25 goes to -- or the extent of his knowledge or experience

1 doesn't necessarily relate to whether or not he's qualified  
2 as an expert. I think it would go -- relate more to the --  
3 to the weight of his testimony, as opposed to his  
4 qualifications. So I -- I imagine that there are people  
5 out there with more extensive experience in narcotics;  
6 there are probably people out there with less -- with less  
7 experience in narcotics. But each group, under the right  
8 circumstances, could certainly be qualified as an expert.

9 Based on his training and experience, I think he has  
10 met that threshold. And I would qualify him as an expert  
11 in the field of narcotics investigation and paraphernalia.

12 Very good. You can stay there or you can step down.

13 (Off the record from 2:41 p.m. until 2:46 p.m.)

14 THE COURT: All right. (To the bailiff) Let's have  
15 the jury back out, please.

16 (Whereupon, the jury entered the courtroom at 2:46  
17 p.m.)

18 THE COURT: All right. All right. I saw one of the  
19 jurors stumble. I should've warned y'all. Be careful. I  
20 love the Robert Mills-courthouse style, but it was built in  
21 an age before safety was a paramount concern. So if you're  
22 sitting on the back row, watch your step as you're getting  
23 back to your seat. I -- every time I come here and we do a  
24 jury trial, it seems like somebody ends up stumbling over  
25 that -- over that step, so be very careful.

1           Solicitor, you moved to qualify Lt. Gray as an expert  
2     in the field of narcotics investigation and paraphernalia;  
3     is that ---

4           MR. BROWN: That's correct ---

5           THE COURT: --- correct?

6           MR. BROWN: --- Your Honor.

7           THE COURT: All right. Ladies and gentlemen of the  
8     jury, the -- the Court has qualified -- or the Court has  
9     found that Lt. Gray is an expert in the field of narcotics  
10    investigation and paraphernalia. And I will explain to you  
11    that normally, when a witness testifies, they have to  
12    testify as to something that they have observed with one of  
13    their five senses: something they saw, heard, smelled,  
14    touched, etc. An exception to this rule exists for a  
15    person who is qualified as an expert in a particular field  
16    or area.

17           In such cases we call these witnesses "expert  
18    witnesses." And they are allowed to give opinion testimony  
19    if it relates to that particular field. Of course, ladies  
20    and gentlemen, it does not mean that you have to accept  
21    their opinion. But it is evidence for you to use in any  
22    way that you deem appropriate.

23           Mr. Brown, please continue.

24           MR. BROWN: Thank you, Your Honor.  
25

## 1 DIRECT EXAMINATION

2 BY MR. BROWN:

3 Q Now, Lt. Gray, you were working with Abbeville Police  
4 Department back on -- back in August of 2012, right?

5 A Yes, sir.

6 Q Now, on August 12th, to be more particular, did you  
7 receive a call to -- that something was going on at [REDACTED]  
8 [REDACTED]?9 A Yes, sir. We received a call from our dispatch, the  
10 911 center, that at Apartment [REDACTED] in  
11 Abbeville City, that there was some gambling, drug use, and  
12 sales going on inside that apartment.13 Q Now, what is the -- what county and -- and state is  
14 that in?15 A It's in the state of South Carolina in Abbeville  
16 County.

17 Q Okay. So ---

18 A In the city ---

19 Q --- [REDACTED] ---

20 A --- of Abbeville.

21 Q --- Oakland Apartments is in the state?

22 Now, once you got to -- again, what did dispatch radio  
23 over the -- over dispatch?

24 A They ---

25 MS. BOLEN: Your Honor ---

1 A --- radioed ---

2 MS. BOLEN: --- objection as to hearsay.

3 THE COURT: All right. Repeat the question, please.

4 MR. BROWN: I was asking what the exact call nature of  
5 the dispatch was.

6 THE COURT: All right. Do you claim an exception to  
7 the hearsay rule, Mr. Brown?

8 MR. BROWN: I do. I say it's not -- not offered for  
9 the truth of the matter asserted.

10 THE COURT: All right. Just to explain his actions  
11 and why he went to the apartment?

12 MR. BROWN: Exactly.

13 THE COURT: Objection's noted but overruled. You may  
14 proceed.

15 A The reasons we went to the apartment was because we  
16 was dispatched there from our 911 dispatchers that there  
17 was a group of people in there that was partaking in  
18 gambling, the selling of drugs, and use of drugs.

19 Q Now, Lt. Gray, did you respond to [REDACTED]

20 [REDACTED]?

21 A Yes, sir, I did.

22 Q When you got there, what did you do?

23 A We approached the front door. When we approached the  
24 front door, the owner -- or the renter of the apartment,  
25 Ms. Ella Brown, was out front. And we advised Ms. Ella

1 Brown the reason that we was there and the complaint that  
2 we had and asked her would she mind if she let us in to  
3 take a look.

4 Q And you say she was outside. Was the door shut on her  
5 apartment?

6 A The door was shut on her apartment. And her and a  
7 couple other people was sitting out front in some chairs.

8 Q All right. Now, after you -- what happened when you  
9 talked to Ms. Brown?

10 A I explained to Ms. Brown why we was there, the call  
11 that we had got, and asked could we look inside of her  
12 apartment.

13 Q What was her response?

14 A Her response was that we could.

15 Q What happened after -- after she said you could?

16 A She retrieved the key from her pocket, unlocked the  
17 door, and proceeded to let us into the apartment.

18 Q And once you were let into the apartment, what did you  
19 observe?

20 A There was a strong odor of marijuana in the apartment.  
21 There was some people -- about five people sitting across a  
22 little, short living room area that was sitting at a table;  
23 look like they was playing some kind of cards. And there  
24 was three or four other people sitting and standing in the  
25 living room area.

1 Q How many people total were inside the apartment?

2 A I -- I believe it was nine adults and two kids.

3 Q Okay. Now, once you got in the apartment, what did  
4 you do?

5 A Well, when we went into the apartment, I observed Mr.  
6 Alexander was sitting on a -- on a couch on direct to the  
7 left of the door. He had a large wad of money in his hand,  
8 sitting on the couch with plastic baggies coming out of his  
9 pocket. There was also a small bag of marijuana there at  
10 his feet. And the people at the table and all that were  
11 gambling were playing -- whatever cards they was playing  
12 was there.

13 Q Once you noticed Mr. Alexander there and the other  
14 people, what'd you do after that?

15 A I patted down the people in the apartment for officer  
16 safety.

17 Q You mean "officer safety." Why would you pat somebody  
18 down?

19 A We was in a small, confined room with three officers,  
20 nine to ten people. We was outmanned, you know,  
21 outnumbered. Usually, when there's drugs, activity go  
22 along -- drugs and guns usually go hand in hand.

23 Q When you patted down, did you have an occasion to  
24 check Mr. Alfonzo Alexander?

25 A Yes, sir.

1 Q And how did that go?

2 A During the pat down of Mr. Alfonzo Alexander, I could  
3 feel in his right pocket where there was, like, additional  
4 baggies what it felt like to me, other than the one that  
5 was poking out of his pocket. In the other pocket, he had  
6 something that was small and square and hard in the other  
7 pocket.

8 Q After you patted down Mr. Alexander, what'd you do  
9 next?

10 A I asked Mr. Alexander was it okay for me to retrieve  
11 the items from his pocket, and he said yes.

12 Q Mr. Alexander consented to you ---

13 A Mr. Alexander ---

14 Q --- checking his ---

15 A --- consented to me -- consented to me entering his  
16 pocket, removing the items from his pocket.

17 Q Once you removed items out of his pocket, what did you  
18 find?

19 A In his pocket, along with the baggies, was another  
20 single baggie, along with additional baggies that contained  
21 a quantity of crack cocaine.

22 Q Was there anything else that you found?

23 A In his other pocket, there was a small set of digital  
24 scales.

25 (Whereupon, Mr. Brown and Ms. Bolen conferred.)

DIRECT EXAMINATION BY MR. BROWN - JOHN GRAY

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1 MR. BROWN: Beg the Court's indulgence, Your Honor.

2 (Whereupon, State's Exhibits 1 and 2 were marked for  
3 identification.)

4 MR. BROWN: Judge, may I approach the witness?

5 THE COURT: Yes.

6 Q Lt. Gray, I want to show you what's been marked for ID  
7 purposes only as State's Exhibit No. 1 and State's Exhibit  
8 No. 2, just for ID purposes. I'm going to get you to take  
9 a look at that and tell me what those are.

10 A The one marked Exhibit No. 1 appears to be the crack  
11 cocaine and the baggie that the crack was found in and the  
12 SLED BEST pack that it was sealed in and sent to SLED for  
13 analysis.

14 Q All right.

15 A Item No. 2 would be the digital scales and the baggies  
16 that was removed from Mr. Alexander. There's also in this  
17 bag a set of playing cards that was on the table that they  
18 was gambling with and nobody would claim it.

19 Q Again, I -- I kind of lost my train of concentration.  
20 What'd you say is in that bag?

21 A The baggies that was also in Mr. Alexander's pocket  
22 and the digital scales.

23 Q All right. Now, Lt. Gray, did you have a chance to  
24 count how many baggies you recovered?

1 A Yes, sir, I did.

2 Q Do you remember how many baggies there were?

3 A I -- 16 to 18 baggies, I believe it was.

4 Q And once you collected or retrieved these items from  
5 Mr. Alexander, what form -- what was the white, rocklike  
6 substance -- what was it contained in when you retrieved it  
7 from ---

8 A It ---

9 Q --- Mr. Alexander?

10 A It was contained in the baggie that was -- it appears  
11 to be in that BEST -- that pack there also, sealed up.  
12 Those ---

13 Q It was not ---

14 A --- also ---

15 Q --- in this -- this big bag, though?

16 A Not the big bag. There was a -- there was a smaller  
17 bag -- the cocaine's in a bag that SLED put it in, and the  
18 other baggie is what it was in. I guess they -- SLED put  
19 in that bag after they had did the analysis of it.

20 Q Now, after you found the white, rocklike substance to  
21 be -- believe to be crack cocaine and the baggies and  
22 playing cards and the digital -- black digital scale, what  
23 did you do with these items?

24 A They were seized.

25 Q Seized?

1           And when you seize items as part of your narcotics  
2 investigations, what do you do with these items?

3       A     The drugs are sealed into what we call a -- the "SLED  
4 BEST pack," where they're submitted to SLED for analysis.  
5 We fill out the BEST pack and the information on it and  
6 drop it into a -- a drop box of evidence that we have there  
7 at the police department.

8       Q     And the other evidence, the scale, the bags, and cards  
9 ---

10      A     It's -- it's dropped in the box also for keeping.

11      Q     Okay. Is this the same bag as what you sealed it in?

12      A     Yes, sir.

13      Q     Has this bag been tampered with or anything?

14      A     Does not appear to be. No, sir.

15      Q     From the time you put it in evidence?

16      A     That's correct.

17           MR. BROWN: Your Honor, the state moves that State's  
18 Exhibit No. 2 be moved into evidence -- evidence at this  
19 time.

20           THE COURT: All right.

21           MS. BOLEN: Your Honor ---

22           THE COURT: That would be the scales?

23           MR. BROWN: That'd be the scales and the baggie ---

24           THE COURT: All right.

25           MR. BROWN: --- and the playing cards?

1 THE COURT: Any objection ---

2 MS. BOLEN: We ---

3 THE COURT: --- to 2?

4 MS. BOLEN: --- renew our prior objection, Your Honor.

5 THE COURT: Subject to the earlier objection, State's  
6 2 will be in evidence at this point in time. State's 1 is  
7 still marked for identification only.

8 (Whereupon, State's Exhibit No. 2 was entered into  
9 evidence.)

10 MR. BROWN: Thank you, Your Honor.

11 Q Now, Lt. Gray, during your investigation in that  
12 apartment, did you -- you and your other officers -- did  
13 you also check the other individuals in the apartment?

14 A Every -- every individual in that apartment was patted  
15 down for weapons. Yes, sir..

16 Q Were anybody -- was anybody else in the apartment  
17 charged with any type of charge?

18 A The only other person that was charged in the  
19 apartments was another guy charged with trespassing.

20 Q Was there any other drugs in the apartment?

21 A Yes, sir, there was.

22 Q And you did mention there was marijuana by the foot of  
23 -- by the foot of Mr. Alexander. What happened with that  
24 marijuana?

25 A It was also seized. It's in the evidence locker at

1 the P.D.

2 Q Was anybody charged with that charge?

3 A No, sir, neighbor was charged with that.

4 Q Now, Lt. Gray, before you sent the white, rocklike  
5 substance believed to be crack cocaine down to SLED, did  
6 you do any therapy of investigation yourself on these -- on  
7 the -- on the rocks, the weight?

8 A Yes, sir. We weighed it.

9 Q And when you weighed the -- the white, rocklike  
10 substance, how did you weigh it?

11 A There's a set of scales at the police department that  
12 we use to get an approximate weight of what we send down.

13 Q Now, do you take it out of the bags or anything like  
14 that or ---

15 A No, sir.

16 Q So in your weight, the weight of the crack cocaine  
17 also has the weight of the baggies that it was contained  
18 in?

19 A That's correct.

20 Q So it's not a true, accurate weight?

21 A No, sir.

22 Q Why would you -- as part of your investigation, why do  
23 you send things down to SLED?

24 A We send it to SLED to get it analyzed [sic] to tell  
25 us what the substance is and to also get a true and

1 accurate weight on it.

2 Q And did the crack seized as far as State's Exhibit No.  
3 1 for ID purposes, was that sent down to SLED?

4 A Yes, sir.

5 Q Now, when you seized from the night on August 12th,  
6 2012, you already mentioned that you dropped it in an  
7 evidence drop box. Who has access to that drop box?

8 A Lieutenant -- Investigator Chris Wilkie.

9 Q And who -- to your knowledge, did anybody else get  
10 into the evidence locker to tamper with this in any way?

11 A The person I know that has access to that locker is --  
12 is Investigator Wilkie.

13 Q Now, you already said that the items were sent down to  
14 SLED for testing. Who took those items down to SLED for  
15 testing?

16 A Officer Wilkie removed them from the box, and I took  
17 them to SLED for testing.

18 Q So I want -- people -- part of the chain, from the  
19 time you secured the -- these items off of Alfonzo  
20 Alexander and took them to SLED, you put them in the  
21 lockbox; and then Chris Wilkie took them out to give to  
22 you?

23 A That's correct.

24 Q And when did you take these items to SLED?

25 A It's been several weeks ago. I'm not sure on the

1 exact date.

2 Q Do you remember who you -- when you took them down to  
3 SLED, who you gave the drugs to?

4 A I -- when you go to SLED -- when we go to SLED to  
5 submit evidence, we go to the lab with SLED. You go in  
6 there, and they have two or three girls in there, usually,  
7 and you submit that evidence to SLED. And then they log it  
8 in.

9 Q Okay. And so you gave it to one of the lab  
10 technicians there?

11 A Yes, sir.

12 Q Do you remember her name?

13 A No, sir.

14 Q But you did, in fact, give it to the lab technician?

15 A Yes, sir.

16 Q What did they do with the evidence or the alleged  
17 crack at the time?

18 A The girls there ---

19 MS. BOLEN: Your Honor, I have an objection as to  
20 speculation.

21 THE COURT: All right.

22 MS. BOLEN: He can't know what ---

23 THE COURT: I tend ---

24 MS. BOLEN: --- they did.

25 THE COURT: -- to speculate that that -- it -- if he

1 can testify as to what he -- you know ---

2 MR. BROWN: Yes, Your Honor.

3 THE COURT: --- what he understands they do, that's  
4 fine. But he can't speculate as to what he ---

5 MR. BROWN: Yes.

6 THE COURT: --- thinks -- he -- he can -- he can  
7 testify as to what his objective was in transporting the  
8 items to SLED. But that's the ---

9 MR. BROWN: Yes, sir.

10 THE COURT: --- scope of -- of his knowledge.

11 Q Lt. Gray, now, once you collected the evidence and --  
12 again, what did -- going back to the actual night -- August  
13 12th, 2012 -- what other -- did you seize anything else  
14 from Alfonzo Alexander that night?

15 A Yes, sir. Some cash that he had on his person in his  
16 hand.

17 Q Do you know how much cash it was?

18 A It was \$839 -- 830 -- it was 830-something dollars.

19 Q Okay. And where is that -- where was that placed in  
20 evidence?

21 A When we seize monies that's related to drug crimes  
22 like that, we seize it; document the paperwork for seizure.  
23 We put in an envelope; drop it into a safe there at the  
24 police department. And then the next day, our clerk gets  
25 the -- opens the safe and gets the monies out, and they

DIRECT EXAMINATION BY MR. BROWN - JOHN GRAY

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1 submit it to our finances lady to deposit into an account.

2 Q So the -- the cash is no -- it's in the bank right  
3 now?

4 A Yes, sir. The cash is in the bank. It was ---

5 Q What ---

6 A No. It was -- it was signed to seize. And I don't  
7 know the status of the case, whether it was seized or not.  
8 I don't ---

9 Q All right.

10 A It was submitted for seizure.

11 Q Now, Lt. Gray ---

12 (Whereupon, Mr. Brown and Ms. Bolen conferred.)

13 MR. BROWN: (To the court reporter) Mark that for ID  
14 purposes.

15 (Whereupon, State's Exhibit 3 was marked for  
16 identification.)

17 Q Now, Lt. Gray, when you did make that call to 401  
18 Oakland Apartments, did you get a good look at Mr.  
19 Alexander?

20 A Yes, sir.

21 MR. BROWN: May I approach, Your Honor?

22 THE COURT: Please.

23 Q I'm showing you what's been marked as State's -- for  
24 State's ID purposes, No. 3. Take a look at that and tell  
25 me who -- or if you know that person.

1 A It's -- this is a picture of Mr. Alfonzo Alexander.

2 Q Okay. And that's the person that you arrested that  
3 night?

4 A Yes, sir.

5 MR. BROWN: Your Honor, at this time we'd like to move  
6 into evidence picture -- it's been marked as State's  
7 Exhibit ID No. 3 -- into evidence.

8 THE COURT: All right. No ---

9 MS. BOLEN: Renew our ---

10 THE COURT: --- objection?

11 MS. BOLEN: --- our previous objection, Your Honor.

12 THE COURT: Under Rule 5?

13 MS. BOLEN: Yes, sir.

14 THE COURT: Okay. Objection is noted; overruled.

15 State's 3 will be in evidence.

16 (Whereupon, State's Exhibit No. 3 was entered into  
17 evidence.)

18 Q Now, Lt. Gray, based on your experience in -- in the  
19 -- your experience with narcotics investigation, with the  
20 crack cocaine you seized off of Mr. Alexander, joining all  
21 of the -- the items you seized from him, what is your  
22 opinion of the items Mr. Alfonzo had on him?

23 MS. BOLEN: And again, Your Honor, just renewing our  
24 prior objection on this matter.

25 THE COURT: Noted; overruled.

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1 A In my opinion, the -- the amount -- the grams of crack  
2 that he had with the scales and the baggies, that it was  
3 for sale ---

4 Q That it ---

5 A --- for ---

6 Q --- was for ---

7 A --- distribution ---

8 Q --- sale?

9 A --- purposes. Yes, sir.

10 Q And now, with -- Mr. Gray, when you -- this is getting  
11 -- question more towards the area of the apartments. When  
12 you approached the apartment or when you look at the  
13 apartment complex, what is kind of the diagram of the  
14 layout of the apartment complex there?

15 A Oakland Apartments is adjoining to another set of  
16 apartments, Hickory Heights. They just separated by a  
17 fence with a walkthrough. And it's also connected on the  
18 backside by Adams Drive. It is a circular drive --  
19 horseshoe-shaped off of Meadow.

20 Q How many -- how many apartments are there, do you  
21 think?

22 A In the -- Oakland? There's ---

23 Q Yes.

24 A --- four apartments -- four buildings, each apartment  
25 having -- I think it is eight apartments.

1 Q Now, what else is there, along with the apartment  
2 complex, that's -- that makes up the apartment complex?

3 A In the apartment complex, you have the -- the  
4 apartments, the parking lots, and a small piece of -- right  
5 there behind the 200 building, there's a small playground.

6 Q Now, you said this took place at [REDACTED],  
7 Oakland Apartments.

8 A Yes, sir.

9 Q Now, if you came out of [REDACTED] what would be  
10 your view?

11 A If you turn -- come out of [REDACTED], it's --  
12 it's a breezeway with all the doors facing in the  
13 breezeway. You come right out the door. If you look to  
14 your immediate left, you would see a small, grassy area  
15 across the parking lot where the playground's located.

16 Q And the playground -- what is -- what makes that a  
17 playground?

18 A It's got the little slide there with, like, a little  
19 tube kids playing in and a swing, I believe it is.

20 Q How far away do you think that playground is ---

21 A It's ---

22 Q --- from that ---

23 A --- it's ---

24 Q --- apartment ---

25 A --- less than a hundred yards ---

## CROSS-EXAMINATION BY MS. BOLEN - JOHN GRAY

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1 Q And based on ---

2 A --- from the ---

3 Q --- your testimony ---

4 A --- front door of ---

5 Q --- do you ---

6 A --- that apartment.

7 Q Based on your testimony, as you walked out the door,  
8 you could see that -- that playground there?

9 A Yes, sir.

10 MR. BROWN: Beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 (Whereupon, Mr. Brown and Mr. Morrow conferred.)

13 MR. BROWN: No further questions, Your Honor.

14 THE COURT: All right. Ms. Bolen, cross?

15 MS. BOLEN: Thank you, Your Honor. May it please the  
16 Court.

17 THE COURT: Yes, ma'am.

18 CROSS-EXAMINATION

19 BY MS. BOLEN:

20 Q Lt. Gray, I've got a couple questions for you. Let's  
21 start with the layout of these apartments. So it's called  
22 "Oakland Apartments," right?

