

ORIGINAL

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from Greenville County
Court of General Sessions

Robin B. Stilwell, Circuit Court Judge

Opinion No. 2012-UP-285 (S.C. Ct. App. Filed May 9, 2012)

THE STATE

Petitioner,

v.

JACOB M. BREDA

Respondent.

Appellate Case No: 2012-212570

APPENDIX

TRISTAN M. SHAFFER
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211
(803) 734-1330

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

Attorney for Respondent

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

W. WALTER WILKINS, JR.
Solicitor, Thirteenth Judicial Circuit
305 E. North Street, Suite 325
Greenville, South Carolina 29601
Attorneys for Petitioner

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STATE OF SOUTH CAROLINA

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APPEAL FROM GREENVILLE COUNTY

Robin B. Stilwell, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JACOB M. BREDÁ,

APPELLANT

RECORD ON APPEAL

TRISTAN M. SHAFFER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Attorneys for Respondent

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1 STATE OF SOUTH CAROLINA

2 IN THE COURT OF GENERAL SESSIONS

3 COUNTY OF GREENVILLE

4
5 STATE OF SOUTH CAROLINA :

6 :

7 -vs-

:

TRANSCRIPT OF RECORD

8 :

9 JACOB BREDA :

:

10
11 May 12, 2010

12 Greenville, South Carolina

13
14 B E F O R E:

15 HONORABLE ROBIN B. STILWELL, Judge.

16
17 A P P E A R A N C E S:

18 PERRY DELOACH, ESQ.

19 Attorney for the Plaintiff

20 RANDY CHAMBERS, ESQ.

21 Attorney for the Defendant

22
23
24 MARY E. DIGIROLAMO

25 Court Reporter

	<u>I N D E X</u>			
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1 (State's Exhibit Numbers 1 and 2 were marked for
2 identification.)

3 THE COURT: All right. We're calling to bar the
4 case of the State versus Jacob Breda, indictment
5 2009-9251, charged with possession with intent to
6 distribute crack cocaine. Mr. DeLoach and Mr. Chambers,
7 I believe y'all have some pretrial motions?

8 MR. DELOACH: Yes, we do, Your Honor. I told the
9 officer to bring up Mr. Breda. He's on the way.

10 THE COURT: Okay, good. Then we'll just wait for
11 Mr. Breda to get here.

12 (Mr. Breda entered the courtroom.)

13 THE COURT: All right. I'll be glad to hear from
14 either or both of you.

15 MR. DELOACH: Yes, sir. The State has some pretrial
16 motions, Judge.

17 THE COURT: Sure.

18 MR. DELOACH: The first one, Judge, we had a
19 conference in chambers and at that time Mr. Chambers --
20 Mr. Chambers in chambers stipulated to the fact that --
21 to the chain of custody and to the fact that this
22 substance was in fact crack cocaine. We'd just like to
23 put that on the record.

24 MR. CHAMBERS: That's true. We stipulate that the
25 substance that was seized was in fact crack cocaine. So

1 we're not going to contest the chain of custody and we're
2 not going to ask the chemist be brought over, unless the
3 State just insists on it. We believe it was properly
4 tested and the substance was crack cocaine.

5 THE COURT: Okay. Good enough.

6 MR. DELOACH: Judge, just -- we do plan to bring the
7 chemist, if that's okay with you Your Honor.

8 THE COURT: It's your case. I'm not going to tell
9 you how to try it.

10 MR. DELOACH: Okay. And Judge, we've got four Deno
11 hearings and then a hearing on the probable cause. I
12 suggest that we take up the Deno hearings first.

13 THE COURT: Sure.

14 MR. CHAMBERS: And just to be clear on the record,
15 Your Honor, specifically my objection to -- on the search
16 and seizure issue is that my understanding is this was
17 an -- a search that was incident to an arrest. And we
18 believe that the arrest in this case was unlawful and as
19 such any subsequent search would have been unlawful.

20 THE COURT: Okay. Good enough. Okay.

21 MR. DELOACH: Your Honor, at this time the State
22 calls Officer Hunter to the stand.

23 THE CLERK: Officer, come forward. If you'd come
24 forward, place your left hand on the Bible and raise your
25 right to be sworn in.

1 MICHAEL HUNTER

2 Having been first duly sworn, testified as follows:

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

4 DIRECT EXAMINATION

5 BY MR. DELOACH:

6 Q Good morning, Officer Hunter? How you doing?

7 A Good. How are you?

8 Q Officer Hunter, do you recall the events of August
9 the 12th of 2009?

10 A I do.

11 Q And did you have an occasion on that day to meet
12 with the defendant in this case, Jacob Breda?

13 A I did.

14 Q And was that around -- do you know what time was
15 that around?

16 A I'd have to recall on my notes.

17 Q Okay. How did you come about meeting him that day?

18 A While we were driving down the road we did observe
19 Mr. Breda walking in the roadway against traffic.

20 Q Okay. Was he walking with traffic or against
21 traffic?

22 A He was walking against traffic.

23 Q Okay. Now, at some upon during that time was Mr.
24 Breda arrested for a charge?

25 A No, sir.

1 Q No, at any point during that day?

2 A Not upon the first encounter.

3 Q But at any point that day?

4 A But yes, he was placed under arrest.

5 Q Okay. And subsequent to that arrest was there a
6 search of his person?

7 A Yes.

8 Q Okay. And was anything found?

9 A Yes.

10 Q Okay. And at that point was he placed under arrest
11 for a different charge?

12 A Yes.

13 Q Okay. After he was arrested for the charge what --
14 was anyone else at the scene with you other than yourself
15 and Mr. Breda?

16 A Yes.

17 Q Who was that?

18 A Officer Lane.

19 Q Okay. And is this the officer sitting at the
20 counsel table?

21 A Yes.

22 Q Okay. And after he was arrested, what did Officer
23 Lane do?

24 A After placing -- reading Miranda and placing the
25 subject in handcuffs I stood by with the subject -- or

1 the defendant while he conducted a search of the rear of
2 his patrol car which is standard procedure.

3 Q Okay. And you say that Miranda was read?

4 A It was.

5 Q Okay. Did you read it or did Officer Lane read it?

6 A Officer lane.

7 Q And did you hear it?

8 A I did.

9 Q Okay. At that point when Officer Lane was searching
10 his vehicle was there anyone else standing there, except
11 for you and the defendant?

12 A No, sir.

13 Q Okay. No other law enforcement?

14 A No, sir. Lane was standing very -- in close
15 proximity by his vehicle.

16 Q Okay.

17 A Within approximately about four to five feet.

18 Q Okay. And briefly where did this event take place?

19 A The initial ---

20 Q This stop?

21 A The stop where he was actually placed under arrest
22 was on Ladson Street near Wilkins.

23 Q Okay. And where is that located?

24 A With the city limits of Greenville.

25 Q And what county?

1 A Greenville County.

2 Q Okay. And prior to that the first time you saw Mr.
3 Breda that day, where was that?

4 A That was at Addie Court by Burns Street.

5 Q Okay. And was that -- where was that located?

6 A Within the city limits of Greenville, county of
7 Greenville.

8 Q Okay. Now, back to where you're standing with the
9 defendant Mr. Breda, okay. You just testified that it
10 was just you and Mr. Breda?

11 A That is correct.

12 Q What were you wearing?

13 A Standard uniform.

14 Q What you're wearing today?

15 A A short sleeve version.

16 Q Okay. Were you wearing a side arm?

17 A I was.

18 Q Okay. Was Mr. Breda in handcuffs?

19 A Yes.

20 Q Okay. At any time during this encounter did you
21 question Mr. Breda?

22 A I did not.

23 Q Any questions at all?

24 A No questions.

25 Q Okay. Did he make statement to you?

1 A He did.

2 Q Okay. Not saying the statement how long into your
3 standing with Mr. Breda did he give this statement?

4 A Just a few moments.

5 Q Okay. Seconds, minutes?

6 A Seconds.

7 Q Okay. And at that time what did Mr. Breda say?

8 A He stated that he was a white man in a predominantly
9 black neighborhood and questioned why would he be selling
10 crack.

11 MR. DELOACH: Okay. And Your Honor, this is the
12 first statement the State would offer into evidence.

13 THE COURT: Okay.

14 MR. DELOACH: No other questions.

15 MR. CHAMBERS: No questions, Your Honor.

16 THE COURT: Okay.

17 MR. DELOACH: Your Honor, at this time the State
18 would move that this statement was voluntary. He was in
19 custody, however there was no interrogation as the
20 officer testified to. The State doesn't believe that
21 there's any other factors that would suggest that there
22 was some sort of coercion in this case and we would offer
23 this statement into evidence.

24 THE COURT: Okay. Mr. Chambers?

25 MR. CHAMBERS: I don't object to it, Your Honor.

1 THE COURT: Okay. Good enough. Mr. DeLoach, how
2 many more do you have? You have three more?

3 MR. DELOACH: Three more, Judge.

4 THE COURT: Okay. About the same time frame?

5 MR. DELOACH: Yes.

6 THE COURT: Okay. The only reason I'm asking is
7 because I got a light on from that last jury.

8 MR. DELOACH: I can speed it up, Judge.

9 THE COURT: Okay. No, you don't have to speed it
10 up.

11 MR. DELOACH: Okay. You can step down, Officer.
12 Your Honor, at this time the State calls Officer Lane to
13 the stand.

14 THE CLERK: Officer Lane, if you'd place your left
15 hand on the Bible and raise your right to be sworn in.

16 CHARLES LANE

17 Having been first duly sworn, testified as follows:

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

19 (A discussion was held off the record.)

20 DIRECT EXAMINATION

21 BY MR. DELOACH:

22 Q Good morning, Officer Lane.

23 A Good morning.

24 Q Officer Lane, you heard Officer Hunter testify, did
25 you not?

1 A I did.

2 Q And do you agree with everything he testified to as
3 to the date and time of this arrest?

4 A I do.

5 Q Okay. After searching your patrol car, who
6 transported Mr. Breda to the law enforcement center?

7 A I did.

8 Q Okay. During that ride home did Mr. Breda make any
9 statements to you (sic)?

10 A Yes, he did.

11 Q Okay. Without saying those statements, how long
12 into the ride did he make these statements?

13 A I can't recall exactly how long into the ride
14 but ---

15 Q Minutes?

16 A Several minutes.

17 Q Okay.

18 A Takes about 10 minutes to get to the detention
19 center from where we were at.

20 Q Okay. Was he in handcuffs at the time?

21 A He was.

22 Q Okay. Where was he sitting.

23 A He was sitting in the back of my patrol car.

24 Q Okay. What were you wearing?

25 A I was wearing my patrol uniform as I'm wearing now

1 but short sleeves.

2 Q Short sleeves?

3 A Yes, sir.

4 Q Okay. Did you have a side arm on?

5 A I did.

6 Q Okay. Was there any other law enforcement in the
7 car?

8 A No.

9 Q Did you at any time ask Mr. Breda any questions?

10 A I didn't ask him any questions until he made a
11 statement to me.

12 Q Okay. And before you asked any questions he made a
13 spontaneous statement, correct?

14 A That's correct, yes.

15 Q And what was statement.

16 A He said the crack didn't belong to him.

17 Q Okay. And did he say it belonged to someone else?

18 A After I asked him who it belonged to he said, yes,
19 it belonged to somebody else.

20 MR. DELOACH: Okay. No more questions, Judge.

21 THE COURT: Any questions of this officer, Mr.
22 Chambers?

23 MR. CHAMBERS: No, Your Honor.

24 MR. DELOACH: Your Honor, at this time we would
25 offer the statement into evidence.

CHARLES LANE - Direct by Mr. DeLoach

13

1 THE COURT: Mr. Chambers?

2 MR. CHAMBERS: No objection, Your Honor.

3 THE COURT: Okay.

4 BY MR. DELOACH:

5 Q After you got him to the law enforcement center,
6 okay, had you field tested this crack yet?

7 A No, sir, I had not.

8 Q Okay. And once you got him to the law enforcement
9 center, did you?

10 A Yes.

11 Q And where did you perform that test?

12 A At the rear of my patrol vehicle.

13 Q Okay.

14 A Outside.

15 Q While you were performing that test where was the
16 defendant sitting?

17 A In the back seat of my patrol vehicle.

18 Q Was he still in handcuffs?

19 A Yes.

20 Q And was there any other law enforcement around?

21 A Yes, Officer Hunter was there.

22 Q Officer Hunter was standing there at this time?

23 A Yes, sir.

24 Q Was he talking to the defendant, to your
25 recollection?

1 A No, not my recollection, not during the field test.

2 Q And at that time did the defendant make a statement
3 to you?

4 A While I was doing the field test he said that was
5 soap that I had.

6 Q Okay. So he said that the substance was soap?

7 A Yes, sir.

8 MR. DELOACH: Okay. After -- Your Honor, at this
9 time I don't know if that's a confession, Judge, but we'd
10 just for safety sake say we'd offer that statement into
11 evidence.

12 THE COURT: Okay.

13 MR. CHAMBERS: No objection, Your Honor.

14 THE COURT: All right.

15 BY MR. DELOACH:

16 Q After he said it was soap, did you do anything at
17 that point? Did you continue your test?

18 A Yes.

19 Q Okay. And tell us about the testing process?

20 A It's -- the one we have specifically, it has three
21 vials and some type of chemical substance. You drop the
22 substance that you believe to be crack, or cocaine base
23 in there and close it and then you break one of the vials
24 and agitate it. You do the second and third the same way
25 and the results will either come back negative or

1 positive.

2 Q And what were the results in this case?

3 A They were positive.

4 Q Okay. And how did that -- how does it indicate a
5 positive result?

6 A It's a blueish-purplish color.

7 Q Okay. And did this in fact go blueish-purple?

8 A Yes, it did.

9 Q And at that time what did you do with that testing
10 kit?

11 A I just held it up toward his direction.

12 Q So he could see it?

13 A Yes.

14 Q Okay. And at that time what did this defendant say?

15 A That's good crack.

16 MR. DELOACH: Okay. Your Honor, at this time we'd
17 like to offer that statement into evidence.

18 MR. CHAMBERS: No objection, Your Honor.

19 BY MR. DELOACH:

20 Q Finally, Officer Lane, as you were booking in Mr.
21 Breda, did he make any further statements?

22 A When we were walking into the detention center?

23 Q Yes. Did you ask him any questions?

24 A No, sir, I didn't ask him any questions.

25 Q Okay. Same uniform?

1 A Yes, sir.

2 Q Any other law enforcement around?

3 A Other than the ones who were in the detention
4 facility.

5 Q So you actually were in the detention facility and
6 there several law enforcement around?

7 A Yes, sir.

8 Q Anyone else dealing with you and Mr. Breda?

9 A No.

10 Q And at that time did you ask him any questions?

11 A I didn't ask any questions.

12 Q And what -- at that time did he make a statement to
13 you?

14 A He said that he was a white man in a black
15 neighborhood and why would he come to the area to sell
16 crack.

17 MR. DELOACH: Okay. That would -- we would offer
18 that statement into evidence, Your Honor.

19 THE COURT: Any questions?

20 MR. CHAMBERS: No objection, Your Honor.

21 THE COURT: Okay.

22 MR. DELOACH: That's all the statements we have,
23 Your Honor.

24 THE COURT: Okay. Thank you, Officer, appreciate
25 it. Okay. With respect to those statements after having

1 heard the testimony I think that it is voluntary under
2 Jackson v. Deno and its prodigy and do find that it is
3 admissible for -- during the trial for consideration by
4 the jury.

5 ✓ MR. DELOACH: Your Honor, if you'd like to continue
6 we could have the hearing now or at Your Honor's
7 discretion.

8 THE COURT: Okay. Let's -- let me go ahead and take
9 the verdict.

10 (A short recess was taken, after which, the trial
11 continued as follows:)

12 THE COURT: All right.

13 MR. DELOACH: Yes, sir, that concludes the State's
14 motions. I believe the defense has a motion.

15 THE COURT: Okay.

16 MR. CHAMBERS: As I said earlier, Your Honor. We're
17 challenging the search and seizure of the substance that
18 tested positive as crack on the basis that -- that the
19 reason advanced by the -- at least in the discovery I was
20 provided was that this was a search incident to arrest,
21 and the arrest was supposedly for the charge of municipal
22 code false address to police. We believe that to be an
23 illegal charge, and moreover we believe he wasn't
24 actually charged with that, and as a result anything --
25 any search after that would have been improper.

