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SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Horry County

Thomas A. Russo, Circuit Court Judge

TERMAIN COOPER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-000149

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1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
2 COUNTY OF HORRY) INDICTMENT NO. 08-GS-26-02197

3 THE STATE OF SOUTH CAROLINA,)
4)
5 PLAINTIFF,)
6)
7 -VS-)
8)
9 TERMAIN OMAR COOPER,)
10)
11)
12 DEFENDANT.)
13)
14)
15)
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21)
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23)
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TRANSCRIPT OF RECORD

Monday & Tuesday,
March 8th & 9th, 2010
Conway, S. C.

11 B E F O R E:

12 HONORABLE EDWARD B. COTTINGHAM, JUDGE, AND A JURY

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

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17 Attorney for the State

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20 Attorney for the Defendant

21 LINDA W. MCCALL
22 OFFICIAL REPORTER
23
24
25

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TRIAL IN ABSENTIA

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DEFENDANT

NONE

1 MONDAY, MARCH 8, 2010

2 TRIAL IN ABSENTIA

3 ARRAIGNMENT AND BENCH WARRANT

4 MS. ELDER: Your Honor, if Mr. Taylor and I could put
5 something on the record real quick.

6 THE COURT: Sure.

7 MS. ELDER: This is, ah, this is The State vs. Termain
8 Cooper. He is on your - - for your trial roster for tomorrow.

9 THE COURT: In the morning, I'm told.

10 MS. ELDER: Yes, Your Honor.

11 THE COURT: Yes.

12 MS. ELDER: There was some confusion about who - - who
13 represented this defendant. So, we - - we put that on the
14 record.

15 Mr. Cooper had retained Mr. Taylor in the '08 case and it
16 has been pending since that time.

17 He's got several charges. We arraigned him. He appeared
18 with Mr. Taylor last week.

19 THE COURT: He appeared with who?

20 MS. ELDER: Mr. Taylor.

21 THE COURT: Yes.

22 MS. ELDER: And on Sunday, ah, we had told him we had
23 set this case for this week. He was told about it at the
24 arraignment. Mr. Taylor was preparing this case. Was
25 scheduled to meet with Mr. Cooper on Sunday afternoon.

1 Apparently, he gets a call from Cezar McKnight indicating
2 that he has been retained. He put Mr. McKnight on notice this
3 case was coming up for trial. Mr. McKnight had a pre-existing
4 order of protection.

5 We've taken up that matter with Judge Hyman today. Judge
6 Hyman said this case is going to start tomorrow whether it's pro
7 se, with Mr. Taylor or Mr. McKnight comes back from vacation.

8 THE COURT: I've been informed about that. We're going
9 to try him tomorrow.

10 He's got three opportunities.

11 He can bring Mr. McKnight here or he can have this
12 distinguished attorney, Mr. Taylor, or he can bring himself.
13 We're going to try him tomorrow. I understand there's a
14 suppression hearing first.

15 MS. ELDER: Your Honor - - -

16 THE COURT: We're going to hear that at 9:30 in the
17 morning.

18 MS. ELDER: Yes, sir, and to that vein, Mr. Cooper was
19 suppose to be back here at 2:00, I believe. He is no where to
20 be found.

21 THE COURT: Issue a Bench Warrant for him - -

22 MS. ELDER: Thank you, Your Honor.

23 THE COURT: - - as we speak. Lock him up, and I'll
24 have him in the morning.

25 MS. ELDER: Thank you, Your Honor.

1 And if we cannot locate him, can we go forward on a TIA at
2 that point.

3 THE COURT: Yes, yes.

4 MS. ELDER: He knew that we're trying it tomorrow.

5 THE COURT: Yes.

6 Now, notify Mr. McKnight of whatever interest he may have
7 of two things.

8 One, we are having to issue a Bench Warrant for him; and
9 find out if McKnight is going to be here or if Mr. Taylor.

10 Can you answer that?

11 MR. TAYLOR: I can, Your Honor.

12 Mr. McKnight is on his way as we speak to Egypt. He, ah,
13 is suppose to be gone this entire week.

14 He is under an Order of Protection.

15 I got an call from him yesterday while I was at the office
16 preparing for this trial telling me that he - - that my client
17 was on the way to get the retainer money to get retained by him
18 and that he was under an Order of Protection and would be
19 leaving this morning.

20 THE COURT: Order for Protection for how long, just
21 today?

22 MR. TAYLOR: No, sir, for the entire week.

23 THE COURT: Is - - is he aware of Judge Hyman's order?

24 MR. TAYLOR: Yes, sir. I talked him.

25 THE COURT: So, what did McKnight say?

1 MR. TAYLOR: There was nothing he could say, Your Honor.
2 He was in New York when I talked to him, New York City.

3 He had already got on the plane and gone to New York.

4 THE COURT: Well, obviously, Cooper can't hire him if he
5 is under an order of protection.

6 MR. TAYLOR: Yes, sir, Your Honor.

7 THE COURT: What is McKnight's position as to his
8 representation of Cooper?

9 MR. TAYLOR: What he tells me is that his client wanted
10 to discharge me and hire him and speaking with him, he says it's
11 a violation of his client's rights by not having his client be
12 able to pick which lawyer he wanted.

13 I explained to him the situation, that I have had this case
14 since 2008. He was arraigned last week and set up to be tried.
15 I thought it was going to be tried this afternoon. It was set
16 to be at least the motion this afternoon, and he said - - -

17 THE COURT: Well, here's what I'm going to do. I'm
18 going to order that you proceed as the attorney if Mr. McKnight
19 is under an Order of Protection whether he says he's
20 representing him or not but he cannot represent him if he's
21 under Order of Protection and doesn't want to show up.

22 MR. TAYLOR: Yes, sir.

23 THE COURT: I'm ordering you to represent him - -

24 MR. TAYLOR: Okay.

25 THE COURT: - - unless McKnight is sitting at the table.

1 MR. TAYLOR: Yes, sir.

2 THE COURT: Now, when we start in the morning if the
3 defendant wants to represent himself, I'll deal with that at
4 that time.

5 MR. TAYLOR: I talked with him earlier because he was
6 here at the courthouse. He's been here since this morning but
7 I don't know. I can't find him now and can't reach him on his
8 phone.

9 Um, but he tells me he does not want to go to trial in this
10 matter. So, I negotiated with the Solicitor on this a good plea
11 offer but I can't - - I can't get in touch with him.

12 THE COURT: Well, let's be clear about it.

13 MR. TAYLOR: Yes, sir.

14 THE COURT: McKnight can't - - you're telling me you
15 know how to call McKnight?

16 MR. TAYLOR: I have his number. I don't know if it's
17 going to work.

18 THE COURT: He cannot take the representation.

19 MR. TAYLOR: Yes, sir.

20 THE COURT: The trial is going forward. He's under an
21 Order. So, either you going to represent him or he can
22 represent himself, and we're going to start the suppression
23 hearing at 9:30 in the morning, go forward with the trial. If
24 we can't find the defendant, I'm going to try him in his absence

25 - -

1 MR. TAYLOR: Yes, sir.

2 THE COURT: - - in the morning starting at 9:30.

3 MS. ELDER: Thank you, Your Honor.

4 THE COURT: Anybody have any question about what I mean?

5 MR. TAYLOR: No, sir, Your Honor.

6 THE COURT: All right.

7 Thank you.

8 MS. ELDER: Thank you.

9 (The Court adjourns this matter and thereafter reconvenes
10 this trial on Tuesday at 10:10 a.m.)

TUESDAY, MARCH 9, 2010

PRETRIAL MOTIONS

THE COURT: All right, Solicitor

MS. ELDER: Your Honor, the State at this time would call for trial The State vs. Termain Omar Cooper, 2008-GS-26-2197.

It is a true-bill indictment for cracking cocaine base, third or - - third offense.

Your Honor, to put on the record, Mr. Cooper is not here. We have received information that he actually was out on bond. He was on electronic monitoring. I have a copy of a report from the jail indicating that Mr. Cooper last night cut his GPS bracelet at approximately 22:00 hours. The deputy went to his residence, found the bracelet cut. Ah, they are seeking warrants for escape and malicious damage.

Also, Your Honor, Mr. Cooper was arraigned last week before Judge Hyman. I have an order, ah, that indicates that, what the last plea offer was, that he rejected that, that he was aware that this plea offer was withdrawn at that time.

That he was ready for trial of the case and that, ah, the judge indicated that this would be ready for trial commencing March 8th which was yesterday.

And I'd make also - - -

THE COURT: An indication, too, that he understood that were he not here, we would go forward.

1 MS. ELDER: Yes, sir, Your Honor. That is on record
2 before Judge Hyman during the arraignments. He made clear of
3 that in every arraignment he did last week, and he was
4 represented at the time by Mr. Taylor.

5 Mr. Cooper was here yesterday. He was here for most part
6 of the day, and he was aware that we were going forward with
7 this trial.

8 THE COURT: Mr. Taylor, as the attorney for the
9 defendant, do you agree with that?

10 MR. TAYLOR: I do, Your Honor.

11 I would like to state that I know that we spoke in chambers
12 yesterday with both Judge Hyman as well as yourself. I just
13 want to put it on the record so we have one transcript here
14 that's along with the trial.

15 My client was suppose to meet with me on Sunday, and I
16 received counsel - - or received a call from opposing attorney,
17 excuse me, not opposing attorney - - from the new attorney,
18 Cezar McKnight who was retained by - - by my client on Sunday
19 evening.

20 THE COURT: Was he actually retained - - -

21 MR. TAYLOR: He was retained, and he sent a letter over
22 to the Solicitor's Office saying that he'd been retained but he
23 was under, apparently, under an Order of Protection, and the
24 Court deemed to go forward even though he had been retained.

25 My client told me yesterday that he did not want me to

1 represent him in this matter at all, that he wanted Cezar
2 McKnight and he wanted to put on the record with the Court that
3 he felt that he was being forced to use me because, ah, the
4 Court was not allowing him to use the attorney that he wanted
5 which was Cezar McKnight.

6 He did not want me to go forward in any way on this case
7 and wanted me relieved as counsel.

8 THE COURT: As I understood it, thought, Mr. McKnight is
9 on his way Egypt on some type of vacation.

10 MR. TAYLOR: He was. Yes, sir.

11 THE COURT: He has protection.

12 As I understand it, now, Judge Hyman told Mr. McKnight that
13 this case was going forward and if he wanted to represent him,
14 he better be here. Otherwise, you would still be the attorney.

15 MR. TAYLOR: Judge Hyman did convey that message to me to
16 pass on to Mr. McKnight, and I did so, and at the time that I
17 did, Mr. McKnight was already in New York City about to board a
18 plane to head to Egypt. Apparently, he's suppose to be there
19 until next week.

20 THE COURT: Well, clearly, the defendant having been
21 noticed to go to trial - -

22 MR. TAYLOR: Yes, sir.

23 THE COURT: Cannot at the last minute try and substitute
24 an attorney because that would be a basis for a continuance.

25 That attorney would have to say, "I need a continuance.

1 I'm not prepared to try it."

2 So, if we permitted this defendant to do that, that would
3 mean that every defendant scheduled for trial would get a
4 continuance by sub - - attempting to substitute a lawyer at the
5 last minute, and that can't possibly be the law.

6 I am going to ask that you having been retained and are
7 familiar with the case and were ready for trial that we are
8 going forward in the TIA today.

9 MR. TAYLOR: Yes, sir.

10 THE COURT: And I ask that you continue to represent
11 him.

12 MS. ELDER: And, Your Honor, just to - - for the record,
13 I didn't hear Mr. Taylor indicate that but Mr. McKnight was made
14 aware prior to being retained that this case had been called for
15 trial on Monday. So, he knew at the time that he undertook
16 representation that we had noticed our intent to try this case
17 this week.