23 A Yes, ma'am.

24 Q And it's at the end of Meadow Street?

25 A It's at the end of Virginia Drive.

1 Q Virginia Drive?

2 Okay. And it's four apartment buildings, right?

3 A That's correct.

4 Q And there's a big parking lot in the middle?

5 A There's a parking place in front of the 100 building  
6 when you pull in.

7 Q Okay.

8 A And the 100 building's on the right. And then,  
9 there's one directly across. And then, the 3- and 400  
10 building, there's a larger parking area over there on the  
11 left-hand side as you enter.

12 Q And the -- the [REDACTED] building is actually the first  
13 building on your left as you enter the complex ---

14 A If you come ---

15 Q --- right?

16 A --- up Virginia Drive and enter into the complex, it  
17 is the first building on your left.

18 Q And in addition to the four buildings, there's a  
19 leasing office as well, right?

20 A That's correct.

21 Q Okay. And there's actually a fence that separates the  
22 Oakland Apartments from the apartments behind it, the  
23 Hickory Heights, right? There's a large ---

24 A There ---

25 Q --- black fence ---

1 A --- there's ---

2 Q --- there?

3 A --- a big -- like, a iron -- wrought-iron fence there.

4 Q Okay.

5 A But there is a walkway with a concrete sidewalk that  
6 connects the two. And it is open in between them.

7 Q Okay. And that's -- that's at the opposite end of  
8 where this playground is, right, the little walkway?

9 A If you enter to the apartments and turn slightly to  
10 the left in the parking lot and go straight up, it's a ---

11 Q Okay. So that's on the left, right?

12 A Yes, sir -- yes ---

13 Q And ---

14 A --- ma'am.

15 Q ---, the playground is at the right-back-hand side,  
16 right?

17 A It's kind of behind the 200 building, the second  
18 building you come to ---

19 Q Okay. So it's behind ---

20 A --- on the right.

21 Q --- the 200 building, and there's a good bit of woods  
22 and trees and overgrowth over the playground, right?

23 A It's -- it's actually back behind the playground. It  
24 -- the playground itself is not overgrown. No, ma'am.

25 Q Okay. And there's a fence immediately behind the

1 playground, right?

2 A There's -- there's a short distance between the grassy  
3 area and the playground. But yes, ma'am. There's a  
4 wrought-iron fence back there.

5 Q And the only way to access this complex by car is on  
6 Virginia Drive into the very front of the -- the apartment  
7 complex, correct?

8 A There's a -- also a walkway from the Hickory Heights  
9 Apartments that comes right next -- close to it that they  
10 -- the other people can walk from apartment complex to  
11 apartment complex.

12 Q But not by car that way, right?

13 A They can pull a car right up next to the fence. It's  
14 -- it's probably 20/30 foot of grass there that there's a  
15 parking spots there that they can park to. And the  
16 entrance is right -- located right there from the other  
17 side of the apartments.

18 Q That's on the Hickory Heights side?

19 A Yes, ma'am.

20 Q Okay. But there's no -- there's no road that goes by  
21 this playground, right? There's no road in front of,  
22 behind, or on either ---

23 A Like a ---

24 Q --- side of ---

25 A --- state or ---

1 Q --- of the ---

2 A --- city road? No, ma'am.

3 Q Okay. And the incident we're talking about, what time  
4 were you called out? Wasn't it about 1:30 in the morning?

5 A Yes, ma'am.

6 Q Okay. And there's not very good lighting out at this  
7 -- this apartment complex, is there?

8 A I -- it's lit up. It's -- it's not great lighting.  
9 But yes, ma'am. It's lit up.

10 Q And you said that if you left the apartment and looked  
11 immediately to your left, you might be able to see the  
12 playground; but if you look to your right or straight  
13 ahead, you wouldn't, right?

14 A If you look to the right, you would side the backside  
15 of the apartment complex. There's actually a house and a  
16 fence that encloses that side of it.

17 Q Okay. So you wouldn't see a playground?

18 A No, ma'am. Not ---

19 Q Okay.

20 A --- to the right or straight in front of the door.

21 Q And actually, the 400 building is the furthest  
22 building from the playground that there is in the complex,  
23 right?

24 A Yes, ma'am. I'd probably have to say so.

25 Q And you don't have any knowledge of -- of Alfonzo

1 living at this complex, right?

2 A No, ma'am.

3 Q Okay. And no reason to think he lives there?

4 A No, ma'am.

5 Q Okay. I want to go back to some other stuff you  
6 talked about. You say when you walked into the apartment,  
7 there's an overwhelming smell of marijuana, right?

8 A Yes, ma'am.

9 Q And you say that you walked in and there was a table  
10 with, I think you said, five people around it?

11 A When you walk into the -- the door of the apartment,  
12 you enter into, like, a living room area.

13 Q Okay.

14 A And then, there's a -- like, a kitchen area with a  
15 open, like, dining room. And the -- they was -- like, one  
16 big room; there's, like, a dining room/living room combo.

17 Q Okay. And there were about five people sitting around  
18 a table, right?

19 A Yes, ma'am.

20 Q And you said they were gambling, right?

21 A It appeared they was playing some type of cards. Yes

22 ---

23 Q And there ---

24 A --- ma'am.

25 Q --- was money on the table?

1 A Yes, ma'am.

2 Q Okay. And there was also a bag of marijuana under  
3 that table, right?

4 A That's correct.

5 Q So it had a -- I think you said about 4 1/2 grams of  
6 marijuana ---

7 A Yes, ma'am. I believe that's correct.

8 Q --- under that table?

9 How big is the kitchen table?

10 A I ---

11 Q Typical?

12 A Typical size. It ---

13 Q Okay.

14 A --- it was big enough to seat all five people that was  
15 there.

16 Q Okay. And could any of those people reach down and  
17 grab that bag of marijuana?

18 A Yes, ma'am.

19 Q Okay. So they could have, right?

20 A (Nodded head up and down.)

21 Q Okay. And you also say that when you walked in, you  
22 saw -- and I think you said three or four people on the  
23 couch?

24 A Yes, ma'am.

25 Q Okay. What was the order of the people on the couch?

1 A I -- I'm not real familiar with -- because the -- by  
2 names.

3 Q Okay.

4 A But when you meet -- when you immediately walk into  
5 the door, there to the left, was, like, a small love seat  
6 that only Mr. Alexander was sitting in. And then, across  
7 the room there was, like, a coffee table in the middle.  
8 And then, on the other room, there was another couch that  
9 had a couple people sitting on it.

10 Q Okay. And you said it looks like they were gambling  
11 as well, right?

12 A No. Not the people in the living room.

13 Q Okay. So just the people ---

14 A Just the ---

15 Q --- around ---

16 A --- people ---

17 Q --- the table where ---

18 A --- the table.

19 Q --- the marijuana is under?

20 A That's correct.

21 Q Okay. And you didn't arrest my client for marijuana,  
22 right?

23 A No.

24 Q Or for gambling?

25 A No.

1 Q Okay. You've been qualified by the state as an expert  
2 in narcotics, right?

3 A Yes, ma'am.

4 Q I believe the investigation paraphernalia. And you've  
5 been working in law enforcement for a total of 18 years, 16  
6 of those ---

7 A Close to ---

8 Q --- have been ---

9 A --- it. Yes, ma'am.

10 Q --- full-time?

11 Okay. And you are the narcotics investigator, I  
12 guess, for Abbeville -- for Abbeville City?

13 A City. Yes, ma'am.

14 Q Okay. So as -- as someone who's an expert in  
15 narcotics and have had this much experience, you're  
16 familiar with constructive possession?

17 A Yes, ma'am.

18 Q Okay. Did you arrest anyone else for that marijuana?

19 A No, ma'am.

20 Q Okay. But it's true that you could've arrested all  
21 five of those people around that table for that marijuana,  
22 isn't it?

23 A At the time it would've been hard for me to prove  
24 constructive possession. Because when we walked in, any  
25 number of them people could've dropped the marijuana

1 without the other ones knowing it. That's ---

2 Q But you just testified that any one of them could've  
3 grabbed it. And you've testified that you know ---

4 A If they would've ---

5 Q --- constructive ---

6 A --- leaned down ---

7 Q --- possession ---

8 A --- under the table, they could've grabbed it. Yes,  
9 ma'am.

10 Q But isn't it true that you can arrest someone for  
11 drugs even if they don't have them directly in their  
12 possession ---

13 A If I ---

14 Q --- under the ---

15 A --- can ---

16 Q --- doctrine of ---

17 A --- say that ---

18 Q --- constructive ---

19 A -- they knew that they constructively knew that they  
20 was there. Yes, ma'am.

21 Q And it's fair to say that with these drugs under the  
22 table that you say any one of these five could've reached,  
23 they knew those drugs were there?

24 A I can ---

25 Q They knew ---

1 A --- that if they would've leaned down under the table  
2 to grab it, yes. They would've known it was there. But I  
3 -- I didn't ---

4 Q Okay.

5 A --- know who dropped it. And ---

6 Q Okay.

7 A --- if they didn't ---

8 Q And ---

9 A --- look, they wouldn't see it.

10 Q And you smelled, you said, overwhelming marijuana,  
11 right?

12 A Yes, ma'am.

13 Q Okay. But yet you didn't arrest anyone for marijuana?

14 A That's correct.

15 Q And you didn't arrest anyone for gambling?

16 A That's correct.

17 Q Despite that you -- you could have?

18 A I -- it would've been hard for me to prove who  
19 actually owned it and who constructively possessed it. You  
20 know, I -- I couldn't say that everybody there knew the --  
21 who dropped it or if they dropped it or knew it was there.  
22 As far as the gambling, I believe there was five people  
23 sitting at the table. And there was only three to four  
24 hands -- card hands sitting there at the table when I  
25 walked up.

1 Q Okay. But again, no arrests on those too?

2 A No arrests.

3 Q Okay.

4 A No.

5 Q And you didn't find any crack pipes in the apartment,  
6 correct?

7 A That's correct.

8 Q And when you patted down the other individuals, you  
9 did not find any -- any crack on them, correct?

10 A That's correct.

11 Q Okay. And you've testified that there was a good  
12 amount of gambling going on, right?

13 A A good amount?

14 Q Well, there was gambling ---

15 A I ---

16 Q --- going on.

17 A The -- the -- it appeared that there was some type of  
18 gambling going on. But I don't know what kind of cards  
19 they was playing or ---

20 Q Okay.

21 A --- exactly who was participating in the gambling at  
22 the ---

23 Q But you ---

24 A --- table.

25 Q --- saw money in addition -- money being used for the

1 ---

2 A There's ---

3 Q --- gambling?

4 A --- money on the table, along with cards. Yes, ma'am.  
5 And some of the cards were dealt out, like, into hands. It  
6 was three to four card hands there.

7 Q Okay. And if I can count them correctly and read off  
8 from the people you say were there, there was another  
9 gentleman named John Gray -- not yourself ---

10 A It's ---

11 Q --- obviously, right?

12 A --- John Decarlos Gray.

13 Q Okay.

14 A That's correct.

15 Q And he's the only one who was arrested -- you arrested  
16 for trespass?

17 A Trespassing. That's correct.

18 Q Okay. Quintavious Paul? He was not arrested, right?

19 A That's correct.

20 Q Okay. Archie McDuffie was there. Not arrested?

21 A That's correct.

22 Q Travis Lee was there. Not arrested?

23 A Correct.

24 Q Okay. Shannon Chappells -- or Chappell? Okay. Not  
25 arrested?

1 Lyesha Mulligan was also there?

2 A That's correct.

3 Q Titus Hadden -- or Hadden was also there, right?

4 A (Nodded head up and down.)

5 Q So in this room with all this overwhelming marijuana  
6 and gambling, all those people were there and Alfonzo's the  
7 only one arrested, right?

8 A That's correct. Well, not the only one arrested. Mr.  
9 John Decarlos Gray was arrested for trespassing.

10 Q For trespass? Okay.

11 And you've actually never -- never had seen Alfonzo  
12 before that night, right?

13 A No, ma'am. I never knew him before ---

14 Q Did not know him at all?

15 A That's correct.

16 Q And you didn't take this picture, right?

17 A No, ma'am, I did not ---

18 Q Do you ---

19 A --- take that ---

20 Q Do you ---

21 A --- picture.

22 Q --- even know who took it?

23 A No, ma'am.

24 Q Okay. And again, it was about 1:30 at night?

25 A Yes, ma'am.

1 Q Okay. Let's talk a little bit about the -- these  
2 baggies. Now, these are just ordinary sandwich bags,  
3 right?

4 A Yes, ma'am. That's what they appear to be. Yes,  
5 ma'am.

6 Q Okay. You can buy these at Ingles or BI-LO?

7 A Sure.

8 Q Fair to say that most people ---

9 A Yes.

10 Q --- have these in their house?

11 Just the little sandwich bags with no zip-lock; they  
12 just kind of fold over a sandwich?

13 A (Nodded head up and down.)

14 Q Right?

15 A Yes, ma'am.

16 Q Okay. And you -- you testified that you found -- you  
17 saw a baggie sticking out of Alfonzo's pockets when you  
18 walked in; isn't that right? That's what you said on  
19 direct?

20 A Yes, ma'am. When I walked ---

21 Q Okay.

22 A --- in the door, he was sitting on the couch just to  
23 the left of me, sitting in the far seat of a two-seater  
24 couch.

25 Q Okay. Do you remember writing an incident report

1 about this case?

2 A Yes, ma'am.

3 Q Okay. And that's standard protocol, what you do for  
4 -- when you ---

5 A Yes, ma'am.

6 Q --- have investigations?

7 Okay. And you wrote this incident report very soon  
8 after the incident, correct?

9 A Yes, ma'am.

10 Q So it's safe to say your memory back then is probably  
11 better than now?

12 A I would -- probably. Yes, ma'am.

13 Q Okay. And do you remember putting in your incident  
14 report that you didn't see the bags until after you patted  
15 down my client?

16 A I'd -- in my report I believe it says before I patted  
17 him down, you could see the baggies from his pocket.

18 Q Okay. Can I -- would it refresh ---

19 A Sure.

20 Q --- your recollection if I handed up your report? I'm  
21 sorry. It's got some scribbles on it. It's my only copy.

22 A It says when he was patted down, I could feel and see  
23 plastic baggies in his right-front pocket.

24 Q Okay. So that's when he's being patted down, not  
25 before ---

1 A Yes, ma'am.

2 Q --- correct?

3 So you don't mention in your report that you saw  
4 baggies until after you pat him down?

5 A No mention in the report. No, ma'am.

6 Q Okay.

7 MS. BOLEN: May I approach, Your Honor?

8 THE COURT: Please.

9 MS. BOLEN: Thank you.

10 Q Going to talk a little bit about what you say you took  
11 out of my client's pocket. If I can just get this kind of  
12 clear ---

13 MS. BOLEN: May I approach the witness, Your Honor?

14 THE COURT: Please.

15 MS. BOLEN: Okay.

16 Q All right. So this is the SLED bag, right, this big  
17 outer bag, correct?

18 A This outer bag -- yes, ma'am. That's -- that's the  
19 way we retrieved it from SLED.

20 Q And which of these two bags was this in?

21 A It would've been in this upper bag. This had to be  
22 put in there by the -- the chemist at SLED that actually  
23 tested it, that ---

24 Q Okay.

25 A --- other bag.

1 Q And the bag that you pointed at is the one that you  
2 say you found on my client. This is the kind of bag you  
3 get at the grocery store for vegetables, right? It's not a  
4 grocery bag, but it's a very, very thin plastic ---

5 A Sandwich bag. Yes, ma'am. Sandwich-type bag.

6 Q Sandwich bag?

7 Okay. Yeah. Actually, hard to tell; it's all  
8 crinkled up. But it's a very lightweight plastic, correct?

9 A That's correct.

10 Q And there's no zippers on it, no zip-locks, nothing  
11 like that?

12 A That's correct.

13 Q Just very thin plastic?

14 A (Nodded head up and down.)

15 Q Okay. Again, going back to you having been qualified  
16 as -- as an expert in narcotics, you told -- you testified  
17 that you -- you weighed this back at the station, right?

18 A That's correct.

19 Q Okay. And when you weighed it at the station, it  
20 weighed 11.1 grams, right?

21 A I believe that is correct. Yes, ma'am.

22 Q Okay. And you sent it down to SLED, right?

23 A That is correct.

24 Q Okay. And the SLED weight on it was 6.8 grams, right?

25 A I believe that is correct. Yes, ma'am.

1 Q That's a pretty big discrepancy, isn't it?

2 A Our -- our scales at the police department are not a  
3 true, certified scales. It's just an approximate weight.  
4 It don't ---

5 Q Okay.

6 A --- it's not a certified weight.

7 Q It's an approximate weight that you got out to a  
8 tenth, right? It was 11.1.

9 A The scales read out to a tenths. Yes, ma'am.

10 Q Okay. But that's a difference of 4.3 grams, right?

11 A Yes, ma'am.

12 Q Okay. Just doing the math in my head.

13 And that -- you'd agree that that's -- I mean, that's  
14 1 1/2 times the real weight, right?

15 A I'd -- I'm not sure how SLED weighs it. I -- I've --  
16 they probably weighed it without the baggie included. But  
17 I don't know.

18 Q Okay. And you testified that you just took the drugs  
19 down to SLED just a couple weeks ago, right?

20 A That's correct.

21 Q So they've been sitting at the Abbeville Police  
22 Department for quite a number of months?

23 A Yes, ma'am. They was in the evidence locker. Yes,  
24 ma'am.

25 Q Okay. And you don't have the cash that was supposedly

1 taken from Alfonzo, right? That's not something you have  
2 anymore?

3 A No, ma'am. We don't leave cash around the police  
4 department. It's submitted and deposited into an account  
5 by the finance -- lady at the finance office.

6 Q And when you patted down these other -- I think it's  
7 nine folks that are in this apartment where there's all  
8 this marijuana and all this gambling, you don't find any --  
9 any crack on them, right?

10 A No, ma'am.

11 Q And you patted down my client, you said, for officer  
12 safety, correct?

13 A (Nodded head up and down.)

14 Q And I think you said guns and drugs go together?

15 A Yes, ma'am.

16 Q But he didn't have a gun, right?

17 A No, ma'am.

18 Q So guns and drugs don't always go together, right?

19 A Not all the time. But sometimes. Yes, ma'am.

20 Q Okay. And no one else had a gun, correct?

21 A That's correct.

22 Q Okay.

23 MS. BOLEN: If I may just have a moment, Your Honor.

24 THE COURT: Certainly.

25 (Whereupon, Ms. Bolen and Ms. Nelson conferred.)

REDIRECT EXAMINATION BY MR. BROWN - JOHN GRAY 189

1 MS. BOLEN: Nothing further. Thank you, Lt. Gray.

2 MR. BROWN: Yes, Your Honor. Just a few more  
3 questions.

4 REDIRECT EXAMINATION

5 BY MR. BROWN:

6 Q Lt. Gray, she was asking about the weight of the crack  
7 that -- I think it was 11.1 grams weighed at the police  
8 department here in Abbeville, right?

9 A That's an approximate weight. Yes, sir.

10 Q Approximately?

11 A (Nodded head up and down.)

12 Q Now, what's the purpose of sending the drugs down to  
13 SLED?

14 A The purpose of sending drugs to SLED is to get  
15 analysis of what the substance is and a true and accurate  
16 weight of how much the substance weighs.

17 Q So you initially wrote in your report 11.1 grams was  
18 an estimation?

19 A Yes, sir. That's -- that was not a ---

20 Q And to be true and accurate, you sent it to SLED to  
21 verify ---

22 A That is correct. Yes, sir.

23 Q Okay. Now, Ms. Bolen was asking about a playground  
24 and said there was fence behind it and the lighting. Now,  
25 going in this apartment complex, is there a -- a gate

1     that's it -- is it a gated apartment complex?

2     A     No, sir.

3     Q     So anybody could walk off the street and go play in  
4     that park -- in that playground?

5     A     Yes, sir.

6     Q     Now, you said there was a trail from the other  
7     apartment complex.

8     A     It's a -- from Oakland to Hickory Heights, there's a  
9     cement sidewalk that goes up through that gate -- that  
10    fenced area that goes up through them and comes out on the  
11    backside of the apartments. Yes, sir.

12    Q     And what's on the backside of those apartments?

13    A     The -- Hickory Heights. It's -- it's the fence in  
14    between ---

15    Q     Okay.

16    A     --- the two complexes.

17    Q     All right. Do they have access to that playground as  
18    well?

19    A     Yes, sir. There's also a playground that they -- that  
20    the Oakland has access to that would be in Hickory Heights  
21    also.

22    Q     All right. Is that within a half-mile radius to [REDACTED]

23    [REDACTED] ---

24    A     Yes, sir.

25    Q     --- Apartments?

REDIRECT EXAMINATION BY MR. BROWN - JOHN GRAY

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1 A It's -- it's just a little bit further distance than  
2 the one there in Oakland.