1 THE COURT: Okay. What was -- the testimony was
2 that he was going the wrong way down the street?

3 MR. DELOACH: Yes, sir. If I can provide this copy
4 of the code. Mr. Chambers ---

5 MR. CHAMBERS: They said he was walking against
6 traffic, Your Honor, which wasn't the reason for the --
7 which wasn't the reason for the arrest to begin with, but
8 it's also common safety practice that if you're walking
9 in the street that you walk against traffic rather than
10 with traffic because you can see the oncoming traffic.

11 THE COURT: I understand. I understand.

12 THE COURT: Okay. Mr. DeLoach.

13 MR. DELOACH: Your Honor, at this time I would call
14 Officer Lane to the stand.

15 THE COURT: Okay.

16 THE CLERK: Officer Lane, oh, you're still under
17 oath.

18 THE COURT: Yeah, you continue under oath, sir.

19 DIRECT EXAMINATION

20 BY MR. DELOACH:

21 Q Officer Lane, on this -- on 8/12 of '09, August 12
22 of '09, did you encounter the defendant, Jacob Mark
23 Breda?

24 A I did.

25 Q Okay. And where did you first see him?

1 A First when I stopped him he was walking on Addie
2 Court with the traffic, coming away from Burns Street.
3 Q Okay. Was it at -- against traffic or with traffic?
4 A With traffic.
5 Q Okay. And was he in the roadway?
6 A He was.
7 Q How far in the roadway?
8 A I don't recall exactly how far but ---
9 Q Was there a sidewalk there?
10 A Yes, there was one for -- provided for approximately
11 30 feet.
12 Q Okay. And at that time what did you do?
13 A Stopped him and did a field interview.
14 Q Okay. Was he under arrest at that time?
15 A No, he wasn't.
16 Q Okay. Has did you -- did you ask him anything?
17 A At the time just what his name and his address was.
18 Q Okay. Why did -- was anything suspicious about Mr.
19 Breda?
20 A At the time?
21 Q Yes.
22 A Other than he was stopping by multiple houses in the
23 area, no.
24 Q Had you ever seen Mr. Breda before?
25 A I had not.

1 Q Do you patrol this area?

2 A I do.

3 Q How often do you patrol it?

4 A I've worked it for at least two years.

5 Q Okay. And you say you asked Mr. Breda for his name
6 and where he lived?

7 A That's correct.

8 Q Did he give you a response?

9 A He did.

10 Q What did he say?

11 A He gave me his name as Jacob Breda and gave me his
12 date of birth and also his address as 101 Mission Street.

13 Q Okay. At that time did you place Mr. Breda under
14 arrest?

15 A I did not.

16 Q Okay. What did you do?

17 A After verifying his information and running it let
18 him go free and I went to check to see if the address was
19 true.

20 Q Okay. So you went and verified that he lived at 101
21 Mission Street?

22 A That's correct.

23 Q Okay. Mr. Breda was not under arrest, he wasn't in
24 detention in any way, shape or form, he was free to go?

25 A Correct.

1 Q You went on your own accord and verified the
2 address, is that correct?

3 A Yes, sir.

4 Q What did you find at 101 Mission Street?

5 A I found a delapidated house that was overgrown.

6 Q Okay. Explain ---

7 A Appeared not to be lived in.

8 Q Okay. So you believed it to be abandoned?

9 A Correct.

10 Q Explain your basis for saying it was abandoned?

11 A There was cobwebs growing up on the front door,
12 there was overgrowth on the house. The roof was starting
13 to cave in.

14 Q Okay. Did you get out of your patrol car?

15 A I did.

16 Q Did you look in the windows?

17 A I did.

18 Q What did you see inside?

19 A It didn't appear to be anything in there.

20 Q Okay. At that time what did you do?

21 A Turned back to try to located Mr. Breda in order to
22 ask him a little bit further about why he gave me the
23 address that he did.

24 Q Okay. And just for the record was anyone else with
25 you during this time?

1 A Yes, Officer Hunter was.

2 Q Okay. And did you find Mr. Breda?

3 A I did.

4 Q And did you question him?

5 A I did.

6 Q And what did you ask him?

7 A I asked why he gave me the incorrect address.

8 Q Okay.

9 A And asked him what his real address was.

10 Q And what was his response?

11 A His response was 52nd Street.

12 Q So he gave you a new address?

13 A Correct.

14 Q Okay. Did you ask him why he had said 101 Mission

15 Street?

16 A I did.

17 Q And what was his response to that?

18 A He said actually it was 102 Mission Street and his

19 brother lives there.

20 Q Now, at that point did you make any other effort to

21 verify that he lived where he said he did?

22 A I did. I offered to see if he might ride over there

23 with us so we could verify that.

24 Q To where?

25 A 102 Mission Street.

- 1 Q To verify what?
- 2 A That that's where his brother actually lived.
- 3 Q And what was his response?
- 4 A Actually his brother just moved is what he said.
- 5 Q And at that time did you place him under arrest?
- 6 A I did.
- 7 Q And what was that for?
- 8 A For false address to police.
- 9 Q And is that under the Greenville municipal code?
- 10 A It is.
- 11 Q Okay. And is that section 24-217 of the Greenville
12 municipal code?
- 13 A I don't remember the number, but ---
- 14 Q Would you disagree with that?
- 15 A No, I wouldn't, sir.
- 16 MR. DELOACH: Okay. Your Honor, at this time that's
17 all the points we have.
- 18 THE COURT: Mr. Chambers?
- 19 CROSS-EXAMINATION
- 20 BY MR. CHAMBERS:
- 21 Q What's the disposition of the charge that -- what do
22 you mean you charged him, did you serve a warrant on him?
- 23 A It was given on a courtesy summons that he was
24 arraigned on.
- 25 Q Okay. Do you have a copy of it?

1 A I do not with me, no, sir.

2 Q Do you know what the disposition is?

3 A Not off the top of my head.

4 Q So you're saying you gave him a ticket?

5 A Well, I gave him a ticket that he was arraigned on
6 at the judge's office in detention.

7 Q All right. And you don't have a copy of the ticket?

8 A Not with me, no, sir.

9 Q And you don't know what the disposition of it is?

10 A I do not know.

11 Q So what do you mean he was arraigned on it? I mean,
12 is it still out there pending?

13 A No, sir. It means I took him down to the detention
14 center and he went before a judge rather than just giving
15 him a courtesy summons and letting him be on his way.

16 Q Okay. So there's really not a charge pending
17 against him after that?

18 A I don't understand the question.

19 Q You didn't really charge him with false address to
20 the police, it's not pending? I mean, there's been no
21 disposition of it, right?

22 A Well, I didn't take him to court, no, sir.

23 Q Okay. So the charge is not pending at all?

24 A (Witness shook his head.)

25 Q And you said you never verified whether he lived at

1 the second address that he gave you?

2 A No, I didn't go back to that address. He ---

3 Q So you don't know whether he was telling you the
4 truth or not?

5 A No, sir.

6 Q And the only reason that you had to talk to him was
7 because he was walking down the street and he was in the
8 street instead of the sidewalk?

9 A No, sir, he was walking with traffic where there was
10 also a sidewalk provided.

11 Q Okay. But he was in the street, he wasn't on the
12 sidewalk and that was your reason for wanting to talk to
13 him?

14 A He was walking in the street with traffic and there
15 was a sidewalk provided, sir.

16 Q I understand. So if you saw a jogger who sometimes
17 they jog in the street instead of the sidewalk because
18 it's kind of easier on the knees, you can stop them and
19 do the same thing as you did with him?

20 A It's a possibility, yes, sir.

21 MR. CHAMBERS: Okay. All right. That's all the
22 questions I have.

23 THE COURT: Okay.

24 MR. DELOACH: No redirect, Your Honor. The State is
25 ready for argument.

1 THE COURT: Okay. All right. You can step down,
2 Officer. Thank you. Yes, sir.

3 MR. DELOACH: Your Honor, the State would be happy
4 to go ahead if Mr. Chambers will allow me to.

5 THE CHAMBERS: Yeah, I'll go first, Your Honor. I
6 don't care, Your Honor. The false address to police,
7 Your Honor, we don't know whether it was a false address
8 frankly. You know, the first address was apparently not
9 the correct address but then Mr. Breda explained that he
10 had gotten it one number wrong. They also never followed
11 up on that. We don't have any idea whether it was a
12 false address or not. The officer admits that. It
13 wasn't an important enough charge at any rate that he
14 even went forward with the charge. It was basically used
15 as a way to conduct a search. It was a reason for him to
16 be able to search.

17 And the only offense apparently that he committed
18 was he was walking in the street instead of on the
19 sidewalk. Now, that wasn't serious enough when he saw it
20 that he detained him, wrote him a ticket to it,
21 investigated it further, he left and then went and
22 checked on this address which he then believed to be
23 wrong, and that's when he followed up with this other
24 interview. And again, when he talked to him the second
25 time we don't know whether that information was correct,

1 whether it was false. The officer certainly didn't know
2 that at the time that he charged him. And we believe
3 that it was just used as a reason to be able to search
4 him, not proper, and therefore the search and seizure of
5 the crack is not proper.

6 MR. DELOACH: Okay. Thank you, Your Honor. Please
7 the Court? Your Honor, we have a case with a man walking
8 in the roadway, with traffic. Officers performed a stop
9 on him. Nothing wrong with that at all. He's in the
10 roadway walking with traffic, potential danger. There's
11 a sidewalk there. He stopped to talk to him. There is
12 no intention on arrest. He asked him where he lived. He
13 doesn't recognize him from the area. He testified to
14 that. He said stopped to ask him where his address was,
15 what his name was. He said 101 Mission Street. Officer
16 lets him go on his way. Then on his own accord follows
17 up and goes to 101 Mission Street. It's an abandoned
18 house.

19 So he goes back to him and he says, sir, you told me
20 it was 101 Mission Street, and I went to 101 Mission
21 Street, that's an abandoned house. Then he changes and
22 says, well, actually it's 102 Mission Street, my brother
23 lives there. He says well, let's go back and see and
24 talk to your brother. I mean, that's no problem. You
25 made a mistake let's go talk to your brother. Well,

1 actually he's moving from there, Judge -- officer. So I
2 don't believe that the officer has any duty at that point
3 to check a third address. Or was he under any duty after
4 the initial address, the wrong address was given?

5 The code, 24-217, which Your Honor has, specifically
6 states it shall be unlawful for any person to give an
7 assumed or fictitious name or a false place of residence
8 or address, or any other than his true name or true place
9 of residence or address upon the request of a police
10 officer or other law enforcement officers. It's black
11 and white. There was a lawful arrest here.

12 Mr. Chambers brings some good issues for trial, but
13 this is a lawful arrest of search incident to arrest
14 for -- not only is that legal it's also for officer
15 safety. How did they know he didn't have a firearm in
16 his pocket? They do a search incident to arrest. They
17 find the crack. It's fairly straight forward as far as
18 the State is concerned, Your Honor.

19 THE COURT: Okay. When the officer went to check
20 and verify the address was Mr. Breda detained during that
21 period, was he left to go on his way?

22 MR. DELOACH: He was left to go on his way, Judge.

23 THE COURT: Okay. All right. Mr. Chambers, any
24 response, sir?

25 MR. CHAMBERS: No, Your Honor. I think we've put

1 our points on the record adequately.

2 THE COURT: All right, sir. Okay. The Court must
3 review this based on the totality of the circumstances.
4 And the State has the burden of showing specific and
5 articulable facts taken together with the rational
6 inferences from those facts, which would reasonably
7 warrant the search. The officer stated several things
8 and articulated with reasonable specificity reasons for
9 the stop to include the fact that he had patrolled that
10 area for a substantial period of time and didn't
11 recognize the individual. I believe also there was
12 testimony that the defendant was going in and out -- or
13 going to and from several residences or buildings and
14 that he was walking down the street in traffic. Then
15 after having asked a simple question and following up on
16 the same, it was determined that that wasn't accurate
17 information and then he went back to him without having
18 detained him during that period of time. Therefore I
19 think that the -- I find that the -- that there was a
20 reasonable suspicion, and that there was a particularized
21 objective basis to lead one to suspect criminal activity.
22 Therefore I find that it was lawful in accordance with
23 the -- with the appropriate case law.

24 MR. DELOACH: Thank you, Your Honor.

25 THE COURT: Yes, sir. Okay. All right, gentlemen,

1 anything else?

2 MR. DELOACH: No, Your Honor.

3 MR. CHAMBERS: No, Your Honor.

4 THE COURT: All right. Then what we'll do is we'll
5 just stand down and when -- when the jury gets here we'll
6 go ahead and select a jury. And after we select that
7 jury, Joelle, what we'll do is just ask them downstairs
8 to select another 40 from among the jurors that are
9 remaining and then we'll call them up when we need to,
10 whether it's tomorrow morning or whether it's this
11 afternoon. And then everyone else can be released
12 because I think we're just going to try -- try this one
13 and just try one after this one.

14 THE CLERK: Okay.

15 THE COURT: Okay. All right.

16 (A short recess was taken, after which, the trial
17 continued as follows:)

18 (Jury selection began at 11:12 a.m.)

19 THE COURT: All right, ladies and gentlemen.
20 Welcome back and good morning. We are about to begin the
21 trial of the State versus Jacob Mark Breda, case number
22 2009-GS-23-9251. Now, I'm going to read the indictment
23 to you. And I want you to know that I am reading the
24 indictment which is allegations by the State. You're not
25 to accept what I read on the indictment as facts or as

1 THE COURT: Yes, sir. I'm sorry.

2 MR. DELOACH: Good morning, ladies and gentlemen. I
3 want to thank y'all for your service today first and
4 foremost. I know that most of you if not all of you
5 don't want to be here today. But I have to stress to you
6 the importance of your presence here as the judge did the
7 other day in jury qualification. Without your presence
8 here not only could we not move this trial that we're
9 trying today, there's other things going on in this
10 courthouse that would be unable to move. It is your
11 presence that allows us to get these things done.

12 Winston Churchill once said that with the exception
13 of service in the military jury service is the most
14 important function that a person can perform for his
15 country. And I say that before every trial because I
16 truly believe it. This -- this service you're doing
17 today is very important. We thank you for it, me and Mr.
18 Chambers.

19 Ladies and gentlemen, the State -- the defendant in
20 this case is charged with possession with intent
21 distribute cocaine base or crack cocaine. And the State
22 has the burden of proving this case. And the burden of
23 proof is reasonable doubt. We have to prove, I have to
24 prove, the State has to prove every element beyond any
25 reasonable doubt. And the State welcomes the burden in

1 this case. This case is not going to be a long case.
2 It's going to be a short case and a simple case. At the
3 end of the evidence you're going to have to decide
4 whether or not Mr. Breda had in his possession a quantity
5 of crack cocaine, not a large quantity, not a small
6 quantity, just a quantity of crack cocaine, and that he
7 intended to distribute that crack cocaine, to sell that
8 crack cocaine, to give it to someone. As long as he
9 intended to distribute that crack cocaine he's guilty of
10 possession with intent to distribute crack cocaine.

11 You're going to hear a lot of evidence. It's going
12 to come from that witness stand. But a couple things
13 you're going to hear are statements from the defendant
14 through officers where he stated that he was in that
15 neighborhood to sell crack. You're also going to hear
16 about the way the evidence was packaged. And I'm not
17 going to get into all that evidence any further. That's
18 going to come from the witness stand. I'm not going to
19 get too detailed in it. But I want you to be listening,
20 paying attention, and I know you will. Because at the
21 end of this case I'm confident you will be able to come
22 back guilty of possession with intent to distribute crack
23 cocaine. Thank you.