18 MR. TAYLOR: I did provide notice to Mr. McKnight. I
19 would like to put that on the record to cover myself as well.
20 I - - and that was based on previous cases I had before Your
21 Honor where Stuart Axelrod was retained a week before trial, and
22 I told Mr. Axelrod that it was up for trial and then whenever he
23 got here and tried to ask for a continuance not knowing that it
24 was up for trial.

25 Um, so I did that. I notified - - and I was called in that

1 prior case by Your Honor to come over here and try that case
2 that I was prepared for because I had quit working on it the
3 week before whenever the other attorney had told me he had been
4 retained.

5 So, I didn't want that to happen again to me, and I didn't
6 want to get a phone call from you to come over here today not
7 being prepared. So, I continued to prepare in preparation for
8 that, and I am prepared to try this case but I did put Mr.
9 McKnight on notice that he was up - - that my client, Mr.
10 Cooper, was up for trial. It was my understanding that he was
11 first up for trial either to begin Monday afternoon or Tuesday
12 morning.

13 THE COURT: And there was a finding by Judge Hyman, as
14 I understand it, that he was aware, the defendant, that this
15 case was scheduled for trial and would go forward in his absence
16 with his failure to attend.

17 MR. TAYLOR: That's true, Your Honor. We had that last -
18 - that hearing last week.

19 MS. ELDER: And Your Honor, I have, ah, I would ask that
20 that Order, that finding by Judge Hyman as well as the
21 indication of his cutting his bracelet. I also have two copies
22 of subpoenas that we sent to Mr. Cooper for this week, um, that
23 all be made a Court's Exhibit for the purposes of going forward
24 on a trial in absence.

25 MR. TAYLOR: I have no objection to those exhibits, Your

1 Honor, and I have those copies myself.

2 THE COURT: I find, then, that going forward with a
3 trial in his absence is appropriate, that the defendant,
4 obviously, is running and that he was advised that the trial
5 would go forward in his absence should he fail to appear.

6 (The Court Reporter accepts the following exhibits as
7 Court's Exhibits:

8 Court's Exhibit #1 - Arraignment findings;

9 Court's Exhibit #2 - Supplementary Report;

10 Court's Exhibit #3 - Subpoena; and

11 Court's Exhibit #4 - Subpoena.)

12 MS. ELDER: Thank you, Your Honor.

13 MOTION TO SUPPRESS AND RULING OF THE COURT (IN CAMERA)

14 THE COURT: All right.

15 As I understand it, there is an issue, a suppression
16 hearing for - -

17 MR. TAYLOR: That's true, Your Honor.

18 THE COURT: - - let the record reflect that the jury is
19 not present.

20 All right, Ms. Donna, let's go forward on that issue,
21 please.

22 MS. ELDER: Thank you, Your Honor.

23 The State would call Officer Quintard Tucker.

24 (The witness takes the witness stand.)

OFFICER TUCKER - DIRECT EXAMINATION BY MS. ELDER

17

1 (IN CAMERA) OFFICER QUINTARD HASON

2 TUCKER, BEING DULY SWORN, TESTIFIES AS FOLLOWS:

3 CLERK OF COURT: Please state your name and spell your
4 full name.

5 OFFICER: Quintard Hason Tucker, Q-u-i-n-t-a-r-d H-a-s-o-n
6 T-u-c-k-e-r.

7 DIRECT EXAMINATION BY MS. ELDER:

8 Q. Officer Tucker, are you employed with the Myrtle Beach
9 Police Department?

10 A. Yes, ma'am.

11 Q. In what capacity?

12 A. I am a corporal within the Street Crimes Unit and also a
13 supervisor over the canine.

14 Q. And do you operate a canine unit on the street patrol?

15 A. Yes, I do.

16 Q. And on February 20, 2008, did you have an opportunity to
17 observe the defendant, Termain Cooper, operating a vehicle in
18 the City Limits of Myrtle Beach?

19 A. Yes, ma'am.

20 Q. And did you observe any traffic violations of Mr. Cooper?

21 A. Yes, ma'am, I did.

22 Q. And what were those traffic violations?

23 A. One of those traffic violations was failure to use a turn
24 signal.

25 Q. Okay.

OFFICER TUCKER - DIRECT EXAMINATION BY MS. ELDER

18

1 A. The other was a seatbelt violation.

2 Q. Okay.

3 And did you initiate a traffic stop in conjunction with
4 those violations?

5 A. Yes, ma'am.

6 Q. And this is a picture of a car. Is this the car that you
7 stopped?

8 A. Yes, it is.

9 MS. ELDER: If we could mark that please, for the
10 purposes of this hearing.

11 (The Court Reporter marks the photo of the car as State's
12 Exhibit #1 for identification only.)

13 COURT REPORTER: Your Honor, that's State's Exhibit #1.

14 Q. And if you'll look at State's Exhibit #1, that was after
15 you pulled that car over. Is that correct?

16 A. Yes, ma'am.

17 Q. And when you pulled Mr. Cooper over, did you ask him any
18 questions, ID or anything like that?

19 A. Yes, he did.

20 Q. And what did he produce at that time?

21 A. He didn't have any identification with him.

22 Q. All right.

23 And did he indicate - - did you ask him about a driver's
24 license?

25 A. Yes, I did.

OFFICER TUCKER - DIRECT EXAMINATION BY MS. ELDER

19

1 Q. And did he indicate anything to you about the status of his
2 driver's license?

3 A. Yes. He said he didn't have a driver's license.

4 Q. Okay.

5 And had, in fact, that his driver's license had been
6 suspended.

7 A. Yes.

8 Q. Did you do anything as a result of your investigation - -
9 your traffic stop? Did you put Mr. Cooper under arrest?

10 A. Yes, I did. I placed him under arrest.

11 THE COURT: Did he have - - develop the ownership of the
12 car, please?

13 MS. ELDER: Excuse me?

14 THE COURT: The ownership of the vehicle..

15 MS. ELDER: Okay.

16 Q. Did you run the ownership of the vehicle?

17 A. Um, I don't remember.

18 Q. Okay.

19 Did you know Mr. Cooper?

20 A. Yes, I did.

21 Q. Okay.

22 You had - - so, you knew him when you approached the car,
23 and you knew this was Termain Cooper?

24 A. I knew the name based on some information I had received
25 prior to stopping Mr. Cooper. However, ah, I didn't recognize

OFFICER TUCKER - DIRECT EXAMINATION BY MS. ELDER

20

1 his face until I started talking to him, and at that time - - -

2 THE COURT: Ah, let's stop a moment, now.

3 I would not want that testimony before a jury based on - -

4 -

5 MS. ELDER: Yes, sir. This is only for the purpose of
6 this hearing.

7 THE COURT: That's fine but I want that excluded, now,
8 when he testifies.

9 MS. ELDER: Yes, sir. I'm not going to ask that
10 question.

11 Q. So, you placed Mr. Cooper under arrest and did violations
12 for - - what did you do violations for?

13 A. Ah, driving under suspension and seatbelt violation.

14 Q. Okay.

15 And that's what you placed him under arrest for?

16 A. Yes, ma'am.

17 Q. And was he in the car by himself?

18 A. In - - -

19 Q. When you stopped him was he in the car by himself?

20 A. Yes, he was.

21 Q. All right.

22 And once you placed Mr. Cooper under arrest, ah, did you,
23 ah, do a pat-down on him or ask about weapons?

24 A. Yes, I did.

25 Q. Did he make any type of utterance at that time?

OFFICER TUCKER - DIRECT EXAMINATION BY MS. ELDER

21

1 A. He didn't have any weapons on him. However, he did tell me
2 had, ah, drugs in his car.

3 Q. Did you ask him about drugs in the car? Prior to that had
4 you asked him about drugs in the car?

5 A. No, I didn't. I just asked about his person.

6 Q. Okay.

7 And is that standard procedure that you do when you're
8 placing someone under arrest?

9 A. Yes for a safety issue for us.

10 Q. And once you placed Mr. Cooper, ah, have him secured, what
11 did you at that point?

12 A. At that point I, ah, removed my dog from the car and ran
13 him around that - - Mr. Cooper's car. He did give me a positive
14 alert by sitting at the driver's side door, and I placed him on
15 the inside of the car.

16 Q. And at that time, when you arrest somebody for driving
17 under suspension, would you have the car towed? Is that normal
18 practice?

19 A. Yes, it is.

20 Q. And pursuant to your department's practice, when you have
21 a car towed do you also inventory prior or subsequent to the
22 tow?

23 A. Yes, we do.

24 Q. Okay.

25 Ah, you ran your dog at that point. What was the purpose

OFFICER TUCKER - DIRECT EXAMINATION BY MS. ELDER

22

1 of running your dog?

2 A. Statistical purposes for myself and my dog and also the
3 recovery of evidence.

4 Q. Okay.

5 When you - - when you approached the vehicle, was the
6 driver's side door already open?

7 A. Yes, ma'am.

8 Q. Okay.

9 And that was from Mr. Cooper getting out of the car?

10 A. Yes, ma'am.

11 Q. All right.

12 And, um, when you approached the driver's side door, did
13 you observe the drugs at that time?

14 A. No, I did not.

15 Q. Okay.

16 And when you ran the dog in, did you observe the drugs at
17 some point in time after that?

18 A. Yes.

19 Q. And where did you observe them?

20 A. They were beneath the seat.

21 Q. Okay.

22 And what seat was that?

23 A. Driver's side seat.

24 Q. And did you - - did you retrieve the drugs or did you leave
25 them?

OFFICER TUCKER - CROSS EXAMINATION BY MR. TAYLOR

23

1 A. I left them there.

2 Q. And who took them over from that?

3 A. I believe Investigator Guthinger did.

4 Q. Okay.

5 MS. ELDER: I have no further questions for this
6 witness, Your Honor.

7 MR. TAYLOR: I'm sorry, Your Honor. I was just reading.

8 THE COURT: Proceed.

9 MR. TAYLOR: Thank you, Your Honor.

10 CROSS EXAMINATION BY MR. TAYLOR:

11 Q. Mr. Tucker, no doubt that whenever my client informed you
12 that he was driving under suspension, you arrested him on the
13 stop?

14 A. Yes, sir.

15 Q. You got him out of the car. It was on the video tape. You
16 got him out of the car. Put handcuffs on him. Searched him for
17 weapons, and he was then at that point under arrest. Is that
18 correct?

19 A. He was detained at that point in time.

20 Q. I mean, you put handcuffs on him but he was arrested for
21 driving under suspension. That's what you - - you arrested
22 for: For driving under suspension and no seatbelt. That is your
23 testimony.

24 A. Yes, sir.

25 Q. Okay.

OFFICER TUCKER - CROSS EXAMINATION BY MR. TAYLOR

24

1 Now, you searched him right there to make sure he didn't
2 have a gun on him for safety reasons, for yourself to be sure he
3 didn't pose a threat to you?

4 A. I moved him back to my vehicle, yes.

5 Q. So, that's whenever you searched him, you - - I'm sorry.
6 I - - it was at your vehicle. When you searched him, he didn't
7 have any weapons on him, did he?