3 Q Okay. Now, Ms. Bolen was asking about the marijuana  
4 and the table where the cards were and the gambling. None  
5 of those people were charged with marijuana and ---

6 A That's correct.

7 Q And that was just out in the middle of the table?

8 A There was a table where five people were sitting. I  
9 believe there was three hands of cards, and it might've  
10 been four. But it was five people.

11 Q Okay.

12 A And I could not tell which ones was actually doing the  
13 gambling and the card-playing. And none of them would fess  
14 up to ---

15 Q So it ---

16 A --- not to ---

17 Q --- was not ---

18 A --- doing it.

19 Q It was not in anybody's immediate possession?

20 A No, sir.

21 Q However, where was that crack cocaine ---

22 A That was ---

23 Q --- found?

24 A --- in Mr. Alexander's pocket.

25 Q So it was an actual possession of crack cocaine?

1 A Yes, sir. It was in Mr. Alexander's pocket.

2 Q And also, in his actual possession is the scales and  
3 the ---

4 A --- baggies. Yes, sir.

5 Q --- baggies?

6 MR. BROWN: No further questions, Your Honor.

7 MS. BOLEN: Brief redirect [sic], Your Honor?

8 THE COURT: Sure.

9 RE CROSS-EXAMINATION

10 BY MS. BOLEN:

11 Q Lt. Gray, you've been qualified an expert, but your  
12 testimony is you can't analyze drugs, right?

13 A No, ma'am. I do not analyze drugs.

14 Q And you don't apparently have the ability to  
15 accurately weigh drugs, right?

16 A That's correct.

17 Q Okay. Going back to the playground, this playground  
18 is tucked behind Oakland Apartments, right?

19 A It's behind the 200 building in the ---

20 Q Right.

21 A --- apartments. Yes, ma'am.

22 Q Okay. And you -- you enter the apartment complex by  
23 Virginia Drive, right?

24 A You can enter the apartment complex from Virginia  
25 Drive. You ---

1 did he say to you?

2 A When he came, I was sitting on my -- on the outside of  
3 my house at the door. And he asked me could he go in there  
4 because he was looking for somebody -- the boy, what was in  
5 my house.

6 Q The -- the people in your house?

7 A Yeah. I had a few peoples in my house, now.

8 Q Now ---

9 A But he was just looking for one of them.

10 Q Did -- did he -- did you open up the door, or what  
11 happened after he asked if he could look in your house?

12 A I opened the door.

13 Q You consented to open up the door?

14 A I opened it for him.

15 Q Okay. And did Mr. Gray go in, along with other police  
16 officers?

17 A (Nodded head up and down.)

18 Q Is that a "yes"?

19 A Yes.

20 Q Okay. Now, do you -- I want to show you what's --  
21 this is State's Exhibit No. 3. Take a look at that. Do  
22 you recognize that picture?

23 A I recognize it.

24 Q Who is that?

25 A I just -- you know, I just call him "A," you know. I

1 Q And -- and did you do that on this occasion for this  
2 ---

3 A Yes, I did.

4 Q Based on your analysis and your experience, what is  
5 contained in that bag?

6 A This bag, which is Item 1.1, I tested on a molecular  
7 level; identified it as a rock substance. It was found to  
8 be cocaine-base crack. And it had a weight of 6.8 grams.

9 Q 6.8 grams?

10 Now, if -- what type of -- or how did you weigh that?

11 A I used a -- one of our balances to weigh it. And  
12 after I did it, I did a chemical test and I did an  
13 instruments test to determine on a molecular level exactly  
14 what it was.

15 Q Do you -- when you weigh crack cocaine, do you weigh  
16 it in its bag?

17 A No. The only weight that I report is the actual  
18 substance of the item. I do not weigh it with any  
19 packaging material.

20 Q So if you weighed it with packaging material, would  
21 that make the weight higher?

22 A That is correct.

23 Q So if you take it out of the bag and you weigh it just  
24 as it is in that rocklike form, you came -- you got 6.8  
25 grams, correct?

DIRECT EXAMINATION BY MR. BROWN - WILLIE SMITH

225

1 A That is -- that is correct.

2 Q And after you got done with testing that item, what  
3 did you do?

4 A Once I finish -- complete all of my testing, I repack  
5 it into another zip-lock bag so that it can weigh the same  
6 thing from when I did my testing. And I also seal it in  
7 another heat-sealed pack with my date and initials so that  
8 when I get to court, I can say that this evidence is in the  
9 same condition from when I tested this evidence on March  
10 27th, 2013, and this heat-sealed pack that I sealed it in  
11 from my testing on that date has not been tampered with.

12 Q And after you say that, with your exam of that heat-  
13 sealed pouch, is -- has it been tampered with in any way?

14 A This pouch has not been tampered with.

15 Q So nothing in that pouch has been changed since the  
16 last time you looked at it?

17 A That is correct.

18 MR. BROWN: Your Honor, at this time I'd like to move  
19 what's been marked State's Exhibit for ID purposes No. 1  
20 into evidence as State's Evidence No. 1.

21 MS. BOLEN: And we're just renewing our prior  
22 objections, based on both Rule 5 and the Fourth Amendment.

23 THE COURT: All right. Subject to the earlier  
24 objections under Rule 5 and the Fourth Amendment, the chain  
25 has been established, it appears. There's no argument in

1     that. It's in evidence as State's 1.

2             MR. BROWN: Thank you, Your Honor.

3             (Whereupon, State's Exhibit No. 1 was entered into  
4     evidence.)

5     Q     And again, just to clarify, your opinion on what was  
6     in that bag is what?

7     A     After testing it on a molecular level, I'm 100 percent  
8     sure that it's cocaine base, known as "crack."

9     Q     And the weight was?

10    A     6.8 grams.

11             MR. BROWN: No further questions.

12             THE COURT: Ms. Bolen?

13             MS. BOLEN: Thank you, Your Honor.

14                             CROSS-EXAMINATION

15     BY MS. BOLEN:

16     Q     Mr. Smith, I just want to talk to you a little bit  
17     about these -- these drugs you've analyzed. You weigh it  
18     before you test it, correct?

19     A     I take an initial weight of the item.

20     Q     And that weighed 6.8 grams, right?

21     A     That is correct.

22     Q     Okay. And when you get evidence from law enforcement  
23     in these BEST packs, they're -- the evidence is usually in  
24     some sort of little bag, right?

25     A     That is correct. In this case it was in a plastic

1 TRIAL DAY 3 - 05/30/13

2 (Whereupon, the proceedings were resumed at 10:12 a.m.)

3 THE COURT: Okay. We're back on the record on the  
4 *State v. Alfonso Alexander*. And the defendant is not  
5 present, but his counsel is; the state is present. At this  
6 point in time, based upon a discussion in chambers, it's my  
7 understanding that the state's going to rest. Is that  
8 right, Mr. Brown?

9 MR. BROWN: That's correct, Your Honor.

10 THE COURT: All right. Just so that we don't  
11 inconvenience the jury, let's go ahead and address -- since  
12 the state has rested, let's go ahead and address motions;  
13 then when the jury comes out, you can rest in front of them  
14 and we'll move forward. I understand the state does not  
15 intend to present a case, so -- or the defense does not  
16 intend to present a case at this point. Ms. Bolen, you  
17 have some motions?

18 MS. BOLEN: Yes. I just want to make sure I was  
19 following what was going on in the courtroom. So we're  
20 doing our -- our directed-verdict motions now?

21 THE COURT: Yes ---

22 MS. BOLEN: Okay.

23 THE COURT: --- please.

24 MS. BOLEN: Your Honor, we're making a motion for  
25 directed verdict on both charges. I'm going to take them

1       separately, Your Honor.

2               With respect to the proximity charge: This is a  
3 charge where the -- the language in the statute is very  
4 clear: that it needs to be a public playground. In fact,  
5 the statute lists it can be a school, playground, or park  
6 or a college or university. And the way the statute it  
7 written, it says: . . . "public or private school; public  
8 playground or park"; and then, "public or private college  
9 or university."

10              So we'd argue that by the -- the clear language of the  
11 statute, it is required to be a public playground.  
12 Furthermore, the legislative intent is also very clear  
13 because they knew to put "private" in front of "school";  
14 and then, they knew to put it again in front of "college or  
15 university."

16              And I think it's significant to note that the  
17 legislature only put "public" in front of "playground or  
18 park," where it -- which is the -- the first one is  
19 "school"; the second one is "playground or park"; the third  
20 one is -- is "college or university." And they say  
21 "private" for the first; "public" only for the second; and  
22 then, they -- they reiterate that it can be a public or  
23 private college or university. And I think that shows  
24 clear intent on behalf of our legislature that it must be a  
25 public playground.

1           The evidence, Your Honor -- there -- there is simply  
2 no evidence to show that this is a public playground. The  
3 state's own witnesses -- Lt. Gray, as well as Ms. Walker --  
4 testified that it was private. Lt. Gray said that it's --  
5 it's not a city-owned or -- or state-owned playground; that  
6 it -- it was a private apartment complex, and the  
7 playground was part of that complex and was a private  
8 playground. And then, we had the manager from the  
9 apartment complex, who said -- stated very clearly when I  
10 asked her, "It is a private playground."

11           She went on to explain, both in direct and cross, that  
12 it is intended for tenants and their guests. That's it.  
13 It is not intended for any other children.

14           It is -- I think we can make an analogy to a swing set  
15 that someone might have in their backyard. This is an  
16 apartment complex that's purely residential. People live  
17 there. And in the backyard of the apartment complex is a  
18 playground. That's for the kids who live in the apartment  
19 complex, just like a playground that someone has in their  
20 backyard or someone in the country and has it their front  
21 yard is for the children.

22           Your Honor, I'd like to draw the Court's attention to  
23 one case, *Brown v. State*, 343 S.C. 342. This is a 2001  
24 case. And this concerned a -- a charge -- a proximity  
25 charge brought where the proximity was to a day care. And

1     our appellate court said that that did not fit the statute;  
2     that a day care was not a -- a public or private school;  
3     was not a public playground; and was not a -- clearly not a  
4     college or university.

5             And the reason that this is important is that there's  
6     been some testimony that, you know, kids play there. You  
7     know, Ms. Brown said that other kids in the neighborhood  
8     played there. But that's not enough. Just having the  
9     presence of kids does not make it public.

10            And I think that's clear from the decision in *Brown v.*  
11     *State* that, certainly, there's kids at a day care. But  
12     it's -- the statute is clear that it's not just somewhere  
13     where kids are and kids congregate and kids play. It has  
14     to fit within these very narrow -- narrow definitions of  
15     "public."

16            More evidence from the state that it was not public is  
17     that there's no public access. There's no road that goes  
18     through it. And again, both -- both of the state's  
19     witnesses who said it was private, most notably Ms. Walker,  
20     who said it is absolutely private; it is not intended for  
21     anyone other than the tenants and guests.

22            Secondly, on the proximity charge, Your Honor, the  
23     state is required under the new statute, which was  
24     rewritten, I think, in 2010, to show actual knowledge:  
25     that the person knew that the school playground or college

1 was there. That was a -- rewritten in 2010 to include that  
2 actual-knowledge element.

3 And there's simply not been any testimony that Alfonzo  
4 knew that there's a playground there. No one has said,  
5 "Oh, yeah. We talked, and he said, 'Oh, yeah. My kids  
6 play on that playground,' or, 'Oh, look. I should bring my  
7 kids there someday.'" There's been no evidence to that.

8 There's been some conflicting testimony about what you  
9 would see if you walked out of the apartment door. Ms.  
10 Brown, I think, said if you look to your right, you would  
11 see the playground. Lt. Gray said if you look to your  
12 left, and Ms. Walker said if you look straight ahead.

13 But something that I think is notable with that:  
14 There's been no evidence presented that Alfonzo had ever  
15 been to this complex before. There's been no evidence  
16 presented that he ever exited the apartment prior to being  
17 arrested.

18 And if Your Honor recalls, all of the witnesses who  
19 talked about what you would see -- no evidence -- all --  
20 all the witnesses who talked about what you would see  
21 testified to what you would see when you walked out of the  
22 apartment. And the reason that's important is you have a  
23 different view when you walk in than when you walk out.

24 For example, if I'm going to walk into that door right  
25 there and I open it up, I'm going to see the door to the

1     solicitor's office. If I come out of this door and walk  
2     across and go there, I still see what's right in front of  
3     me there and I see the solicitor's office when I open  
4     there. But if I exit that door, the first thing I'm going  
5     to see is that wall.

6             So we don't know that he ever left that apartment  
7     prior to being arrested. So we don't know if he ever saw  
8     what would've been right -- either right in front or on the  
9     left or right.

10            THE COURT: Okay. Mr. Brown, on the question of the  
11     character of the playground, private versus public, what's  
12     the state's position?

13            MR. BROWN: Your Honor, based on the state's position,  
14     Ella Brown did testify that she was a tenant there for a  
15     long while and she could see the playground. She would see  
16     children playing on it. I asked her a specific question:  
17     "Is this a playground that only children in the apartment  
18     complex play on?"

19            And she testified, saying, "No. All the children play  
20     on this playground." What I understood from that is that  
21     children around that community -- even though Lt. Gray and  
22     Ms. Walters said that it is a private apartment complex, it  
23     does seem like, in nature, it -- it is public that the  
24     community children around that area do come to play on it.  
25     They did say there's a pathway from another housing area,

1       that they had access to that playground.

2           THE COURT: I certainly agree with you on that  
3 particular point. I'll take judicial notice of the fact  
4 that if you build a playground, they will come. Children  
5 will come, and they will come from all around. And  
6 probably, this clearly was not a gated community. It's not  
7 a situation where you needed a key card or a key in order  
8 to access the playground. You didn't have a security guard  
9 there, monitoring who was using it, making sure that only  
10 residents used it.

11           At the same time, the playground, based upon the only  
12 evidence which has been presented, is located on private  
13 property. It's not a public playground. I look at the  
14 statute, as I did last night in anticipation of this  
15 argument, and it's clear that with regard to school or  
16 schools under the proximity statute, this -- the  
17 legislature was extremely specific.

18           It said "public or private elementary, secondary, or"  
19 -- whatever -- "school." It used the adjective "public or  
20 private" when modifying those different schools. In this  
21 case my understanding is -- or my -- my recollection is  
22 that the statute uses "public" to modify "park or  
23 playground," as opposed to a private park or playground.

24           This is a fee-simple interest owned by some  
25 corporation or some business. And my clerk tells me that

1     there is a Pennsylvania case somewhat on point.   One  
2     moment, please.

3                     (Off the record briefly.)

4             THE COURT:   All right.   The case that I'm looking at  
5     is *Commonwealth v. Campbell*, reported at 2000 Pa. Super.  
6     251 and 758 A.2d 1231, 2000 case, holding (as read):   The  
7     legislature intended for the term "playground" to encompass  
8     those play areas found not only at schools or public  
9     municipal areas, but also outside such areas.   Thus the  
10    trial -- thus the Court held that the trial court erred  
11    when it held the statute inapplicable to a sale within 200  
12    feet of play areas in semi-private housing complexes and  
13    apartment-building complexes.

14                    (Off the record briefly.)

15            THE COURT:   And they specifically in Pennsylvania  
16    define what a playground is.   Can you point me to anything,  
17    Mr. Brown, that would be case law supporting the  
18    proposition that ---

19            MR. BROWN:   Judge, I just -- I would point to the  
20    statute where it does not specifically lay out public as  
21    being -- you know, I -- what I would argue is that the  
22    children came from around the community.   It was open; it  
23    was not gated; and they did have access to it.   That would  
24    be my argument making that a public playground at that  
25    point.

1           And we do have testimony saying that children from  
2           outside the area did play there. It would be my  
3           proposition to let the jury decide on the facts of that  
4           case on the testimony.

5           THE COURT: All right. I appreciate your position,  
6           Solicitor -- appreciate your position, Solicitor. I think  
7           that the motion by Ms. Bolen is appropriate. I'll grant a  
8           directed verdict with regard to the proximity charge.

9           You had another motion, Ms. Bolen?

10          MS. BOLEN: Yes. Thank you, Your Honor, for that --  
11          that result. And we're also making directed-verdict motion  
12          on the possession with intent to distribute; specifically,  
13          with the -- that there's not been evidence of any intent to  
14          distribute. There's not been any testimony that -- that he  
15          tried to sell or that anyone bought from him; not been any  
16          testimony that -- that there's any paraphernalia found on  
17          him that would be consistent with dealing; not been any  
18          testimony about the -- the drugs being broken up in such a  
19          way as would be made more consistent with dealing. And so  
20          the -- the drugs are clearly in one bag. And so we'd --  
21          we'd make a directed-verdict motion that there's not been  
22          evidence of the intent-to-distribute prong of the  
23          possession with intent to distribute.

24          THE COURT: All right. The state is relying upon the  
25          evidentiary inference of more than a gram?

1           MR. BROWN: Correct, Your Honor. Plus, the inference  
2           that can be taken from having -- actually, there was --  
3           it's been admitted into evidence that he did have 16  
4           baggies, scale, and also the large amount of cash, which, I  
5           believe, is the inference that he is dealing. Also, Lt.  
6           John Gray did testify, in his opinion, that with somebody  
7           having this amount of crack cocaine, baggies, plus the  
8           scale, large sum of cash, that it's his opinion that it --  
9           that would be consistent with somebody dealing drugs ---

10          THE COURT: All right.

11          MR. BROWN: --- crack cocaine.

12          THE COURT: All right. In the light most favorable to  
13          the state, clearly, there's evidence from which the jury  
14          could conclude that a PWID charge would be appropriate or  
15          the jury could conclude that the defendant is guilty of  
16          PWID. So I'll deny your directed-verdict motion on that  
17          charge.

18          MS. BOLEN: Thank you, Your Honor.

19          THE COURT: Of course, I did mean to mention a moment  
20          ago that part of my reasoning in granting the directed  
21          verdict on the -- on the prox charge, under South Carolina  
22          law and under laws of most states, any criminal statute has  
23          to be strictly construed against the state. And certainly,  
24          the absence of the word "private" in that portion of the  
25          statute dealing with parks or playgrounds, that would

1 indicate to me an intention to -- well, that would indicate  
2 to me that -- that it would be proper to grant a directed  
3 verdict for the reasons I put on the record a minute ago.

4 I prepared the proposed jury instructions; they're  
5 pretty standard. I have included the absent-defendant  
6 language. Aside from that it's what you would expect of --  
7 and y'all have tried cases with me before. But what I'll  
8 do is give you an opportunity -- is there anything specific  
9 that y'all were wanting?

10 MS. BOLEN: Your Honor, I -- I had copied the absent-  
11 defendant language as well. And I'm assuming I probably  
12 have the same language as you do. We're also asking for a  
13 lesser-included of possession to be charged.

14 THE COURT: All right. I think there's a case on  
15 point, Solicitor.

16 MR. BROWN: I -- I believe there is a case on point  
17 that lesser-included can be charged.

18 THE COURT: That -- say again, Mr. Brown?

19 MR. BROWN: (No audible response.)

20 THE COURT: Maybe I misheard you, Mr. Brown. Are you  
21 agreeing with Ms. Bolen that she's entitled to a lesser-  
22 included, or are you saying ---

23 MR. BROWN: I ---

24 THE COURT: --- that ---

25 MR. BROWN: I -- based on past research, I do believe

1 -- I -- but I'm not positive on that.

2 THE COURT: All right. So the state does agree that  
3 she's ---

4 MR. BROWN: I ---

5 THE COURT: --- entitled to a lesser-included ---

6 MR. BROWN: I believe ---

7 THE COURT: --- on possession?

8 MR. BROWN: --- I think if it includes possession,  
9 that -- that the lesser can be charged ---

10 THE COURT: All right.

11 MR. BROWN: --- on that.

12 THE COURT: All right. I'll need to modify this  
13 slightly, then, because I did not include a lesser-included  
14 offense of possession. So I will do that. I'll let you  
15 look at this. We'll be at ease for a few moments. You can  
16 check the language about absent defendant, Ms. Bolen, and  
17 ---

18 MS. BOLEN: Yes, sir. Thank you.

19 THE COURT: --- I'll modify this slightly.

20 MS. NELSON: Thank you, Your Honor.

21 (Off the record from 10:31 a.m. until 10:45 a.m.)

22 THE COURT: Okay. If we may, we'll go ahead and go  
23 back on the record. Of course, the jury is here. I'll --  
24 I've reworked the jury charge. We'll bring the jury out;  
25 the state will rest; the defense will rest. And we'll

1 proceed with argument. Of course, the defense gets last  
2 argument. (To the bailiff) Let's have the jury, please.

3 (Whereupon, the jury entered the courtroom at 10:45  
4 a.m.)

5 THE COURT: All right. Let the record reflect that  
6 the jury is back. Ladies and gentlemen of the jury, I  
7 trust you had a pleasant evening. I hope that -- hope you  
8 weren't too impatient this morning to get going with the  
9 case. Again, I apologize for keeping you waiting, of  
10 course.

11 At this point in time, Solicitor, call your next  
12 witness, please.

13 MR. BROWN: State rests, Your Honor.

14 THE COURT: All right. Any case from the defense?

15 MS. BOLEN: Defense rests, Your Honor.

16 THE COURT: All right. Ladies and gentlemen of the  
17 jury, we've reached that point in the trial where you're  
18 going to hear the closing arguments of the attorneys. And  
19 the way that we'll proceed is that the state will go first,  
20 to be followed by the defense.

21 I'll tell you, of course, the same thing that I told  
22 you yesterday: What the lawyers say during their closing  
23 argument to you is not evidence. It's simply their  
24 contention to what has or has not been proven. And it's  
25 normal for a lawyer to reference or to make reference to

1 the facts that have been presented.