24 THE COURT: Mr. Chambers.

25 MR. CHAMBERS: Ladies and gentlemen, this is -- he

1 was introduced a little earlier, but this is Jacob Breda,
2 and I'm here representing him today. He's been waiting
3 for a while for this day in court. He's been looking
4 forward to it. And I will tell you and the evidence as
5 you hear it in this case is going to become clear that
6 Jacob in a lot of ways has lead a troubled life. He's 26
7 years old as he sits here today. And this is probably
8 the most squared away that Jacob has been in a long time.
9 He looks good. He looks healthy. He's been off drugs
10 for a while. But prior to this, folks, and he's not
11 proud of this, and it's something he wants very much to
12 change about his life, from his teenage years up until
13 just not too long ago ---

14 MR. DELOACH: Objection, relevance, Your Honor.

15 THE COURT: Overruled.

16 MR. CHAMBERS: He was an alcoholic and a drug user.
17 And that lifestyle, folks, is what led him to be in the
18 Woodside community here in Greenville back on August 12,
19 2009. And some of you folks have lived here all of your
20 lives. Some of you are fairly new to the area, but
21 Woodside is one of old mill villages here in Greenville.
22 It's over in west Greenville. And like a lot of the mill
23 villages it has seen better days. And unfortunately for
24 the folks that live over in that area there is a lot of
25 crime and a lot of drug activity. And it's exactly that

1 kind of activity that led Jacob to be in that area on
2 August 12, 2009.

3 Now, the solicitor told you and His Honor read to
4 you earlier the indictment in this case. And that's a
5 charging document. But a better way to put it is it's an
6 accusation. Okay. I started my legal career as a Navy
7 lawyer. And one of the things I like about practicing in
8 the military was that we don't refer to the person that's
9 on trial as the defendant, because to me the defendant
10 kind of implies that you've got something to defend, that
11 you've got something to prove to somebody. In the
12 military you refer to that person as the accused. And
13 that's exactly what Jacob is. He's accused. He is,
14 specifically in this case, accused of possessing a
15 quantity of crack cocaine with the intent to distribute
16 to distribute. Possession with intent to distribute.

17 Now, the legislature in South Carolina, like in most
18 states makes a distinction between people who possess, in
19 other words users, and people who distribute, in other
20 words dealers. And the reason for that is obviously we
21 deem it as a society more serious when somebody is
22 selling or distributing drugs. That's the reason for the
23 distinction. We treat that much differently. We treat
24 that much more harshly.

25 In this particular case, folks, to a certain degree

1 I want to narrow the issues down for you. We're going to
2 make this a little bit easier for you. Jacob Breda on
3 August 12, 2009, possessed a quantity of crack cocaine.
4 He has never denied that. He has been willing to plead
5 guilty to that at any time, that he possessed it. So you
6 don't even have to worry about that. When you folks go
7 back there to deliberate later you can go ahead and say,
8 well, he possessed crack cocaine. We have even
9 stipulated and you'll hear this later, that the substance
10 that was seized and later tested was in fact crack
11 cocaine. So we have relieved them of the obligation of
12 bringing in witnesses to prove that it was in fact crack
13 cocaine.

14 Now, folks, that leaves for you, and that's what
15 this trial is going to be about as you listen to the
16 evidence in this case, whether or not Jacob possessed
17 that quantity of crack cocaine with the intent to
18 distribute it. And as you listen to the evidence the
19 things you want to listen for are, what was the amount.
20 Now, in the statute there's actually an inference amount,
21 that if somebody possesses over a gram you can infer that
22 and that alone that a person possessed the crack cocaine
23 with the intent to distribute it.

24 Well, folks, you're going to hear that the evidence
25 in this case is that Jacob Breda possessed less than a

1 gram. What you're going to hear is there were four rocks
2 of crack cocaine with a street value of about 80 bucks,
3 and they found that in his pocket in a baggie. Well, I
4 think there was some cellophane that was wrapped around
5 each one. So it was less than the inference amount. So
6 you can consider the amount as you listen to the
7 evidence. You can consider whether he was stopping cars,
8 whether he was observed stopping anybody, having a closed
9 transaction with anybody, anything like that that was
10 observed. And the evidence in this case is going to show
11 that none of that happened.

12 And the one thing that was interesting to me is, the
13 solicitor a few moments ago indicated to you that they
14 were going to introduce a statement that he actually
15 admitted that he was over there to distribute crack
16 cocaine. Folks, the evidence is not going to show that.
17 The evidence will not show that. And I want you to
18 remember that as they go through the case that he said
19 that to you right upfront. They have the burden of
20 proof. And he said he welcomes that burden of proof.
21 But I want to talk about that for a minute. All these
22 folks seated over here they're the ones that brought this
23 case. They're the ones that have decided that he
24 possessed that with the intent to distribute. And they
25 want you to believe that's true. But they have to prove

1 it. And all of you took an oath a few minutes ago and
2 one of the things that you swore to do was to hold them
3 to their burden of proof as you consider the evidence in
4 this case.

5 Now, the way most times that the judge describes the
6 burden of proof to somebody is they talk about a scale.
7 And when this trial starts out it starts out perfectly
8 balanced. All right. There are civil cases where all
9 they would have to do if they were the accusers in this
10 case is tip it just a little bit in their favor and then
11 they would win. Well, that's not what beyond a
12 reasonable doubt is. Beyond a reasonable doubt they have
13 to tip it almost all the way.

14 Now, it's not beyond any doubt. It's not beyond a
15 shadow of a doubt. I'm pretty persuasive when I want to
16 be. I could probably convince some of you that the sun
17 is not going to come up tomorrow. That's not a
18 reasonable doubt, folks. When we're talking about a
19 reasonable doubt it's the kind of doubt that would make a
20 reasonable person hesitate to act. It's the kind of --
21 it's the kind of proof that leaves you firmly convinced.
22 And as I think about that what always comes to me is if I
23 were in a situation would I will be willing to bet
24 something that was important to me. If something
25 important to me were really at stake would I be that sure

1 of the decision. And that's how you have to approach it
2 in this case, folks. That's how you have to approach it.

3 This is not going to take a long time, but it is a
4 serious matter and there's certainly a lot at stake for
5 Jacob Breda. And we do appreciate you being here.

6 As you go through this you're the finders of fact.
7 You're going to get to go back and decide what the facts
8 are when all is said and done. I just ask you to do
9 three things. I ask you to take the evidence as you hear
10 it from the witness stand. Don't -- no conjecture, no
11 filling in the gaps for the State, nothing like that,
12 just take the evidence as you hear it from the witness
13 stand. Take the law as His Honor gives it to you. He
14 will tell you what the law in this case is, and then you
15 can then apply that law to the facts in this case.

16 Finally, folks, use your own common sense. That's
17 really what makes this system work. It's absolutely what
18 makes this system work. All of you come in here from
19 different walks of life, different ages, different life
20 experiences, and you're going to come together as a
21 deliberative body back there and you're going to decide
22 this case. And you're going to talk about does what they
23 told me make sense, does it add up, does it prove to me
24 beyond a reasonable doubt what they say he did.

25 Now, beyond a reasonable doubt, that's something we

1 all hear every day and some of us take it for granted,
2 but y'all get to put it to the test. You get to actually
3 decide whether they've proved to you beyond a reasonable
4 doubt.

5 Folks, based on the evidence that's going to be
6 presented to you we believe that the proper finding in
7 this case will be guilty of possession but not guilty of
8 possession with intent to distribute. Thank you.

9 MR. DELOACH: May it please the Court?

10 THE COURT: Yes, sir.

11 MR. DELOACH: Your Honor, the State calls Officer
12 Lane to the stand.

13 THE CLERK: Officer Lane; if you would come forward.
14 Place your left hand on the Bible, raise your right to be
15 sworn in.

16 CHARLES LANE

17 Having been first duly sworn, testified as follows:

18 THE CLERK: Thank you. You may be seated. Would
19 you please state your name for the record?

20 THE WITNESS: Charles Lane.

21 THE CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY MR. DELOACH:

24 Q Good morning, Officer Lane. How are you doing?

25 A I'm fine.

- 1 Q Officer Lane, where do you work?
- 2 A Greenville City Police Department.
- 3 Q And how long have you worked there?
- 4 A A little over three years.
- 5 Q Okay. And what's your rank there?
- 6 A PFC.
- 7 Q What does that mean?
- 8 A Private First Class.
- 9 Q Okay. Did you work anywhere prior to that?
- 10 A Not in law enforcement, no, sir.
- 11 Q Where did you receive your training?
- 12 A From the South Carolina Criminal Justice Academy.
- 13 Q Okay. And when -- do you recall when you graduated
- 14 from the South Carolina Department?
- 15 A It was in 2007.
- 16 Q 2007. Officer Lane, do you recall the events of
- 17 August the 12th, 2009.
- 18 A Yes, sir, I do.
- 19 Q Were you on patrol that day?
- 20 A I was.
- 21 Q Okay. And did you have an occasion to encounter the
- 22 defendant on that day, Jacob Breda?
- 23 A I did.
- 24 Q And where did you encounter him?
- 25 A I encountered him on Addie Court coming away from

1 Burns Street.

2 Q Okay. And where is that located?

3 A It's in Greenville city limits, in the Butler
4 community.

5 Q And what county?

6 A Greenville county.

7 Q Okay. And what was Mr. Breda doing?

8 A He was walking in the roadway with traffic and there
9 was a sidewalk that was also provided.

10 Q Okay. Do you recall how far in the roadway he was?

11 A No, sir, I don't recall exactly how far in the
12 roadway he was.

13 Q Okay. But there was a sidewalk provided?

14 A There was.

15 Q Okay. What did you do at that time upon viewing him
16 in the street?

17 A I stopped him.

18 Q Okay. And did you arrest him?

19 A No, sir, I didn't.

20 Q What did you do?

21 A I conducted a field interview which entails me just
22 asking his name, his date of birth, maybe if I can get
23 some identification to confirm an address.

24 Q Okay. And did you have any intention on arresting
25 him for walking in the roadway?

1 A No, sir.

2 Q Did he give you an address?

3 A He did.

4 Q Okay. What address did he give you?

5 A It was 101 Mission Street, which is in Greenville.

6 It's actually only a few blocks away from where I had
7 stopped him.

8 Q Okay. Now, do you patrol this area regularly?

9 A Yes, sir, I do.

10 Q Okay. Had -- you how long have you been patrolling
11 that area?

12 A About two years.

13 Q Okay. And how often do you patrol it?

14 A Each time I'm on shift normally.

15 Q So three or four days a week, five days a week?

16 A Three to four.

17 Q Okay. And did you recognize Mr. Breda from your
18 experience?

19 A No, I did not.

20 Q Okay. Did you see Mr. Breda doing anything else
21 other than walking in the road?

22 A Prior to encountering him I saw him coming away from
23 a house in the area.

24 Q Okay. Now, after he gave the address of 101 Mission
25 Street, what did you do?

1 A After I verified his -- well, took the information
2 he gave me and saw that he didn't have anything else
3 pending with the courts, I let him free to go.

4 Q So he was free to go?

5 A Um-hm.

6 Q Go on his way?

7 A Yes, sir.

8 Q What did you do at that time?

9 A At that time I left from that location. Since it
10 was only a few blocks up, I went and checked to see if
11 that address was true.

12 Q Okay. And were you by yourself?

13 A No, sir, I had Officer Hunter with me that day.

14 Q Is that this officer seated at counsel table?

15 A Yes, sir.

16 Q Okay. And did you in fact go to 101 Mission Street?

17 A I did.

18 Q Okay. Now, why did you go to 101 Mission Street? What
19 reason were you doing that?

20 A I was checking to see if the address that he gave me
21 was correct.

22 Q Okay. What did you find at 101 Mission Street?

23 A When I went there and checked on the house it
24 appeared to be abandoned.

25 Q Okay. And describe the house in a way that made you

1 think it was abandoned?

2 A The roof looked like it was beginning to cave in.
3 There was lot a overgrowth on the outside of the house as
4 well as on the fence. And on the front door there was
5 actually cobwebs near the knob which indicated to me
6 nobody had gone in or out of there recently.

7 Q Okay. And did you get out of your patrol car?

8 A Yes, sir, I did.

9 Q And what did you do when you got out of your patrol
10 car?

11 A That's when I was looking at the front door. I
12 looked in the house. I didn't see anything in the house.

13 Q Okay.

14 A That would indicate somebody was living there.

15 Q I'm sorry, go ahead.

16 A I didn't see anything in the house that indicate
17 anybody was living there.

18 Q And at that point did you make a determination based
19 on your view of the house?

20 A After looking at the house I felt that the address
21 that he had given me was in fact incorrect.

22 Q Okay. And why was that?

23 A Because it didn't look like it was lived in at all.

24 Q Okay. What did you do then?

25 A Went back to look for Mr. Breda to ask him questions

1 to why he gave me an incorrect address.

2 Q Now, why would you go question him as to why he gave
3 you an incorrect address? Why is that a problem?

4 A Well, under the municipal code whenever a police
5 office stops you, asks for your name and your address,
6 you're to give it, a correct name and address.

7 Q Okay. And did you find Mr. Breda?

8 A Yes, sir, I did.

9 Q Okay. And did you stop him?

10 A I did.

11 Q When you stopped Mr. Breda what did you ask him?

12 A First I asked him what his address was since he had
13 given me that one, and you know, found out it was an
14 abandoned house, and he said it was actually 52nd Street
15 in Woodside.

16 Q Okay. And let's stop for just second. When you
17 found him the second time where was he?

18 A He was on Ladson Street coming -- he was coming away
19 from Logon Street and going toward Otis Street.

20 Q Okay. And where is that located?

21 A It's Greenville city limits.

22 Q And what county?

23 A In Greenville County.

24 Q Okay. And you said that he said -- he changed the
25 address that he said was his?

1 A That's correct.

2 Q Okay. And did he give you another address?

3 A Yes, he gave me the address of 52nd Street which is
4 in Woodside. And then when I asked him why he gave me
5 the address of 101 Mission Street he said it was actually
6 102 Mission Street and that was his brother's address.

7 Q Okay. And did you arrest him at that time?

8 A At that time no, I did not. I was still speaking
9 with him about the -- about the address.

10 Q Okay. And what did you ask him then?

11 A I asked him then if he would be willing to go with
12 me and check on the address.

13 Q Okay. And that being?

14 A 102 Mission Street.

15 Q And what was his response?

16 A He said, well, actually my brother had just moved.

17 Q Okay. So he said it was his brother's house?

18 A Correct.

19 Q But he wasn't living there at that time?

20 A Correct.

21 Q Okay. At that point, after getting three addresses,
22 what did you do?

23 A I placed him under arrest for false address.

24 Q Okay. After placing him under arrest, what did you
25 perform on Mr. Breda?

1 A Search incident to arrest.

2 Q Okay. And what is that?

3 A Essentially whenever we arrest anybody we search the
4 person make sure they don't have any weapons or other
5 contraband on them.

6 Q Okay. And did Mr. Breda have anything, such
7 contraband on him?

8 A He did.

9 Q Okay. Officer Lane, I'm going to show you what's
10 been previously marked as State's Exhibit 2 for
11 identification. You can open that up. And will you tell
12 me what that is?

13 A This is the -- what's left of the four rocks that I
14 pulled out of Mr. Breda's pocket.

15 MR. DELOACH: Okay. Your Honor, at this time we
16 would offer this into evidence under stipulation.

17 MR. CHAMBERS: No objection, Your Honor.

18 THE COURT: All right. Without objection same is
19 offered into evidence as plaintiff's -- excuse me,
20 State's Exhibit Number one.

21 MR. DELOACH: Thank you, sir.

22 THE COURT: Two. State's Exhibit Number 2.

23 (State's Exhibit Number 2 was filed.)

24 BY MR. DELOACH:

25 Q Officer Lane, if you could, take that bag back out.

1 Now, you said what's left of it. What do you mean by
2 that?

3 A It appears that it's been broken up. At the time
4 when I pulled it out of his pocket there were intact four
5 rocks packaged within like a cellophane type packaging,
6 like a plastic bag, which were also housed inside another
7 sandwich bag.

8 Q Okay. So there were four separate rocks?

9 A Correct.

10 Q Okay. And were they -- was each rock -- were they
11 loosely in there or were they packaged separately?

12 A They were each packaged separately within like a
13 plastic type wrapping.

14 Q So we're talking about five total bag here then?
15 The big bag and then the four little cellophane wrappers?

16 A Yes.

17 Q Around each rock?

18 A Yes, sir.

19 Q Okay. At that time after pulling this out of his
20 front pocket did you place him under arrest for anything
21 else?

22 A For the possession of the crack.

23 Q Okay. And why did you -- how did you know that was
24 crack?

25 A I've seen crack on the streets many times before

1 either when other officers made arrests or I've
2 encountered it myself.