8 A. As far as I knew, no.

9 Q. Okay.

10 At that point, no doubt he was under arrest for driving
11 under suspension?

12 A. For driving under suspension.

13 Q. Driving under suspension.

14 A. No, I hadn't - - -

15 Q. At that point.

16 A. At that point I hadn't, ah, run his driver's license.

17 Q. But he told you he was driving under suspension which is
18 why you handcuffed him. He told you.

19 A. Right. Yes, he did.

20 Q. And there was no doubt about it. I mean, he came right
21 out and said, "I'm driving under suspension."

22 A. Well, he said he didn't have a driver's license, yes.

23 Q. But he told you that it was suspended, actually, because
24 he'd just gotten out of jail, and he'd been in for - - for an
25 offense which got it suspended. He told you that. It was on

OFFICER TUCKER - CROSS EXAMINATION BY MR. TAYLOR

25

1 the tape.

2 A. I don't remember. I didn't view the whole tape. I'm
3 sorry.

4 Q. All right.

5 But you - - you know, you did talk to the defendant about
6 the fact that he'd been in prison, and he actually said - - you
7 just said, yeah, that he just got out - - that you just got out
8 whenever you made the statement to Mr. Cooper.

9 A. I might have. Like I said, I don't remember.

10 THE COURT: Let me be clear, now. I'm not going to let
11 any prior record come in but if you ask the question, it comes
12 in. It's your responsibility.

13 MR. TAYLOR: Judge, I'm not going to ask that in front of
14 the jury.

15 THE COURT: I just want to make sure.

16 MR. TAYLOR: I'm just asking - - I would never ask that
17 question in front of a jury.

18 THE COURT: All right. I just want to make sure.

19 But in fairness to the defendant who is being tried in his
20 absence, I want to protect his rights, too.

21 MR. TAYLOR: And, Judge, I'm going to do everything for
22 Post-Conviction Relief to protect his rights to make sure that
23 I do this by the book.

24 THE COURT: All right.

25 Thank you.

1 Q. Um, so at that point, again, I kind of lost track there.
2 You had him under arrest, and then you started questioning him
3 at that point. Started asking him some questions about what he
4 was doing?

5 A. Questioning him?

6 Q. Uh-huh.

7 A. No, I - - at that point I asked him about his person.
8 Whether or not he had any weapons on him or anything like that.

9 Q. But, I mean, then you started asking him. Basically, he
10 was under arrest at that point, and you started your
11 investigation into the matter because he was under arrest. He
12 was detained. You had him in handcuffs, and you were the lead
13 officer on this case which is why you're going to be sitting at
14 that table, correct?

15 A. Yes.

16 Q. Okay.

17 Now, at what point did you Mirandize him?

18 A. I didn't Mirandize him.

19 Q. All right.

20 Ah, do you have a problem with the fact that you got
21 statements from him that were incriminating with no Miranda?

22 A. No, sir.

23 All of my statements were pretty much a routine statement
24 on a traffic stop, ah, asking for his identification. Ah, when
25 he told me he didn't have any identification, yes, of course, I

OFFICER TUCKER - CROSS EXAMINATION BY MR. TAYLOR

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1 placed him, ah, in a set of handcuffs.

2 However, when he gave me a statement about the drugs, he,
3 ah, that was a spontaneous utterance on his behalf.

4 Q. But that was after you - - as you testified, that was after
5 he was arrested. He was under arrest.

6 A. That was actually after I asked if he had any weapons on
7 him which was for my safety.

8 Q. Sure.

9 But, no doubt, through your testimony prior, he was already
10 under arrest at that point?

11 A. At that point he was in a set of handcuffs, yes, sir.

12 Q. Okay.

13 Now, how does that differ than asking a murder person,
14 somebody that's charged with murder and is under arrest, "Where
15 is the gun? Where's the bullets? Where is the knife? Where's
16 the machete? Where's the chainsaw?"

17 A. I didn't ask where the drugs were. I just asked if he had
18 any weapons on him.

19 Q. Okay.

20 But you also - - but in asking him, you were asking for - -
21 to do your investigation in this matter because you were the
22 lead investigative officer at that point?

23 A. No, sir.

24 In asking that I was protecting myself. It was a safety
25 issue for myself making sure I didn't - - he didn't have any

OFFICER TUCKER - CROSS EXAMINATION BY MR. TAYLOR

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1 weapons that could stick me, harm me or anything else.

2 Q. Now, but you're asking him about the car, and he's under
3 arrest. He's under - - in handcuffs, at that point what's in
4 the vehicle is not a danger to you because you have him under -
5 - under arrest, and you have him further from me to that bailiff
6 over there from your car, um, how is anything in that car
7 dangerous to you at that point?

8 A. Well, I didn't ask him about the car at that point. He
9 gave me the utterance before the car.

10 Q. But you had him under arrest and no Miranda whatsoever?

11 A. You are correct.

12 Q. Okay.

13 And it - - regarding the ownership of the vehicle, um, at
14 any point in time did you ever run that vehicle to determine who
15 was the owner of the vehicle?

16 A. For, ah, tow purposes, I'm sure I had. Yes, I did.

17 Q. Do you have anything in the file that shows that my client
18 was the owner of that vehicle?

19 A. No, sir. That's actually not my file.

20 Q. Okay.

21 Um, but you have your investigative files in handling this,
22 in handling this case because you're going to be lead
23 investigative person, you would have a file of what you had
24 regarding what you did in this case?

25 A. No, sir. That file was turned over to, ah, another agent.

OFFICER TUCKER - CROSS EXAMINATION BY MR. TAYLOR

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1 Q. Okay.

2 So, you're not the lead investigative person on that? It's
3 the other agent who is the lead investigator?

4 A. Only on the Municipal Court charges.

5 Q. Okay. All right.

6 Who is the officer who is the lead investigator on the, ah,
7 on the drug charge which is why we are here today?

8 A. I believe it was recovered by Investigator Guthinger.

9 Q. Guthinger?

10 Do you have a list of the inventory of that vehicle and
11 what you took from the vehicle?

12 A. I didn't take anything from the vehicle.

13 Q. You didn't take anything from the vehicle?

14 A. No, sir.

15 Q. So, you didn't search it for inventory-wise to determine
16 whether there was a twelve hundred dollar purse or anything of
17 value in the car, anything that could go missing? You didn't
18 search the vehicle at all?

19 A. My dog gave me a positive alert on the car. So, of course,
20 I went in the car, and I did search the car.

21 Q. Okay.

22 So, did you search the vehicle and make an inventory of
23 what you took from the vehicle?

24 A. I don't remember if I did it or if another officer did it.

25 Q. Okay.

OFFICER TUCKER - EXAMINATION BY THE COURT

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1 The open container that was in the car, do you have that
2 open container or anything to that affect?

3 A. No, sir. I didn't remove anything from the car.

4 Q. Okay.

5 MR. TAYLOR: Court's indulgence, Your Honor.

6 Q. You testified that the drugs were found beneath the
7 driver's side seat. That was your testimony?

8 A. Yes, sir.

9 Q. Okay.

10 MR. TAYLOR: Your Honor, I have no further questions.

11 Please answer - - -

12 THE COURT: I have a question.

13 OFFICER TUCKER: Yes, sir.

14 EXAMINATION BY THE COURT:

15 Q. At what point in this sequence did he say, "I have drugs."

16 A. We were standing there at my car, and I was - - I was
17 getting ready to pat him down for weapons.

18 Q. But he was not under arrest at that time?

19 A. No, sir.

20 THE COURT: That's what I want to know.

21 You have any?

22 MS. ELDER: Not from this officer, Your Honor.

23 THE COURT: All right.

24 You may come down.

25 (The witness leaves the witness stand.)

OFFICER GUTHINGER - DIRECT EXAMINATION BY MS. ELDER

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1 MS. ELDER: Officer Guthinger.

2 (The witness takes the witness stand.)

3 (IN CAMERA) OFFICER G. MICHAEL GUTHINGER, BEING
4 DULY SWORN, TESTIFIES AS FOLLOWS:

5 CLERK OF COURT: Please state your name and spell your
6 full name.

7 OFFICER GUTHINGER: G. Michael Guthinger, Michael, M-i-c-
8 h-a-e-l G-u-t-h-i-n-g-e-r.

9 DIRECT EXAMINATION BY MS. ELDER:

10 Q. Officer Guthinger, where are you currently employed?

11 A. With the City of Myrtle Beach Police.

12 Q. In what capacity?

13 A. I'm an investigator.

14 Q. And on February 20, 2008, were you detached to a special
15 drug enforcement unit?

16 A. Yes. I was attached to the Fifteenth Circuit Drug
17 Enforcement Unit and also the Narcotics and Vice Supervisor for
18 the City of Myrtle Beach.

19 Q. And did you have an opportunity to arrive and assist on a
20 traffic stop conducted by Corporal Tucker?

21 A. Yes, I did.

22 Q. And that involving the defendant, Termain Cooper?

23 A. Yes, it was.

24 Q. And when you arrived on the scene, um, what did you do in
25 regard to anything to Mr. Cooper's vehicle?

1 A. I, ah, inventoried the vehicle.

2 Q. Did you take some photographs?

3 A. I took photographs of the vehicle and, ah, completed the
4 Inventory Sheet for tow, arranged for the tow and collected the
5 narcotics.

6 Q. And you did, in fact, observe narcotics in that vehicle?

7 A. Yes, I did.

8 Q. And do you recognize that photograph?

9 A. Yes, I do.

10 Q. Did you take that photograph?

11 A. Yes, I did.

12 Q. And was that prior to the drugs being removed from the
13 vehicle?

14 A. Yes.

15 MS. ELDER: I'd like to mark this for the purpose of
16 this hearing, Your Honor.

17 (The Court Reporter marks State's Exhibit's #2 for
18 identification only.)

19 Q. That will be State's Exhibit #2.

20 And that shows them in the condition that y'all located
21 them?

22 A. Yes.

23 Q. And, ah, could you tell me where they were located?

24 A. They were under the driver's front seat, ah, just a little
25 bit back kind of out of view if you were looking directly down

OFFICER GUTHINGER - DIRECT EXAMINATION BY MS. ELDER

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1 on it.

2 Q. Okay.

3 So, you had to squat down to see it?

4 A. Yeah, had to turn your head down to the side a little and
5 look towards the back - - the front of the seat but looking
6 underneath it.

7 Q. All right.

8 And is that the floor mat?

9 A. That's the floor mat right there.

10 Q. So, it's sitting on the floor mat of the front passenger
11 seat?

12 A. Yes.

13 Q. And did you also do an inventory of the vehicle?

14 A. Yes, I did.

15 Q. Is that a copy of what you inventoried?

16 A. Yes, that is it.

17 Q. Is that standard procedure for your department?

18 A. Yes, both my department and with the Drug Enforcement Unit.

19 MS. ELDER: Your Honor, I'm mark that Inventory State's
20 Exhibit #3.

21 (The Court Reporter marks the exhibit as State's Exhibit #3
22 for identification only.)

23 Q. Do you recall if, ah, you ran the title on that vehicle?

24 A. Yes, I would have done that with, ah, dispatch.

25 Q. Is this a copy of the Title History on the vehicle?

OFFICER GUTHINGER - DIRECT EXAMINATION BY MS. ELDER

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1 A. Yes, that's a - - well, that was run, actually, when we got
2 back to the office but that - - that's a copy of the
3 registration.

4 Q. Okay.

5 MS. ELDER: We'd mark this State's Exhibit #4.

6 MR. TAYLOR: Your Honor, if I could just take a look at
7 the title.

8 Thanks.

9 MS. ELDER: Uh-huh.

10 (The Court Reporter marks the exhibit State's Exhibit #4
11 for identification only.)