2 I will tell you that if your recollection of the facts  
3 differs from what they tell you the facts are, of course,  
4 you should go with what you recall the facts as being,  
5 because you are the judges of the facts in this case. For  
6 example, if one of the lawyers say that yesterday it was  
7 bright and sunny and your recollection was that yesterday  
8 it was rainy and miserable, you should go with your  
9 recollection of it being rainy and miserable, as opposed to  
10 them telling you it's bright and sunny.

11 And as I mentioned a moment ago, the way that we'll  
12 proceed is that Mr. Brown will go first on behalf of the  
13 state, to be followed by Ms. Bolen on behalf of the  
14 defense. At this point, Mr. Brown, you are recognized for  
15 your closing sir.

16 MR. BROWN: Thank you, Your Honor.

17 CLOSING ARGUMENT BY MR. BROWN

18 MR. BROWN: Good morning, ladies and gentlemen. First  
19 of all, I just want to thank you for your attention, your  
20 time, and your consideration in this case. Again, I told  
21 you the other day it wouldn't be that long of a case, but  
22 it's an important case. Not too many witnesses, but you  
23 did hear important witnesses and testimony; saw evidence.

24 And let's go back to see who -- who testified in this  
25 case. First person that testified was Lt. John Gray. What

1 did he tell you? He got a call from 911 dispatch that  
2 there was an -- there was an anonymous tip to go to 401  
3 Oakland Apartments -- which is in Abbeville City, Abbeville  
4 County, South Carolina -- for illegal gambling and drugs.

5 He goes there, and he meets Ms. Ella Brown, who is the  
6 renter or the tenant of that apartment. He asks if -- tell  
7 her why he's there and asks if he can take a look. She  
8 voluntarily opens up the door and lets him in. At that  
9 point he tells us that he smells marijuana -- the odor of  
10 marijuana; sees people in the back kitchen, playing cards.  
11 There's cards on the table. There's a little marijuana in  
12 the middle of the table.

13 He looks directly to his left, and he sees Alfonzo  
14 Alexander. Alfonzo's got a wad of cash in his hand. And  
15 as she testified, there were three officers and  
16 approximately ten people in the house. For officer safety  
17 he said, based on his experience, a lot of times where  
18 there's drugs, there's weapons. So he patted down Mr.  
19 Alexander, along with everybody else in the apartment.

20 What he does say is when he did pat him down, he could  
21 see baggies coming out of his pants pocket. Patted him  
22 down; felt another bulge in his pocket. He asked Mr.  
23 Alexander, "Do you mind if I see what's in your pocket?"

24 Mr. Alexander said, "Yes." So he takes it out. What  
25 do we find?

1           Mr. Gray testified that 16 baggies, 16 individual  
2 baggies, were in his pocket -- his right pocket. Along  
3 with that right pocket -- and it's in evidence as State's  
4 Exhibit No. 1 -- it's crack cocaine, 6.8 grams of crack  
5 cocaine, contained in that plastic baggie in his pocket,  
6 along with those 16 baggies. Left pocket is a digital  
7 scale, in his left pocket. Also, in his possession he's  
8 got \$837 cash.

9           Now, what does Lt. Gray do at that point? Takes this  
10 into evidence; Mr. Alexander is arrested. There's another  
11 person arrested in the apartment for trespassing.

12           Now, defense, I know, through the trial was: Why  
13 weren't these people arrested? Well, Mr. Gray explained  
14 that in the middle of the kitchen table where they were  
15 gambling, there's a bag of marijuana. Couldn't tell who it  
16 was -- who it belonged to; didn't know who possessed --  
17 possessed that marijuana.

18           Also, sitting next to Alfonzo was a bag of marijuana.  
19 Alfonzo wasn't charged with marijuana. But he did charge  
20 him with possession of crack cocaine with intent to  
21 distribute. Why? Because it was in his pocket.

22           Well, ladies and gentlemen, after he left 401 Oakland  
23 Apartments, he goes back -- he testified he goes back to  
24 the police department and he makes an initial weight of the  
25 crack cocaine. He takes the weight on his scales, and the

1 crack is still in the baggie, still in the package that it  
2 came in, that he retrieved it off of Mr. Alexander with.  
3 He weighed it: 11.1 grams.

4 He then seals it in a BEST evidence kit to send down  
5 to SLED; packages it in that. Nobody can tamper with it.  
6 Drops it in -- the mailbox they have there has a -- has a  
7 lock on there. The only person that has a -- has a key to  
8 that evidence locker is Lt. Chris Wilkie. You heard from  
9 Mr. Wilkie. Mr. Wilkie retrieved that bag when Mr. -- when  
10 Lt. Gray transported this down to SLED.

11 Now, Lt. Wilkie also testified that the -- pretty much  
12 the security of that drop box. Because once you drop it  
13 in, you can't reach back down there. Crack was secured in  
14 this drug-evidence bag. Lt. Wilkie testified, saying that  
15 when he looked at it, when he was prelogging it into SLED,  
16 that there was no evidence of tampering, no evidence of  
17 anybody trying to get in that to tamper with the drugs.

18 Now, ladies and gentlemen, you also heard from Ms.  
19 Ella Brown. Ms. Ella Brown was the resident of that  
20 apartment complex. Lt. Gray approached that apartment; he  
21 met Ms. Brown there. Ms. Brown said that she voluntarily  
22 opened up the door, let Lt. Gray in, and that she knew this  
23 fella.

24 He was in her apartment that night. He knew him since  
25 he was little; he knew -- she knew his mama. She couldn't

1 remember his name off the top of his head, but she was  
2 confident he was there. But that -- along with Lt. Gray,  
3 this is the man, Alfonzo Alexander, that he arrested that  
4 night and had crack in his pocket, along with the scales,  
5 the baggies, and the cash.

6 Now, moving onto the chain evidence, after Lt. Wilkie  
7 retrieved crack cocaine out of the evidence locker, he gave  
8 it back to Lt. Gray. Lt. Gray then took it the same day  
9 down to SLED. He checked it in with the SLED intake. That  
10 lady's name was Courtney Smith. She testified here  
11 yesterday.

12 She said once she got it, that Lt. Gray handed over to  
13 her, she logs it in. She make sure it's all logged in;  
14 gives it a particular number so they can track it down.  
15 That's what that L13041 -- or -013 is. It's to make sure  
16 they can track it; make sure the integrity of the evidence  
17 is still intact. Nobody can tamper with that.

18 She then places it on the evidence shelf there at  
19 SLED. Next person that comes in contact with it is Pat  
20 Crooks. Pat Crooks testified that when she got it, the  
21 evidence was still safely secured: no tampering, no  
22 evidence of anybody getting into that bag with the crack.  
23 She then gave it to Willie Smith, who was our forensic  
24 scientist who testified yesterday.

25 What did Mr. Smith say? He received this baggie of

1 crack cocaine. What he does first is he checks to make  
2 sure that everything in that pouch -- that it's not been  
3 tampered with; that nobody has damaged it. He wants to  
4 make sure the integrity of what's inside is what it is and  
5 nobody's messed with it; make a true and accurate reading  
6 of it.

7 So the first thing he does is he checks that. And if  
8 he -- it had been tampered with, he said he would send it  
9 back. He didn't send it back.

10 What he does is he takes it out; takes the crack out  
11 of the plastic bag that it's still in that came off of  
12 Alfonso Alexander. He weighs just the contents of crack  
13 cocaine. And he came with 6.8 grams of crack cocaine.

14 Now, there's a difference there. And the defense  
15 wants you to get hung up on the difference between 11.1 and  
16 6.8. Mr. Smith was asked, "Now, if it was weighed in the  
17 plastic bag, would that make the weight of the crack  
18 cocaine more?" Obviously, yes, it would make it more.

19 But he didn't weigh the plastic bag, so we don't know  
20 how much -- if the difference from 11.1 to 6.8, if that's  
21 the plastic bag. But that would infer that it would.

22 Now, ladies and gentlemen, Willie Smith testified that  
23 it was 6.8 grams of crack cocaine. He was 100 percent  
24 certain, through his chemical testing, that's crack  
25 cocaine.

1           Now, ladies and gentlemen, the -- what the state has  
2   to prove here -- and we have the burden of proof. As I  
3   said that in opening statement, we have the burden of proof  
4   to prove to you beyond a reasonable doubt that the state --  
5   that the state can prove that Alfonzo Alexander was in  
6   possession with intent to distribute crack cocaine.

7           Now, what is proof beyond a reasonable doubt? It's a  
8   proof that leaves you firmly convinced. It's not all  
9   doubt; it's not every doubt; it's not any doubt. But it's  
10   firmly convinced in his guilt.

11          Now, what do I have to prove? What does the state  
12   have to prove? We have to show that Mr. Alexander  
13   knowingly possessed -- that he knowingly possessed a  
14   controlled substance, crack cocaine, with intent to  
15   distribute.

16          Now, where does the intent come from? The state --  
17   there is circumstantial evidence that there's a permissible  
18   inference. And the judge will instruct you on this later  
19   on. There's a permissible inference that if somebody  
20   possesses 1 gram or more of crack cocaine, that he intends  
21   to distribute; that you can infer that there's an intent  
22   there to distribute the crack cocaine.

23          In this case we have 6.8 grams of crack cocaine,  
24   nearly seven times the inference weight. Along with that  
25   we have 16 individual baggies. If it was just for himself,

1 no need for baggies. Just for himself, no need for scales.  
2 Yet his left pocket's a scale; right pocket was 16  
3 individual baggies, along with crack cocaine.

4 Also, you can infer by the -- the amount of cash he  
5 has in his hand. He has \$837 cash in his hand, big sum of  
6 money. Also, remember back to what Lt. Gray said. Based  
7 on his experience as a narcotics officer, when you have all  
8 this evidence together -- the baggies, the scale, the  
9 weight of crack cocaine of 6.8 grams -- what does that  
10 usually tell you? He's intending to distribute this crack.  
11 He's going to hand it out -- for money, of course. Now --  
12 and that's where the \$837 comes in.

13 Now, ladies and gentlemen, you've heard the evidence;  
14 you've seen the facts. You'll have -- be able to look at  
15 these individually; these are in evidence. At the end of  
16 the day, Mr. Alfonzo Alexander had the crack in his pocket,  
17 his actual possession; it was in his pocket. He had scales  
18 in his left pocket; he had the baggies there in his pocket.  
19 And you can infer by the weight of the crack and by the  
20 other paraphernalia that he had with him that he was  
21 intending to distribute this.

22 So the elements, again, to have to check to prove  
23 beyond a reasonable doubt the defendant knowingly possessed  
24 -- check, it was in his pocket -- a controlled substance --  
25 crack cocaine, check; taken down to SLED, 6.8 grams; 100

1     percent certainty from Willie Smith that it is crack  
2     cocaine -- with the intent to transfer the controlled  
3     substance to another party -- have an inference; over 1  
4     gram of crack cocaine -- we have 6.8 -- he intended to  
5     distribute that drug. That, coupled with the  
6     paraphernalia, would accomplish those elements.

7             Ladies and gentlemen, I ask that you -- after hearing  
8     all the arguments, that you return to the jury room and  
9     find Mr. Alexander guilty as charged. Thank you.

10            THE COURT: Thank you, Mr. Brown. Ms. Bolen, you are  
11     recognized, ma'am, for your closing.

12            MS. BOLEN: Thank you, Your Honor. May it please the  
13     Court?

14            THE COURT: Yes, ma'am.

15            (Whereupon, Ms. Bolen and Ms. Nelson conferred.)

16            MS. BOLEN: Sorry for the delay. Just trying to make  
17     sure this is -- this is working right.

18            THE COURT: That's all right. Take your time.

19            (Whereupon, Ms. Bolen and Ms. Nelson conferred.)

20                    CLOSING ARGUMENT BY MS. BOLEN

21            MS. BOLEN: You'll notice that when Mr. Brown just  
22     addressed you, he only talked to you about one charge. He  
23     talked to you about possession with intent to distribute.  
24     And if you recall way back to Monday when this case was  
25     called, there were two charges. There was a possession

1 with intent to distribute, and there's what we call a  
2 "proximity charge."

3 The proximity charge has been dismissed by the judge.  
4 So that's not -- that's not before you anymore. Basically,  
5 they didn't have the evidence for that. And that -- that  
6 requires you to ask yourself: If they got that one wrong,  
7 doesn't that call into question this entire case? If they  
8 got one charge wrong, how can you trust any of this case  
9 that's been presented to you by the state?

10 I'm going to go through what I see as the problems  
11 that the state has in proving this case to you beyond a  
12 reasonable doubt. And remember, they need to prove it  
13 beyond a reasonable doubt. And I'm going to take you  
14 through the evidence you've heard, the evidence you've  
15 seen, and show you where you find reasonable doubt in this  
16 case, where you find reasonable doubt that Alfonzo  
17 Alexander had the intent to distribute crack cocaine.

18 Okay. And what I've -- what I found in my summary of  
19 the evidence is that we see this in -- in a couple places:  
20 (1) Faulty investigation: Certain things weren't done  
21 during the investigation; (2) inconsistent treatment of  
22 Alfonzo, compared to other people; (3) you've got some --  
23 some pretty serious conflicting evidence, okay, and some  
24 pretty serious conflicting results of that evidence.

25 There's other reasonable explanations that the state

1 has not presented to you to a lot of these problems. And  
2 those other reasonable explanations mean that the state  
3 hasn't met its burden of proof of beyond a reasonable  
4 doubt.

5 The state also has a problem proving identity, proving  
6 that it was, in fact, Alfonzo Alexander. They have not  
7 proved that. And remember that the state has to prove  
8 every element of each charge beyond a reasonable doubt,  
9 every element.

10 When I prepared this slide show, I -- I didn't know at  
11 that point that the proximity charge would be dismissed.  
12 So I'm going to go through -- just not -- not go over these  
13 slides that relate to that. Okay.

14 Let's talk about some of the evidence that is missing  
15 to prove that Alfonzo Alexander, if that was indeed him,  
16 had the intent to distribute any crack cocaine. What he's  
17 charged with is possession with intent to distribute. And  
18 you'll hear from the judge that on your jury-verdict form,  
19 you're also going to have the option of finding him guilty  
20 of possession of crack cocaine.

21 What the state is trying to prove is possession with  
22 intent to distribute. There's also a lesser-included of  
23 possession of crack cocaine. So the state has to prove --  
24 in order to get that conviction on intent to distribute,  
25 they have to prove he had the intent to distribute, and

1 they simply haven't done that.

2 There's not been any testimony -- any testimony, even  
3 from the state's own qualified expert in narcotics  
4 investigations, about how much crack might be for personal  
5 use. There's been nothing to say that 6.8 grams would not  
6 be personal use.

7 There's no evidence that anyone bought any crack from  
8 Alfonzo Alexander that night or that he even tried to sell  
9 any crack. How do we know that? Lt. Gray said there were  
10 no crack pipes found there. You've got all these people in  
11 this apartment; no crack pipes found.

12 He testified -- Lt. Gray testified that he patted down  
13 all the -- all the other individuals. There was no crack  
14 found on them. And why is that important? Well, if  
15 Alfonzo -- who they say is Alfonzo was selling, wouldn't  
16 some of those people have something like that on them?

17 There's no paraphernalia found. There's no -- the  
18 crack itself that was allegedly taken is all in one bag.  
19 It's in this one bag. It's not divided up into little  
20 sections, as you might expect it would be for resale. It's  
21 not put into -- into anything smaller. It's all in one  
22 bag.

23 And again, there's absolutely been no evidence  
24 presented that he even tried to sell anything to anyone in  
25 that house. How do we know that? Well, Lt. Gray testified

1     that there were about ten people in the house, so that  
2     leaves eight or nine other people. We named them off when  
3     I -- when I questioned him, we named off every other  
4     person.

5             Don't you think that if Alfonzo had tried to sell any  
6     crack or had sold any crack, that those people would be  
7     here for the state's case, testifying that he had done  
8     that? The state knew who they were. The state had their  
9     names.

10            Yet not a single of those people came up to tell you,  
11     "Yeah. Alfonzo tried to sell me crack that night," or,  
12     "Yeah. Alfonzo was just talking about selling." Not a  
13     single one of these eight or nine people that are named in  
14     the state's own report were up here to say anything about  
15     Alfonzo selling any crack.

16            There's some other reasonable explanations of this --  
17     this evidence that the -- the state has. The sandwich  
18     baggies, you can see by looking, these are just regular  
19     sandwich baggies. You can buy them at Ingles, BI-LO; pack  
20     your kid's sandwiches in them; pack carrots, chips,  
21     whatever. I think it's reasonable to say that most of us,  
22     if not all of us, have these in our house right now. These  
23     are not indicative of drug use. They're sandwich bags.

24            The scales? Another reasonable explanation of the  
25     scales is that maybe a user might want to measure how much

1 they might be buying. They're not just used by dealers.

2 Again, we've got no testimony about any paraphernalia  
3 found on or around Alfonzo. There's no pipes, no buy  
4 books, no beepers, no pagers, no cell phone, no weapons;  
5 notably, no gun. Remember, Lt. Gray said guns and drugs,  
6 they go together.

7 He's an expert in narcotics investigation; he's an  
8 expert in people dealing drugs. And he says they have  
9 guns. He didn't have a gun. Alfonzo didn't have a gun.  
10 No one in that apartment had a gun.

11 As Mr. Brown said and -- and as the judge will  
12 instruct you, there's an -- you'll be told that you can  
13 infer intent to distribute based on weight. However,  
14 that's merely an inference. You can also infer the other  
15 direction, which would be possession, not possession with  
16 intent to distribute. You can make an inference that this  
17 amount was personal use, which, again, would be possession,  
18 not possession with intent to distribute.

19 And a reason that it's pretty easy to make that  
20 inference in this case is, again, it's all in one bag --  
21 all in one bag. It's not divided up for resale. I'm sure  
22 all of you can think of times when you buy stuff in bulk.  
23 Maybe you go to Sam's Club or Costco, or maybe you just go  
24 to Ingles and get a 24-pack of Coke instead of one single  
25 Coke can. The inference alone is not enough to prove that

1 he had any intent to distribute.

2 There's another reasonable explanation for the money  
3 in his hand. Pretty clear from the testimony of Lt. Gray  
4 that there was gambling going on. When there's gambling,  
5 there's money. And when there's gambling, there's a  
6 winner. That money can just as easily be explained from  
7 him winning than from any sort of drug transactions.

8 Let's look a little bit about the investigation: what  
9 the police did, what they didn't do. We heard ample  
10 testimony from Lt. Gray that he walks in this apartment and  
11 there's overwhelming -- overwhelming marijuana smells --  
12 and clouds. He says he can see the marijuana smoke. And  
13 there's gambling in plain sight. And there's these people  
14 that he names off by name and counts, and they're all in  
15 there.

16 Okay? There's five at a kitchen table, I think he  
17 says, and four or five at some couches and love seats along  
18 in here. There's marijuana at the kitchen table within  
19 arm's reach of the five people at the table. He testified  
20 to that. Any one of them could've grabbed it.

21 He also testified that yes, under -- under  
22 constructive possession, he could have charged all of them.  
23 Okay? Could've charged them all for the marijuana. He's a  
24 narcotics investigator. He knows constructive possession  
25 means you don't have to have it in your hand. He could

1     have arrested them. He chose not to, but he could have.

2             He also could have arrested them all for gambling --  
3     clear evidence of gambling going on. Yet you have an  
4     officer who walks into an apartment where he sees all this  
5     evidence of criminal activity, and he doesn't arrest any of  
6     them for it. He arrests who he says is Alfonzo Alexander.  
7     And then, he says he arrests another gentleman for  
8     trespass, but no one else for all this marijuana that's  
9     lying around the apartment and all this gambling that's  
10    here.

11            The 911 call that he received that caused him to go to  
12    the apartment was about gambling. So again, that leaves  
13    you to ask: Why doesn't he arrest anyone for this  
14    gambling? If it's important enough to respond to, isn't it  
15    important enough to make an arrest?

16            He said that they didn't know who was involved. They  
17    were just responding to a call. Yet Ms. Ella Brown who  
18    testified yesterday said twice from the stand -- twice --  
19    "What the police officer said to me was they were looking  
20    for one specific guy."

21            Okay. What does that sound like? That sounds like  
22    targeting. Okay? They may not want to admit it, but  
23    they're looking for someone in specific.

24            More importantly than that, Ms. Brown's testimony  
25    doesn't go with what we've heard from Lt. Gray. Okay?

1 Those are -- those are two different accounts of why  
2 officers were there. You know, and she says, "The officers  
3 told me they were looking for one person in particular."

4 Officer didn't say that from the stand. He said, "Oh,  
5 we don't know why we were there." But that's what Ms.  
6 Brown said.

7 So we know that there's lots of marijuana. We know  
8 that there's lots of gambling. We know that there's an  
9 inconsistent story about who police are looking for, what  
10 they're looking for.

11 We've also got inconsistent testimony from Lt. Gray  
12 about when he sees or alleges he sees these -- these  
13 baggies. First he testified that he saw them as soon as he  
14 walked in and saw who he says is Alfonzo sitting on the  
15 couch. He said he saw it right away.

16 But then, when I question him a little further and --  
17 and he reviewed his report, he -- he -- he said, "Oh, yeah.  
18 Yeah. You're right. It -- it was later. It was after I  
19 had already patted him down." Pretty big difference.