3 Q But you didn't know for sure it was crack at that
4 time, did you?

5 A Not for certain, no, sir.

6 Q Okay. But you believed it to be?

7 A Yes.

8 Q Okay. At that time did you read him Miranda?

9 A Yes.

10 Q Okay. Did you place him in handcuffs?

11 A Yes, I did.

12 Q Okay. After placing him in handcuffs did you do
13 anything before placing him in the back of your patrol
14 car?

15 A I checked the back of my patrol car and the seat to
16 make sure nobody left anything prior to him sitting down
17 in it.

18 Q Okay. What does that entail? What do you do there?

19 A Essentially our -- the bottom seat of our patrol car
20 comes out. And you can lift the back panel and make sure
21 nothing -- nobody stuffed anything up in there.

22 Q When you say stuffed anything, what are you
23 referring to?

24 A Oh, sometimes people take things from out of their
25 pocks and stuff it between the crevice from the back of

1 the seat and the actual back of the patrol car.

2 Q And did you find anything?

3 A No, I did not.

4 Q Okay. And what did you and Mr. Breda at that time
5 (sic)?

6 A Excuse me?

7 Q What did you do with Mr. Breda at that time?

8 A Placed him in the back of the patrol car.

9 Q Okay. And is Mr. Breda in the courtroom today?

10 A He is.

11 Q Where is he located?

12 A Right there sitting at the ---

13 Q Sitting at the defense counsel table? After putting
14 Mr. Breda in the car where did you go?

15 A We went to the detention center.

16 Q Okay. You transported him in your car?

17 A Yes, sir.

18 Q Where was Officer Hunter during this time?

19 A He was following me along. He was not in my patrol
20 car then.

21 Q Okay. Was he in a separate patrol car?

22 A Yes, sir.

23 Q And had you -- do y'all do any type of testing on
24 your own before sending it to any type of lab or
25 anything?

- 1 A We conduct a field test.
- 2 Q Had you done that yet before you left the scene?
- 3 A No, I did not.
- 4 Q Okay. Did you perform a field test?
- 5 A Yes.
- 6 Q Where did you perform that?
- 7 A At the rear parking lot of the detention center.
- 8 Q Okay. Did you -- where did you perform it?
- 9 A The rear of my patrol car.
- 10 Q Okay. And where was the defendant at that time?
- 11 A He was sitting in the backseat of my patrol car,
- 12 sir.
- 13 Q Still in handcuffs?
- 14 A Yes, sir.
- 15 Q Okay. On your way to the law enforcement center,
- 16 did you ask Mr. Breda any questions?
- 17 A I did not.
- 18 Q Talk to him at all, solicit any conversation?
- 19 A I didn't solicit any conversation, no, sir.
- 20 Q Okay. But did Mr. Breda make a statement?
- 21 A He did.
- 22 Q And what did he state?
- 23 A He said that it was not his crack.
- 24 Q Okay. And did say whose it was?
- 25 A He did.

1 Q Okay. After getting back to the law enforcement
2 center, did you -- and you performed the field test?

3 A Yes.

4 Q Is that correct?

5 A Yes.

6 Q Okay. While you were performing the field test did
7 Mr. Breda again try to get your attention?

8 A He did.

9 Q Okay. And did you approach him?

10 A Yes, sir.

11 Q And what did he say to you?

12 A He said that's soap, referring to the crack.

13 Q So first he said it's not his crack and then he says
14 now it's soap?

15 A Correct.

16 Q Is that correct? Okay. Did you continue with the
17 field test anyway?

18 A Yes, sir.

19 Q And explain to us about the field test, how does
20 that work?

21 A This particular field test it's a small kind of
22 plastic container that folds. It has three separate
23 glass vials in it with a chemical, or several chemicals,
24 I'm not sure. But you take the piece of substance, you
25 put it in there, you close it off and then you break one

1 vial, agitate it and do the same with second and the
2 third.

3 Q Okay. And if it's positive what color does it turn?

4 A It's a bluish-purplish color.

5 Q Okay. And what color did this field test turn on
6 the crack that you -- or on the substance you retrieved
7 from Mr. Breda's pocket?

8 A Bluish purplish color.

9 Q Okay. And at that time did you do anything specific
10 with that vial towards Mr. Breda?

11 A I just held it up to where he could see it.

12 Q And what did he say?

13 A He said, that's good crack.

14 Q Okay. Can you say it how he said it?

15 A I don't recall the exact manner which he said it.

16 Q He said, that's good crack?

17 A Yes, sir.

18 Q Okay. At that time what did you do?

19 A At that time we went into the detention facility.

20 Q What did you do with these drugs?

21 A Oh, I gave them to Officer Hunter.

22 Q Okay. Prior to giving them to Officer Hunter, had
23 they been in anyone else's possession other than yours?

24 A No, sir, they were any in patrol car during the
25 transport from where I arrested Mr. Breda to the

1 detention facility where we tested it for the crack.

2 Q So from bringing it out of his pocket to handing
3 them off to Officer Hunter were they ever in anyone
4 else's possession?

5 A No, sir, they weren't.

6 Q Okay. And were they ever in an area where somebody
7 else could have gotten to them?

8 A No, sir, they weren't.

9 Q Okay. While you're walking in with Mr. Breda, into
10 the law enforcement center, does he make another
11 statement to you?

12 A Yes, sir, while we're going into the detention
13 center he said that he was a white guy in a black
14 neighborhood, why we would he go in there and try to sell
15 crack.

16 Q Okay. Had you asked him anything about that?

17 A I had not, sir.

18 Q Had you mentioned to him that he was under arrest
19 for possession with intent to distribute crack?

20 A At that point, no, sir, I hadn't.

21 Q So he had no knowledge from you about selling or
22 anything, is that correct?

23 A That's correct.

24 Q Okay. Now, once you get into the law enforcement
25 center, what do you do then?

1 A Take him in there, have him arraigned before the
2 judge after a warrant is procured, and after he's
3 arraigned place him in the detention facility.

4 Q Okay. Now, since then have you met with Mr. ---

5 A I have not.

6 Q --- Breda? Okay. And did you bring those drugs
7 here today?

8 A I did.

9 Q Okay. Where did you retrieve those from?

10 A From our property and evidence at the law
11 enforcement center.

12 MR. DELOACH: Okay. Once second, Officer Lane. I
13 have no more questions. Please answer any questions Mr.
14 Chambers has.

15 CROSS-EXAMINATION

16 BY MR. CHAMBERS:

17 Q All right. The reason that Mr. Breda first came to
18 your attention you're telling us is because you saw him
19 walking in the roadway, is that correct?

20 A Yes, sir.

21 Q Is that right?

22 A That's when I first stopped him.

23 Q Okay. And you stopped him because he was in the
24 roadway as opposed to on the sidewalk?

25 A Walking with traffic as well instead of against

1 traffic.

2 Q Okay. And so when you went over there were you
3 concerned for his safety because he was walking with
4 traffic, is that the reason you stopped to talk to him?

5 A Generally speaking, yes, sir.

6 Q All right. So did -- when you stopped -- did you
7 ask him if he would get up on the sidewalk because it
8 would be safer for him to walk there? Did you do that?

9 A I don't recall if I asked him that at that time
10 either, sir.

11 Q Okay. So you -- I mean, that would have addressed
12 the concern, wouldn't it, if you had just said, why don't
13 you walk on the sidewalk because I'm worried you're going
14 to get hit by a car?

15 A Yes, sir, I understand what you're saying. I
16 stopped him in violation of the pedestrian roadway.

17 Q Okay. Did you give him a ticket for that?

18 A No, sir, I did not.

19 Q All right. So what you did though was you asked him
20 for where he lived, correct?

21 A Yes, sir.

22 Q And he gave you an address and then you went and
23 checked on that address and discovered that it was an
24 abandoned house, correct?

25 A Yes, sir.

1 Q And so then you went and you saw him basically in
2 that same area, a little bit later, right?

3 A Yes, sir.

4 Q And you stopped and started talking to him again, is
5 that right?

6 A Yes, sir.

7 Q And he told you the things that you told us, that he
8 said that he really meant 102 Mission and that his
9 brother lived there, right?

10 A I'm sorry, sir, could you repeat that.

11 Q He then told you it was 102 Mission and that his
12 brother lived there but his brother had moved, is that
13 right?

14 A Yes, sir, after he told me he lived at 52nd in
15 Woodside.

16 Q And apparently he did live at 52nd Woodside Street,
17 is that -- or 52nd Street in Woodside, isn't that
18 correct?

19 A Yes, sir.

20 Q Because you even wrote that down as the address
21 where he lived?

22 A Yes, sir.

23 Q So apparently when he told you he lived at 52nd
24 Street in Woodside that was true?

25 A Yes, sir.

1 Q And you never checked about 102 Mission or whether
2 his brother had ever lived there, or anything like that,
3 correct?

4 A That's right.

5 Q But your reason you said for arresting him was
6 because he gave you a false address?

7 A Yes, sir.

8 Q I mean, that's what you said. Let's make sure I'm
9 getting that right. That's what you said, right?

10 A Yes, sir.

11 Q So your sole purpose for arresting Jacob Breda was
12 because you say he gave you the wrong address?

13 A That's correct.

14 Q And that is a violation of the City ordinance?

15 A That's correct, sir.

16 Q And that was based on him telling you that he lived
17 at 101 Mission and you went out there and found that that
18 was a -- an abandoned house?

19 A Yes, sir.

20 Q All right. There was nothing about him that had
21 given you any suspicion that he was out there loitering
22 to sell drugs, was there?

23 A There was.

24 Q Well, you didn't say anything about that? You said
25 that he was walking in the road with the traffic?

1 A Yes, sir.

2 Q You didn't see him stopping cars, did you?

3 A No, sir, I didn't see him stopping cars.

4 Q You didn't see him involved in what looked like
5 transactions with other people, did you?

6 A No, sir, I didn't.

7 Q All right. So unless you weren't telling the truth
8 earlier then the whole reason you stopped him was because
9 he was walking in the street with traffic, right?

10 A That was the reason I stopped him, yes, sir.

11 Q Well, you hesitate. Was that the reason or was it
12 not the reason?

13 A That's the reason I stopped him, yes, sir.

14 Q All right. And the reason you arrested him was only
15 because you think he gave you a false address, right?

16 A When I stopped him the second time, yes, sir.

17 Q So apparently there was nothing at all that gave any
18 indication that he was involved in drug traffic out there
19 in that area, correct?

20 A No, sir, that's not correct.

21 Q Well, then where is any of that in your report that
22 there was some reason for you to believe he was involved
23 in drug trafficking?

24 A Would you like me to offer that information, sir?

25 Q Yeah, because you didn't testify to it earlier. And

1 you said the reason he was arrested was because he gave
2 you a false address?

3 A That's the reason he was arrested, yes, sir.

4 Q So what is it that makes you believe that he was
5 involved in drug activity?

6 A Yes, sir, in the incident report I noted that he
7 came from 7 Woodfin Avenue where I saw earlier.

8 Q Um-hm.

9 A Which is known for a lot of drug activity,
10 prostitution.

11 Q Okay.

12 A And that was before I stopped him.

13 Q You think he was involved in prostitution?

14 A No, sir, I believe he had possibly been involved in
15 drug activity.

16 Q And part of drug activity is -- if -- to go use
17 drugs in that area, correct?

18 A Part of it, yes, sir, and sales.

19 Q So again, what you're saying is because he was
20 present on 7 Woodfin Avenue that's your reason for
21 believing that he was selling dope, is that what you're
22 saying?

23 A Part of it, yes, sir.

24 Q So if I was present on 7 Woodfin Avenue, you would
25 think that I was selling dope?

1 A Possibility, yes, sir.

2 Q And if she was on 7 Woodfin Avenue you would think
3 she was selling dope?

4 A Depending on their actions, yes, sir.

5 Q So anybody that's on 7 Woodfin Avenue is probably
6 selling dope, to you?

7 A I wouldn't say probably, possibly, sir.

8 Q Oh, so it's possible that they're selling dope?

9 A Yes, sir.

10 Q If I was walking down Crescent Avenue, or McDaniel
11 Avenue, would you think that it was possible that I was
12 selling dope?

13 A Less possible, yes, sir.

14 Q It is possible?

15 A It's possible.

16 Q So it's possible you're selling dope anywhere, is
17 that right?

18 A I suppose you could say that, yes, sir.

19 Q Okay. The truth of the matter is, Officer, and you
20 could admit it, you arrested him for this allegedly false
21 statement because you wanted the opportunity to be able
22 to search him and see what he was up to, isn't it?

23 A No, sir.

24 Q Okay. And you found four rocks of crack cocaine in
25 his possession, that's right?

- 1 A Yes, sir.
- 2 Q You got them up there with you?
- 3 A Yes, sir, I do.
- 4 Q Let me see those.
- 5 A Here you go.
- 6 Q So it's those four rocks. You said that you're
- 7 familiar with crack because of the job you do, right?
- 8 A Yes, sir.
- 9 Q What does -- what's -- if you buy it on the street
- 10 what does one crack rock cost?
- 11 A Typically about \$20.
- 12 Q About 20 bucks. So that's probably about 80 bucks
- 13 worth of crack in that bag, right?
- 14 A Approximately, yes, sir.
- 15 Q And are you -- do you know when somebody has -- how
- 16 do people usually use crack? Do they smoke it?
- 17 A Typically, yes, sir.
- 18 Q And do they usually smoke it like one rock at a
- 19 time, would that be the usual dosage I guess?
- 20 A I suppose.
- 21 Q Well, do you know?
- 22 A I've never actually seen somebody smoke a crack
- 23 rock, sir.
- 24 Q Okay. But do you have any understanding of it based
- 25 on your vast experience as a law enforcement officer?

1 A Through my experience, yes.

2 Q All right. And so that would probably be then four
3 dosages of crack cocaine?

4 A Correct.

5 Q Is that fair to say?

6 A Yes, sir.

7 Q Now, you're familiar with the law on possession with
8 intent to distribute crack, aren't you?

9 A Yes, sir.

10 Q If somebody possesses more than a gram you can
11 charge them just based on the amount, correct?

12 A Yes, sir, based on the amount alone.

13 Q This amount was less than one gram, wasn't it?

14 A Yes, sir.

15 Q And you said that he told you at first that that
16 didn't belong to him, wasn't his?

17 A Yes.

18 Q It's not unusual for somebody to deny that something
19 that you find on them belongs to them, is it, based on
20 your experience?

21 A I've had it happen before, yes, sir.

22 Q Okay. And then he later told you well, it's soap.
23 Again, it's not unusual for somebody in that situation to
24 try and tell you it's something that it's not, is it?

25 A Correct.

1 Q All right. Did you do any field sobriety tests of
2 any kind on Mr. Breda to find out whether he was under
3 the influence?

4 A That's not the standard procedure for finding out if
5 somebody is under ---

6 Q Okay. So he could have been high and you just
7 wouldn't have known it, right?

8 A Yes, sir, that's a possibility.

9 Q All right. And you had -- on the way over when he
10 was talking to you at some point you had made the
11 statement to him, something along the lines of, you're --
12 what's a white boy like you doing in a drug infested
13 neighborhood, didn't you?

14 A I didn't make the statement. I didn't make that
15 statement.

16 Q You said something like that to him?

17 A No, he said that to me, sir.

18 Q And later on there was some discussion that -- about
19 he was going to be charged with and that you were going
20 to charge him with possession with intent distribute,
21 right?

22 A At which time, sir?

23 Q Later on when you got down to the station?

24 A Yes, sir.

25 Q Okay. So you did tell him that's what you were

1 going to charge him with?

2 A Once we were at detention.

3 Q All right. At the detention center?

4 A Yes, sir, once we were inside.

5 MR. CHAMBERS: Okay. Thank you very much.

6 MR. DELOACH: Reply.

7 THE COURT: Yes, sir.

8 REDIRECT-EXAMINATION

9 BY MR. DELOACH:

10 Q A few things, Officer Lane. First of all, he
11 stated -- or Mr. Chambers asked some questions about why
12 you stopped him. Okay. Now, he said he lived at 101
13 Mission Street initially, is that correct? You testified
14 to that?