12 Q. And that is in the name of I believe the owner's name is
13 Theresa Lisbane. Is that correct?

14 A. Yes, that's correct.

15 Q. And what's the address on that?

16 A. Myrtle Beach, ah, 29577.

17 Q. And is this a copy of Mr. Cooper's driving record?

18 A. Yes, it is.

19 Q. Does that show his - - the address of his driver's license?

20 A. Yes. It's Myrtle Beach.

21 Q. Okay.

22 Is that the same address of the Title History shows for the
23 car?

24 A. Yes, it is.

25 MS. ELDER: I have no other questions, Your Honor.

OFFICER GUTHINGER - CROSS EXAMINATION BY MR. TAYLOR

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1 MR. TAYLOR: Thank you, Your Honor.

2 CROSS EXAMINATION BY MR. TAYLOR:

3 Q. Did you arrest Theresa Lisbane in anyway connected to the
4 drugs that were found in her vehicle?

5 A. No, I did not.

6 Q. Did you have any conversations with her regarding the dope
7 that were found in her vehicle?

8 A. Not the - - not the dope in the car, no. I released her
9 vehicle back to her, ah, I guess a short time later. I don't
10 know how many days it was but she collected it.

11 Q. Okay.

12 Why did you not ask her about the dope that was found in
13 the vehicle belonging to her?

14 A. Because she was not in that car at that time.

15 Q. Okay.

16 Now, you testified that you - - well, let's back up some.

17 Whenever you got to the vehicle, your purpose was in
18 looking at the video tape, you took photographs, correct, the
19 photographs that were entered for the purpose of this hearing?

20 A. Yes.

21 Q. All right.

22 And whenever you got there, you had to open up the door to
23 take the photographs of the drugs or you opened it up to do
24 that, correct?

25 A. The door was open.

OFFICER GUTHINGER - REDIRECT EXAMINATION BY MS. ELDER

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1 Q. So, you had to squat down and look under the seat to see
2 where the dope was?

3 A. Yeah, I kind of had to angle myself a little bit.

4 Q. But you couldn't see that unless you had the door open?

5 A. Yeah. You would to have had the door open.

6 Q. You had to have the door open in order to see where the
7 drugs were, correct?

8 A. Yes.

9 Q. And then that's whenever you took the photographs?

10 A. Yes.

11 Q. Okay.

12 MR. TAYLOR: Your Honor, I have no further questions of
13 Mr. Guthinger.

14 REDIRECT EXAMINATION BY MS. ELDER:

15 Q. Officer Guthinger, just for the purpose of this hearing,
16 ah, did you have information regarding this defendant in
17 narcotics - -

18 A. Yes, I did.

19 Q. - - prior to the traffic stop?

20 A. Yes, I did.

21 Q. And what was the information that you had?

22 A. We had received information that he was going to be making
23 a delivery of a quantity of crack cocaine.

24 Q. And I believe y'all actually placed the call to make the
25 delivery. Is that correct?

OFFICER GUTHINGER - REDIRECT EXAMINATION BY MS. ELDER

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1 A. Yes. Yes, we did.

2 Q. Okay.

3 And was that with - - with a male?

4 A. Yes.

5 Q. It was not with a female?

6 A. It was not.

7 MS. ELDER: No further questions of this witness.

8 THE COURT: You may come down.

9 OFFICER GUTHINGER: Thank you.

10 (The witness leaves the witness stand.)

11 THE COURT: Any further witnesses.

12 MS. ELDER: No, sir, Your Honor.

13 THE COURT: Do you have any witnesses?

14 MR. TAYLOR: I have no witnesses, Your Honor.

15 THE COURT: What is your position here.

16 MR. TAYLOR: Your Honor, I actually have a couple of
17 motions to make in regards to - - after hearing testimony.

18 Um, I'll start with I would move after listening with Mr.
19 Tucker's statement, obviously, he arrested my client for driving
20 under suspension. My client told him, "My license is under
21 suspension", and he then got him out of the car, and you can see
22 it on the video tape if you want to look at it yourself, put
23 handcuffs on him, and he is at that point under arrest for
24 driving under suspension.

25 That is the pre-cursor to then search the vehicle, like

1 with - - -

2 THE COURT: No, sir. That's not the testimony. The
3 testimony, the initial inquiry, the defendant said, "I have
4 drugs in the car", and he was not under arrest at the time. At
5 that time he was just asking the preliminary questions with
6 regard to identification.

7 MR. TAYLOR: Yes, sir.

8 THE COURT: Ah, I conclude that he was not under arrest
9 when that assertion was made, that he voluntarily said that at
10 the initial inquiry.

11 MR. TAYLOR: Okay.

12 THE COURT: That's his testimony, is it not?

13 MR. TAYLOR: Well, the testimony as I understood it was
14 that he got him out of the car. Had handcuffs on him. No
15 doubt he was being arrested at that point for driving under
16 suspension.

17 THE COURT: Well, I asked him specifically.

18 "Was he under arrest at the time he made that assertion?"

19 And he said, "No."

20 His initial testimony was that he - - the defendant blurted
21 it out without questioning. That's the testimony. The jury can
22 accept it or not.

23 MR. TAYLOR: Yes, sir.

24 THE COURT: What was your next motion?

25 MR. TAYLOR: My next motion would be, um, that I would

1 suppress anything regarding testimony that his dog alerted to
2 drugs in the car, and the reason why is I've been provided
3 nothing showing testimony that or any evidence that there was a
4 dog up until today.

5 I know that's not Ms. Elder's fault because she was just
6 provided this video today but with the dog testimony, that would
7 give me pause just to be prepared for that issue.

8 The defendant - - -

9 THE COURT: What about that testimony? I have some
10 concerns with the dog testimony when he wasn't aware of it.

11 MS. ELDER: I don't have any objection, Your Honor. I
12 don't think - - we don't need the dog, um, testimony because - -
13 -

14 THE COURT: I'm going to exclude that, and,
15 incidentally, I don't understand why the investigating
16 department didn't provide this information.

17 Did you know about the dog?

18 MS. ELDER: Um, Your Honor, it was not indicated in the
19 report that the dog ran around the vehicle but I have no
20 problem. We don't need the dog alert.

21 THE COURT: So, if believed, you've got a statement that
22 either he voluntarily said, "There's drugs in the car."

23 MS. ELDER: Well, and our position is it doesn't matter,
24 ah, either way. He was going to be placed under arrest for DUS.
25 They have a right to do an inventory search of the vehicle. The

1 drugs were going to get discovered on the inventory search.

2 THE COURT: Well, there's a two prong with that.

3 First, there's an admission, and

4 Secondly, they had a right to inventory the car after he
5 was properly arrested.

6 And there's no question about the fact that at the time of
7 the occurrence he was driving under suspension.

8 MS. ELDER: Yes, sir.

9 THE COURT: So, on the two prong attack, I think the
10 drugs are admissible without the dog, first, on his own
11 admission, and, secondly, on an inventory.

12 MR. TAYLOR: Yes, sir.

13 THE COURT: So, I respectfully deny that.

14 I am going to accept your motion to exclude his testimony
15 with the dog.

16 MR. TAYLOR: That's what I wanted - - -

17 THE COURT: I have some concerns about why the
18 investigative people didn't disclose it.

19 MR. TAYLOR: Yes, sir.

20 My second thing and it may be minor. It may appear minor
21 to the Court but I don't want the jury to hear it.

22 There was an open container in the car, um, of liquor of
23 some sort or alcohol of some sort. I don't want the jury to
24 hear that.

25 To begin, they have no evidence of that today and although

1 it may seem minor to the Court, it may be major to - - to one of
2 the jurors, and it may swing them in the wrong direction or shed
3 - - -

4 THE COURT: What you say about that, Solicitor?

5 MS. ELDER: Your Honor, it's on the tow sheet - - the
6 Inventory Sheet. There is an indication of alcohol in the
7 vehicle. It's on the tow sheet.

8 THE COURT: I'll - - if - - if - - if their
9 investigation disclosed an open container containing alcohol,
10 it's admissible.

11 MR. TAYLOR: Yes, sir, but the alcohol. they didn't keep
12 the alcohol. They can't be able to show to the jury that
13 there's any alcohol, and he's not on trial for alcohol. He's on
14 trial for drugs.

15 THE COURT: What was the container, Ms. Donna?

16 MS. ELDER: It was a bottle of Grey Goose.

17 THE COURT: Pardon me?

18 MS. ELDER: It was a bottle of Grey Goose Vodka.
19 It was the liquor bottle itself.

20 THE COURT: It was the liquor bottle itself?

21 MS. ELDER: Yes, sir.

22 THE COURT: They're entitled to show that - - that just
23 - - as a part of the inventory. I don't know why you need it -
24 - to put it in, Donna?

25 MS. ELDER: And I wasn't - - honestly, I wasn't planning

1 to - - to do anything on the inventory but, um, if Mr. - - Mr.
2 Taylor has obviously questioned who did the inventory. So, I'm,
3 obviously, going to address that in front of the jury, that it
4 was, in fact, inventoried.

5 MR. TAYLOR: I just think that it - - it shows an undue
6 light if he's not on trial for open container.

7 THE COURT: It's not necessary to your case, Solicitor.
8 Just leave that out.

9 MS. ELDER: Well, I'm not going to point it out, Your
10 Honor, but I think I should have an opportunity. I mean, if
11 he's going to raise the question, "Did you do an inventory, and
12 where's the sheet?", then I shouldn't have to come behind him to
13 do that.

14 THE COURT: If he raises the question, then I'll permit
15 you to do it on - - bring it up on redirect.

16 MR. TAYLOR: Judge, I was not planning on doing that in
17 front of the jury. I just - - my - - that question was just
18 solely for the purposes of this suppression hearing.

19 THE COURT: Well, if you don't raise it, she won't bring
20 it in.

21 MR. TAYLOR: Okay.

22 THE COURT: That solve that question?

23 MR. TAYLOR: Yes, sir.

24 MS. ELDER: Yes.

25 THE COURT: Your Honor, my last motion is based on

1 Arizona vs. Gant regarding this case. It's long been the rule
2 under New York vs. Belton that under - - once a person is placed
3 under arrest - - -

4 THE COURT: I read that case last night. Somebody gave
5 it to me some time ago, and it's about a twenty-five page
6 opinion, well written.

7 MR. TAYLOR: Yes, sir.

8 THE COURT: But it's not applicable in this case simply
9 because he said when he was not under arrest, "There are drugs
10 in the car".

11 I agree with you that you can't start searching a man after
12 he's under arrest outside the presence of the car when there's
13 no danger to him.

14 MR. TAYLOR: Yes, sir.

15 THE COURT: But that's not what happened here.

16 At the initial inquiry, the defendant said, "There's
17 drugs."

18 So, I don't think Gant is applicable here though I'm very
19 familiar with the case.

20 MR. TAYLOR: Why I - - just for purposes for an appeal
21 for my client, why I think that it is applicable, if a person
22 says to an officer that during the - - take it under this
23 context.

24 During a murder investigation, the defendant is sitting
25 down at a table being interviewed by a detective for a murder

1 case, and the defendant says, "The murder weapon is at James
2 Smith's house."

3 They can't just run to James Smith's house and search that
4 house.

5 THE COURT: I think in your analogy, though, the
6 defendant was in custody sitting down being interrogated.

7 In this case the defendant at that time was not in custody.
8 He was responding to a simple inquiry which was made by the
9 arresting officer when he stopped the vehicle.

10 MR. TAYLOR: Yes, sir.

11 THE COURT: But unfortunately for him, he blurted out,
12 "There's drugs," if believed by the jury. It's a question for
13 the jury to determine.

14 MR. TAYLOR: And I just wanted to put it on the record
15 for an appellate, I understand the Court's ruling. I am not
16 arguing with the Court.

17 THE COURT: I understand.

18 MR. TAYLOR: I just want to put it on the record for an
19 appellate issue that if - - -

20 THE COURT: I can agree with you that if he was outside
21 of the car, handcuffed being arrested for no driver's license,
22 a search at that time would probably be improper.