20 Okay. Let's look at -- at the drugs, the actual  
21 investigation in the drugs. These drugs were weighed by  
22 Lt. Gray and weighed, he says, 11.1 grams. And he said  
23 that was an approximate weight. But I want you to look at  
24 the fact that it's not 11 or 12. It's 11.1. That's a  
25 pretty specific weight. That's not approximate; goes out

1 to a tenth of a gram.

2 Lt. Gray, who's been certified by the state as an  
3 expert in narcotics investigations, testified that he can't  
4 accurately weigh drugs. Again, that calls into question  
5 the investigation. If the state's own narcotics expert  
6 can't give you an accurate weight, how do we trust the  
7 state's investigation?

8 The logical question from that is: How do we trust  
9 any weight? He says this is 11.1. SLED says -- SLED says  
10 it's 6.8. That's a difference of 4.3 grams.

11 So does that mean, if Abbeville narcotics weighs  
12 something and says you have 4 grams of crack, that it could  
13 actually be that you have zero grams of crack? That's a  
14 big difference. It's a very big difference. The weight is  
15 a big problem for the state and a big problem in the  
16 state's case.

17 Even the SLED agent, he didn't -- he didn't want to  
18 admit this, but he did. Okay? He -- remember, he's a  
19 state's witness; SLED is a law enforcement agency. He  
20 admitted that 4.3 grams is a big difference.

21 And it is. There's no -- no dispute that 4.3 grams,  
22 when you're talking about this small amount of evidence,  
23 there's no dispute that that's a big difference.

24 The state wants you to believe that this little  
25 sandwich baggie, this very thin plastic with no zip lock,

1 nothing on it, they want you to think that this accounts  
2 for the 4.3-gram difference. That's what they want you to  
3 -- to say.

4 One of the things that the judge has told you and will  
5 tell you again is that you can use your common sense in  
6 evaluating the evidence you've heard and seen. And I'm  
7 asking you to use your common sense when looking at that  
8 explanation. There's simply no way that this little baggie  
9 weighs 4.3 grams. Okay?

10 One way to -- to sort of test this -- and you'll have  
11 this back in the jury room with you, so you can all do  
12 this. 4.3 grams is about two-thirds of 6.8, right? I'm  
13 not a mathematician, but that's approximate. So if it's  
14 about two-thirds of the weight, then these two sides should  
15 feel roughly the same.

16 But look what happens. If I hold on this side, it  
17 balances okay. This side, I have to hold onto it to keep  
18 it from falling. You can -- you can hold this and -- and  
19 feel the difference in the weight between something that's  
20 6.8 and something that they're trying to tell you is just a  
21 little bit less. It's a lot less.

22 You can use your common sense to tell you this does  
23 not account for that huge difference. It simply doesn't.  
24 And that's a big problem for the state, because they've got  
25 a big difference in the evidence that they say they seized

1 and the evidence that they then have analyzed.

2 Let's look at how the evidence was handled. Lt.  
3 Wilkie testified that he couldn't remember when he picked  
4 up the evidence; he didn't know when he had handled it. He  
5 testified that it's put into this drop box and he's the  
6 only one with the key for one side but that any officer can  
7 open the other side; testified that it's basically a  
8 mailbox; that any evidence put in it is just left there to  
9 sit. And again, any officer can put evidence in there.

10 And also, remember the testimony that came from the  
11 SLED witnesses about when they actually received this from  
12 law enforcement. It wasn't until March 26th. Why was it  
13 just sitting there for that many months? Why wouldn't they  
14 have just taken it down to SLED to have it analyzed?

15 Contrast the Abbeville's handling of the evidence,  
16 which is, "We put in a box; I don't know when I touched it;  
17 I don't know when I -- I don't know when I moved it," to  
18 SLED's. SLED had a very sophisticated system. They  
19 tracked the evidence -- any evidence that they receive.

20 Identity: In addition to the other problems that --  
21 that's in the state's case, how can you be sure that the  
22 state even has the right person? Okay? Lt. Gray testified  
23 he had never met Alfonzo Alexander before. He did not know  
24 him; had never met him.

25 There was no testimony presented by the state about

1     how they identified that they was Alexander Alfonzo [sic].  
2     They didn't say that he gave them a license or another ID  
3     card -- nothing -- nothing to say "This is how we knew it  
4     was Alexander -- Alfonzo Alexander."

5             There was no name. They didn't say, "Well, he told us  
6     this was his name." There was no testimony about "Other  
7     people told us this was him." There were eight or nine  
8     other people. Again, if it was him, couldn't they have had  
9     one of those eight or nine other people come up here and  
10    tell you, "Yeah. That was Alexander -- that was Alfonzo  
11    Alexander"? That's a big problem.

12            We don't know who took the picture. Lt. Gray doesn't  
13    know who took that picture. He doesn't know Alfonzo  
14    Alexander. He doesn't say how he -- how he figured out or  
15    how he determined that this was supposedly Alfonzo  
16    Alexander.

17            Ms. Ella Brown could not testify that -- by name that  
18    Alfonzo Alexander was in her house. The state really tried  
19    hard to get her to say that, and she couldn't. She  
20    couldn't say that; couldn't say that that's Alfonzo  
21    Alexander.

22            It's just as reasonable for you to believe that  
23    someone who was arrested gave a name that wasn't their own.  
24    That's another reasonable explanation.

25            So taking this altogether -- and again, I'll skip

1     that, because that is on the proximity charge. All the  
2     things in -- in sum that give you reasonable doubt --  
3     inconsistent treatment; nine other people that could've  
4     been arrested and were not; inconsistent testimony -- were  
5     they specifically looking for one person? Ms. Ella Brown  
6     seems to say that yeah, they were.

7             Inconsistent testimony about when these baggies are  
8     seen; problems with the evidence -- why this huge weight  
9     discrepancy? That's a big, big problem. And again, I  
10    encourage you to -- to weigh that to see if there's really  
11    a way that this weighs two-third of what this does, if that  
12    could really account for such a big difference. I think  
13    you find that it can't.

14            No accounting for the evidence while at the police  
15    department -- all of these things -- the fact that there  
16    was no one else arrested, despite clear evidence by Lt.  
17    Gray's testimony that there's illegal activity going on  
18    with marijuana and gambling; testimony that they were  
19    looking for one specific person; inconsistent testimony  
20    about the reasons for the investigation and when the  
21    officer supposedly sees these bags; the weight disparity;  
22    the lack of evidence that Alfonzo, if it was him, had any  
23    intent to distribute the drugs; undocumented handling of  
24    evidence; and the lack of -- lack of identification -- all  
25    of these things give you reasonable doubt.

1           And in closing, I'd just like you to consider, if you  
2 think that it was Alfonzo Alexander and if you think that  
3 this is the crack that was taken from his pocket, then he's  
4 guilty of possession, not possession with intent to  
5 distribute. We'd ask you to consider all the evidence, to  
6 look at all the problems and holes in the state's case, and  
7 to find him not guilty of possession with intent to  
8 distribute. Thank you.

9           THE COURT: Thank you, Ms. Bolen.

10                       CHARGE OF THE COURT

11           THE COURT: All right. Now, ladies and gentlemen of  
12 the jury, it now becomes my responsibility to instruct you  
13 on the law that applies in this case. And I will tell you  
14 that I'll give you copies of -- or -- or a -- a copy of  
15 these instructions that you can refer to if you need to  
16 during your deliberations. Of course, you have to consider  
17 these instructions as a whole and please don't simply  
18 follow some portion of the instructions, ignoring the other  
19 part. When you're done with your deliberations and you've  
20 returned your verdict, I'll need these instructions back,  
21 if you would, please.

22           Now, ladies and gentlemen, I instruct you that under  
23 the laws of this state, a defendant can be tried even if  
24 the defendant does not attend the trial or is present for  
25 the trial. But the fact that the defendant is not present

1 may not be considered against him in any manner whatsoever.

2 Furthermore, I emphasize to you the fact that the  
3 defendant did not testify is not a factor to be considered  
4 by you in any way during your deliberations and your -- and  
5 in your consideration of the question of guilt or the  
6 innocence of the defendant. It cannot be considered by you  
7 in any manner whatsoever. A defendant has the  
8 constitutional right to remain silent, and the assertion of  
9 this right must not be considered by you in your  
10 deliberations. Because under your oath, you're to draw no  
11 conclusion whatsoever from the fact that the defendant in  
12 this case did not testify. The fact that he did not  
13 testify shouldn't even be discussed by you in the jury  
14 room.

15 The burden of proof, as I have stated to you, is on  
16 the state. And the defendant is not required to prove his  
17 innocence. The burden of proof remains on the state to  
18 prove guilt beyond a reasonable doubt.

19 Now, ladies and gentlemen, in this case the indictment  
20 that you'll have for your consideration charges the  
21 defendant with the offense of possession of crack cocaine  
22 with the intent to distribute. As has been mentioned to  
23 you, the charge relating to the possession with intent  
24 distribute crack within proximity to a public park or  
25 playground, that charge has been dismissed by the Court.

1     So that will not be submitted to you for your  
2     consideration.

3             I remind you the fact that Mr. Alexander was arrested,  
4     charged, and indicted in this case is not evidence and  
5     cannot be considered by you as evidence of guilt in this  
6     case, nor does it create any presumption or inference of  
7     guilt. The indictment is simply the formal written  
8     instrument which contains the charge made against the  
9     defendant. It's the formal document by which a case is  
10    brought into this court.

11            Now, again, ladies and gentlemen, Mr. Alexander has  
12    pled not guilty to this indictment. That plea puts the  
13    burden on the state to prove him guilty. A person charged  
14    with committing a criminal crime in South -- or -- sorry --  
15    with committing a criminal offense in South Carolina is  
16    never required to prove himself innocent.

17            I instruct you that it's an important rule of law that  
18    the defendant in a criminal trial, no matter what the  
19    seriousness of the charge may be, will always be presumed  
20    to be innocent of the crime for which the indictment was  
21    issued unless guilt has been proven by evidence satisfying  
22    you of that guilt beyond a reasonable doubt. This  
23    presumption of innocent does not end when you begin your  
24    deliberations, but it accompanies the defendant throughout  
25    the trial until you reach a verdict of guilt based on

1 evidence satisfying you of his guilt beyond a reasonable  
2 doubt.

3 The presumption of innocence, ladies and gentlemen, is  
4 like a robe of righteousness places about the shoulders of  
5 the defendant. It remains with him until it's been  
6 stripped from him by evidence satisfying you of his guilt  
7 beyond a reasonable doubt.

8 Ladies and gentlemen, the presumption of innocence is  
9 not merely a legal theory. It's not just a legal phrase.  
10 It's a substantial right to which every citizen is entitled  
11 unless you, the jury, are satisfied, from the evidence, of  
12 the defendant's guilt beyond a reasonable doubt.

13 Well, what is a reasonable doubt in the eyes of the  
14 law? A reasonable doubt is the kind of doubt that would  
15 cause a reasonable person to hesitate to act.

16 The state has the burden of proving the defendant  
17 guilty beyond a reasonable doubt. And some of you may have  
18 served as jurors in civil cases where you were told that  
19 it's only necessary to prove that a fact is more likely  
20 true than not true, such as by the greater weight, or the  
21 preponderance of the evidence. In criminal cases, the  
22 state's proof must be more powerful than that. It must be  
23 proof beyond a reasonable doubt.

24 Proof beyond a reasonable doubt is proof that leaves  
25 you firmly convinced of the -- of the defendant's guilt.

1 Now, there are very few things in this world that we know  
2 with absolute certainty. And in criminal cases the law  
3 does not require proof that overcomes every possible doubt.

4 If, based on your consideration of the evidence,  
5 you're firmly convinced that the defendant is guilty of the  
6 crime charged, you must find the defendant guilty. If, on  
7 the other hand, you think there's a real possibility that  
8 the defendant is not guilty, you must give the defendant  
9 the benefit of the doubt and find him not guilty.

10 Now, ladies and gentlemen, I remind you that during  
11 this trial, you and I have certain duties to perform. And  
12 as the trial judge, it's my responsibility to preside over  
13 the trial, and I also have the duty to rule on the  
14 admissibility of evidence offered during the trial. You  
15 have to consider only the competent evidence before you.  
16 So if there was any testimony ordered stricken from the  
17 record, you must disregard that testimony because you're to  
18 consider only the testimony which has been presented from  
19 the witness stand, any exhibits -- and any exhibits which  
20 have been a -- made a part of the record in this case.

21 I have the additional duty to charge you the law  
22 applicable to this case. And as the presiding judge, I'm  
23 the sole judge of the law. It's your duty as jurors to  
24 accept and apply the law as I now state it to you. If you  
25 already have any idea as to what the law is or what the law

1     ought to be and it disagrees with what I now tell you the  
2     law is, you must abandon this idea because you're sworn to  
3     accept and apply the law as I now state it to you.

4             In every case tried in this Court before a jury, the  
5     jury becomes the sole and exclusive judge of the facts in a  
6     case. A trial judge cannot intimate, state, comment on, or  
7     make any statement to a trial jury about the facts in a  
8     case. Since you, the jury, are the sole judges of the  
9     facts in this case, you're not to infer, from what I have  
10    said during the progress of this trial in ruling upon the  
11    admissibility of evidence or otherwise or anything that I  
12    say to you now, that I have any opinion about the facts in  
13    this case.

14            The law does not allow me to have an opinion about the  
15    facts in this case. This is a matter solely for you, the  
16    jury, to determine. As jurors it's your duty to determine  
17    the effect, value, weight, and truth of the evidence  
18    presented during this trial.

19            Now, ladies and gentlemen, there are typically two  
20    types of evidence which are presented during a trial:  
21    direct evidence and circumstantial evidence. Direct  
22    evidence is the testimony of a person who claims to have  
23    actual knowledge of a fact or event, such as an eyewitness.  
24    It's evidence which immediately establishes the main fact  
25    to be proven.

1           Circumstantial evidence is a proof of chain -- a --  
2       excuse me. Circumstantial evidence is a proof of a chain  
3       of facts and circumstances indicating the existence of a  
4       fact. It's a -- it's evidence which immediately  
5       establishes collateral facts from which the main fact may  
6       be inferred. Circumstantial evidence is based upon  
7       inference and not on personal knowledge or observation.

8           Now, the law makes absolutely no distinction between  
9       the weight or value to be given to either direct or  
10      circumstantial evidence, nor is a greater degree of  
11      certainty required of circumstantial evidence than of  
12      direct evidence. You should weigh all the evidence in this  
13      case. And after weighing all the evidence, if you're not  
14      convinced of the defendant's guilt beyond a reasonable  
15      doubt, you should find him not guilty.

16          Now, necessarily, you must determine the credibility  
17      of witnesses who have testified during the trial.  
18      "Credibility" simply means believability. It becomes your  
19      -- your duty as jurors to analyze and to evaluate the  
20      evidence and determine which evidence convinces you of its  
21      truth.

22          In determining the believability of witnesses who have  
23      testified, you may believe one witness over several  
24      witnesses or several witnesses over one witness. You may  
25      believe a part of the testimony of a witness and reject the

1 remaining part of the testimony of that same witness. You  
2 may believe the testimony of a witness in its entirety or  
3 reject the testimony of a witness in its entirety. You may  
4 consider whether any witness has exhibited to you any  
5 interest, bias, prejudice, or other motive in this case.  
6 And you can also consider the appearance and manner of a  
7 witness while on the witness stand.

8 Now, ladies and gentlemen, in this case I believe we  
9 had two individuals qualified as expert witnesses. And I  
10 remind you that the rules of evidence usually don't permit  
11 witnesses to testify as to opinions or conclusions, but  
12 that an exception to this rule exists for witnesses known  
13 as "expert witnesses." A witness who, by education and  
14 experience has become expert in some art, science,  
15 profession, or calling, can state an opinion as to relevant  
16 and material matter in which the witness claims to be an  
17 expert and may also state the reasons for the opinion.

18 Since -- you should consider any expert opinion  
19 received in evidence in this case and, like any other  
20 evidence, give it the weight you think it deserves. If you  
21 decide that an opinion of an expert is not based on  
22 sufficient education or experience or if you conclude that  
23 the reasons given in support of the opinion are not sound  
24 or that the opinion is outweighed by other evidence, you  
25 may disregard the opinion entirely.

1           Now, in this case, ladies and gentlemen, the defendant  
2 is charged with the offense of possession of crack cocaine  
3 with intent to distribute. Therefore, the state must prove  
4 beyond a reasonable doubt that the defendant possessed  
5 crack cocaine with the intent to distribute it. To prove  
6 possession, the state must prove beyond a reasonable doubt  
7 that the defendant had both the power and intent to control  
8 the disposition or use of the crack cocaine.

9           Possession may be actual or constructive. "Actual  
10 possession" means that the crack cocaine was in the actual  
11 physical custody of the defendant. "Constructive  
12 possession" means that the defendant had dominion and  
13 control or the right to exercise dominion and control over  
14 either the crack cocaine itself or the property on which  
15 the crack cocaine was found.

16           I instruct you that mere presence at the scene where  
17 the drugs were found is not enough to prove possession.  
18 The defendant's knowledge and possession may be inferred  
19 when a substance is found on the property under the  
20 defendant's control. However, this inference is simply an  
21 evidentiary fact to be taken into consideration by you,  
22 along with the other evidence, and to be given the weight  
23 you decide it should have.

24           The state must also prove beyond a reasonable doubt  
25 that the defendant intended to distribute the crack

1 cocaine. "Distribution" means to deliver, other than by  
2 administering or dispensing, a drug. Intent may be shown  
3 by acts and conduct of the defendant and other  
4 circumstances from which you may naturally and reasonably  
5 infer intent.

6 In determining whether the defendant had the intent to  
7 distribute the crack cocaine, you may consider the  
8 circumstances surrounding the defendant's alleged  
9 possession. You may consider the amount of the substance  
10 alleged to have been possessed; the manner in which it was  
11 allegedly possessed; the place where it was possessed;  
12 allegedly; and other factors which you consider to be  
13 important. You must find that the defendant did not intend  
14 to have the crack cocaine solely for his own use.

15 Finally, I instruct you that possession of more than 1  
16 -- finally, instruct you that possession of 1 or more grams  
17 of crack cocaine creates an inference that the defendant  
18 possessed the crack cocaine with the intent to distribute  
19 it. This inference does not relieve the state from -- from  
20 proving beyond a reasonable doubt that the defendant had  
21 the intent to distribute. It -- it's simply an evidentiary  
22 fact to be taken into consideration by you, along with the  
23 other evidence in this case, and to be given the weight you  
24 decide it should have.

25 Now, ladies and gentlemen, if you find that the state

1 has failed to prove beyond a reasonable doubt that the  
2 defendant is guilty of possession with intent to distribute  
3 crack cocaine, you may consider whether the state has  
4 proven beyond a reasonable doubt that the defendant is  
5 guilty of simple possession of crack cocaine. Simple  
6 possession does not require an intent to distribute the  
7 crack cocaine.

8 Now, ladies and gentlemen, there are two possible  
9 verdicts that you can reach in this particular case. And  
10 I've prepared this verdict form to help guide your  
11 deliberations, Mr. Clary. The first question basically  
12 states -- it makes -- well, it's not really question; it's  
13 a statement. It says: "We, the jury in the above-  
14 captioned case, on the charge of possession with intent to  
15 distribute crack cocaine, unanimously find Alfonzo  
16 Alexander" -- and then, there are two blanks where you can  
17 initial it, either "not guilty" or "guilty."

18 If, based upon the evidence presented, the jury  
19 unanimously finds that the state has met its burden of  
20 proving the defendant guilty beyond a reasonable doubt, you  
21 would initial there and simply go and sign your name as  
22 bailiff -- or as foreperson; knock on the door; let the  
23 bailiff know you've reached your decision; and we'll  
24 receive you back in the courtroom.

25 If, however, you find that the state has failed to

1 meet its burden of proving the defendant's guilt beyond a  
2 reasonable doubt, you would initial "not guilty" and then  
3 proceed to consider Question No. 2 -- or Statement No. 2.

4 The second statement basically says: "We, the jury in  
5 the above-captioned case, on the charge of possession of  
6 crack cocaine, unanimously find Alfonzo Alexander" -- and  
7 then, again, you've got the options of "not guilty" or  
8 "guilty," based upon what the jury unanimously decides.

9 Whenever you're done with your deliberations, simply  
10 knock on the door; let the bailiff know; and we'll get you  
11 back in here into the courtroom.

12 Now, ladies and gentlemen, I remind you that you have  
13 no enemies to punish in this case; you have no friends to  
14 reward. Your verdict must be based upon the evidence  
15 presented and the law as I have instructed it to you. Your  
16 verdict cannot be the result of passion, caprice,  
17 prejudice, or based upon any consideration which is not in  
18 the record in this case.

19 I'm going to ask you that you go ahead and return to  
20 the jury room for just a moment because there's a couple of  
21 things I want to take up with the lawyers. I want to make  
22 sure I've told you everything I need to tell you concerning  
23 the law. I anticipate you having this case in the next  
24 couple of minutes, however, but I do need to review with  
25 the lawyers to make sure I've covered all the bases.

1           Your cue to begin your deliberations, Mr. Clary, will  
2   be receipt of these jury instructions, the verdict form, as  
3   well as the evidence involved in this particular case.  
4   Now, obviously, ladies and gentlemen, the -- the drugs that  
5   are involved in this case, they've been sealed in a bag. I  
6   would ask that you please don't remove that from the bag;  
7   simply don't do that. But you're -- if -- if you -- you're  
8   free to inspect it or look at it as necessary. But if you  
9   could, just leave it in that bag for purposes of your  
10   deliberations.