15 A Yes, sir.

16 Q Okay. And you went to that area, it was abandoned,
17 wasn't it?

18 A Yes, sir, I didn't ---

19 Q You went back and found the defendant, didn't you?

20 A I did.

21 Q And at that time how many addresses did he give you?

22 A He gave me two others.

23 Q Okay. He gave -- which -- go ahead and name them.

24 A First he gave 52nd Woodside as a place he lived.

25 Excuse me. And then 102 Mission Street as a place that

1 his brother lived. That was actually what he meant to
2 begin with.

3 Q And you offered to take him to his brother's place
4 just to verify, didn't you?

5 A Yes, sir, I did.

6 Q And what did he say?

7 A He said, well, actually his brother had just moved.

8 Q Okay. And you didn't go check the third address,
9 did you?

10 A No, sir, that's why I offered him that opportunity.

11 Q Okay. And do you think you were under any
12 obligation to go check a third address?

13 A No, sir, I didn't.

14 Q Okay. And Mr. Chambers asked you about -- or strike
15 that. Did he have any smoking devices on him?

16 A No, he did not.

17 Q Did he appear high?

18 A No, sir, he did not.

19 Q Okay. Was he speaking fluently?

20 A He was.

21 Q Okay. Was he answering questions?

22 A Yes, he was.

23 Q Did you have any indication whatsoever that he was
24 on crack cocaine?

25 A No, sir.

1 Q Did he have anything on his person that would have
2 permitted him to smoke that crack cocaine?

3 A No, sir.

4 Q Now, I just want to bring up one thing about this
5 bag here. It doesn't look like four crack rocks in there
6 anymore, does it?

7 A No, sir, it doesn't.

8 Q Why? Why not?

9 A I'm not that totally familiar with the process when
10 they actually do a lab analysis, but I guess they take it
11 out of those bags and they get broken up.

12 Q Okay. In the process of testing?

13 A In the processing of testing it, yes, sir.

14 Q Okay. But when you sealed it, how many rocks were
15 in there?

16 A Four.

17 Q And were they packaged separately?

18 A They were.

19 Q Okay. Now, Mr. Chambers asked you about whether or
20 not if you were walking down McDaniel, whether or not it
21 would be possible that you were selling crack, is that
22 true?

23 A Yes, sir.

24 Q And would it be possible?

25 A It's possible, yes, sir.

1 Q And then you said it would not be as possible though
2 as when you were on Woodfin, right?

3 A That's correct.

4 Q And why is that?

5 A Because as long as I've been working over there in
6 that area there is a high frequency of drug use. I've
7 made several drug cases out of there, either associated
8 paraphernalia or drugs themselves. And not once can I
9 recall being on McDaniel of Crescent and doing the same
10 thing or seeing the same activity.

11 Q So basically what you're saying is when you go to
12 work every day you don't leave your common sense at the
13 door either, do you?

14 A No, sir, I don't.

15 Q Okay. Finally one last thing. He asked about when
16 you told him you were going to charge him with possession
17 with intent to distribute. Was that before or after he
18 told you that he -- he was a white boy in a black
19 neighborhood there to sell drugs?

20 A It was after.

21 Q It was after he told -- it was after he said that
22 that you told him you're going to charge him with selling
23 the drugs?

24 A Not immediately after, but yes, he had made that
25 statement.

1 Q Did you give him any indication he was going to be
2 charged with distribution prior to his making that
3 statement to you?

4 A No, sir, I did not.

5 MR. DELOACH: No more questions, Your Honor.

6 THE COURT: Recross?

7 MR. CHAMBERS: No recross, Your Honor.

8 THE COURT: All right, Officer. Thank you, sir.
9 Appreciate it. You can step down.

10 MR. DELOACH: Your Honor, at this time the State
11 calls Officer Hunter to the stand.

12 THE COURT: Okay. Officer, if you'll come up
13 please, sir.

14 THE CLERK: Officer, if you would place your left
15 hand on the bible and raise your right to be sworn in.

16 MICHAEL HUNTER

17 Having been first duly sworn, testified as follows:

18 THE CLERK: Thank you. You may be seated. Would
19 you please state your full name for the record?

20 THE WITNESS: Michael Hunter.

21 DIRECT EXAMINATION

22 BY MR. DELOACH:

23 Q Good afternoon, Officer Hunter. It's afternoon now.
24 Officer Hunter, do you recall the events of August 12th
25 of 2009?

1 A I do.

2 Q And you were in the courtroom earlier when Officer
3 Lane testified, were you not?

4 A I was.

5 Q Okay. Were you in fact with Officer Lane that
6 day?

7 A I was.

8 Q Okay. And did you have an occasion to meet the
9 defendant Jacob Breda on to that day?

10 A I did.

11 Q Okay. And did he in fact get arrested by Officer
12 Lane for possession with intent to distribute crack
13 cocaine?

14 A He did.

15 Q Okay. And while Officer Lane was cleaning out
16 his patrol car as he testified to earlier, where were
17 you?

18 A I was standing by, next to the vehicle with Mr.
19 Breda.

20 Q Okay. And what was Mr. Breda wearing? I mean not
21 clothe-wise, was he in handcuffs?

22 A He was.

23 Q Okay. Had he been arrested and read his Miranda
24 rights?

25 A He had been.

1 Q Okay. Did you ask him any questions?

2 A I did not.

3 Q How many seconds had you been standing there with
4 him, how many minutes, hours?

5 A Just a few seconds.

6 Q Just a few seconds. And what did he say to you?

7 A He stated he was a white man in a black neighborhood
8 and questioned why he would be selling crack in that
9 neighborhood.

10 Q Okay. Did you in any way indicate to him that he
11 was going to be arrested for selling crack?

12 A I did not.

13 Q Distributing crack?

14 A No.

15 Q Any way, shape or form?

16 A Not at all.

17 Q Okay. And did you ask him any questions?

18 A I did not.

19 Q Just volunteered that statement?

20 A He did.

21 Q Okay. Briefly you heard Officer Lane testify that
22 he handed you the drugs at the law enforcement center?

23 A He did.

24 Q Okay. What did you do with those drugs?

25 A I immediately took them to property and evidence

1 after sealing them in a plastic bag, did admit them into
2 property and evidence.

3 Q Okay. And how do you seal the bag?

4 A With a heat sealer.

5 Q Okay. And do you initial them?

6 A I do. I sign the inside of bag, place the substance
7 into the bag and then heat seal it.

8 Q Okay. I'm going to show you what's been introduced
9 as State's Exhibit 2. And tell me if you can tell us
10 where the initials are?

11 A The initials are in the inside of the plastic bag on
12 this white area here.

13 Q Okay. And did anyone come into contact with those
14 drugs from the time that Officer Lane gave them to you
15 and that you sealed them in that bag?

16 A They did not.

17 Q And after sealing them in that bag where did you put
18 them?

19 A In property and evidence.

20 Q In a drop box, did you hand them to somebody?

21 A In a drop box.

22 Q Okay. After that did you have any dealings with
23 these drugs or Mr. Breda?

24 A I did not.

25 MR. DELOACH: Okay. No more questions, Your Honor.

CROSS-EXAMINATION

1

2

BY MR. CHAMBERS:

3

Q Officer Hunter, were you and Officer Lane in
separate cars?

4

5

A We were.

6

Q And Officer Lane is the one who transported Mr.
Breda down to the law enforcement center, isn't that
right?

7

8

A That is correct.

9

10

Q And you said you that first observed Mr. Breda
walking on Burns Street, is that right?

11

12

A That's correct -- no, Addie Court.

13

Q Okay.

14

A Coming from Burns Street.

15

Q Okay. And when you -- well, you first saw him, ask
you -- and you said that you observed him walking in the
roadway and that Officer Lane had gotten out with him at
that point?

16

17

18

A Correct.

19

Q Is that right? And I believe that he told you that
he had just gotten out of prison and he was trying to
straighten up his life, isn't that correct?

20

21

22

A That is true.

23

24

Q And you talked to him for a while and that's when he
gave you the address at 101 Mission Street, and I think

25

1 you said you shook hands with him and wished him the best
2 of luck?

3 A I did.

4 Q And then the next time you saw him, he was standing
5 at 6 Addie Court and he was talking to several people who
6 were sitting around in like a seating area?

7 A There is gazebo in the front yard that is -- that a
8 lot of people do hang out at.

9 Q So basically just people hanging out talking?

10 A That particular area is known for drug sales.

11 Q But what you said was they were talking to each
12 other, right?

13 A Correct.

14 Q You just -- I believe what you said, and you correct
15 me if I'm wrong on this, is that you saw the subject
16 standing speaking with several subjects in a seating area
17 in front of the house?

18 A That is true.

19 MR. CHAMBERS: Okay. Thank you.

20 MR. DELOACH: Nothing on redirect, Your Honor.

21 THE COURT: All right. Thank you, Officer.

22 Appreciate you. You may step down, sir.

23 MR. DELOACH: Your Honor, may this witness be
24 excused? He has to go out of town.

25 MR. CHAMBERS: No objection.

1 THE COURT: All right. Yes, sir.

2 MR. DELOACH: Your Honor, at this time -- Your
3 Honor, at this the State calls James Armstrong to the
4 stand.

5 THE COURT: Okay.

6 THE CLERK: Mr. Armstrong, if you'd come forward.
7 Place your left hand on the bible and raise your right
8 hand to be sworn in.

9 JAMES ARMSTRONG

10 Having been first duly sworn, testified as follows:

11 THE CLERK: Thank you. You may be seated. Please
12 state your full name for the record?

13 THE WITNESS: James William Armstrong.

14 THE CLERK: Thank you.

15 DIRECT EXAMINATION

16 BY MR. DELOACH:

17 Q Good afternoon, Officer Armstrong, how you doing?

18 A Good, how are you?

19 Q Officer Armstrong, what's your rank?

20 A I'm employed as a criminalist in the crime lab.

21 Q Okay. And how long have you been working there?

22 A A little over 14 years.

23 Q Okay. And what exactly do you do at the crime lab?

24 A I have a dual function as a forensic chemist where
25 we analyze suspected control substances and report our

1 findings. I'm also a firearm's examiner.

2 Q Okay. Where did you receive your training to do
3 that?

4 A Started out, have a Bachelor's Degree in Chemistry
5 from Erskine College. I've attended the instrumental
6 analysis schools concerning all the instruments I use in
7 my analysis, trained in the area of drug identification
8 approximately one year under the direction of our lab
9 supervisor. I have attended the forensic chemist
10 seminars sponsored by the Drug Enforcement Administration
11 in Washington, D. C. I have testified as an expert in
12 the federal, state and local courts in the are of the
13 drug identification no fewer than 128 times.

14 MR. DELOACH: Your Honor, at this time we would
15 offer Mr. Armstrong as an expert in drug identification.

16 MR. CHAMBERS: No objection, Your Honor. And as we
17 said earlier I mean did stipulate that the substance that
18 was taken and tested was in fact crack cocaine.

19 THE COURT: Okay. Good enough. All right. He is
20 so submitted as an expert. Ladies and gentlemen, an
21 expert witness is someone who by education, experience or
22 special knowledge is allowed to testify as to their
23 opinions on evidence, whereas regular lay witnesses may
24 not be able to. Now, just because someone is qualified
25 as an expert witness and he is accepted by this Court as

1 an expert witness does not mean you give special
2 deference and consideration to that testimony. You can
3 consider that testimony just like you would any other
4 person's testimony, and you determine whether it's
5 credible and you determine what weight to put on that
6 testimony. You may proceed.

7 MR. DELOACH: Thank you, Your Honor.

8 BY MR. DELOACH:

9 Q Mr. Armstrong, I'm going to show you what's been
10 offered as State's Exhibit 1 for identification. Can you
11 tell me what that is?

12 A Yes, this is a copy of my lab analysis report on the
13 City case number 2009-66383.

14 MR. DELOACH: Your Honor, at this time we would
15 offer this report into evidence.

16 MR. CHAMBERS: No objection, Your Honor.

17 THE COURT: All right. Without objection the same
18 is offered into evidence as State's Exhibit Number 1.

19 (State's Exhibit Number 1 was filed.)

20 BY MR. DELOACH:

21 Q Mr. Armstrong, what is the name of the defendant on
22 that case?

23 A Jacob Mark Breda.

24 Q Okay. Have you ever met Mr. Breda?

25 A No, sir.

1 Q Okay. Did you in fact test those drugs?

2 A Yes, sir, I did.

3 Q I'm going to show you what's been introduced as
4 State's Exhibit Number 2. Is this in fact what you
5 tested?

6 A Yes, sir, it is.

7 Q Okay. And what was the result of your test?

8 A I found item CH1 to be a bag containing four bags of
9 rock substance. Found that those bags contained cocaine
10 base with a weight of 0.31 grams.

11 Q And what is cocaine base?

12 A The -- another term is crack cocaine..

13 MR. ARMSTRONG: Okay. No more questions, Your
14 Honor.

15 THE COURT: Any questions, Mr. Chambers?

16 CROSS-EXAMINATION

17 BY MR. CHAMBERS:

18 Q The total weight is 0.31 grams?

19 A That's correct, sir.

20 Q Okay. And what is that as a fraction of a gram?

21 A This is a little less than a third of a gram.

22 MR. CHAMBERS: Thank you.

23 MR. DELOACH: No, nothing on redirect.

24 THE COURT: All right. Thank you for being here,
25 sir. I appreciate it.

1 case until such time as I tell you to. You haven't heard
2 all of the testimony yet. Don't discuss it with one
3 another. Don't discuss it with anyone else outside of
4 this courtroom. Don't call friends, spouses or relatives
5 and start discussing, this is the case I'm in and this is
6 what I heard, this is what's happening. It's not
7 appropriate for you to do that yet. The only thing that
8 is appropriate for you to consider is what's been put on
9 the stand today.

10 I would also tell you don't go to the internet and
11 look and try to Google something and find out some
12 additional information about this case. That wouldn't be
13 appropriate. As I indicated the only thing that's for
14 your consideration is what you see today. So please
15 don't begin -- don't begin deliberating or discussing the
16 case. It won't be appropriate until you've heard all of
17 the case to include the charge on the law.

18 So y'all have a great lunch and I'll see you back
19 here at a quarter to.

20 (The jury exited the courtroom at 12:35 p.m.)

21 THE COURT: All right, gentlemen, motions?

22 MR. CHAMBERS: Your Honor, I'd make a motion for a
23 directed verdict as to the element of the offense that is
24 the with the intent to distribute. Considering the
25 evidence in the light most favorable to the State they

1 have not presented sufficient evidence under that test to
2 demonstrate an intent to distribute. The only evidence
3 offered on that that I think even approaches it is this
4 statement that my client was alleged to have made that
5 he -- a white man in a black neighborhood why would I be
6 selling crack, which even that is not any sort of an
7 admission, it is a question to the police officer. Other
8 than that I mean, the quantity in this case is a third of
9 a gram. It is substantially below the inference level
10 that is contained with the statute. And frankly beyond
11 that statement there is no other evidence.

12 THE COURT: Yes, sir.

13 MR. DELOACH: Your Honor, the State introduced those
14 statements as well as the fact each -- that there were
15 four individual rocks wrapped separate down there, that
16 this defendant had no smoking pipes, was not intoxicated,
17 it's a high crime area, in addition to the statements.
18 Also, the inference weight is just that. It allows a
19 jury to have an inference. But the State does not
20 believe it should be used to prohibit the State from
21 going forward with distribution on less than a gram.
22 This is -- the statute calls for possession with intent
23 to distribute crack, not for possession with intent to
24 distribute one gram of crack.

25 THE COURT: I understand.

1 MR. CHAMBERS: And just briefly in response, Your
2 Honor. The fact that it was somehow individually wrapped
3 in a baggie, I mean obviously he could have bought it
4 that way. Doesn't mean that he made it that way. It
5 could have been the way it was when he bought it and then
6 possessed it. So again, that's our motion and that's the
7 basis for it.

8 THE COURT: Okay. All right, good enough. All
9 right. Viewing the motion in the light most favorable to
10 the non-moving party, I believe that there was sufficient
11 evidence to overcome that threshold burden for a directed
12 verdict. I understand the defense's argument which is
13 well reasoned and well posed, but I think those go to a
14 jury argument as opposed to an argument. They go to the
15 weight of the evidence as opposed to the existence of the
16 evidence. Therefore I'm respectfully denying the same.
17 Okay. Do you intend to put your client on the stand?