23 MR. TAYLOR: Yes, sir.

24 THE COURT: But that's not what happened here. There
25 was an admission initially when he was not under arrest.

1 MR. TAYLOR: Judge, if you would watch that video that's
2 in that tv right over there, I don't think you would have any
3 question that this client was arrested. My client was arrested
4 when as soon as he said, "I don't have a driver's license," he
5 got him out of the car and put handcuffs on him.

6 THE COURT: Okay.

7 I'll ask the Solicitor to respond for the record.

8 Ms. Donna, respond for the record.

9 MS. ELDER: Yes, sir, Your Honor.

10 Your Honor, this is an officer who was by himself. He
11 always detains. He always - - he puts handcuffs on him. He was
12 handcuffed as soon as he got out of the car because the officer
13 was by himself at that point, did not have backup until they
14 arrived shortly later.

15 He detains until he figures out what - - what charges, if
16 any, are appropriate, and that's what he was doing. So he was
17 under handcuff.

18 And I do want to address the issue again.

19 I respectfully disagree that even if he was under arrest,
20 Gant case is entirely different. Gant case was in his yard. He
21 drove to his yard. There was no suspicion or no articulable
22 suspicion in that case of narcotics. They searched the vehicle,
23 and the reason given by the officer searching the vehicle was,
24 "Just because I can." That's in the opinion.

25 Now, Gant specifically said, "This opinion does not affect

1 Carroll stops. It does not affect inventory searches."

2 This was not in this man's yard. This was on the side of
3 the road.

4 Even if he didn't make that statement, they had a right to
5 inventory that car, and Gant does not apply.

6 THE COURT: Well, that's - - that's the problem the
7 defendant had. Assuming the search was illegal at the time, you
8 still got the problem of the inventory search which they had a
9 right to do.

10 MR. TAYLOR: If I could respond to that argument again
11 just for the record, Your Honor?

12 THE COURT: That would be fine.

13 MR. TAYLOR: I think this case in Gant is directly on
14 point with the case here.

15 In Gant they came to the house where Robbie Justice Gant
16 was located. They questioned him concerning drug activity at
17 that house because a confidential informant said, "Drugs are
18 being sold out of that house."

19 Mr. Gant said, "The owner of this house is not here."

20 And then they left. They ran - - they then ran Mr. Gant's
21 driving license and showed he was driving under suspension.

22 Through their investigation they go back to the house later
23 on and then they see Mr. Gant driving up. They arrest him
24 because they know that he is under suspension.

25 In this - - -

1 THE COURT: The problem here you have, Mr. Taylor, is
2 that he was not being questioned at the time. He just blurted
3 it out. "There are drugs in the car."

4 That's a voluntary statement by him.

5 MR. TAYLOR: I understand that but it was - - -

6 THE COURT: In Gant they were actually questioning him
7 about drugs.

8 MR. TAYLOR: Yes, sir.

9 Not at the time Mr. Gant was arrested. At the time that
10 Mr. Gant was arrested they arrested him because they knew he was
11 - - -

12 THE COURT: Let me cut this short.

13 I'm familiar with the Gant case. Studied it last night and
14 don't think it's applicable in this case for the reasons that
15 I've stated.

16 MR. TAYLOR: Okay.

17 THE COURT: Your Motion to Suppress is respectfully
18 denied.

19 MR. TAYLOR: Yes, sir.

20 Again, just renew my objections for the record for purposes
21 of an appeal.

22 THE COURT: I understand. That's fine.

23 MS. ELDER: And, Your Honor, we had one other, ah, issue
24 in relation to, ah, a stipulation regarding why this defendant
25 was being targeted because of the order for crack being made,

1 um, that he was driving to their location to deliver. I had
2 indicated to Mr. Taylor that I was - - I would stipulate that I
3 would not bring that up, that we start at the point of the
4 traffic stop.

5 However, if Mr. Taylor intends to question about the
6 ownership of the vehicle and make that an issue, then I'm going
7 to not be able to stipulate to that because I think it is - - -

8 THE COURT: Well, let's - - let's resolve it.

9 Is the ownership of the vehicle an issue?

10 MR. TAYLOR: Well, I think, you know, after hearing
11 testimony that they did not show that my client was the owner of
12 the vehicle. I don't think I have a choice but to argue that he
13 was not - - I have to argue something to the jury. That's where
14 the - - how the dope ends up in the car that he was in.

15 THE COURT: That's fine but if that's your position,
16 then she's not going to stipulate.

17 MS. ELDER: Right.

18 I'm going to - - I'm going to have to - - I'm going to have
19 to draw that testimony out as to why. They ordered the crack.

20 THE COURT: Sure.

21 MS. ELDER: It was a male defendant in a car.

22 THE COURT: You're entitled to do that if he raises an
23 issue that it was the owner's drugs and not the defendant's
24 drugs.

25 MS. ELDER: Well, I'm going to have to do that on case -

1 - I'm not going to - - I intend to do that on my case in chief
2 then - -

3 THE COURT: Sure.

4 MS. ELDER: - - if that's an issue.

5 So - - -

6 THE COURT: Okay. That's fine.

7 Anything else, Mr. Taylor?

8 MR. TAYLOR: Yes, sir, and I'm sorry my thought process
9 has been - - I understand we stipulated to that but that was
10 before we got into testimony regarding to that. So, if these
11 officers are going to testify that they got to my client because
12 of a CI, I think the CI is going to need to testify that he made
13 the call. Otherwise, it's going to be hearsay, um, evidence
14 regarding the CI without the CI present.

15 THE COURT: You can't - - you can't put that testimony
16 in unless you have the CI.

17 MS. ELDER: Your Honor, the CI was not part of this
18 transaction. The officers were monitoring - - Officer Guthinger
19 here, they were monitoring the phone call. They were actually
20 in the CI's house when the phone call was placed.

21 THE COURT: They can testify that they themselves heard
22 that. I'll permit it. Yeah.

23 If they heard it, if they were in the house when the call
24 was made, they can testify as to what they heard.

25 MS. ELDER: One moment, Your Honor.

1 THE COURT: That's not nothing hearsay about that.

2 MR. TAYLOR: Yes, sir.

3 THE COURT: All right. What else?

4 MR. TAYLOR: That would conclude my motions at this
5 point, Your Honor.

6 THE COURT: All right, sir.

7 We'll take a short break, and let the jury go until 11:00.

8 When the jury is down there, make sure all of them are down
9 there and bring them on up, and let me know when they get here.

10 Okay?

11 MS. ELDER: Thank you, Your Honor.

12 THE COURT: We'll take a break until the jury gets here.

13 (The Court recesses the trial of this case for a short
14 break and thereafter reconvenes the trial of this case.)

15 REMARKS OF THE COURT

16 THE COURT: Good morning, ladies and gentlemen. Please
17 be seated.

18 Ladies and gentlemen, we have called upon you so that we
19 might select from your number twelve jurors and one alternate
20 for the purposes of being the finders of the facts and the trial
21 jury in a case that, ah, we are getting ready to try.

22 The case is The State vs. Termain Omar Cooper who is
23 charged with trafficking in cocaine to which charge he
24 specifically pleads not guilty thereby placing the burden of
25 proof upon the State of South Carolina of proving him guilty if

1 they can by evidence to your satisfaction beyond a reasonable
2 doubt.

3 Now, this case is proceeding by trial in the absence of the
4 defendant. Having said that, you must raise no adverse
5 inference against the defendant because of his absence in this
6 case.

7 By the same token, I tell you that under certain
8 circumstances the State of South Carolina has the absolute right
9 to try an individual in his absence, and you must not hold that
10 against the State of South Carolina.

11 Even though the defendant Cooper is not here he is entitled
12 to all the constitutional rights given anyone in the trial of a
13 case.

14 Among those rights and the most important of all is that
15 every defendant is presumed innocent and the fact he's being
16 tried must not be held against him. There is absolutely no
17 adverse inference to be derived from that fact.

18 Every defendant is entitled to the presumption of innocence
19 from the moment this case is tried throughout the trial until
20 you, the jury, have found him guilty by evidence beyond a
21 reasonable doubt.

22 So, I say to you that this defendant is entitled to every
23 protection that he would have if he were here present and
24 participating.

25 Now, as I've indicated to you, upon this indictment that I

1 hold in my hand the defendant is charged with trafficking in
2 cocaine to which he pleads not guilty.

3 At an appropriate time in the trial of this case I will
4 fully advise you as to the elements of that charge, and I will
5 charge you at that time that the State must prove each and every
6 element beyond a reasonable doubt.

7 Now, the State and the defendant, the defendant represented
8 by Mr. Paul Taylor, desires from your number twelve folks,
9 twelve folks with no friends to reward, to enemies to punish,
10 twelve people who can say, "Your Honor, under my oath, I will
11 base my verdict on the law and evidence heard in this courtroom
12 and from no other source."

13 Now, I have several questions to ask of you as a panel to
14 insure that we receive a jury that I've described, a jury who
15 has no interest in the case, do not know the parties and can
16 give a verdict based upon the law and the evidence in this case
17 remembering at all times, do not hold the fact against the
18 defendant that he is not here. The case has the burden of
19 proving him guilty if they can beyond a reasonable doubt.
20 Attach no adverse inference to his absence in this case.

21 VOIR DIRE

22 THE COURT: Now, first, are any of you related by blood
23 or marriage to Termain Omar Cooper? If so, please stand.

24 It is alleged in this indictment and I charge you the
25 indictment is not evidence. It's just a formal manner by which

1 an individual is brought to trial. It is alleged that on
2 February 20, 2008, the defendant trafficked in cocaine.

3 It's not likely. Would any of you heard anything about the
4 case or having discussed it in any way?

5 Now, this case involves allegations of trafficking in
6 cocaine. We know from life's experiences that, ah, some of us
7 through our families or friends or others have had matters
8 involving drugs which might or might not prejudice us in the
9 consideration in the case where an individual is charged with
10 drugs.

11 Now, based on the facts that these are allegations of
12 trafficking in cocaine, do any of you have such personal biases
13 that you feel that you could not give this defendant a fair and
14 impartial trial because it involves allegations of drugs?

15 All of you, then, are saying to me that you will base your
16 verdict on the law and evidence in this case.

17 For the prosecution, any further inquiry?

18 MS. ELDER: No, sir, Your Honor.

19 I've given Your Honor or handed up a copy of my witness
20 list. I don't know if you want to inquire about - - -

21 THE COURT: I will do that. Beyond the witnesses, any
22 other inquiry, Mr. Taylor?

23 MR. TAYLOR: None, Your Honor.

24 THE COURT: Now, there are several potential witnesses
25 that may or may not be called by one side or the other and my -

1 - this is for my information.

2 One is Detective Mike Guthinger. Any of you have any
3 special relationships with him, related by blood or marriage or
4 close personal friends?

5 Another witness is Quintard Tucker. Same question.

6 Ah, another possible witness is Lisa Floyd, a chemist.

7 And, ah, Sharon Lilly. Anybody have any special
8 connections with her?

9 Mr. Taylor, you have any witnesses you would like for me to
10 - - -

11 MR. TAYLOR: None, Your Honor.

12 THE COURT: All right, sir.

13 All right. Any further inquiry?

14 MS. ELDER: No, sir, Your Honor.

15 THE COURT: Mr. Taylor?

16 MR. TAYLOR: None, Your Honor.

17 THE COURT: All right.

18 Give us a jury, twelve plus one alternate.

19 JURY SELECTION

20 CLERK OF COURT: When I call your name, please come and
21 stand right here and face the back of the courtroom, and when
22 you come, bring your personal belongings with you.