11           Now, if you would, return to the jury room. Again,  
12   your cue to begin your deliberations will be receipt of  
13   this, the evidence, and my asking the -- the alternate to  
14   step out. So y'all go back there; don't talk about it yet;  
15   I'll let you know when you can.

16           (Whereupon, the jury exited the courtroom at 11:37  
17   a.m.)

18           THE COURT: All right. The jury is out.  
19   Exceptions/additions from the state?

20           MR. BROWN: No, Your Honor.

21           THE COURT: None from the defense?

22           MS. BOLEN: No, sir, Your Honor.

23           THE COURT: Very good. I think there are only three  
24   exhibits? Very good. If y'all want to look at the verdict  
25   form, that's fine.

1 publish, please.

2 VERDICT OF THE JURY

3 CLERK OF COURT: (As read): Case No. 13-GS-01-15,  
4 *State of South Carolina v. Alfonzo Alexander*: We, the jury  
5 in the above-captioned case, on the charge of possession  
6 with intent to distribute crack cocaine, unanimously find  
7 Alfonzo Alexander guilty. Derrick B. Clary; May the 30th,  
8 2013.

9 Mr. Foreman, ladies and gentlemen of the jury, if this  
10 is your verdict so say you all, please signify by raising  
11 your right hand.

12 (Whereupon, all jurors raised right hand.)

13 THE COURT: All right. Let the record reflect that  
14 all 12 jurors did, in fact, raise their right hand.  
15 Anything prior to discharge of the jury from the state?

16 MR. BROWN: No, Your Honor.

17 THE COURT: Nothing from the defense?

18 MS. NELSON: We'd ask that the jury be polled, Your  
19 Honor.

20 THE COURT: All right. Ladies and gentlemen, the  
21 clerk is going to ask you in a moment basically a question:  
22 if -- if the verdict of guilty is your verdict and if it's  
23 still your verdict. And she'll go by -- go through one by  
24 one, asking each of you if that is your question, and  
25 simply respond appropriately. Again, do you have the list

1 with that y'all take care. Thank you very much, and a  
2 pleasure to meet y'all.

3 (Whereupon, the Court and the clerk of court  
4 conferred.)

5 THE COURT: Oh, I need you to sign -- yeah. I always  
6 forget to do that. Mr. -- the rest of y'all can go. I  
7 need the foreperson for five seconds to sign the verdict on  
8 the verdict form.

9 (Whereupon, the jury was discharged at 12:05 p.m.)

10 THE COURT: All right. If you would, just sign right  
11 there.

12 FOREPERSON: All right.

13 THE COURT: All right. Good to meet you, Mr. Clary.

14 FOREPERSON: Good to meet you.

15 THE COURT: Take care of yourself. All right?

16 FOREPERSON: All right.

17 (Off the record from 12:05 p.m. until 12:27 p.m.)

18 THE COURT: All right. If we may, let's go ahead and  
19 go back on the record in the *State v. Alfonzo Alexander*.  
20 At this point, Ms. Bolen, you move for a new trial?

21 MS. BOLEN: Yes, sir, Your Honor. We move for a new  
22 trial and renew our -- all of our prior motions.

23 THE COURT: All right. Motion for a new trial is  
24 denied. Same ruling on all prior motions, as far as the  
25 Court is concerned.

1           Solicitor, I know that -- I've been told that this is  
2           not Mr. Alexander's first narcotics offense. Which  
3           offenses, in the state's opinion, do you believe would  
4           enhance this?

5           MR. BROWN: Yes, Your Honor. Just going through his  
6           entire criminal history: 1996 he did have a resisting  
7           arrest or resisting officer; disorderly conduct then. In  
8           1997 he had possession of less than 1 gram of ice or crack  
9           cocaine, first; 1998, trespassing charge; second  
10          trespassing charge in 1998. In 1998 he also had a  
11          manufacture and distribution of crack cocaine, which was  
12          his second offense. Actually, there were two charges of  
13          manufacture and distribution of cocaine in 1998.

14          Later on that year -- well, there's a custody status  
15          on a violation of probation on the crack. 2002, Mr.  
16          Alfonzo Alexander did a -- has a conviction for  
17          distribution of crack cocaine, third offense or more;  
18          received a sentence of ten years in 2002. 2002, he also  
19          pled guilty to a criminal-domestic-violence, first, charge.

20          And he did have a custody status in 2003, which looks  
21          like he had a distribution or sale-proximity charge there  
22          in 2003. But -- so this would be a third or subsequent  
23          conviction for the possession with intent to distribute  
24          crack cocaine.

25          THE COURT: Okay. So it's the state's position that

1 the distributions in '02 and '03 are the ones that enhance?

2 MR. BROWN: That's correct, Your Honor.

3 THE COURT: All right. And what's the conviction date  
4 for the '02 offenses?

5 MR. BROWN: The '02 offense conviction date appears to  
6 be May 8th, 2002. And the 2003 looks like January 8th,  
7 2003. And then, he did receive that ten-year sentence.

8 THE COURT: Okay. My understanding of the law is that  
9 they would enhance so long as they're within the last ten  
10 years. And obviously, he was incarcerated. Am I thinking  
11 of the correct provision of the law?

12 MR. BROWN: He was incarcerated well within the last  
13 ten years.

14 THE COURT: Right. Okay. So the '02 and '03, based  
15 upon my understanding, would enhance, then, since he  
16 received a ten-year sentence on the '02 charge.

17 All right. Ms. Bolen, happy to hear from you, ma'am.

18 MS. BOLEN: Thank you, Your Honor. May it please the  
19 Court.

20 THE COURT: Yes, ma'am.

21 MS. BOLEN: I think Your Honor's heard much of what --  
22 what I'm going to say. But just to -- to have it all on  
23 the record: Obviously, I'm standing without my client.  
24 And I think that -- that's definitely the most notable  
25 thing about this whole proceeding.

1           Alfonzo's absence at this trial has surprised me just  
2 as -- as it has everyone else. Up until Tuesday I -- he  
3 was what I would describe and what I actually did describe  
4 to my boss, Ms. Nelson, as a model client. I think a week  
5 or two before this, I was telling her about him and said,  
6 you know, "I wish all clients could be like this. He shows  
7 up to every office meeting. He calls me practically about  
8 his case."

9           We'd even texted before about some stuff that came up  
10 that I was in court; he was at work; we couldn't talk. And  
11 it was something on his case. He's -- he's shown up for  
12 everything that I've asked him to be there for. So it --  
13 it really was shocking that he was -- was not here.

14          He and I met last on Thursday in my office -- Thursday  
15 of last week. And since then I've -- I've not had any  
16 communication with him. I've talked to various family  
17 members, but I -- I've not talked to him. And I think it  
18 -- it's worth noting for the record that since Thursday  
19 I've not communicated anything directly to him about the  
20 proceedings this week.

21          I think it's also worth noting that Mr. Alexander has  
22 never been put on roll call or a trial docket before. We  
23 have -- certainly, people are put on roll call who -- who  
24 don't show. He's -- this is a case that moved to the trial  
25 docket very, very suddenly. He made his two mandated court

1 appearance, the initial and the docket. He didn't have a  
2 chance to make any roll call because he wasn't given a  
3 roll-call date.

4 But he -- he has made every meeting. Anytime I've  
5 asked him to be in the office, he has been there.

6 I think it's also worth noting that there's -- there's  
7 nothing violent about this offense itself. There's nothing  
8 violent about what -- what happened.

9 And there's also nothing violent on his record. He's  
10 not a violent person. There's no history of violence.  
11 There's nothing -- nothing from this case -- I mean, the  
12 testimony was clear that he didn't -- didn't have a gun on  
13 him.

14 And I think the -- the sentencing -- for crack in  
15 particular, but maybe all drugs -- but is -- can be sort of  
16 disparate to what -- what the offense actually is. This --  
17 this carries up to 30 years; 30 years is the same as what  
18 you could get for murdering someone. And clearly, there's  
19 a very different effect on society between having 6.8 grams  
20 of crack and murdering someone.

21 So I'd ask Your Honor to take into consideration this  
22 -- this was a completely nonviolent event and there's  
23 absolutely no violence in his history, and to -- that  
24 although the legislature has allowed up to 30 years, that,  
25 you know, 30 years is also something you get for raping a

1 young child or killing someone and to take that into  
2 consideration when looking at the facts of -- of this case  
3 and the relatively minor damage to society from this.

4 He has one son, another on the way. He was working.  
5 I -- I don't know at this point -- I -- I -- my -- I  
6 suspect that he is no longer working or else we would have  
7 found him at his place of employment. But up until last  
8 Thursday, he was working at Carolina Pride. He supported  
9 his child, and he was supporting the -- the mother of his  
10 soon-to-be-born child.

11 The offer in this case had been 12 years. And there  
12 was a second offer, mainly -- mainly -- mainly offered at  
13 -- at my request, of a range of 10 to 15. As I believe has  
14 already been presented, it -- it seemed to be my client's  
15 intent -- and certainly, I understood it to be his intent  
16 -- to take the 12-year offer. Again, up until Tuesday --  
17 really, up until Tuesday, late afternoon, I fully expected  
18 him to walk in here and -- and plead.

19 When I say that -- that I told Ms. Nelson he was a  
20 model client, it was when he -- when he would say things to  
21 me like, "I know this is no one's fault but my own"; that  
22 he -- he accepted responsibility in a way that not all  
23 clients do.

24 And -- and I know, obviously, he was not here for his  
25 trial. But that -- that is 2 1/2 days/3 days. And I'm --

1 I'm just asking Your Honor to not let three days turn into  
2 a number of years in terms of sentence. I know it will  
3 factor in, but I'm asking not -- not to have three days  
4 turn into 5 or 10 extra years and to consider that the  
5 offer was 12; to consider that -- that he's not violent; to  
6 consider the relative lack of harm in this particular case  
7 in imposing your sentence.

8 THE COURT: All right. Anything else from the state?

9 MR. BROWN: Judge, just the fact that it was my  
10 understanding that he was to be here on Tuesday; did not  
11 show. The offer was 12 years. But at the time when he did  
12 not show, that offer was taken off the table at that point.  
13 And once he did not meet -- make it to that roll call on  
14 Tuesday with his scheduled appointment, that offer was off  
15 the table at that point. So that was no longer an option.

16 MS. BOLEN: And I -- I don't dispute that. Mr. Brown  
17 told me that offer would be off the table if we picked a  
18 jury, but just -- that that's what our -- our offer had  
19 been.

20 THE COURT: I understand. Did your client do any time  
21 in jail before he made bond, to your knowledge, Ms. Bolen?

22 MS. BOLEN: Off the top of my head, I -- I actually  
23 don't recall, Your Honor. I don't -- I don't want to  
24 speculate and guess. And I just -- I just don't know.

25 THE COURT: Can you tell me, madam clerk?

1           DEPUTY CLERK OF COURT: August the 12th to September  
2 the 19th, five weeks.

3           THE COURT: 19th?

4           DEPUTY CLERK OF COURT: 19th.

5           THE COURT: Thanks. I have 38 days.

6           DEPUTY CLERK OF COURT: Thirty-eight.

7           THE COURT: All right. Here's how we're going to  
8 leave this, Ms. Bolen: I have sentenced Mr. Alexander. I  
9 have sealed the sentence in an envelope from my stationery.  
10 It'll be filed with the indictment until such time as Mr.  
11 Alexander is located and brought before the Court for  
12 sentencing.

13           We have one last day in this term of court.

14           MS. BOLEN: Yes, sir.

15           THE COURT: I know that you have been communicating  
16 with Mr. Alexander's family. I suspect -- and perhaps you  
17 harbor the same suspicions -- that they may be in  
18 communication with him or may have some avenue of  
19 communicating with him. There is one last day in this term  
20 of court. If Mr. Alexander were to appear tomorrow and  
21 abide by his obligation to show up, you may assure him that  
22 I will reconsider the sentence that I have imposed that has  
23 been sealed.

24           MS. BOLEN: Yes, sir.

25           THE COURT: After tomorrow, however, it is impossible

STATE OF SOUTH CAROLINA  
COUNTY OF ABBEVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA , )  
 )  
 PLAINTIFF, )  
 )  
 )  
 -VS- )  
 )  
 ALFONZO ALEXANDER, )  
 )  
 )  
 DEFENDANT. )  
 \_\_\_\_\_ )

2013-GS-01-14  
2013-GS-01-15

TRANSCRIPT OF RECORD

SEPTEMBER 18, 2013  
GREENWOOD, SOUTH CAROLINA

B E F O R E:

THE HONORABLE FRANK R. ADDY, JR.

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

ATTORNEY FOR PLAINTIFF:

YATES BROWN, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

PATRICIA BOLEN, ESQUIRE

TARA T. SCOTT, CVR  
CIRCUIT COURT REPORTER

INDEXWITNESSPAGE NO.

SENTENCE OF THE COURT

3

CERTIFICATE OF REPORTER

7

EXHIBITSNODESCRIPTIONIDEVIDENCE

(No exhibits were presented during this hearing)

1           THE COURT: The record should reflect that we're going  
2 back on the record on an Abbeville case, case 13-GS-01-14  
3 and -15. These are cases which were tried, I believe. A  
4 verdict was rendered according to indictment 15 on May 30th  
5 of this year. It's The State v. Alfonzo Alexander. The  
6 record should reflect that Mr. Brown is present on behalf of  
7 the State. Ms. Bolen is here on behalf of Mr. Alexander.  
8 Mr. Brown, happy to hear from you at this point.

9           MR. BROWN: Judge, this trial was done in May, as you've  
10 already stated. He was called to roll call that week. He  
11 did not show at the beginning of the week. We called as he  
12 was on the trial docket. We did call his case to trial.  
13 And after the two-day trial a jury did find him guilty on  
14 the possession with intent to distribute third offense.  
15 During the trial, though, the proximity was dismissed by  
16 directed verdict.

17           Just to go over his -- would you like to hear his  
18 criminal history again, or does that make any -- because  
19 you've already sentenced him.

20           THE COURT: I don't believe that -- Right. The sentence  
21 has already been delivered and sealed. At this point time,  
22 I'm in possession of an envelope that I will unseal in a  
23 moment.

24           MR. BROWN: Yes, sir.

25           THE COURT: And I think that you did back in May apprise

1 me of Mr. Alexander's criminal history.

2 MR. BROWN: Yes, Your Honor. This would definitely be a  
3 third or subsequent offense. Mr. Alexander was located and  
4 was -- been told to be in Melbourne, Florida. He was  
5 arrested there last week. A member of the Abbeville Police  
6 Department and the Abbeville Sheriff's Department did travel  
7 down to Melbourne, Florida where it's my understanding that  
8 Mr. Alexander waived his extradition rights and did -- now  
9 he's back here in Abbeville County and has been brought over  
10 to Greenwood County for his sentencing.

11 THE COURT: Ms. Bolen, I'm happy to hear from you at  
12 this point in time, ma'am.

13 MS. BOLEN: Thank you, Your Honor. May it please the  
14 court?

15 THE COURT: Yes, ma'am.

16 MS. BOLEN: I believe I placed the majority of the  
17 mitigation I had for Alfonzo at the trial, at the sentencing  
18 we had then. Just in the -- obviously he was just picked  
19 up. And I've met with him this morning. And he is --  
20 realizes he made a very bad decision, is very remorseful and  
21 he wishes he could go back and take the twelve years that  
22 had been offered. I think I said at the time that I thought  
23 of him not being present might have something to do with a  
24 -- wanting to see his child born. And in talking with him  
25 this morning, it does seem that that was the main motivator,

1     that his child is scheduled to be delivered on the 30th of  
2     this month. And I think he just made a panicked and  
3     desperate attempt to try to see that child born before  
4     serving his prison sentence.

5           THE COURT: All right. I understand. Mr. Alexander,  
6     I'm happy to hear anything that you might want to say, sir,  
7     before I pronounce sentence.

8           MR. ALEXANDER: Yes, sir, Your Honor. Before the actual  
9     trial, you know, like Ms. Bolen just said, just with my  
10    child been born, I tried to, you know what I'm saying, just  
11    like everything, even work with police department, some  
12    other things to try to buy some time, but seem like all the  
13    doors just shut and, like she said, I panicked, Your Honor.  
14    So know there's nothing I can say or do to make it seem less  
15    I just ask, I guess, for the mercy of the court. Thank you.

16          THE COURT: Thank you, Mr. Alexander. All right. Mr.  
17    Alexander, I will tell you that you have a -- you had legal  
18    obligation to appear at the time of your trial. I believe  
19    that you know that. And, in all candor, certainly your  
20    failure to appear put your lawyer, I think, at a  
21    disadvantage in many, many respects while the trial was  
22    going on. And you only have yourself to blame for this  
23    sentence for your failure to show up. The sentence of the  
24    court is that you're committed to the Department of  
25    Corrections for 29 years. You receive credit for 38 days in

1 jail, as well as the time that you have served in jail since  
2 you were extradited from Florida. And I wish you luck, sir.

3 MR. BROWN: Thank you, Your Honor.

4 THE COURT: Mr. Alexander, you have ten days to appeal  
5 this sentence and post conviction relief would have to be  
6 filed within one year of any remand from the Court of  
7 Appeals. Good luck, sir.

8 MS. BOLEN: Thank you, Your Honor.

9 MR. BROWN: Thank you, Your Honor.

10 (END OF REQUESTED TRANSCRIPT)

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Certificate of Reporter

I, the undersigned, Tara T. Scott, CVR, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenwood County, South Carolina, on the 18th day of September, 2013.

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

April 1, 2014.



Tara T. Scott, CVR

Circuit Court Reporter



**ORIGINAL**

|                         |   |                                  |
|-------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF GENERAL SESSIONS |
|                         | ) | FOR THE EIGHTH JUDICIAL CIRCUIT  |
| COUNTY OF ABBEVILLE     | ) |                                  |
|                         | ) |                                  |
| THE STATE               | ) | Warrant Number: 2012A0120100041  |
|                         | ) | Indictment: 13GS01-0015          |
| v.                      | ) |                                  |
|                         | ) | Motion to Reconsider Sentence    |
|                         | ) |                                  |
| Alfonzo Alexander,      | ) |                                  |
| Defendant               | ) |                                  |

---

Alfonzo Alexander appeared in front of the Honorable Judge Frank Addy on September 28, 2013 for a sentencing hearing. Alexander was tried in absentia on May 29 and May 30, 2013 in Abbeville County, with Judge Addy presiding. Alexander was found guilty of one count of possession with intent to distribute crack cocaine, third offense. At the close of the State's case, Judge Addy directed a verdict of not guilty on one count of possession with intent to distribute within proximity of a school or playground. On September 18, 2013, Judge Addy's sentence of 29 years was unsealed and pronounced.

Alexander puts forth the following facts and arguments for the Judge to reconsider:

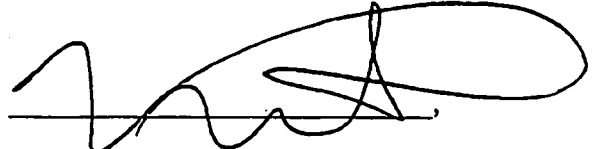
- 1) Several issues of law were raised during the trial, including that the defendant was unlawfully searched by law enforcement, as law enforcement did not specify any facts upon which to base its belief that Alexander posed a risk to officer safety.
- 2) The sentence is disproportionate to the crime. Alexander was found guilty of only one offense. The crime of which he was found guilty was not violent and did not involve any harm to any other person.
- 3) The longest sentence Alexander had ever received prior to this sentence was a ten-year sentence on possession with intent to distribute, second offense, to which Alexander pled guilty on or about January 7, 2003.
- 4) Alexander's prior history is as follows: possession of crack, 1997, YOA; trespassing, 1998, community service; possession with intent to distribute, 1998, 5 years; simple assault and battery, 2001, fine; possession with intent to distribute, 2003, 10 years; criminal domestic violence, first offense, 2003, time served.

- 5) Had Alexander pled guilty to this offense, he would have received a twelve year negotiated sentence, as the Solicitor's office had offered twelve years on a plea.
- 6) The sentence of 29 years is more than twice the sentence that Alexander would have received had he pled guilty, and is more than twice the sentence that the Solicitor's office offered as appropriate punishment.
- 7) Under Rule 16 of the South Carolina Rules of Criminal Procedure, a defendant may waive his right to be present at trial.
- 8) Alexander's service of a twenty-nine year sentence does not serve the interests of the state because it is costly for the State to house Alexander for twenty-nine years in order to punish a person for a crime which resulted in neither physical harm nor loss of property.
- 9) A person has a right to a trial by jury, a right to cross-examine and confront all the witnesses and evidence in the case, the right to present defenses, a right to testify, a right to remain silent, a right to the presumption of innocence, and the right to have the state attempt to prove each element of each offense beyond a reasonable doubt. Having such a right means that a person can exercise these rights without fear of punishment for their exercise thereof.
- 10) Mr. Alexander expressed remorse for his actions at the sentencing hearing, and explained to the Court that he waived his right to be present at trial in an attempt to see his child born.
- 11) The state legislature has provided that a Court may sentence a person who has been convicted possession with intent to distribute, third or subsequent offense, anywhere between ten and thirty years. Alexander's sentence is just one year shy of the maximum allowable sentence.
- 12) The maximum sentence should be reserved for the worst drug crime offenders who have more than two prior drug offenses. Mr. Alexander had two convictions for possession with intent to distribute, making this a true third offense rather than a fourth or fifth offense.
- 13) Similar sentences for this charge have not been imposed on other defendants in this circuit. Although there have not been any recent trials on this charge in the 8<sup>th</sup> circuit, there has been a recent trial in the circuit on a charge of manufacturing methamphetamine, third offense, for which the defendant was sentenced to twenty-five years. Possession is less egregious than manufacturing. Counsel for Alexander cannot recall a sentence this high for other drug cases in this circuit.