18 MR. CHAMBERS: I don't know, Your Honor. I probably
19 won't know that until we get back from our lunch period.

20 THE COURT: Good enough.

21 MR. CHAMBERS: I'm going to talk to him briefly
22 about that.

23 THE COURT: Sure, that's fine. And do you -- do
24 either of you have any requests for charge at this point?

25 MR. DELOACH: Your Honor, I think the State would --

1 statement.

2 I'm not going to charge anything with respect to
3 prior record of the defendant because there was no
4 testimony from the defendant. Then with respect to
5 possession, I'm going to charge a simple definition of
6 possession, and I'm not going to go into the further
7 explanation regarding actual and constructive possession,
8 because I don't think that was ever at issue in this
9 case.

10 MR. DELOACH: No, sir.

11 THE COURT: So it will simplify that charge
12 fairly -- fairly well. Any exception to those decisions?

13 MR. DELOACH: Nothing from the State, Your Honor.

14 MR. CHAMBERS: No, Your Honor.

15 THE COURT: Okay. Good enough. All right. Well,
16 if you're ready for the jurors we'll bring them in. If
17 y'all want to approach I'll let you take a look at the --
18 at this verdict form real quick.

19 MR. DELOACH: That's fine.

20 THE COURT: All right. Thank you.

21 (The jury entered the courtroom at 2:04 p.m.)

22 THE COURT: All right, ladies and gentlemen. The
23 State has rested and the defense has elected not to put
24 up a -- any evidence in this case, so we're going to move
25 straight to our arguments and then a charge on the law.

1 I want to tell you first before we get started on
2 that, the defendant has elected not to testify. And what
3 you need to know is that it is his Constitutional right
4 not to testify. Under the Constitution every single one
5 of us has a right to remain silent. And simply
6 exercising our Constitutional rights cannot be held
7 against us. Therefore when you begin your deliberations,
8 when I tell you to, you can't hold that against him. As
9 a matter of fact, you can't consider it in any way, shape
10 or form. And you can't discuss it in any way, shape or
11 form. Because, as I indicated, exercising your
12 Constitutional rights cannot be held against you.

13 So at this point we're going to move to closing
14 arguments. The State will argue and then the defense
15 will close. As I have told you earlier, these are simply
16 arguments, not to be considered evidence or facts in your
17 deliberations. They're simply arguments in advocacy of
18 their respective client's position. Mr. DeLoach.

19 MR. DELOACH: Thank you, Your Honor. Please the
20 Court?

21 THE COURT: Yes, sir.

22 MR. DELOACH: Good afternoon, ladies and gentlemen.
23 I get to address y'all one more time. I appreciate
24 y'all's attention throughout this entire trial. I want
25 to start off by saying that, as the judge just stated,

1 the evidence in this case comes from this witness stand.
2 Whatever me and Mr. Chambers say is not evidence, whether
3 it be in closings or in opening statements, that's not
4 evidence. The evidence that y'all heard in this case
5 came from right there.

6 First of all, I'd like to talk about reasonable
7 doubt. The State has the burden of reasonable doubt in
8 this case and we welcome that burden. A reasonable
9 doubt, ladies and gentlemen, is not proof beyond any
10 doubt as I believe Mr. Chambers said in his opening.
11 That's true. It is not. It is -- there are very few
12 things in life that we know with absolute certainty,
13 ladies and gentlemen. And the law does not require that
14 we prove someone guilty beyond any possible doubt. The
15 important fact is whether you are firmly convinced. If
16 you are firmly convinced that he is guilty of it then you
17 must find him guilty. And if you are not firmly
18 convinced you have to give the benefit of the doubt to
19 the defendant in that case. The judge will charge on the
20 law. I'm not going to go too far into it, but I did want
21 to address reasonable doubt with y'all.

22 There's going to be a couple stipulations in this
23 case, ladies and gentlemen. The judge is going to read
24 them off to you. One is the chain of custody. The
25 State -- the defense has stipulated that those drugs that

1 were found in Mr. Breda's pockets were the same drugs
2 that were tested at the law enforcement agency and are
3 the same drugs that you'll have in the back room in
4 evidence. They have also -- they have also stipulated
5 that that was in fact .31 grams of crack cocaine that was
6 in the front pocket. You don't have to consider that any
7 more. That's a stipulation. It's been given to you.
8 The State went ahead and put Mr. Armstrong on the stand
9 just to be double sure that y'all knew we showed you
10 exactly where those drugs went, from the front pocket, to
11 Officer Lane, to Officer Hunter, to James Armstrong for
12 testing. Those were the drugs that were in his pocket.

13 So what you have come down to is you see that he's
14 guilty of possession of crack cocaine. The decision
15 y'all are going to have to make is whether or not he's
16 guilty of possession with intent to distribute crack
17 cocaine. That's where you're going to have your
18 discussion in the jury room. I want to point a few
19 things out to you.

20 First and foremost, the weight of these drugs. Mr.
21 Chambers undoubtedly is going to make a lot of reference
22 to the weight in his closing argument, that it wasn't a
23 lot. But, ladies and gentlemen, you don't have to have a
24 lot. There's is no requirement that I go down -- that I
25 go and sell two or three grams of crack. That's not a

1 requirement. If I'm a small time dealer and I can't
2 afford two or three grams, and I can afford .31 grams,
3 and I'm going to sell it at \$20 dollars a rock, I'm still
4 guilty of possession with intent to distribute crack.
5 The weight as far as that's concerned has nothing to do
6 with it. If I had .01 grams and I intended to go sell it
7 and y'all found that out, then I would be guilty of
8 possession with intent to distribute to crack cocaine.
9 So the weight is not significant if you find that he
10 intended to sell these crack rocks.

11 So how did you find that out? How do you make the
12 decision that the State has proved beyond any reasonable
13 doubt that he possessed those drugs and he possessed them
14 with intent to distribute them? Well, let's look at what
15 you've got.

16 First and foremost you've got a bag of crack. This
17 is the bag here. Now, it's crushed up now from the
18 testing process, but Officer Lane testified and it's
19 mangled during testing. But you can see a bag there and
20 little pieces of cellophane in there that originally
21 wrapped around, as Officer Lane testified, four different
22 crack rocks. Individually packaged. Individually
23 wrapped.

24 Now, I want you to ask yourselves, if you're going
25 on a trip, do you pack four small bags or one big bag.

1 When you're carrying four little baggies of a substance
2 what do you intend to do with that? You intend to give
3 it to people, one, two, three, four, 20 bucks a rock.
4 Right there. So the weight doesn't matter. Look at how
5 this stuff is packaged. Also, did he have any smoking
6 devices on him? Was he high? No. Did he have a crack
7 pipe in his pocket? No. All he had was a bag with four
8 individual rocks individually packaged inside of there.

9 What else do you have? You've got his own
10 statement. No officer ever told him that he was being
11 charged with possession with intent to distribute, or
12 selling crack. They told you that on the witness stand.
13 Well, what did he say? Why would a white boy be down
14 here in a block neighborhood selling crack? Selling
15 crack. Not using crack. Not buying crack. Selling
16 crack. His own statement. Before anybody told him. It
17 would be different if the officer had said, we're going
18 to charge you with selling crack and then he said it.
19 That's not what happened. The officer didn't say
20 anything to him. He just volunteered that information.
21 He used the word selling. He was down there selling
22 crack, four crack rocks for \$20 a rock.

23 Now, some stuff that's come up in this case
24 regarding the stop, regarding whether he was on the side
25 of the road and would you be on McDaniel Street, asking

1 Officer Lane is it possible that anybody would sell crack
2 if you're on McDaniels Street as opposed to this high
3 crime area. Ladies and gentlemen, that's smoke and
4 mirrors. Don't let the defense distract you from the
5 issue at hand. That is, he was in a high crime area,
6 walking in the road. He was stopped by this officer and
7 questioned and in his front pocket are four individually
8 packaged rocks, and he makes the statement that he is --
9 why would he be down there selling crack. This man knew
10 what he had and he was down there selling it.

11 Now, this has been a short case. And I'm not going
12 to stand up and talk, and talk, and talk just for the
13 fact of talking. But I want y'all to remember what I
14 said regarding these drugs, regarding the way they were
15 packaged. And I hope, I'm confident you're going to find
16 this man guilty not of just possession of crack but of
17 possession with intent to distribute crack cocaine.
18 Thank you.

19 MR. CHAMBERS: May it please the Court, Your Honor?

20 THE COURT: Yes, sir.

21 MR. CHAMBERS: Solicitor. Ladies and gentlemen,
22 it's almost time for you to go back and do your job. I'm
23 going to talk to you for a few minutes and then His Honor
24 is going to charge you on the law, and then you get to
25 consider the evidence in this case. And as I told you at

1 the outset, and I want to be real clear about this, Jacob
2 is guilty of possession. Not something he's proud of.
3 But he was over in that neighborhood and he had crack in
4 his possession. He's a crack user. That was why he had
5 it. But this is a classic case of over reaching by law
6 enforcement. And they've got him for possession. And
7 he's not in any way asking to go unpunished here. He's
8 guilty of possession. But rather than just charge him
9 for possession they over reached. They go for a charge
10 that is simply not supported by the evidence.

11 Now, I wish honestly that I had a dollar for every
12 time that I have heard a prosecutor stand up and talk and
13 tell a jury that what I was about to tell them was smoke
14 and mirrors, because I can quit practicing law. But
15 that's what they say when they're worried about the lack
16 of evidence in the case. I'm not up here to offer smoke
17 and mirrors. I'm up here to ask you to simply take a
18 look at what was presented to you and more importantly
19 the lack of what you heard about in this case. All
20 right.

21 Now, there was some discussion when I talked to
22 Officer Lane about why he made the stop. And that wasn't
23 in any way to try and mislead or this smoke and mirrors
24 thing they're talking about. What I was trying to get
25 into with him was the real reason he made the stop.

1 Because I think we all know enough, we're not out there
2 riding around in a car, we're not out there in the
3 streets doing that, but we all know enough to know that
4 he wasn't really concerned about the fact that he was in
5 the street. He didn't recognize this guy. And that's
6 what he finally told you. He said that area over there
7 is ripe with crime. There is a lot going on over there.
8 There's people dealing drugs. There's prostitution. And
9 ladies and gentlemen, they drive through that
10 neighborhood all the time. And that's not a bad thing.
11 I'm sure that a lot of the folks that live in that
12 neighborhood appreciate that. Okay. But that's where
13 they spend most of their time.

14 And why did he stop and start talking to him?
15 Because he didn't recognize him. Because he had never
16 seen him there before. Spends a lot of time in that
17 neighborhood, never seen him there before. Wanted to
18 know what he was up to. Well, that's your first
19 indication that they've got a problem trying to label
20 this man a drug dealer. Because if he was a drug dealer
21 they sure would have recognized him. They would have
22 seen him over there before. They might even know who he
23 was. But he was out of place. That's why they stopped
24 and started talking to him. All right.

25 So now they go and they say, well, he didn't live at

1 that address, and then they see him again. Now they've
2 got a reason that they can arrest him, take him into
3 custody. And you heard -- and maybe this is a little
4 thing, but on three different occasions I heard them say,
5 he gave me three false addresses. Well, that's not true.
6 He told them 101. I can't remember the name of the
7 street now. And that ended up being an abandoned house.
8 Then he gave them his real address. The second time they
9 talked to him. And the police officer indicated that.
10 It was even on his report is what his address was, 52nd
11 Street, Woodside. That's where he lived. And then he
12 said, well, it was actually 102. My brother lived there
13 but he moved. But you know, none of that matters. I
14 mean, what I was really driving at was the fact why they
15 stopped him, why they talked to him and did they then use
16 that as a reason to arrest him and search him. And then
17 they found the crack.

18 Now, the officer was reluctant to answer those
19 questions. You could tell he really didn't want to get
20 into it. And when I finally just come out and said,
21 well, what are these, because he said I believed that he
22 was involved in drug activity. What were those reasons?
23 Reason? Because he was on Woodfin. That's his reason.
24 It was 8:35. It's daylight, because this is August. And
25 his reason to believe that he's involved in drug activity

1 is he's on Woodfin. I asked him, would you think I was
2 involved in drug activity? Yes. Would you think she was
3 involved in drug activity? Possibly. Because they're on
4 Woodfin. They wanted to know what he was up to. And
5 they searched him and they found crack. And why did they
6 find crack? Because he is a crack user. All right.

7 And I do want to talk to you about the amount,
8 because again, this is important. You heard the
9 testimony, it's an absolute fact that the law says if
10 they had taken more than a gram off of him there is an
11 inference from which that and that alone you as a jury
12 can find that he possessed it with the intent to
13 distribute. And while the solicitor stands up here today
14 and tells you that doesn't matter, amount has got nothing
15 to do with it, I can guarantee you, because I've heard it
16 plenty of times, if he had had more than a gram he would
17 have been standing right here in front of you and he
18 would have been saying, you don't have to consider
19 anything else, he had more than a gram, he's guilty of
20 possession with intent to distribute. Not only did he
21 not have a gram, folks, he had less than a third of a
22 gram. Less than a third of a gram. That is not the way
23 that somebody that's going to supposedly I guess make
24 their living selling crack is going to head out of the
25 house with. All right. It's just not.

1 Now, the other thing you want to consider is this.
2 He's supposedly selling \$20 a rock. Did they find any
3 money on him? No. You would have heard about it. No.
4 They searched him. They took everything he had. No. No
5 money. No money. There is absolutely no indication that
6 this man was out there selling crack to anybody. And
7 since we know he was -- that he didn't belong there, if
8 he really had decided to cruise in there with his less
9 than a third of a gram of crack and start selling pope
10 over there, and we know there's lots of other people that
11 sell dope, do you really think they would have taken very
12 kindly to that? I don't think the guys in the
13 neighborhood that actually do sell crack would have taken
14 to that very kindly. On the other hand if he came over
15 there to buy crack, they probably patted him on the back.
16 Said, come back next time you need some.

17 The other thing is this, folks, I mean, they had
18 opportunity to watch him and see what he was up to. At
19 no point did they ever see him like going up to anybody's
20 car in the street, going up and looking like he was
21 engaged in any kind of transaction. There was a time on
22 Addie Street where he was sitting there talking to some
23 other guys that were just sitting out there and he was
24 talking to them. But they didn't see anything that
25 looked out of the ordinary there. I would think that if

1 that had been the case, since they were kind enough to
2 stop him, that they would have walked up to those other
3 people to check on what they were up to. So clearly
4 there was nothing going on with the other people standing
5 around talking. He wasn't doing anything that would have
6 indicated to anybody that he was selling crack. Nothing.
7 Not one thing.

8 So then it comes down to these statements that he
9 made. One thing that I want y'all to keep in mind,
10 because I told you at the beginning of the trial to
11 remember this, the solicitor stood up here in his opening
12 statement and it struck me because, you know, we do get
13 to look at some of the evidence and stuff before we
14 start, because it just didn't fit with what I knew about
15 the case, so I wrote it down, he said that my client,
16 that Jacob made a statement that he was in that
17 neighborhood to sell crack, in that neighborhood to sell
18 crack. And I said I want y'all to remember that and I
19 want you to see if there's any -- actually any testimony
20 to that. Guess what? No testimony to that. Because
21 that isn't what he said.

22 Supposedly he made the statement, first of all, that
23 the crack wasn't mine. It's kind of like anybody getting
24 caught with something they're not supposed to have, they
25 try to deny it. Crack belonged to somebody else. And

1 then when they were testing it in front of him it was --
2 that's soap. And then after he showed him the vials,
3 they said, here you go, he said, that's good crack. None
4 of which would indicate anybody selling. Which raises to
5 the statement, white boy in a black neighborhood why
6 would I be over there selling crack. And they want you
7 to believe that that just came up out of nowhere, that he
8 just volunteered that.