23 CLERK OF COURT: 124, Catherine Gannoe.

24 What say the State?

25 MS. ELDER: Please present this juror.

1 CLERK OF COURT: Defense?

2 MR. TAYLOR: Please present this juror, Your Honor.

3 CLERK OF COURT: Please be seated in the juror box.

4 THE COURT: Strikes are five and five.

5 CLERK OF COURT: 202, Melissa Lambert.

6 What say the State?

7 MS. ELDER: Your Honor, please present Ms. Lambert.

8 CLERK OF COURT: The defense?

9 MR. TAYLOR: I'm sorry. I didn't get the juror number,
10 and I have two Melissa Lamberts.

11 CLERK OF COURT: 202.

12 MR. TAYLOR: 202, okay.

13 Please present this juror.

14 CLERK OF COURT: Please be seated in the jury box.

15 91, Gerald Dew.

16 What say the State?

17 MS. ELDER: Please present this juror.

18 CLERK OF COURT: The defense?

19 MR. TAYLOR: Please excuse this juror.

20 CLERK OF COURT: Please be seated. You're excused from
21 this particular case.

22 127, Larry Geddings.

23 What say the State?

24 MS. ELDER: Please present this juror.

25 CLERK OF COURT: The defense?

1 MR. TAYLOR: Please present this juror.

2 CLERK OF COURT: Please be seated in the jury box.

3 THE COURT: I'm going to ask that you accept the
4 foreman's chair for me. Thank you.

5 CLERK OF COURT: 63, Jennifer Carroll.

6 What say the State?

7 MS. ELDER: Please present this juror.

8 CLERK OF COURT: The defense?

9 MR. TAYLOR: Please excuse this juror.

10 CLERK OF COURT: Please be seated. You are excused from
11 this particular case.

12 16, Charles Banks.

13 What say the State?

14 MS. ELDER: Please excuse the juror from this case.

15 CLERK OF COURT: Please be seated. You're excused from
16 this particular case.

17 328, Carol Rushow.

18 What say the State?

19 MS. ELDER: Please present the juror.

20 CLERK OF COURT: The defense?

21 MR. TAYLOR: Please present this juror.

22 CLERK OF COURT: Please be seated in the juror box.

23 79, Graham Cormack.

24 What say the State?

25 MS. ELDER: Please excuse the juror.

1 CLERK OF COURT: Please be seated. You're excused from
2 this particular case.

3 396, Eddie West.

4 What say the State?

5 MS. ELDER: Please present this juror.

6 CLERK OF COURT: The defense?

7 MR. TAYLOR: Please present this juror.

8 CLERK OF COURT: Please be seated in the juror box.

9 300, Darlene Plyler.

10 What say the State?

11 MS. ELDER: Please present this juror.

12 CLERK OF COURT: The defense?

13 MR. TAYLOR: Please present this juror.

14 CLERK OF COURT: Please be seated. in the jury box.

15 85, Charles D'errico.

16 What say the State?

17 MS. ELDER: Please present this juror.

18 CLERK OF COURT: The defense?

19 MR. TAYLOR: Please excuse this juror.

20 CLERK OF COURT: Please be seated. You're excused from
21 this particular case.

22 359, Jeffrey Spencer.

23 What say the State?

24 MS. ELDER: Please present this juror.

25 CLERK OF COURT: The defense?

1 MR. TAYLOR: Please present this juror.

2 CLERK OF COURT: Please be seated in the jury box.

3 62, Donna Carroll.

4 What say the State?

5 MS. ELDER: Please present the juror.

6 CLERK OF COURT: The defense?

7 MR. TAYLOR: Please excuse this juror.

8 CLERK OF COURT: Please be seated. You're excused from
9 this particular case.

10 365, Lynell Stout.

11 What say the State?

12 MS. ELDER: Please present this juror.

13 CLERK OF COURT: The defense?

14 MR. TAYLOR: Please present this juror.

15 CLERK OF COURT: Please be seated in the jury box.

16 376, Bernie Thompson.

17 What say the State?

18 MS. ELDER: Please excuse the juror from this case.

19 CLERK OF COURT: Please be seated. You're excused from
20 this particular case.

21 242, Marie McLaughlin.

22 MS. ELDER: I'm sorry. What number?

23 CLERK OF COURT: 242.

24 What say the State?

25 MS. ELDER: Please present this juror.

1 CLERK OF COURT: The defense?

2 MR. TAYLOR: Please present this juror.

3 CLERK OF COURT: Please be seated in the jury box.

4 43, Joyce A. Boyd.

5 What say the State?

6 MS. ELDER: Please present this juror.

7 CLERK OF COURT: The defense?

8 MR. TAYLOR: Please present this juror.

9 Please be seated in the jury box.

10 338, Lynda Schwanekamp.

11 What say the State?

12 MS. ELDER: Please present this juror.

13 CLERK OF COURT: The defense?

14 MR. TAYLOR: Please present this juror.

15 CLERK OF COURT: Please be seated in the jury box.

16 189, Mark Kershaw.

17 What say the State?

18 MS. ELDER: Please present this juror.

19 CLERK OF COURT: The defense?

20 MR. TAYLOR: I'm sorry. What was this juror's number
21 again, please?

22 CLERK OF COURT: 189.

23 MR. TAYLOR: Please present this juror.

24 CLERK OF COURT: Please be seated in the jury box.

25 THE COURT: That will constitute the jury. We will want

1 one alternate. Strikes are one and two.

2 CLERK OF COURT: 271, Thomas Myers.

3 What say the State?

4 MS. ELDER: Please present this juror.

5 CLERK OF COURT: The defense?

6 MR. TAYLOR: Please present this juror.

7 CLERK OF COURT: Please be seated in the jury box.

8 THE COURT: All right. Have them go to the jury box,
9 please, Christina. I'll be calling you back out very shortly.

10 (The jury retires to the jury room.)

11 THE COURT: For the State, any matters regarding the
12 composition of the jury?

13 MS. ELDER: No, sir, Your Honor.

14 THE COURT: For the defense?

15 MR. TAYLOR: None, Your Honor.

16 THE COURT: All right, sir. I'm prepared - - Christina,
17 what instructions do we need to give to the rest of the panel?

18 CLERK OF COURT: Call back after six today.

19 THE COURT: Okay.

20 Ladies and gentlemen, I thank you for your services this
21 morning, and I'm told by the Clerk that we will not need any of
22 you for the rest of the day, and you are excused for the day but
23 call in after 6:00 tonight for purposes of seeing what we're
24 going to have tomorrow.

25 Does anybody have any questions about the call-in

1 procedure?

2 Well, let me say I thank you very much for your patience
3 this morning, and you are now excused to call in after 6:00
4 tonight.

5 You may leave at this time, and thank you so much.

6 (The remaining jury panel is released to call in after 6:00
7 p. m. tonight and departs the courtroom.)

8 THE COURT: All right.

9 Prior to beginning, let the record reflect that we have had
10 a suppression hearing this morning which is now made a part of
11 the record, and I have made appropriate findings of fact giving
12 rise to the propriety of trying this defendant in his absence,
13 and that, too, is made a part of this record.

14 Are we now ready to proceed?

15 MS. ELDER: Yes, sir, Your Honor.

16 MR. TAYLOR: Yes, sir, Your Honor.

17 THE COURT: Bring the jury in and swear the jury for me,
18 please.

19 (The Court addresses another Solicitor off the record on
20 matters unrelated to this trial.)

21 (The jury returns to the courtroom.)

22 THE COURT: Swear the jury, please.

23 (The Clerk of Court swears the jury.)

24 REMARKS OF THE COURT

25 Mr. Foreman, I have designated you as Foreman of the Jury,

1 and your job, of course, will be to preside during the
2 deliberations in the jury room and to be the spokesman in the
3 courtroom, and I thank you for your services.

4 Ladies and gentlemen, we are now ready to try the case, and
5 let me make a few preliminary remarks to you understanding that
6 for many of you this is the first time you've been in the jury
7 and, certainly, the first time you've been on a criminal case.

8 Ah, this defendant, as I've indicated, is being tried in
9 his absence, and there's absolutely no adverse inference to be
10 derived from his absence in the case. His absence should not
11 even enter into your discussions in the jury room.

12 As I indicated to you, the State of South Carolina has the
13 burden of proof of proving him guilty of the charge of
14 trafficking in cocaine if they can by evidence to your
15 satisfaction beyond a reasonable doubt.

16 At the appropriate time in the trial of this case, I will
17 give you various definitions as to reasonable doubt and I will
18 charge you as the elements of trafficking in cocaine.

19 We will start by the Solicitor, Ms. Donna, giving you an
20 opening statement of what she says her case is about.

21 Following that Mr. Taylor representing the defendant will
22 give you a statement as to their statement.

23 Following these opening statements, and these opening
24 statements is not evidence. It's their position but it's not
25 evidence. The evidence comes from this witness stand under

1 oath.

2 Following these opening statements there will be various
3 witnesses presented. At the conclusion of the testimony of the
4 various witnesses, we'll then have final statements by the
5 Solicitor and the counsel for the defendant.

6 At that time, I will charge you with regards to the
7 appropriate law in this case and ask at that time that you
8 retire to the jury room and give us a verdict of either not
9 guilty or guilty.

10 Ms. Donna.

11 OPENING STATEMENT BY MS. ELDER

12 MS. ELDER: May it please the Court, Your Honor.

13 Ah, my name is Donna Elder. I didn't get a chance to
14 introduce myself earlier but I'm one of the senior prosecutors
15 with the Fifteenth Judicial Circuit. Our job is to represent
16 the State of South Carolina in criminal cases in Horry and
17 Georgetown Counties.

18 The case that we've brought here today before you is a case
19 that occurred back in 2008, February 20th to be exact, and it's
20 about drugs, and, particularly, in this case it's about what we
21 call cocaine base. The legal term for it is cocaine base. The
22 street term for it is crack.

23 So, you may have heard about it out in the community. You
24 may have read it in the newspapers. You may have seen it on
25 television but that's what we're talking about. We're talking

1 about a specific amount of crack cocaine. So, you may hear me
2 use the term "cocaine base" but that - - that's the same thing.

3 It's unfortunate that we have to deal with drugs. It's
4 also unfortunate that they're everywhere. They're beside you.
5 They're in front of you. They're in the schools. They're in
6 the streets, and this is what we have here today.

7 You're going to hear - - it's going to be a fairly short
8 case - four witnesses that I'm going to produce to y'all about
9 what happened on February 20th, and you're going to hear from
10 Officer Guthinger who was detached to a Drug Enforcement Unit
11 here in our circuit that dealt with narcotics investigations.
12 You're going to hear that they developed what we call a
13 confidential informant, and he's going to tell you that through
14 the use of this confidential informant, they were able to make
15 some phone calls. They placed an order for crack cocaine. They
16 were given a general description of the person they were
17 ordering from: A black male in a gold colored Lincoln car.

18 They placed the order for the crack. They had another
19 officer, Corporal Tucker, who operates from Myrtle Beach Police
20 Department. He's one of the Canine Unit Operators. He was on
21 patrol. They asked for his assistance.

22 They told him the car that they were on the look-out for.
23 He was able to get behind that car, and like they always do,
24 you'll hear that they concerned themselves with the safety and
25 identity of their confidential information because you can

1 imagine. Sometimes it can be dangerous for somebody to be a
2 confidential informant. So, they try to protect their identify
3 as much as possible, and that's what they did in this case.