Alexander had both a right to a trial and a right to waive his own presence at trial. He also has no violent offenses in his history, and the crime of which he was convicted was not violent in nature and did not harm any person or any property. The sentence that the State considered appropriate was twelve years, as evidenced by its offer of twelve years for a plea. Alexander was found not guilty of one offense. His sentence is disproportionate to sentences in other drug crimes in this circuit. Punishment for the underlying crime, not for Alexander's decision to waive his own presence or his decision to exercise his constitutional right to a trial, should be the basis of the sentence. Alexander respectfully requests that the court reconsider the sentence and lower it.

IT IS SO MOVED.

Respectfully submitted,

By: 

Patricia Bolen  
Assistant Public Defender  
8<sup>th</sup> Judicial Circuit  
600 Monument Street, Suite 208  
Greenwood, South Carolina 29646  
(864) 229-9505

September 26, 2013  
Abbeville, South Carolina  
Greenwood



FILED  
STATE OF SOUTH CAROLINA  
COUNTY OF ABBEVILLE  
2013 SEP 26 PM 2 58  
EMILY Y MCMAHAN  
CLERK OF COURT

STATE OF SOUTH CAROLINA  
COUNTY OF ABBEVILLE

STATE OF SOUTH CAROLINA,

vs.

ALFONZO ALEXANDER,  
Defendant.

THE COURT OF GENERAL SESSIONS

CASE NO. 13-GS-01-15

RECEIVED

DEC 16 2013

SC Court of Appeals

ORDER DENYING MOTION FOR  
RECONSIDERATION OF SENTENCE  
IMPOSED

THIS MATTER ORIGINALLY CAME BEFORE THE COURT on May 30, 2013 for trial *in absentia*. The State was represented by Yates Brown, and Alfonzo Alexander was represented by Patricia Bolen. The court directed a verdict on the proximity charge, and the jury returned a verdict of guilty on the charge of possession with intent to distribute crack cocaine, third offense. The sentence of the court was sealed, and Mr. Alexander was subsequently apprehended and appeared for sentencing on September 18, 2013, at which time the court imposed the sentence of twenty-nine (29) years. Having considered the argument of counsel in Mr. Alexander's motion for reconsideration, I deny Defendant's motion for a reduction in sentence for the following reasons:

1. Although this court is understanding of Mr. Alexander's explanation for not appearing, the most basic obligation of an individual who is facing charges and out on bond is to show up on the date of his trial. Had Mr. Alexander appeared and accepted the State's offer of twelve (12) years, this court or previous judges may have entertained allowing delayed reporting so that he could attend his child's birth. However, Mr. Alexander elected to reject the state's offer, flee the jurisdiction of the court, and was subsequently taken into custody in Florida. To the extent the court took Mr. Alexander's refusal to appear for trial into account in sentencing, this consideration was proper.

2. Additionally, when comparing Mr. Alexander's previous sentences to the current sentence, the court finds that the current sentence is appropriate notwithstanding any

*2/18*

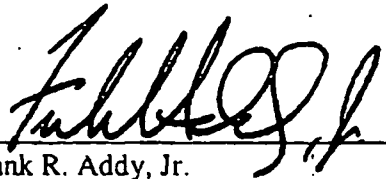
considerations given to the question of flight. Mr. Alexander's prior drug convictions resulted in a youthful offender act sentence, a five (5) year sentence, and a ten (10) year sentence. On a daily basis this court is confronted with the detrimental societal effects of illicit drug use. Clearly, a more substantial sentence is warranted for an individual who repeatedly dealt drugs, repeatedly received leniency, yet repeatedly resumed the identical illegal activity.

3. To the extent that paragraph 9 of Mr. Alexander motion implies that, by sentencing Mr. Alexander to twenty-nine (29) years, the court may have been punishing Mr. Alexander for exercising his rights under the Constitution, such is not the case.

4. In short, the state demonstrated that Mr. Alexander was a repeat drug dealer who had previously been sent to prison for substantial periods of time, yet continued to deal drugs upon his release. Had Mr. Alexander desired to accept the state's offer of twelve (12) years, he should have done so. Finally, although the court is sympathetic with Mr. Alexander's stated reason for fleeing the jurisdiction of the court and although the court is aware of the substantial expense associated with incarcerating Mr. Alexander, the court cannot turn a blind eye to his failure to abide by the most basic condition of bond.

For the foregoing reasons, Defendant's motion for reconsideration of the sentence imposed is denied.

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
Frank R. Addy, Jr.  
Circuit Court Judge  
Eighth Judicial Circuit

November 26, 2013  
Greenwood, South Carolina

**WITNESSES**

Neil Henderson  
Abbeville Police Department

**THE STATE OF SOUTH CAROLINA**

COUNTY OF ABBEVILLE

**COURT OF GENERAL SESSIONS**

January Term, 2013

Indictment # 13GS01-15

**WARRANT NUMBER**

2012A0120100041

**THE STATE**

vs.

Alfonzo Alexander

B/W [REDACTED]

*[Signature]*

*D. Smith* 5/30/13

Foreman of the Grand Jury

Date: JAN 07 2013

**TRUE BILL****VERDICT**

*William S. Porter*

Foreman

**INDICTMENT FOR**

POSSESSION OF COCAINE BASE  
(CRACK COCAINE)  
WITH INTENT TO DISTRIBUTE  
44-53-0375

**THE STATE OF SOUTH CAROLINA**

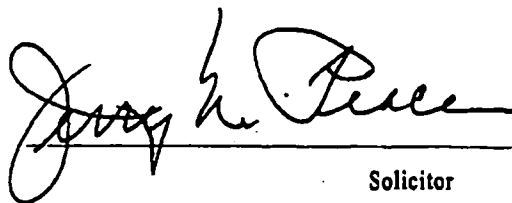
**COUNTY OF ABBEVILLE**

**INDICTMENT FOR  
POSSESSION OF COCAINE BASE  
(CRACK COCAINE)  
WITH INTENT TO DISTRIBUTE  
44-53-0375**

At a Court of General Sessions, convened on the 7th day of January, 2013 the Grand Jurors of Abbeville County present upon their oath:

That Alfonzo Alexander, did in Abbeville County, state aforesaid, on or about the 12th day of August, 2012 willfully, unlawfully, and knowingly possess with intent to distribute, dispense, deliver, or did otherwise aid, abet, or conspire to possess with intent to distribute, dispense, or deliver cocaine base (crack cocaine), in violation of the provisions of Section 44-53-375 of the South Carolina Code of Laws, 1976, as amended.

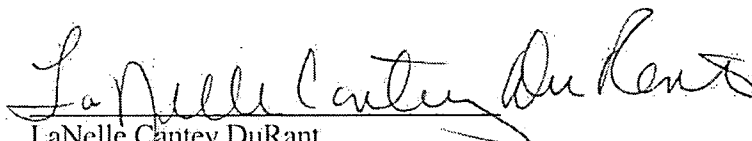
Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

  
Solicitor

## 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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

March 2nd, 2015

  
LaNelle Cantey DuRant  
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 Abbeville County  
The Honorable Frank R. Addy, Circuit Court Judge

Appellate Case No. 2013-002636

---

THE STATE,

Respondent,

v.

ALFONZO ALEXANDER,

Appellant.

---

**FINAL BRIEF OF RESPONDENT**

---

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Attorney General

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ATTORNEYS FOR RESPONDENT

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| II.    The trial court did not abuse its discretion in qualifying Lt. John Gray as an expert in narcotics investigation. He was qualified by knowledge, skill, and experience to speak on the subject. His opinion was relevant to the issue of intent. Moreover, it is clear that narcotics investigation is information not commonly known to the average juror .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         | 8  |
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## STATEMENT OF ISSUES ON APPEAL

### I.

The trial court properly denied Appellant's request to suppress crack cocaine found in his pocket. Officers entered Brown's apartment based on her consent, not based on the anonymous tip received. Upon entering the apartment, officers (1) smelled marijuana, (2) observed a card game and money on the table, consistent with gambling, (3) observed a bag of marijuana in plain view on the floor near Appellant's feet, and (4) saw Appellant on the couch holding a large sum of money with baggies protruding from his pocket. Therefore, officers had reason to investigate the obvious criminal activity. Due to the nexus between drugs and guns and the number of individuals in the room, a Terry frisk for weapons was reasonable. However, crack cocaine in Appellant's pocket was discovered when the investigating officer asked for and received permission to remove the baggies from Appellant's pocket. As such, evidence supported the trial court's finding.

### II.

The trial court did not abuse its discretion in qualifying Lt. John Gray as an expert in narcotics investigation. He was qualified by knowledge, skill, and experience to speak on the subject. His opinion was relevant to the issue of intent. Moreover, it is clear that narcotics investigation is information not commonly known to the average juror.

## **STATEMENT OF THE CASE**

Alfonzo Alexander (“Appellant”) was indicted for Possession with Intent to Distribute (“PWID”) Crack Cocaine, Third Offense. (R. 194-95) Appellant was tried in his absence by a jury on May 28-30, 2013. The Honorable Frank R. Addy presided. Following the guilty verdict, Appellant’s sentence was sealed. On September 18, 2013, the sentence of twenty-nine years was read. (Supp. R. p. 2) Appellant then filed a Motion to Reconsider Sentence dated September 26, 2013. (R. pp. 189-91) The Motion was denied by Judge Addy in an order dated November 26, 2013.)

## STATEMENT OF FACTS

On August 12, 2012, an anonymous caller phoned 911 to report “people gambling, using drugs, and selling drugs” at apartment 401 in in an Abbeville apartment complex. (R. pp. 12-13, pp. 80-81) Lt. John Gray responded to the area and encountered the apartment tenant, Ella Brown, outside the door to the apartment. (R. p. 13; p. 81; p. 121) Lt. Gray advised Brown of the complaint and asked if he could look inside the apartment. (R. p. 13, p. 18, pp. 81-82) Brown opened the apartment door. (R. p. 14, p. 82; p. 121) Lt. Gray observed approximately ten people inside the apartment, some engaged in a card game. (R. p. 14, pp. 82-83) He also detected a strong odor of marijuana. (R. p. 14, p. 82) Upon stepping into the apartment, Lt. Gray noticed a bag of marijuana on the floor at Appellant’s feet. (R. p. 14, p. 83) Appellant was seated on 000 00a couch holding a large sum of money. (R. pp. 14-15, p. 83) Lt. Gray could also see baggies coming out of Appellant’s pocket. (R. p. 15, p. 21; p. 83)

Lt. Gray frisked Appellant for weapons. During the frisk he felt “in [Appellant’s] pocket that there was additional bulge under the baggie that you could see through his pocket that felt to be more baggies. And in his other pocket, you could just feel a – a hard square. Wasn’t sure what it was at the time.” (R. pp. 15-16, p. 84) Lt. Gray asked if he could retrieve the items from the pocket, and Appellant stated that he could. (R. p. 16, p. 84) Inside Appellant’s pocket were 16-18 baggies, an “off-white, rocklike substance...believed to be crack cocaine,” and digital scales. (R. p. 16, pp. 84-86) The substance was later determined to be 6.8 grams of crack cocaine. (R. p. 122) Appellant also had a total of \$839.00, mostly in twenty-dollar bills. (R. p. 17; p. 92)

## ARGUMENT

### I.

The trial court properly denied Appellant's request to suppress crack cocaine found in his pocket. Officers entered Brown's apartment based on her consent, not based on the anonymous tip received. Upon entering the apartment, officers (1) smelled marijuana, (2) observed a card game and money on the table, consistent with gambling, (3) observed a bag of marijuana in plain view on the floor near Appellant's feet, and (4) saw Appellant on the couch holding a large sum of money with baggies protruding from his pocket. Therefore, officers had reason to investigate the obvious criminal activity. Due to the nexus between drugs and guns and the number of individuals in the room, a Terry frisk for weapons was reasonable. However, crack cocaine in Appellant's pocket was discovered when the investigating officer asked for and received permission to remove the baggies from Appellant's pocket. As such, evidence supported the trial court's finding.

"South Carolina appellate courts review Fourth Amendment determinations under a clear error standard." State v. Provet, 405 S.C. 101, 747 S.E.2d 453 (2013). The appellate court will affirm if there is any evidence to support the trial court's ruling.; State v. Taylor, 401 S.C. 104, 736 S.E.2d 663 (2013). The trial court's denial of Appellant's motion to suppress is supported by evidence in the record.

In the present case, the trial court correctly discerned that officers did not rely on the anonymous tip as a basis for their entry into Brown's apartment. (R. Supp. p. 1) Lt. Gray approached Brown outside her apartment in a public area, inquired about the tip, and asked for her consent to look inside the apartment. The anonymous tip was not necessary for officers to approach Brown in a public area and ask her questions. "[A] seizure does not occur simply because a police officer approaches an individual and asks a few questions." Florida v. Bostick, 501 U.S. 429, 434 (1991). No seizure had occurred at this point.

Brown then opened the door for the officers. "As a guest, [Appellant] assumed the risk that the home resident would allow others into the area." State v. Bailey, 276 S.C. 32,

37, 274 S.E.2d 913, 916 (1981). Because Brown consented to allowing officers into her apartment, officers were lawfully present.

The trial court also correctly found that the Terry frisk was appropriate. (R. p. 28; pp. 34-35) Once the door was opened, Lt. Gray reported (1) smelling marijuana, (2) a card game and money on the table, consistent with gambling reported in the tip, (3) a bag of marijuana in plain view on the floor near Appellant's feet, (4) approximately 10 individuals as opposed to 3 officers, and (5) Appellant on the couch holding a large sum of money with baggies protruding from his pocket. Lt. Gray also cited the well-known connection between guns and drugs. (R. pp. 26-27) It is well settled that "[a]n investigative detention is constitutional if supported 'by a reasonable and articulable suspicion that the person seized is engaged in criminal activity.'" State v. Taylor, 401 S.C. 104, 108, 736 S.E.2d 663, 665 (2013) (quoting Reid v. Georgia, 448 U.S. 438, 440 (1980).) "In assessing whether a suspect is armed and dangerous, the officer need not be absolutely certain the individual is armed." State v. Blassingame, 338 S.C. 240, 249, 525 S.E.2d 535, 540 (1999). Our courts recognize:

...that because of the "indisputable nexus between drugs and guns," where an officer has reasonable suspicion that drugs are present in a vehicle lawfully stopped, there is an appropriate level of suspicion of criminal activity and apprehension of danger to justify a frisk of both the driver and the passenger in the absence of other factors alleviating the officer's safety concerns.

State v. Banda, 371 S.C. 245, 253, 639 S.E.2d 36, 40 - 41 (2006). While the present case does not involve an automobile stop, it clearly involves the reasonable suspicion of drug activity based upon Lt. Gray's observations upon entering Brown's apartment.

Based on the factors listed by Lt. Gray, officers frisked all individuals inside the apartment, including Appellant. (R. p. 26, p. 88) Lt. Gray's observations when Brown

opened the door provide reasonable suspicion that criminal activity was afoot. In addition to the narcotics readily seen and smelled, Lt. Gray's observations of the baggies in Appellant's pockets and money in his hand provide additional indication that Appellant in particular may be involved in distribution of narcotics. The factors listed by Lt. Gray clearly provide a basis for reasonable suspicion of narcotics distribution and therefore justified his concerns for safety, particularly in light of the number of individuals and close quarters.

Appellant's case is readily distinguishable from that of State v. Fowler, 322 S.C. 263, 471 S.E.2d 706 (Ct. App. 1996), cited by Appellant. Fowler encountered officers on the street. Officers knew he had a prior drug conviction, believed he was walking in a "suspicious manner," "acted 'kind of scared,'" did not take the normal sidewalk route, "was known to carry weapons," kept "company with suspected drug dealers and persons known to carry weapons," and did not greet officers as he usually did. Id. at 265. Officers admitted that Fowler "did not do anything to make the police believe he was armed or involved in drug activity." In Fowler's case, officers did not even have an articulable suspicion to justify a Terry stop. The court further noted that even if the Terry stop were proper, the officers articulated no facts on which to base a belief Fowler was armed and dangerous. In contrast to Fowler, Appellant was stopped with narcotics at his feet, baggies bulging from his pockets, and a large amount of cash in his hand in a room that smelled of marijuana. It appeared there was gambling. There were around 10 individuals inside the small apartment and only 3 officers whereas Fowler was alone and approached by law enforcement on a public street. Unlike Fowler, who was merely walking in his own neighborhood and did nothing to arouse suspicion of drugs or arms, Appellant appeared to be in the act of distributing narcotics at the moment the officers entered.

Officers further articulated a concern based on experience about the well-known nexus between drugs and guns. In contrast to Fowler, in Appellant's case officers articulated reasons for stopping Appellant and reasons to justify a frisk of his outer clothing for weapons.

However, as the trial court also discerned, the drugs were not discovered as a result of plain feel during the frisk. The drug evidence Appellant seeks to suppress was found as a result of a consensual search of his pocket. There is no requirement that officers know what is in a suspect's pocket before asking for consent to remove the item; there is no requirement that the officer believe that a weapon will be found before asking for consent to remove items from a pocket.

For all these reasons, evidence supports the trial court's denial of Appellant's motion to suppress.

## II.

The trial court did not abuse its discretion in qualifying Lt. John Gray as an expert in narcotics investigation. He was qualified by knowledge, skill, and experience to speak on the subject. His opinion was relevant to the issue of intent. Moreover, it is clear that narcotics investigation is information not commonly known to the average juror.

Appellant first questioned the adequacy of Lt. Gray's training and experience. "The qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's sound discretion." State v. White, 372 S.C. 364, 373, 642 S.E.2d 607, 611 (Ct. App. 2007). "To warrant reversal based on the admission or exclusion of evidence the complaining party must prove both the error of the ruling and the resulting prejudice. To show prejudice, there must be a reasonable probability that the jury's verdict was influenced by the challenged evidence or the lack thereof." Id. at 373-374. (Internal citations omitted.)

"A person is competent as an expert when he or she has acquired knowledge, skill, or experience so that he or she is better able than the jury to form an opinion on the subject matter." State v. Robinson, 396 S.C. 577, 586, 722 S.E.2d 820, 825 (Ct. App. 2012) (citing Rule 702, SCRE). The burden of showing the requisite qualifications rests with the party offering the expert. Id. "However, defects in the amount or quality of education and experience go to the weight of the expert's testimony and not its admissibility." Id.

The trial court properly concluded that Lt. Gray was qualified by knowledge, skill, or experience to offer expert testimony in narcotics investigations. (R. pp. 76-77) Lt. Gray has had experience with narcotics investigations since he began his law enforcement career in 1995. (R. pp. 67-68) He began as a reserve officer, and at the time of trial in 2013 had been a full-time officer for approximately 16 year. (R. p. 76) He was

specifically assigned to narcotics for five years while working for Abbeville County. When he moved to the Abbeville city police department, he was also expressly assigned to narcotics several months before Appellant's trial. (R. p. 68) Lt. Gray is a certified drug instructor through the Federal Law Enforcement Training Center (FLETC). He has attended numerous courses. (R. pp. 68-69) He has been called upon by other officers to assist in identifying drugs and paraphernalia. (R. p. 70) Lt. Gray investigated and assisted in numerous cases, estimating investigations involving nearly 100 people over the course of his career. (R. p. 75) His experience ranged from cases involving simple possession of a single pill to one case involving 50 pounds of marijuana and 500 ecstasy pills. (R. p. 76) While Lt. Gray's training and experience is not as extensive as that of the expert in Robinson, it still sets him far apart from the average juror. Any shortcoming in his experience goes to the weight of his testimony, not its admissibility. Therefore, the trial court did not abuse its discretion.

In the State's case, Lt. Gray's expert opinion was limited to a short statement that he believed that the amount of crack cocaine, the baggies, and the scales together indicated that Appellant intended to were consistent with the distribution of crack cocaine. (R. pp. 94-95) Appellant further argues the testimony should have been excluded on two grounds: (1) the statute provides for an inference of intent to distribute when the amount possessed exceeds one gram, thereby removing the need to present additional evidence and (2) no specialized knowledge was needed here because the information was within the knowledge of average jurors.

As to Appellant's first argument, the amount of crack cocaine seized, 6.8 grams, indeed leads to an inference that Appellant intended to distribute. As a preliminary matter, this particular argument was never presented to the court. Appellant merely stated

that the objection was in part based on “relevancy, that this is outside what the jury would need....” (R. p. 77) “To preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court. The objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error.” State v. Johnson, 363 S.C. 53, 58-59, 609 S.E.2d 520, 523 (2005). (Internal citation omitted) Nonetheless, the argument fails on the merits. The inference arising from the amount in possession is not mandatory, and the State bears the burden of proof. State v. Andrews, 324 S.C. 516, 479 S.E.2d 808 (Ct. App. 1996). The amount of narcotics is, as the trial court instructed, “simply an evidentiary fact to be taken into consideration by [the jury], along with other evidence in [the] case, and to be given the weight [the jury decides] it should have.” (R. p. 169) Lt. Gray’s testimony is highly relevant to ensure that the jury is aware of the significance of the baggies, digital scales, and large amounts of cash as consistent generally with distribution of crack cocaine as opposed to personal use.