9 Well, first of all, using your common sense, that
10 doesn't make any sense, because that's basically clearly
11 something that's in response to something that somebody
12 else said to you. And they say, well, you know, we
13 hadn't had any discussion about what we were going to
14 charge him with, and blah, blah, blah. Folks, if you
15 really believe that all that happened was this officer
16 pulled up there and started talking to this man just in
17 that calm way that he was talking to us from the stand
18 today, and inquired about his safety, because he was in
19 the road and asked for his address and on and on and on,
20 that belies common sense. That doesn't make any sense.
21 You know good and well that there was some discussion
22 with him about what he was doing over there, about
23 whether he was selling over there, to which he finally
24 said so, hey, white boy in a black neighborhood, do you
25 really think I'd be over there selling crack, not to

1 mention there's a lot of truth in what he said. Because
2 I go back to the fact that this guy, who they had never
3 seen before, is a drug dealer, and he just decided to
4 walk into somebody else's neighborhood and start selling
5 crack, he would be asking for trouble. And we all know
6 that's true, whether we had any experience with it or
7 not.

8 You know, I could stand up here and go on and on
9 with this, but there's no reason to. Folks, y'all were
10 listening to this case. You've heard the evidence and
11 you know how lacking this case is. Find him guilty of
12 possession. That's what this case has been all along.
13 It's a possession case. But don't let them over reach.
14 Don't let them label him a drug dealer. Don't let him be
15 punished for something that he didn't do. Let him be
16 punished for what he actually did.

17 Now, I always hate to sit down because you know I'm
18 Jacob's advocate in court here today and I take that role
19 seriously. And I always feel like there's one more thing
20 I could have said, one more thing I could have done, but
21 the one that gives me solace, the one that gives me
22 confidence is I know that you folks listen. And I know
23 that you folks take your oath seriously. And I know that
24 you folks are going to hold them to the burden of proof
25 that they have and you're not going to let them over

1 reach in this case. Find him guilty of possession,
2 guilty of possession. Thank you.

3 THE COURT: All right, ladies and gentlemen. We've
4 reached the point where I'm going to give you the charge
5 on the law. Now, some of the things I'm going to tell
6 you I may restate a little bit. For that I apologize.
7 If I restate something that I said before then it means
8 that it's important and it's something you should
9 consider.

10 And also I want to tell you that I'm going to read a
11 little bit of it. I'm not going to read much. I don't
12 like to read because it suggests to you one of two
13 things, either that I'm not smart enough to know what the
14 law is, which some people would say is true, or that I'm
15 too lazy to learn it. Other people may say that's true
16 as well. But really the reason is because I'm going to
17 give you a precise definition, I want to make sure it's
18 precise and I don't want to misstate the law. And I
19 don't want to misspeak just because I'm trying to do it
20 off the top of my head. So some of this you'll see I'll
21 start reading a little bit but I'll try to do that as
22 little as possible.

23 I want to restate to you, obviously, the charges are
24 just allegations, not evidence, not fact to be considered
25 by you. The only evidence to be considered by evidence

1 it says, we, the jury, by unanimous agreement, find
2 defendant either, not guilty, two, guilty of possession
3 with intent to distribute crack cocaine, or guilty of
4 possession of crack cocaine. You will mark one of the
5 three. One of the three. And then Ms. Smith, you will
6 sign as foreperson of the jury.

7 Note, it says unanimous. Your verdict must be
8 unanimous. It can't be 10 to two, 11 to one. It can't
9 be eight to four. It's got to be unanimous.

10 Now, I'm about to send you back to your jury room
11 for your deliberations. And -- but I don't want you to
12 start deliberating yet. What I'm going to do is I'm
13 going to ask the attorneys if there's anything that I
14 have either left out, or if there's any proposition of
15 law that I misstated. And if I have, which happens from
16 time to time, then I'll bring you back in and I'll
17 correct myself or I'll give you an additional charge that
18 will make up for what I may have missed. So please
19 return to your jury room but do not begin your
20 deliberations yet. Thank you..

21 (The jury exited the courtroom at 2:38 p.m.)

22 THE COURT: All right. Exceptions to the charge?

23 MR. DELOACH: Nothing from the State.

24 MR. CHAMBERS: No, Your Honor.

25 THE COURT: Okay. All right. Well, if y'all will

1 do an inventory of the evidence to go back, and Mr.
2 Thompson if you'll give them this verdict form, and if
3 you'll ask the two alternates to come out and see me,
4 please.

5 (The jury began their deliberations at 2:40 p.m.)

6 THE COURT: All right. Bring the jury in please.

7 (The jury entered the courtroom at 3:41 p.m.)

8 THE COURT: All right, ladies and gentlemen. I got
9 your message and I will go through each of your questions
10 individually.

11 The first one is, intent, need this again. Okay.
12 The general definition of intent, I didn't charge you
13 that specifically. The Websters definition which is, he
14 meant to do it. That's essentially what intent means,
15 that he meant to do it. Now, with respect to my earlier
16 charge what I said about intent is that intent may be
17 shown by acts and conduct of the defendant and other
18 circumstances from which you may naturally and reasonably
19 infer intent. In determining whether the defendant had
20 the intent to distribute crack cocaine, you may consider
21 the circumstance surrounding the defendant's alleged
22 possession. You may consider the amount of the substance
23 alleged to have been possessed, the manner in which it
24 was allegedly possessed, the place where it was allegedly
25 possessed, and other factors which you consider to be

1 important. You must find that the defendant did not
2 intend -- or did not intend to have the crack cocaine
3 solely for his own use. Now, that's intent.

4 Your other two questions, his lawyer said he was now
5 drug free and we want clarification, when, how long has
6 he been drug free. We don't remember. And then two, can
7 we get the transcript of what the lawyer of the defendant
8 accused said. Okay. The answer to both of those
9 questions is I can't give you anything additional. Okay.
10 The evidence that is presented is all of the evidence.
11 And I can't supplement that by giving you additional
12 evidence or by calling witnesses back to the stand and
13 saying, can you restate what you said, or having the
14 attorney restate for you something that he may have said.
15 I can't do that because we'd end up trying the case over
16 and over. And also I would essentially be cherry picking
17 what should be restated and resaid. What I tell -- what
18 I must tell you is that you have to rely on your
19 recollection of the testimony that was presented. This
20 has been a fairly short trial and I trust that you can
21 remember what was said. Okay. So a lot of times I have
22 juries ask me we want more, we want more, and I tell
23 them, I can't give you anymore. I just I can't do it.
24 So you have to decide based on what you've received.
25 Okay. All right. Thank you.

1 (The jury exited the courtroom at 3:45 p.m.)

2 THE COURT: All right, gentlemen. I'm going to make
3 a copy -- or make this question a Court's Exhibit. That
4 will be Court's Exhibit Number 1. Any exceptions to the
5 charge?

6 MR. DELOACH: Nothing from the State, Your Honor.

7 MR. CHAMBERS: No, Your Honor.

8 THE COURT: Okay. Good enough.

9 (Court's Exhibit Number 1 was marked and filed.)

10 (The jury resumed their deliberations.)

11 THE COURT: Gentlemen, I have been informed we have
12 a verdict. Are we ready for the verdict?

13 MR. DELOACH: The State is ready, Your Honor.

14 MR. CHAMBERS: Yes, Your Honor.

15 THE COURT: All right. Bring them in.

16 (The jury entered the courtroom at 5:24 p.m.)

17 THE COURT: All right. Ms. Smith, has the jury
18 reached a unanimous verdict?

19 MS. SMITH: We have, Your Honor.

20 THE COURT: Okay. If you would, please, pass your
21 verdict form. She's multitasking. If you'd give it to
22 the clerk of court so that she can publish the same.
23 Appreciate it.

24 THE CLERK: Your Honor, case number 2009-GS-23-9251,
25 the State versus Jacob Mark Breda, we the jury

1 unanimously -- by unanimous agreement find the defendant
2 guilty of possession with intent to distribute cocaine.
3 Signed foreperson, Cecilia Smith.

4 THE COURT: All right. Gentlemen, any additional
5 issue for this jury?

6 MR. DELOACH: Nothing from the State, Your Honor.

7 MR. CHAMBERS: No, Your Honor.

8 THE COURT: Okay. Ladies, thank you very much for
9 your service. I know that several of you have place to
10 be, and I'm cognizant of that. I'm sorry I couldn't
11 release y'all sooner but at some point it becomes y'all's
12 case and not mine anymore, so I didn't have the
13 discretion to say y'all stop and go. I'll also say that,
14 not me, I did not suggest this, so don't direct any anx
15 (phonetically) at me, but there were several ladies in
16 the courtroom who said it would be a miracle if 12 women
17 agreed on anything. So you have indeed proved them
18 wrong. Congratulations.

19 I've told you over and over don't discuss the case.
20 You're welcome to discuss it now. If you go out and any
21 one offers to discuss it with you, whether it be family
22 members, wife, or whether it be lawyers who want to
23 discuss with you your deliberations, you're welcome to.
24 However, you're not required to. You can tell them,
25 please, do not, and if they persist let me know and I'll

1 but ultimately it's up to you. It's entirely up to you
2 and you're going to decide whether you're going to get
3 over and around this or whether you're not.

4 The sentence of this Court is you be committed to
5 the State Department of Corrections for a period of eight
6 years, recommend ATU.. Served any time on this.

7 MR. CHAMBERS: Ten and a half months. I don't know
8 the exact number of days.

9 MR. DELOACH: 269 days, Your Honor.

10 THE COURT: Credit for 269 days. And I'll leave it
11 up to the sentencing judge for any probation revocation
12 to determine whether that's run concurrent with that
13 sentence. Good luck to you, Mr. Breda.

14 MR. DELOACH: Thank you. Your Honor.

15 - - -END OF TRANSCRIPT OF RECORD- - -
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C E R T I F I C A T E

I, the undersigned Mary E. DiGirolamo, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 12th day of May, 2010.

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

October 30, 2010

Mary DiGirolamo

Mary E. DiGirolamo

Official Court Reporter

WITNESSES

C. Lane

Greenville Police Department

8/12/2009

ARREST WARRANT NUMBER

M380264

ACTION OF GRAND JURY

TRUE BILL

Ann Soderette

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

*Guilty**Charles C. Davis*
Foreperson of Petit Jury5-12-10
Date:

DOCKET NO. 2009-GS-23-

LBP

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

April

TERM 2009

THE STATE

vs.

JACOB MARK BRED A

Indictment for

3014

POSSESSION OF COCAINE BASE W/INTENT
TO DISTRIBUTE

VIOLATION § 44-53-0375

106

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
INDICTMENT FOR
POSSESSION OF COCAINE BASE W/INTENT TO DISTRIBUTE

At a Court of General Sessions, convened on **APR 13 2010** the Grand Jurors of Greenville
County present upon their oath:

That JACOB MARK BREDA did in Greenville County, on or about the 12th day of August, 2009, possess with
intent to distribute or aid, abet, or conspire to possess with the intent to distribute a quantity of Cocaine Base
(Crack Cocaine), a controlled substance, such possession not having been authorized by law. This is in violation
of §44-53-375 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

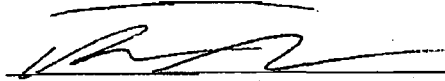
Seign. Pascelti
SOLICITOR

109

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

September 2nd, 2011



Tristan M. Shaffer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Robin B. Stilwell, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JACOB M. BREDÁ,

APPELLANT

FINAL BRIEF OF APPELLANT

TRISTAN M. SHAFFER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUES ON APPEAL

Did the State fail to present substantial circumstantial evidence that Appellant intended to distribute the .31 grams of cocaine found in Appellant's possession?

STATEMENT OF THE CASE

On May 12, 2010, Appellant was called to trial before the Honorable Robin Stillwell and a jury. R. 1. Appellant was charged with possession with intent to distribute crack cocaine (PWID). The State was represented by Perry Deloach. R. 1. Appellant was represented by Randy Chambers. R. 1.

The jury found Appellant guilty. R. 102, ll. 1-3. Appellant was sentenced to eight years. R. 103, ll. 4-6. This appeal follows.

ARGUMENT

The State failed to present substantial circumstantial evidence that Appellant intended to distribute the .31 grams of cocaine found in Appellant's possession.

Relevant Facts

On August 12, 2009, Private First Class Charles Lane, a two year veteran of the Greenville Police Department, saw Appellant leaving from 7 Woodfin Avenue. R. 60, ll. 6-7. According to Lane, that address was "known for a lot of drug activity [and] prostitution." R. 60, ll. 9-10. When Appellant began walking in the road, Private Lane stopped Appellant and began questioning him. R. 58, ll. 2-15. Appellant allegedly told Private Lane that he lived at 101 Mission Street.

Private Lane left Appellant to see if Appellant was telling the truth about his home address. R. 41, ll. 9-11. According to Private Lane 101 Mission Street appeared to be abandoned. Private Lane then went back to find Appellant. Appellant was walking down the street when Private Lane found him. R. 45, ll. 16-19. Private Lane searched Appellant and justified the search by arresting him for giving a false address¹. R. 46, l. 1 – R. 47, l. 1.

During Private Lane's search of Appellant, he found a bag with four rocks of crack cocaine. R. 47, ll. 13-14. The combined total weight was slightly less than one third of a gram. R. 78, ll. 18-21. Private Lane estimated the street value to be approximately \$80. R. 62, ll. 8-13. Each of the four rocks had cellophane around them. R. 48, ll. 12-18. Initially Appellant denied the crack was his. R. 51, ll. 22-23. Then Appellant claimed that the crack was actually soap. R. 52, ll. 13-15. Eventually, after he

was taken to jail, Appellant told Private Lane "[Appellant] was a white guy in a black neighborhood, why would he go in their and try to sell crack."² R. 54, ll. 9-15. Appellant was charged with PWID.

At trial, Appellant admitted he was in possession of the .31 grams of crack cocaine that Private Lane found on him. Essentially, Appellant argued that he was guilty of simple possession of crack cocaine but not guilty of PWID.

The State's case for PWID relied on the fact that four crack rocks were found and that appellant made a statement *denying* that he was in the neighborhood to distribute crack. The State presented no evidence that Appellant was in possession of any money at the time he was arrested. Appellant was not in possession of any scales or extra bags which might indicate he intent to distribute. Furthermore, the State failed to present any other evidence that Appellant might be involved in the distribution of crack.

Appellant asked for a directed verdict on PWID. R. 79, l. 22 – R. 80, l. 11. The trial court denied the directed verdict motion.

Argument

In a criminal case, directed verdict should be granted when the State's evidence merely raises a suspicion of the defendant's guilt. *State v. Bostick*, -- S.C. --, -- S.E.2d -- (2011) (citing *State v. Cherry*, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004)). "Evidence must constitute positive proof of the facts and circumstances which reasonably tend to prove guilt." *Id.* If there is sufficient evidence of the intent to distribute, a defendant may be found guilty of possession with intent to distribute crack even if he is

¹ Greenville Code of Ordinances §24-217.

found in possession of less than one gram of crack. See *State v. James*, 362 S.C. 557, 561-562, 608 S.E.2d 455, 457 (Ct. App. 2004). However, for Appellant's conviction to pass constitutional muster, the State would have had to of presented sufficient evidence for a reasonable fact finder to find beyond a reasonable doubt that Appellant intended to distribute the crack cocaine. See *Goldsmith v. Witkowski*, 981 F.2d 697, 701 (4th Cir. 1992) (Citing *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789 (1979)).

In *James*, there was testimony that James was in a "high crime and high narcotics trafficking" area when he was stopped by police. *Id.*, 362 S.C. at 563, 608 S.E. at 458. An officer found two zip lock bags in his pocket. One was empty, but the other contained eight to ten rocks of crack cocaine. *Id.*, 362 S.C. at 559, 608 S.E. at 456. In that case, the officer testified that addicts³ generally only carry one rock of crack cocaine, *Id.*, 362 S.C. at 563, 608 S.E. at 458. However, there was evidence that dealers would carry multiple rocks in a single bag and sell all the rocks in one bag before distribution from other bags. *Id.*, 362 S.C. at 560, 608 S.E. at 456. There was also testimony that James looked healthy in contrast to crack addicts who generally appear unhealthy. *Id.*, 362 S.C. at 563, 608 S.E. at 458. This Court distinguished *James* from *Cherry* and *Robinson*⁴ and found that directed verdict should have been granted. *Id.*, 362 S.C. at 565, 608 S.E. at 459.

² The Solicitor originally tried to spin this as a confession, but the record does not support that. R. 32, ll. 12-15.

³ There is no comparable evidence presented in Appellant's case.