4 They asked Mr. Tucker, Officer Tucker, to get behind the
5 defendant. See if he made any kind of traffic violation while
6 he was driving down the road. So, that's exactly what Officer
7 Tucker did. Got in behind the defendant as he was coming - -
8 after they made the phone call for the deliver. Got in behind
9 him. Observed traffic violations of improper lane changes.

10 He initiates a traffic stop. He goes around to Mr.
11 Cooper's vehicle. He gets him out of the car. Asks for
12 identification. He places him in handcuffs, and he's going to
13 tell you. That's standard for him. He's by himself. Until he
14 fully investigates and determines what's going on for his
15 protection, he's going to place the person in handcuffs,
16 especially under the circumstances.

17 He gets him out of the vehicle. He asks for driver's
18 license as you would on any traffic stop. Termain Cooper says,
19 "I don't have a driver's license".

20 Because in fact it was - - he was driving while he was
21 suspended.

22 At that point the narcotics officer who was involved in
23 this investigation gets called to the scene.

24 We've got a traffic. We've stopped him. He's driving
25 under suspension. He made improper lane changes. He had a

1 seatbelt violation.

2 Officer Guthinger, the narcotics officer, comes to the
3 scene. Officer Tucker is going to tell you when Termain Cooper
4 got out of the car, he left his driver's side door open.
5 Officer Tucker had an opportunity to see a substance on the
6 floorboard of the vehicle.

7 When the narcotics officer arrived on the scene, he told
8 Officer Guthinger, "Looks what appears to be cocaine in the
9 front floorboard of the seat - - of the car."

10 Officer Guthinger goes up there. He takes some photographs
11 before removing the drugs, and you'll see those, and then he
12 takes the drugs.

13 You'll hear from two other witnesses. One is the Evidence
14 Custodian, and sometimes jurors are confused as to why we even
15 place the Evidence Custodian up there but she is going to
16 testify to what we call the chain of evidence.

17 We've got to show you where the drugs went from the car all
18 the way up to testing. So, that's her purpose.

19 She's going to tell you, "I got the drugs. Officer
20 Guthinger had packaged them. Dropped them in my evidence drop
21 box. I took them into evidence. I passed them on to the
22 chemist."

23 And then the chemist, Lisa Floyd, is going to get up and
24 tell you that what she, in fact, tested, what was, in fact,
25 removed by Officer Guthinger from Termain Cooper, the vehicle he

1 was driving, was, in fact, cocaine base. It did weigh 11.97
2 grams, and I'm going to have an opportunity at the end of the
3 trial to address you about the charge itself but the weight is
4 important because in order to get to trafficking, the charge of
5 trafficking, you have to have more than ten grams. So, she's
6 going to testify that we clearly have more than ten grams of
7 crack cocaine because we've got 11.97.

8 And simply put, that's the case. That's what you're going
9 to be presented, and I think if you will - - I know you all will
10 listen to the case but once you hear the testimony and you see
11 the drugs, you see the photographs, you hear the officers, I'm
12 sure you'll reach the conclusion that Termain Cooper is, in
13 fact, guilty of trafficking in cocaine, 10 to 28 grams.

14 Thank you very much.

15 THE COURT: Mr. Taylor.

16 OPENING STATEMENT BY MR. TAYLOR

17 MR. TAYLOR: Thank you, Your Honor.

18 If it please the Court?

19 Good morning. I didn't get a chance to introduce myself
20 either. My name is Paul Taylor. I practice here in Conway
21 and, primarily, doing criminal defense work.

22 And as Ms. Elder stated, we're here today because of crack
23 cocaine. It looks like soap, and I'll have to agree with her.
24 This is scourge on society, and it's taken over. It's probably
25 one of the most addictive things that you'll ever see in your

1 life or hear about.

2 The first time I ever saw it was in a case. It was the
3 size of a chocolate chip cookie. It comes in different sizes
4 and colors.

5 Well, I'm not going to talk about the crack cocaine right
6 now. I understand that she went into that about the weight and
7 all of that which are legal matters which the judge is going to
8 describe to you later on.

9 Let's go back to the beginning of the State's opening
10 statement. She said this is a very short case, and it's not
11 going to take that long. She's only got, I believe, four
12 witnesses, and the first one she's going to put up is Ms. Floyd
13 over here in the brown coat who is our county examiner when it
14 comes to drugs, and I'll stipulate. There was drugs found in
15 the car. There's no way that I'm going to try and stand in
16 front of you and say there were not drugs found in this car.
17 There were.

18 So, she's going to start off and tell you what she did to
19 the drugs and what she tested and how it came back as far as
20 weight. That's really not important either.

21 What I want - - want you to focus on in this case is how
22 did they get to that and how did they get to my client and
23 whether or not it was my client that actually had possession of
24 those drugs, whether or not it was his.

25 This is a really quick case but it should be a longer case.

1 It's a serious matter here why we're here, trafficking in
2 cocaine, but it should be longer because the investigation
3 should be a little more in depth. There should have been a
4 little more done on the front end prior to making an arrest, and
5 I'm going to get into that, and you're going to see that through
6 the testimony of the officers as they get up here.

7 What - - in thinking about this case last night and what I
8 was going to have to stand in front of you today, the only thing
9 I could think of in looking through the State's evidence and
10 what they did and the amount of time they did, it reminds me
11 when I was a kid and my grandmother was always making pound
12 cake. She made the best pound cake in the world but she - - if
13 you opened the oven too - - too early, it just dropped, and
14 that's basically what happened here.

15 You get really excited because that pound cake is
16 delicious, and these officers, these two officers, to them it's
17 like my grandmother's pound cake. They see that there's
18 somebody there that they can arrest, and they get excited, um,
19 and they want to go and they want to arrest somebody, and they
20 want to go quickly, and they want - - but the problem is just
21 like that pound cake, if you open that up too early, it drops.
22 It doesn't - - it doesn't come up like it's suppose to, and
23 that's what happens in this case.

24 You're going to see that, and this case starts in the
25 beginning, and I'm going to start from the beginning with you.

1 They get a confidential informant which is usually the
2 case. They get somebody that's arrested for drugs or whatnot
3 who is cooperating with them who is going to get up with law
4 enforcement and say, "Yep. You know, I'll help you if you help
5 me."

6 That's the way it always works.

7 You're going to hear testimony from this officer sitting
8 over here that what happened with - - with him is he gets to the
9 CI, and there's a phone call made, obvious. I mean, somebody
10 calls, and they order some drugs. He doesn't see who that
11 person is. He just knows, "I'm going to make a phone call. I'm
12 going to set up a buy."

13 And then they arrest somebody driving a vehicle described
14 like what my client is suppose to be driving, and they stop him
15 for a traffic violation, and they search that car that's suppose
16 to be coming from my client.

17 Um, the problem is that the vehicle doesn't belong to my
18 client. I - - I'm going to stop there, and I want you to think
19 about this. I want you to imagine that you got in your vehicle
20 this morning to drive here, and I want you to think in your mind
21 here. How long did it take you to get in your car and put the
22 key in the ignition and turn the ignition and then take off?

23 Probably didn't even think about what was around you. It's
24 kind of instinctive.

25 You know, you knew where to come. It was like coming to

1 work. You'd already been here before and drove here quickly
2 but you didn't bother to look in that car if your husband drove
3 the car. You didn't bother to see what was in the car. You
4 didn't think to because nobody does.

5 You didn't think, "Let's look in the trunk. See what my
6 husband may have in the trunk that may get him in trouble."

7 Or if this is my brother's car, "Let me look in the car and
8 see what's in the vehicle before I drive it."

9 Nobody does that, nobody. That's not your common reaction.
10 You go out. You hop in the car. You take off in it. You've
11 got permission to drive it. It's not yours. You can drive it.

12 These drugs were found in somebody's car that did not
13 belong to my client. They ran the ownership of the registration
14 of that vehicle. This officer over here did, and it comes back
15 to Theresa Lisben.

16 And he's going to testify that he returned her vehicle to
17 her but he didn't ask her how that got in her car. He didn't
18 question her about it. He didn't ask anything concerning her.
19 How my client came to be driving the car? Is she related to
20 him? Is it a girlfriend? Anything.

21 And that's a problem. That's a major problem because they
22 can't put that to my client.

23 It wasn't found in his pocket. It wasn't found in his coat
24 pocket. It wasn't found in his pants pocket. It wasn't found
25 in his sock or his shoe or his underwear or anything else on his

1 body. It was found under the seat that he was driving.

2 Think about that. None of you driving here today looked
3 under the seat of your vehicle, and if anybody drove here today
4 in your husband's car, if yours is in the shop or if you're
5 driving your friend's car because yours is in the shop or you
6 were driving somebody else's car because you don't even own a
7 car, and my client didn't own a car. He didn't look under the
8 car when he got in the car because that's not a normal reaction.

9 They did not do anything to investigate - - -

10 THE COURT: Mr. Taylor, you're entitled to a short
11 opening statement. You're getting into closing now. Save some
12 of that for closing.

13 MR. TAYLOR: Yes, sir.

14 So, anyway, I'm getting shut down. So, I'll close - - I'll
15 close with the fact that they can't put that with my client, and
16 there's no way that they're going to be able to put this with my
17 client. They can't show that it's my client's, and that's a
18 problem but they want you to convict him even though they can't
19 prove that it's his.

20 Jumped the gun. Opened that oven too fast and did not
21 properly make that case before they charged my client with a
22 very serious offense, and I hope that after you hear all of he
23 evidence today that you find my client not guilty because you
24 may hate what's on that table right there but that's not enough
25 to prove my client is guilty, and he's innocent until proven

MS. LILLY - DIRECT EXAMINATION BY MS. ELDER

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1 guilty but just because you may not like what's on that table
2 and you may hate it and you may know that it's destroying this
3 society, you can't convict my client just because of that.

4 You took an oath to give him a fair trial, and I ask that
5 you do that.

6 Thank you.

7 THE COURT: Mr. Taylor, in your closing, you will be
8 presented unlimited opportunity to make your position.

9 MR. TAYLOR: Thank you, Your Honor.

10 THE COURT: All right.

11 MS. ELDER: Your Honor, the State would call Sharon
12 Lilly.

13 (The witness takes the witness stand.)

14 SHARON LILLY, BEING DULY SWORN, TESTIFIES AS
15 FOLLOWS:

16 CLERK OF COURT: Please state your name and spell your
17 last name for the Court.

18 MS. LILLY: Sharon Lilly, L-i-l-l-y.

19 DIRECT EXAMINATION BY MS. ELDER:

20 Q. Ms. Lilly, where are you employed?

21 A. Horry County Police Department.

22 Q. And what do you do with the Horry County Police Department?

23 A. Evidence Custodian.

24 Q. Okay.

25 And what are some of your general duties as Evidence

MS. LILLY - DIRECT EXAMINATION BY MS. ELDER

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1 Custodian?

2 A. I take in property that's turned in to me and log it in to
3 the computer.

4 Q. And did you happen to take in property that was dropped by
5 an officer at that time assigned to the Drug Enforcement Unit on
6 Termain Cooper?

7 A. Yes, I did.

8 Q. And do you document that when you take it in?

9 A. I do.

10 Q. And how do you document that?

11 A. I log it into the computer.

12 Q. And then it's assigned a number?

13 A. Yes, ma'am. I put a drug kit number on it.

14 Q. Okay.

15 And this is - - is there a drug kit number on this?

16 A. Yes, ma'am.

17 Q. And where is that located?

18 A. It's right here.

19 MS. ELDER: I'd like to have this marked for
20 identification, please.

21 (The Court Reporter marks the drugs as State's Exhibit #5
22 for identification.)

23 Q. I'm referring for State's for identification #5.

24 And that's what we're talking about?

25 A. Yes, ma'am.

MS. LILLY - DIRECT EXAMINATION BY MS. ELDER

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1 Q. And you received these from what officer?