Appellant further argues that the significance of such evidence does not require specialized knowledge:

...that’s not something that the jury needs any sort of specialized testimony – specialized scientific – or other testimony about. I think he can testify, obviously, what he found on our – our client. But the purpose of expert witnesses is to explain something that’s outside the purview of the – average juror. And I – I just don’t think this rises to that level and requires any sort of specialized knowledge as would be required from an expert.

(R. p. 73, line 18 – p. 74, line 1) In effect, Appellant argued that the average juror would be aware that multiple baggies, scales, and cash on the person were tools of the crack cocaine trade as opposed to personal use. In other words, Appellant’s objection posited that the inference of Appellant’s intent to distribute under these facts was plain to the

average person in the community, so plain that an expert was not even required. The trial court found that based on his experience and education, Lt. Gray possessed knowledge in the field of narcotics investigation, an area which an average juror would be unfamiliar with. (R. pp. 76-77) This Court has recognized “how crack cocaine was sold and packaged” as a topic outside the purview of the average juror. Robinson at 588, 722 S.E.2d 825-826. Appellant’s argument is therefore without merit. Moreover, if the public were so well versed in the drug trade that this would be within their purview, it stands to reason that any error in Lt. Gray offering testimony to that effect would be harmless – he merely said what they already knew.

Finally, overall, any error in admitting Lt. Gray’s testimony would be harmless. The trial court was careful to instruct that expert witness opinions could be accepted or rejected. (R. p. 79; p. 167) Robinson at 587-588, 722 S.E.2d 825 (citing State v. Douglas, 380 S.C. 499, 503, 671 S.E.2d 606, 609 (2009) (finding a defendant was not prejudiced by the witness's expert qualification because the fact that the witness was qualified as an expert did not require the jury to accord her testimony any greater weight than that given to any other witness); State v. White, 382 S.C. 265, 271, 676 S.E.2d 684, 687 (2009) (finding the circuit court properly instructed the jury to give the expert witness's testimony “such weight and credibility as you deem appropriate as you will with any and all witnesses that will testify at this trial”); State v. Commander, 384 S.C. 66, 75, 681 S.E.2d 31, 35 (Ct.App. 2009) (“As with any witness, the jury is free to accept or reject the testimony of an expert witness.”).

## CONCLUSION

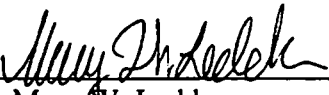
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

March 16, 2015

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Abbeville County  
The Honorable Frank R. Addy, Circuit Court Judge

Appellate Case No. 2013-002636

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THE STATE,

Respondent,

v.

ALFONZO ALEXANDER,

Appellant.

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**CERTIFICATE OF COUNSEL**

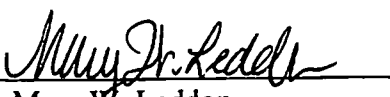
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The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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THE STATE,

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v.

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Appellant.

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**PROOF OF SERVICE**

---

I, Anne Mueller, certify that I have served the within Final Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle Cantey DuRant, 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 16<sup>th</sup> day of March, 2015.

  
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Abbeville County

Frank R. Addy, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

ALFONZO ALEXANDER,

APPELLANT

APPELLATE CASE NO. 2013-002636

---

FINAL BRIEF OF APPELLANT

---

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## STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in denying Appellant Alexander's motion to suppress the crack cocaine based on a violation of his Fourth Amendment rights because there was not sufficient reliability of the anonymous call to conduct an investigative stop; the police did not have reasonable suspicion based on specific and articulable facts that Alexander was armed and dangerous before conducting a Terry<sup>1</sup> frisk; and the police did not have cause to pull any objects from Appellant Alexander's pocket after the officer said nothing felt like a gun during the pat-down?
2. Did the trial court err in qualifying Lieutenant John Gray of the Abbeville Police Department as an expert in the field of narcotics investigation which was not specialized knowledge outside the purview of the average juror and which did not meet the requirements of Rule 702, SCRE?

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<sup>1</sup> Terry v. Ohio, 392 U.S. 1 (1968).

### STATEMENT OF THE CASE

On January 7, 2013, the Abbeville County Grand Jury indicted Alfonzo Alexander on the charge of possession with intent to distribute crack cocaine (PWID) and PWID crack within the proximity of a school or park. On May 28-30, 2013, a trial was held before the Honorable Frank R. Addy and a jury in the absence of Appellant Alexander. Alexander was represented by Janna Nelson and Patricia A. Bolen. The state was represented by C. Yates Brown and Christopher Andrew Morrow. R. 1. Judge Addy did grant the defense motion for a directed verdict on the proximity charge. R. 133, ll. 5 – 8. The jury returned a verdict of guilty on the PWID crack. At the close of the trial, Judge Addy sealed the sentence. R. 181, ll. 7 – 25.

On September 18, 2013, Alexander appeared before Judge Frank R. Addy for the purposes of sentencing. Alexander was again represented by Patricia Bolen, and the state was represented by Yates Brown. Judge Addy unsealed the sentence and sentenced Alexander to twenty-nine years in prison. R. 186, ll. 16 – R. 187, ll. 9.

Alexander's attorney filed a motion to reconsider the sentence which Judge Addy denied on November 26, 2013. Alexander's attorney filed a notice of appeal. This appeal follows.

## STATEMENT OF FACTS

During pretrial motions, Lieutenant John Gray with the Abbeville Police Department testified that on August 12, 2012, he received a call through dispatch that an anonymous tipster had called complaining there were people in a neighboring apartment using drugs, gambling, and selling drugs. Lt. Gray and his shift went to the apartment and met the renter of the apartment, Ella Brown, sitting outside. Lt Gray told her o12 84, ll. 1 – R. 13, ll. 4.

When he entered the apartment, Lt. Gray saw a crowd of people-about ten- inside the apartment. There was a strong smell of marijuana. Four or five people were sitting in the kitchen area playing cards. R. 14, ll. 5 – 14. There was a bag of marijuana under the table where the card players were located which contained about four and one-half grams of marijuana. Any of them could reach that marijuana. R. 102, ll. 5 – R. 103, ll. 19; R. 80, ll. 1 – R. 83, ll. 2.

Lt. Gray saw Alexander sitting on a couch in the living room just to the left when he entered the front door. There was a small bag of marijuana on the floor beside Alexander, and he had a large sum of money in his hand. The officer saw plastic baggies coming out of Alexander's left pocket. Lt. Gray then patted Alexander down for officer safety because guns and drugs go together. However, no weapon was found on Alexander. R. 14, ll. 17 – R. 15, ll. 19; R. 83, ll. 1 – 25.

When Lt. Gray patted Alexander down, he could feel an additional bulge under the baggie that he could see through his pocket that felt to be more baggies. In his other pocket, he could feel a hard square. Alexander gave consent for Lt Gray to remove the baggies and other things from his pocket. When he removed the baggies, Lt. Gray found a quantity of an off-white, rocklike substance that he believed to be crack and a set of small scales. The cash

that Alexander was about \$839. Alexander was arrested and charged with PWID crack and PWID crack in the proximity of a school or playground. The only other person arrested was one man for trespassing. R. 15, ll. 20 – R. 18, ll. 3; R. 84, ll. 1 – R. 89, ll. 3.

On cross examination, Lt. Gray admitted that Alexander did not stand up but continued sitting on the sofa. In his report, Lt. Gray did not report anything about Alexander being fidgety. Alexander did not threaten him in any way. Nor did he reach for his pocket. He did not make any sharp movements, and did not look nervous. There was no mention of guns in the 911 call. In his report, Lt. Gray did not write that he saw baggies protruding from Alexander's pocket, but saw the baggies when he patted Alexander down. He had no prior knowledge of Alexander; he did not know him. Lt. Gray admitted that the baggies he felt did not feel like a gun. The scales did not feel like a gun either. R. 18, ll. 12 – R. 23, ll. 22.

At the beginning of the trial, defense counsel made a pretrial motion to suppress the drugs; the judge held the suppression hearing and Lt. Gray's pretrial testimony. Defense counsel argued that the drugs should be suppressed on the basis of a Fourth Amendment violation because the drugs were unlawfully seized and should be suppressed under the exclusionary rule. R. 5, ll. 25 – R. 6, ll. 6.

Counsel cited from the 911 report and the police officers' incident report R. 6, ll. 16 – R. 7, ll. 7. Counsel argued that the basis of her motion was twofold. The first basis was that the police acted on an anonymous tip without any corroboration by the officers which was not sufficient reliability for an investigatory stop. She argued that anonymous calls were held to a higher standard for reliability. She cited State v. Taylor, 401 S.C. 104, 736 S.E.2d 663 (2013) for this constitutional issue because there were no other suspicious circumstances. The anonymous caller in Alexander's case did not know who the apartment

belonged to, and did not see any drugs or money exchanged. Although the investigative stop was of Ms. Brown, the drugs should be suppressed as part of the “fruit of the poisonous tree” doctrine because it resulted from the unlawful stop. R. 7, ll. 8 – R. 8, ll. 18.

The second basis for the suppression of the drugs was the unlawful Terry frisk. The police needed reasonable suspicion based on specific and articulable facts that the person to be frisked is armed and dangerous. R.8, ll. 17 – 25. Counsel cited the case of Minnesota v. Dickerson, 508 U.S. 366 (1993) which held that officers needed to be able to investigate without fear of violence.

There was nothing in the officers’ incident report to indicate they had any reasonable fear for their safety. The state did not meet the constitutional burden to conduct a Terry frisk. R. 8, ll. 17 – R. 11, ll. 17.

At the close of the suppression hearing, defense counsel argued the same issues and position. R. 28, ll. 3 – R. 31, ll. 16. The state argued that under the totality of the circumstances the frisk was constitutional, and that Alexander consented. Defense counsel responded in argument that the police officer had no right to pull anything from Alexander’s pocket because the officer testified that nothing during the pat-down felt like a gun. Therefore, the Terry frisk was unconstitutional. The judge denied the suppression motion, and allowed the drugs to come into evidence. R. 31, ll. 1 – R. 35, ll. 2.

Willie Smith, the forensic chemist from SLED, testified that the drugs found on Alexander weighed 6.8 grams. R. 122, ll. 1 – R. 123, ll. 1.

Defense counsel objected when the baggies and scales were admitted into evidence and when the drugs were admitted into evidence. R. 87, ll. 1 – R. 88, ll. 10; R. 122, ll. 1 – R. 124, ll. 2. Defense counsel renewed all objections at the close of the trial. R. 174, ll. 18 – 25.

During the testimony of Lt. Gray before the jury, the solicitor moved to have Lt. Gray qualified as an expert in the field of narcotics and paraphernalia investigations. After a few questions, defense counsel had a matter of law, and the jury was excused. R. 70, ll. 19 – R. 72, ll. 8.

The state provided a proffer of Lt. Gray's testimony which was that the state would have Lt. Gray give his opinion as an expert that based on the number of baggies and weight of the drugs that created an inference that Alexander possessed the drugs with an intent to distribute. R. 73, ll. 1 – 14. Defense counsel argued:

Our response would be that that's not something that the jury needs any sort of specialized testimony ---specialized scientific or other testimony about. I think he can testify, obviously, to what he found on our client. But the purpose of expert witnesses is to explain something that's outside the purview of the average juror. And I—I just don't think that this case rises to that level and requires any sort of specialized knowledge as would be required by an expert.

R.73, ll. 17 – R. 74, ll. 1.

Following argument by the state, defense counsel said she wanted to make an objection for the record both on relevancy and that this was outside what a jury would need; as well as the qualifications that did not meet the requirements of Rule 702, SCRE. R. 74, ll. 11 – R. 77, ll. 23.

The judge qualified Lt. Gray as an expert in the field of narcotics investigation and paraphernalia. R. 77, ll. 24, R. 78, ll. 12. When Lt. Gray testified that in his expert opinion, based on the grams and baggies found on Alexander, the drugs were for sale and distribution, defense counsel renewed her prior objection on that matter. R. 94, ll.18 – R. 95, ll. 9.

## ARGUMENT

The trial court erred in denying Appellant Alexander's motion to suppress the crack cocaine based on a violation of his Fourth Amendment rights because there was not sufficient reliability of the anonymous call to conduct an investigative stop; the police did not have reasonable suspicion based on specific and articulable facts that Alexander was armed and dangerous before conducting a Terry frisk; and the police did not have cause to pull any objects from Appellant Alexander's pocket after the officer said nothing felt like a gun during the pat-down?

The Fourth Amendment protects the right of the people to be secure in their persons, house, papers, and effects, against unreasonable searches and seizures. U.S. Const. amend. IV. This guarantee protects against unreasonable searches and seizures, including seizures that only involve a brief detention. Robinson v. State, 407 S.C. 169, 754 S.E.2d 862 (2014) citing State v. Pichardo, 367 S.C. 84, 97, 623 S.E.2d 840, 847 (Ct. App. 2005) (citing United States v. Mendenhall, 446 U.S. 544 (1980). Reasonable suspicion is something more than an inchoate and unparticularized suspicion or hunch. Terry v. Ohio, 392 U.S. 1, 27 (1968). The police officer may make reasonable inferences regarding the criminality of a situation in light of his experience, but he must be able to point to articulable facts that , in conjunction with his inferences, "reasonably warrant" the intrusion. Id. at 21, 27. Robinson v. State, 407 S.C. 169, 754 S.E.2d 862(2014).

The South Carolina Supreme Court wrote in State v. Taylor, *supra*, citing United States v. Perrin, 45 F.3d 869. 871 (4<sup>th</sup> Cir. 2008) that the required reasonable suspicion can arise from an anonymous tip provided that the totality of the surrounding circumstances justifies acting on the tip. The Fourth Circuit held in United States v. Branch, 537 F.3d 328, 337 (4<sup>th</sup> Cir. 2008) that courts

must look at the cumulative information available to the officer...and not find a stop unjustified based merely on a piecemeal refutation of each individual fact and inference.

In State v. Green, 341 S.C. 214, 532 S.E.2d 896 (Ct. App. 2000), the Court of Appeals held that the uncorroborated anonymous tip did not provide officer with reasonable suspicion to stop the defendant's automobile. In Green's case, the police received a dispatch call that a black male by the name of Alonzo Green was leaving Bayside Manor with a large sum of money and narcotics driving a gray four door Maxima. The officer saw a gray Maxima drive by and stopped it based solely on the anonymous tip. The Court of Appeals said that was not enough.

In Terry v. Ohio, *supra*, the U.S. Supreme Court held that when a police officer reasonably concludes that that criminal activity is occurring and the person with whom he is dealing may be armed and dangerous, and there is fear for his own or others' safety, he is entitled for the protection of himself and others to conduct a **carefully limited search** of the outer clothing of such person in an attempt to discover weapons which might be used to assault him. [Emphasis added].

In State v. Fowler, 322 S.C. 263, 471 S.E.2d 706 (1996), Fowler was seen coming from the front yard of a suspected drug house in a high drug area. The officers stopped him thinking he might have a weapon. The officers found a large lockblade knife and \$504.87 on Fowler's person. The officer said Fowler walked in a suspicious manner and acted "kind of scared." The officers also knew Fowler had a prior conviction for drugs and was known to carry weapons and the officer had known him for two and one-half years. The Court of Appeals ruled that the officer did not have reasonable suspicion to frisk Fowler as Fowler had no prior weapons charges; police did not find weapons on defendant during previous searches; and another officer testified that Fowler did not do anything to make the officers think he was armed.

In Minnesota v. Dickerson, 508 U.S. 366 (1993), the police officer stopped Dickerson as he was leaving a known crack house. When he saw the police, Dickerson abruptly started walking in the opposite direction. When the officer did a pat-down search, he found no weapons but found a lump in Dickerson's jacket that he suspected to be crack. The officer reached into Dickerson's pocket and pilled out the small plastic bag that contained crack. The U.S. Supreme Court held that this search was "not authorized by Terry or any other exception to the warrant requirement." The Court held that this further search was constitutionally invalid and therefore, the seizure of the cocaine was unconstitutional.

Alexander's case is similar to Minnesota v. Dickerson, Id., but the police in Dickerson's case had more facts of suspicion than in Appellant's case. All the officers in Alexander's case had was the uncorroborated anonymous tip. The officer did not know Alexander and had not heard of Alexander carrying weapons. The officer admitted that Alexander did not act nervous or fidgety; did not make any strange movements; did not look nervous; and there was no mention of names or weapons in the 911 call.

The officer exceeded the scope of a Terry frisk when he reached into Alexander's pocket and pulled out the baggies although Alexander allegedly consented. His consent came after the unlawful Terry frisk. Although the officer said he saw the baggie before the pat down, he did not include this significant piece of information in his report. He also said he saw the baggie when he looked into Alexander's pocket.

The investigative stop, the Terry frisk, and the search of Alexander's pocket were unconstitutional and the drugs should have been suppressed.

## ARGUMENT II

The trial court erred in qualifying Lieutenant John Gray of the Abbeville Police Department as an expert in the filed of narcotics investigation which was not specialized knowledge outside the purview of the average juror and which did not meet the requirements of Rule 702, SCRE.

Rule 702, SCRE, provides ``that if scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise.

In State v. Robinson, 396 S.C. 577, 722 S.E.2d 820 (Ct. App. 2012), the Court of Appeals held that Commander Marvin Brown of the Drug Enforcement Unit was qualified as an expert in “how crack is packaged, sold, the going price, the typical intoxicating dose, and the different habits between the typical addict, and the typical drug dealer.” Commander Brown had thirty years of experience in narcotics enforcement, and had published an article in a national magazine for the United States Attorney’s Office. He taught classes as he was the narcotics supervisor.

Alexander’s case is distinguished from Robinson in that Lieutenant Gray was an officer with the Abbeville Police Department in narcotics investigations. He had been in law enforcement since 1995 and had participated in only twenty or more narcotics investigations with the city but maybe one hundred in his career. He had taken classes several years before and was a certified drug instructor. R. 67, ll. 6 – R. 77, ll. 6.

In State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), the Supreme Court wrote in Footnote 5 that they could envision no circumstances where it was appropriate for a forensic interviewer of children to be qualified as an expert because their work was not appropriate for the courtroom. The Court cited State v. Douglas, 380 S.C. 499, 671 S.E.2d 606, 607 (2009) which held

that it was unnecessary for the forensic interviewer to be qualified as an expert because no specialized knowledge was required there.

It was not necessary for Lt. Gray to be qualified as an expert to give his opinion that Alexander's possession of 6.8 grams of crack was an inference that he intended to sell or distribute it. This was clear from the statute so all he had to do was cite the statute. South Carolina Code Section 44-53-375 (B) provided that "possession of one or more grams of methamphetamine or cocaine base is prima facie evidence of a violation of this subsection." Subsection (B) provided that a person who manufactures or distributes or possesses with intent to distribute is guilty of a felony and must be sentenced to prison.

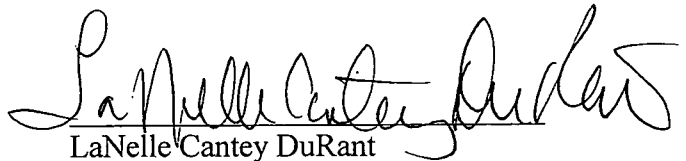
It was not harmless error for Lt. Gray to give his expert opinion that Alexander intended to distribute or sell the crack cocaine. The Supreme Court wrote in Kromah that "although an expert's testimony theoretically is to be given no more weight by a jury than any other witness, it is an inescapable fact that jurors can have a tendency to attach more significance to the testimony of experts."

The prejudice suffered by Alexander was that Lt. Gray's opinion related to the inference of distributing crack rather than just possession as there were no witnesses who said he sold or distributed crack. The officer did not witness any drug transaction. This offense carried a much longer prison sentence than just possession.

CONCLUSION

Based on the above, the conviction and sentence should be reversed, and the case remanded for a new trial.

Respectfully submitted,

  
LaNelle Cantey DuRant  
Appellate Defender

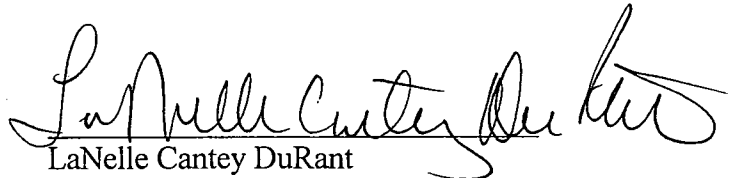
ATTORNEY FOR APPELLANT

This 11<sup>th</sup> day of March, 2015.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

March 11th, 2015



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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Abbeville County  
Frank R. Addy, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

ALFONZO ALEXANDER,

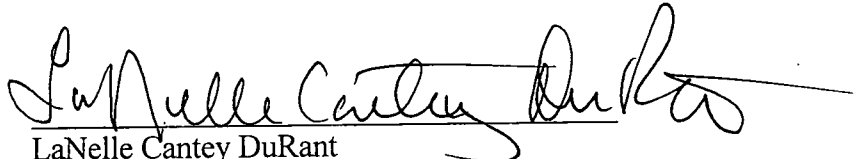
APPELLANT

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CERTIFICATE OF SERVICE

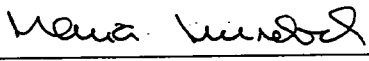
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The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mary W. Leddon, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11<sup>th</sup> day of March, 2015.

  
LaNelle Cantey DuRant  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 11<sup>th</sup> day of March, 2015.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023.