⁴ *State v. Robinson*, 344 S.C. 220, 543 S.E.2d 249 (Ct. App. 2001).

In Appellant's case, the State presented even less evidence to prove that Appellant intended to distribute the crack than the State did in *James*. Appellant was found with only four crack rocks compared to the eight to ten in James' possession. The State even presented evidence that Appellant *denied* that he was selling crack. While the solicitor argued that he volunteered this statement before he knew he was being charged with PWID, the statement was made after the crack was found. The State failed to present any evidence that Appellant fit the profile of a crack dealer, whereas in *James*, the prosecution presented evidence that James's behavior and physical characteristics matched the profile of a crack dealer and not a possessor.

Like *James*, Appellant's case can easily be distinguished from *Cherry*, *Robinson*, and *Elmore*. There is no evidence that Appellant was found with any cash on him. See *State v. Elmore*, 368 S.C. 230, 236, 628 S.E.2d 271, 274 (2007) (finding *Elmore* is distinguishable from *James* because of the \$653 found on Elmore). The State also failed to present any testimony⁵ that crack rocks are generally individually wrapped for sale as the State did in *Robinson*. See *Robinson*, 344 S.C. at 224, 543 S.E.2d at 223.

In sum, even though Appellant admitted that he was in possession of the crack, the solicitor tried Appellant's case as a PWID. However, Appellant is not a dealer and the State failed to present any evidence that Appellant intended to distribute.

⁵ The State is limited to testimony that is in the record. While it may be common knowledge to lawyers and judges that crack rocks are generally sold individually wrapped, a juror's decision should be based solely on what is in the record. Without this

CONCLUSION

Appellant respectfully requests that this Court reverse Appellant's conviction and Sentence.

Respectfully submitted,



Tristan M. Shaffer
Appellate Defender

ATTORNEY FOR APPELLANT.

This 9th day of September, 2011.

testimony, the fact that the rocks were individually wrapped *does not even* raise a mere suspicion of the intent to distribute.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

September 9th, 2011



Tristan M. Shaffer
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
Robin B. Stilwell, Circuit Court Judge

THE STATE,

RESPONDENT,

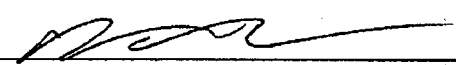
V.

JACOB M. BREDAS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Harold M. Coombs, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of September, 2011.



Tristan M. Shaffer
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 9th day of September, 2011.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 2, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
Honorable Robin B. Stilwell, Circuit Court Judge

THE STATE,

Respondent,

vs.

JACOB M. BREDAS,

Appellant.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

W. WALTER WILKINS
Solicitor, Thirteenth Judicial Circuit

305 E. North Street, Suite 325
Greenville, SC 29601
(864) 467-8647

ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The defendant asks whether the state presented substantial circumstantial evidence that he intended to distribute the .31 grams of cocaine that he possessed. (Appellant's Statement of Issue on Appeal).

STATEMENT OF THE CASE

The Greenville County Grand Jury charged the defendant with possession of cocaine base with intent to distribute (2009-GS-23-9251). The defendant and his counsel came to trial on May 12, 2010 before the Honorable Robin B. Stilwell, Judge, and a jury. The jury found the defendant guilty. The court sentenced the defendant to imprisonment for eight years. The defendant served opposing counsel a timely notice of appeal.

ARGUMENT

The defendant's motion alleging insufficient evidence to demonstrate an intent to distribute his crack cocaine was soundly denied.

The defendant said there was no evidence of possession of crack cocaine with intent to distribute - other than his [rhetorical] statement about selling crack to a police officer and his individually wrapped [rocks] - and moved for a directed verdict of acquittal. The court found that viewing the evidence in the light most favorable to the state, there was sufficient evidence and the defendant's ground went to the weight of the evidence. The court denied the motion. (ROA. p. 79, line 22 - p. 81, line 16). The court's decision is soundly supported by the record.

Officer Lane saw the defendant leave an address known for "a lot of drug activity" and thought that, possibly, the defendant was involved. The defendant was walking in the roadway with traffic although there was a sidewalk, and for that reason, Lane stopped him and conducted a field interview. The defendant stated his address, and the officer allowed him to go. The address proved to be an abandoned property, and Lane sought additional information. After further questioning, he arrested the defendant for providing a false address. (ROA. pp. 41-46; pp. 56-60). A search incident to arrest revealed a sandwich bag containing four, separately packaged rocks of crack cocaine weighing .31 grams. (ROA. pp. 47-48; p. 78). Each separately packaged rock was a dose of crack cocaine and sold for about twenty dollars. (ROA. pp. 62-63). The defendant had nothing on his person with which to smoke the crack, and he did not appear high. (ROA. pp. 66-67). On the way to the detention center the defendant claimed that it was not his crack. During a field test the defendant said it was soap, but when the test result was displayed, he quipped, "that's good crack." (ROA.

pp. 51-53). Next, the defendant queried why a white man would be in a black neighborhood selling crack. At the time of the query, the defendant had not been apprised of the "intent to distribute" charge. (ROA. p. 54).

Possession with intent to distribute does not hinge upon the amount involved. State v. James, 362 S.C. 557, 608 S.E.2d 455 (Ct. App. 2004)("Possession of any amount of controlled substance coupled with sufficient indicia of intent to distribute will support a conviction for possession with intent to distribute.").

A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. In reviewing a motion for directed verdict, the trial judge is concerned with the existence of the evidence, not with its weight. On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State. If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find the case was properly submitted to the jury.

State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001)(internal citation omitted). The evidence was properly submitted to the jury. A reasonable juror could have found that the defendant wanted to be conspicuous in the area - if he was readily observed by the police, he was readily observable by others. His stop at the address may have been to sell drugs or to purchase the quantity in his possession - individually wrapped for potential resale. The defendant had no paraphernalia in his possession for consuming the crack himself. The defendant's attempt to conceal his address and gratuitous comments - including his apparently knowledgeable comment on the test result and prescient mention of intent to distribute - could reasonably be inconsistent with one merely in possession. The court applied the correct law, and the ruling is supported by the record.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General

W. WALTER WILKINS
Solicitor, Thirteenth Judicial Circuit

BY: Harold M. Coombs, Jr.
Harold M. Coombs, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

September 7, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
Honorable Robin B. Stilwell, Circuit Court Judge

THE STATE,

Respondent,

vs.

JACOB M. BREDAS,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule
211(b), SCACR.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General

W. WALTER WILKINS, JR.
Solicitor, Thirteenth Judicial Circuit

By: Harold M. Coombs, Jr.
Harold M. Coombs, Jr.

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

September 7, 2011

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
Honorable Robin B. Stilwell, Circuit Court Judge

THE STATE,

Respondent,

vs.

JACOB M. BREDÁ,

Appellant.

PROOF OF SERVICE

I, Harold M. Coombs, Jr., certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Tristan M. Shaffer, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, South Carolina 29211.

I further certify that all parties required by Rule to be served have been served.

This 7th day of September, 2011.

Harold M. Coombs, Jr.
HAROLD M. COOMBS, JR.

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR RESPONDENT

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.

Jacob M. Breda,

Appellant.

Appeal From Greenville County
Robin B. Stilwell, Circuit Court Judge

Unpublished Opinion No. 2012-UP-285
Heard April 10, 2012 – Filed May 9, 2012

REVERSED AND REMANDED

Appellate Defender Tristan M. Shaffer, of Columbia,
for Appellant.

Attorney General Alan Wilson, Deputy Attorney
General John W. McIntosh, Assistant Deputy
Attorney General Salley W. Elliott, and Assistant
Attorney General Harold M. Coombs, Jr., all of

Columbia; and Solicitor W. Walter Wilkins, III, of Greenville, for Respondent.

PER CURIAM: Jacob Mark Breda appeals his conviction for possession with intent to distribute cocaine base, arguing the circuit court erred in denying his motion for a directed verdict because the State failed to present substantial circumstantial evidence of the intent to distribute. We reverse and remand for a new trial.

An appellate court reviews the denial of a directed verdict by viewing the evidence and all reasonable inferences to be drawn therefrom in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). "If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, [an appellate court] must find the case was properly submitted to the jury." Id. at 292-93, 625 S.E.2d at 648. The circuit court may not consider the weight of the evidence. Id. at 292, 625 S.E.2d at 648. However, "when the [circumstantial] evidence presented merely raises a suspicion of guilt," the circuit court should direct a verdict in favor of the accused. State v. Bostick, 392 S.C. 134, 142, 708 S.E.2d 774, 778 (2011) (citing State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004)). A mere suspicion is a belief that is inspired by "facts or circumstances which do not amount to proof." State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001).

The possession of one gram or more of cocaine base is prima facie evidence of an intent to distribute. S.C. Code Ann. § 44-53-375(B) (Supp. 2011). In cases involving less than one gram of cocaine base, the State must present sufficient evidence the accused intended to distribute the cocaine base in his possession. Id. Otherwise, the evidence only supports a charge of simple possession. S.C. Code Ann. § 44-53-375(A) (Supp. 2011). Intent can be proven, and ordinarily is proven, by circumstantial evidence. State v. Tuckness, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971).

The facts of State v. James, 362 S.C. 557, 608 S.E.2d 455 (Ct. App. 2004), are strikingly similar to the facts here. In James, the accused was arrested in a high narcotics trafficking area for an open container violation

and a search revealed two Ziploc bags: one empty and one containing eight to ten rocks of crack cocaine. Id. at 559, 608 S.E.2d at 456, 458. When the officer discovered the drugs, the accused struggled, broke free, took the bag containing the drugs, and fled. Id. at 559, 608 S.E.2d at 456. The empty bag ultimately tested positive for crack cocaine residue. Id. At trial, the police officer testified dealers usually sell one bag completely before selling from another and that they carry a large number of rocks in a single bag. Id. at 559-60, 608 S.E.2d at 456. He explained users only carry one rock and have "a distinct, unhealthy physical appearance." Id. at 560, 608 S.E.2d at 456. The accused, he said, appeared in good health. Id. Finally, the accused only had \$37 on his person. Id. at 565, 608 S.E.2d at 459.

The James court distinguished its facts from State v. Robinson, 344 S.C. 220, 222, 543 S.E.2d 249, 250 (Ct. App. 2001), and State v. Cherry, 348 S.C. 281, 284, 559 S.E.2d 297, 298 (Ct. App. 2001), aff'd in result, 361 S.C. 588, 606 S.E.2d 475 (2004). James, 362 S.C. at 563-65, 608 S.E.2d at 458-59. It put weight on the fact there was no evidence of a drug transaction, as in Robinson, or large amounts of cash, as in Cherry. Id. at 564-65, 608 S.E.2d at 459. Moreover, it found the police officer's testimony as to the amount of rocks speculative because they were never recovered. Id. at 565, 608 S.E.2d at 459. Finally, the James court declined to consider the accused's appearance, reasoning "it could also have raised the inference that he was not a long-term user of crack cocaine." Id. Accordingly, it held the State failed to present substantial circumstantial evidence the accused intended to distribute the drugs in his possession. Id.

Here, evidence exists showing Breda was found in an area of high drug activity, walking away from a residence known for its drug activity. A search incident to Breda's arrest for providing a false address revealed four individually-wrapped rocks of crack cocaine totaling a weight of 0.31 grams. He carried no drug paraphernalia and did not appear high, and no evidence was presented showing he had any money in his possession. Finally, Breda made several statements denying the substance was crack cocaine and also asked law enforcement why he, a white man, would be selling crack cocaine in a predominantly African-American neighborhood.

Considering James, we find the evidence presented by the State merely created a suspicion Breda intended to distribute the crack cocaine in his possession. The most significant circumstantial evidence presented by the State was Breda's possession of four individually-wrapped rocks of crack cocaine. However, the State failed to present evidence explaining why this evidence was especially significant. No witness testified that the possession of four rocks exceeded the quantity generally possessed by a mere user, evidence that was presented to the jury in James, in which the accused possessed eight to ten rocks. No witness testified the individual wrappings indicated the rocks had been prepared for distribution. Moreover, we find Breda's utterances to law enforcement are no more probative of guilt than was the flight of the accused in James. Accordingly, the decision of the circuit court is

REVERSED AND REMANDED.

WILLIAMS and LOCKEMY, JJ., and CURETON, A.J., concur.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
Honorable Robin B. Stilwell, Circuit Court Judge

THE STATE,

Respondent,

vs.

JACOB M. BREDA.

Appellant.

PETITION FOR REHEARING

Pursuant to Rule 221, SCACR. Petitioner submits with particularity points the Court overlooked or misapprehended.

A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. In reviewing a motion for directed verdict, the trial judge is concerned with the existence of the evidence, not with its weight. On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State. If there is any direct evidence or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find the case was properly submitted to the jury.

State v. McHoney, 344 S.C. 85, 544 S.E.2d 30 (2001)(internal citation omitted).

"Substantial evidence is that amount of relevant evidence necessary to persuade a rational juror to accept a conclusion." State v. Mann, 560 S.E.2d 776, 781 (N.C. 2002).

"Substantial evidence" is evidence that is existing and real, not just seeming or imaginary.

State v. McAvoy, 417 S.E.2d 489 (N.C. 1992). For review of an agency's decision under the

APA, "substantial evidence" is evidence that, in context of the whole record, a reasonable

mind would accept to support the agency's action. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000).

In a criminal case the appellate court sits to review only errors of law, State v. Wilson, 345 S.C. 1, 545 S.E.2d 827 (2001) and wants jurisdiction to weigh evidence. State v. Barrs, 257 S.C. 193, 184 S.E.2d 708 (1971).

The officer who regularly patrolled the community did not recognize defendant but saw him leave an address known for "a lot of drug activity" and thought that, possibly, the defendant was involved. (R. pp. 42 and 60).

The defendant walked conspicuously in the roadway, with the traffic, and the officer stopped him for a field interview. (R. pp. 41-42).

The defendant said that he had just gotten out of prison and was trying to straighten up his life. (R. p. 73).

After the defendant gave his address as an apparently abandoned house, the officer saw the defendant talking to people in an area known for drug sales. (R. p. 43; pp. 73-74).

The officer arrested the defendant solely for giving him an incorrect address. (R. p. 58).

The defendant possessed, at the time of his arrest, a sandwich bag containing four, separately packaged rocks of crack cocaine weighing .31 grams. (R. pp. 47-48; p. 78).

Each separately packaged rock was a dose of crack cocaine and sold for about twenty dollars. (R. pp. 62-63).

The defendant had no smoking paraphernalia and did not appear high. (R. p. 66).

Before he was transported from the scene, the defendant questioned why he would be selling crack in a black neighborhood. (R. pp. 70-71). The defendant raised that same

question at the detention center to another officer, and he had not been apprised of the "intent to distribute" charge. (R. p. 54).

The numerous points of evidence, in context of the whole record, were direct evidence or substantial circumstantial evidence reasonably tending to prove that the defendant possessed his crack cocaine with the intent to distribute.

The State asks the Court to grant the petition and to reconsider the case.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

HAROLD M. COOMBS, JR.
Senior Assistant Attorney General

W. WALTER WILKINS
Solicitor, Thirteenth Judicial Circuit

BY: Harold M. Coombs, Jr.
Harold M. Coombs, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

May 11, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Greenville County
Honorable Robin B. Stilwell, Circuit Court Judge

THE STATE.

Respondent.

vs.

JACOB M. BREDAS.

Appellant.

PROOF OF SERVICE

I, Harold M. Coombs, Jr., certify that I have served the within Petition for Rehearing on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Tristan M. Shaffer, Esquire, South Carolina Commission on Indigent Defense, Division of Appellate Defense, P.O. box 11589, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 11th day of May, 2012.

Harold M. Coombs, Jr.

HAROLD M. COOMBS, JR.

Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR PETITIONER

The South Carolina Court of Appeals

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JUN 22 2012

ATTORNEY GENERALS
OFFICE

The State, Respondent,

v.

Jacob M. Breda, Appellant.

Appellate Case No. 2010-161308

ORDER

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.

H. B. J. J.

James E. Elliott J.

Stephen M. Curreton A. J.

Columbia, South Carolina

cc:

John W. McIntosh
Randall Lee Chambers
Salley W. Elliott
Tristan M Shaffer
Alan McCrory Wilson
Harold M. Coombs, Jr.

FILED

22 June 2012