2 A. Officer Mike Guthinger.

3 Q. Okay.

4 And when you receive it, is it sealed?

5 A. It is sealed.

6 Q. Okay.

7 And do you look at it to see if there is any damage or
8 anything - -

9 A. I do.

10 Q. - - before you log it in?

11 A. I do.

12 Q. Okay.

13 And if there was damage, would you have noticed that?

14 A. I would have noted it and called him back in.

15 Q. Okay.

16 And was that - - in this case, was this package sealed and
17 intact when you received it?

18 A. Yes, it was.

19 Q. Okay.

20 And when you received it and logged it in, and it has a
21 number on it, what did you do at that point?

22 A. I then give it to Lisa Floyd, the chemist.

23 Q. And is that the normal protocol y'all do with evidence?

24 A. Yes, it is.

25 Q. All right.

MS. LILLY - DIRECT EXAMINATION BY MS. ELDER

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1 And when you gave to her, was it in the same condition as
2 when Officer Guthinger gave it to you?

3 A. It was.

4 Q. And it was still sealed?

5 A. It was.

6 MS. ELDER: I have no further questions, Your Honor.

7 THE COURT: Mr. Taylor

8 MR. TAYLOR: Your Honor, I have no questions of this
9 witness.

10 THE COURT: You may come down and are excused from
11 further testimony.

12 Thank you.

13 (The witness leaves the witness stand.)

14 MS. ELDER: Thank you, Your Honor.

15 The State would call Lisa Floyd.

16 (The witness takes the witness stand.)

17 MS. ELDER: Your Honor, it's the State's understanding
18 that the defense will stipulate as to Ms. Floyd's expertise in
19 giving her opinion in her analysis of narcotic drugs.

20 MR. TAYLOR: Your Honor, I've forgotten how many times
21 I've appeared with Ms. Floyd in court. I know she is an expert
22 and very qualified at her job.

23 THE COURT: I find her qualified. She's testified many
24 times in my court and other courts. She is qualified as
25 opinions.

MS. FLOYD - DIRECT EXAMINATION BY MS. ELDER

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1 MS. ELDER: Thank you, Your Honor.

2 LISA FLOYD, BEING DULY SWORN, TESTIFIES

3 AS FOLLOWS:

4 CLERK OF COURT: State your name for the Court.

5 MS. FLOYD: Lisa Floyd.

6 DIRECT EXAMINATION BY MS. ELDER:

7 Q. Ms. Floyd, where are you employed?

8 A. I run the Drug Analysis Laboratory for the Horry County
9 Police Department.

10 Q. And what do you do there?

11 A. Um, I test drugs submitted from multiple agencies within
12 the Fifteenth Judicial Circuit, all of them within Horry County
13 and, ah, and issue reports based on the findings of those tests.

14 Q. And how long have you been doing that?

15 A. Since September of 2002.

16 Q. If you'll take a look at what's been marked as State's
17 Exhibit #5 for identification. Before we go with those
18 specific drugs, can you tell me the general protocol as to what
19 do you do when you receive a package in your lab?

20 A. Um, the first thing I do is log it, and I look at the
21 tamper evidence packaging that is on all sides of this bag
22 that's in the interior clear bag. Um, that bag that's inside
23 here is what it's submitted to me in, and as long as the red
24 adhesive seals at the top and all of the blue tamper evidence
25 designs around it show no evidence of tampering, then when I get

1 ready to test it, I'll put my initials, the letters OK and the
2 date that I open it, and that OK tells me when I look back at it
3 that those seals were fine.

4 Q. And, in fact, on this particular State's Exhibit #5, was
5 that, in fact, the case?

6 A. Yes. The seals were intact.

7 Q. And did you proceed at that point to open the drugs for
8 testing?

9 A. That's correct, yes.

10 Q. And when you opened them, um, there's a couple of smaller
11 baggies in there. Could you explain what those are?

12 A. Um, inside - - let me look at my worksheet.

13 Um, inside this outer bag that I was explaining has the
14 tamper evidence seals, the evidence was placed, and in this case
15 it was submitted. It's a piece of a sandwich baggie. It's
16 commonly referred to as a corner bag or a corner baggie, and,
17 um, the other bag that you see inside is a zip-lock back with a
18 small red line at the top, and that's the bags that I repackaged
19 the evidence in. Both of them bear the lab number I assign it,
20 my initials and the date.

21 Q. And you initial and number all those things. Is that for
22 quality assurance so that you'll know?

23 A. It is. Yes.

24 Q. And did you, in fact, test these drugs?

25 A. I did have the opportunity to test drugs, yes.

MS. FLOYD - DIRECT EXAMINATION BY MS. ELDER

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1 Q. Did you remove them from the packaging they came in. You
2 said there was a - - a corner baggie. You said there was a
3 piece of a zip-lock baggie or something they were originally
4 stored in. Did you remove them from that?

5 A. Um, yes, in order to test and weigh the substance, it has
6 to be removed from the original packaging.

7 Q. And you did, in fact, do that in this case?

8 A. Yes, I did.

9 Q. And following the standard protocol, ah, what did your
10 tests conclude about the contents of that particular piece of
11 evidence?

12 A. Um, both the presumptive test which is simply color test in
13 this case and the confirmatory analysis, um, both indicated that
14 it is cocaine base which is, again, commonly referred to as
15 crack cocaine.

16 Q. And did you determine the weight?

17 A. Yes. The weight of the substance was 11.97 grams which is
18 184.69 grains.

19 Q. And are those the two common weights that you use for
20 cocaine and cocaine base?

21 A. It is, yes.

22 Q. And the weight of 11.97 grams, that was without packaging.
23 Is that correct?

24 A. That's correct. The weight reported is simply the weight
25 of the substance by itself.

MS. FLOYD - CROSS EXAMINATION BY MR. TAYLOR

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1 MS. ELDER: I have no further questions at this time,
2 Your Honor.

3 THE COURT: Mr. Taylor.

4 MR. TAYLOR: One question.

5 CROSS EXAMINATION BY MR. TAYLOR:

6 Q. Those drugs that come in, and you tested them, obviously,
7 as you testified to but you don't know how they got there as far
8 as investigative. You're not in any way involved in the
9 investigation concerning how the drugs came to you?

10 A. No, I am not.

11 Q. Okay.

12 Thank you.

13 MR. TAYLOR: No further questions.

14 THE COURT: You may come down.

15 Can this witness now be excused?

16 MS. ELDER: I would ask that, Your Honor.

17 THE COURT: You are excused, and we thank you.

18 MS. FLOYD: Thank you.

19 (The witness leaves the witness stand.)

20 MS. ELDER: Your Honor, the State would call Officer
21 Guthinger.

22 (The witness takes the witness stand.)

OFFICER GUTHINGER - DIRECT EXAMINATION BY MS. ELDER

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1 OFFICER G. MICHAEL GUTHINGER, BEING
2 DULY SWORN, TESTIFIES AS FOLLOWS:

3 CLERK OF COURT: Please state your name and spell your
4 last.

5 OFFICER GUTHINGER: G. Michael Guthinger, G-u-t-h-i-n-g-e-
6 r.

7 DIRECT EXAMINATION BY MS. ELDER:

8 Q. Officer Guthinger, where are you employed?

9 A. I am employed by the City of Myrtle Beach Police
10 Department.

11 Q. And how about in February of 2008?

12 A. I was employed by the City of Myrtle Beach Police
13 Department assigned to the Fifteenth Circuit Drug Enforcement
14 Unit.

15 Q. And what were your duties at that time being assigned to
16 the Drug Enforcement Unit?

17 A. As assigned to the Drug Enforcement Unit, I was to
18 investigate, ah, narcotics offenses in both Horry and Georgetown
19 Counties.

20 Q. And did you have an opportunity to initiate an
21 investigation on defendant who became known to you as Termain
22 Cooper?

23 A. Yes, I did.

24 Q. I want to go back to February of '08, and I want to talk to
25 you a little bit about how y'all initiate investigations.

OFFICER GUTHINGER - DIRECT EXAMINATION BY MS. ELDER

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1 Tell me what - - well, let me - - tell me what a
2 confidential informant is.

3 A. A confidential informant is somebody who is cooperating
4 with the State in order us further an investigation. Ah,
5 generally they'll provide information. Ah, they may make
6 official purchases of narcotics for us on our behalf or, you
7 know, just provide information to us on our cases.

8 Q. And, usually, it's to some benefit of theirs. Is that
9 correct?

10 A. Yes. They are either - - there's two types of informants
11 that we have. They are either have been charged with a
12 narcotics offense, and they're trying to cooperate and maybe get
13 a favorable recommendation for, ah, reduced charges or the other
14 ones that we have are actually paid or we'll, ah, we'll pay them
15 a set fee for their - - their services.

16 Q. In this particular case were y'all at a location with what
17 we call confidential informant?

18 A. Yes.

19 Q. And, ah, I believe you were present. Is that correct?

20 A. Yes, I was present with him.

21 Q. And, um, at the time were there any phone calls made by the
22 informant?

23 A. Yes. What we did is we made, I believe, two recorded
24 telephone calls to an unknown male subject. We did not know his
25 name at that particular time but we had made - - we made two

OFFICER GUTHINGER - DIRECT EXAMINATION BY MS. ELDER

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1 phone calls.

2 Q. And what were the purposes of those phone calls?

3 A. The purpose of the call was to order up a quantity of crack
4 cocaine and have it delivered to a specific location.

5 Q. And that's what y'all had done prior to Mr. Cooper being
6 stopped by the officer. Is that correct?

7 A. Yes, it is.

8 Q. And that was on February 20th?

9 A. That was February 20th.

10 Q. The same day?

11 A. The same day, yes.

12 Q. And this confidential informant, did they also provide you
13 whether or not it was a man or woman? Could you tell by the
14 phone call if it was a man or woman you were talking to?

15 A. Yes. The informant informed us that it would be a male
16 subject that he knew.

17 MR. TAYLOR: Objection, Your Honor. It would be
18 hearsay.

19 THE COURT: Yes. I sustain that.

20 Q. Could you tell by the conversation? Were you talking to
21 a man or a woman?

22 A. It sounded like a male, yes.

23 Q. Okay.

24 And did you have information as to what the vehicle, ah,
25 the suspect would be driving?

OFFICER GUTHINGER - DIRECT EXAMINATION BY MS. ELDER

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1 A. Yes. We had information that he was going to be driving a
2 gold colored Lincoln, and he was coming from a specific area.

3 Q. If you'll take a look at what's been marked as State's
4 Exhibit #1. Do you recognize that?

5 A. Yes, I do. That's the gold Lincoln.

6 Q. And that was the vehicle that Mr. Cooper was riding in?

7 A. Yes.

8 MS. ELDER: Your Honor, we would ask that that be moved
9 into evidence at this time.

10 THE COURT: I admit it.

11 MR. TAYLOR: No objection to that, Your Honor.

12 THE COURT: Without objection.

13 (The Court Reporter accepts State's Exhibit #1 into
14 evidence.)

15 Q. And you were at the location with your informant. Is that
16 correct?

17 A. At the time of the phone calls, correct.

18 Q. Okay.

19 And you heard the phone calls?

20 A. Yes, I did.

21 Q. And were you informed at some point in time while you were
22 with the confidential informant that a gold Lincoln had, in
23 fact, been stopped with a black male inside?

24 A. Yes.

25 After - - after the phone calls I had left the informant

OFFICER GUTHINGER - DIRECT EXAMINATION BY MS. ELDER

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1 with another agent, and I went down the road a little ways but
2 then I was informed that there was, actually, a traffic stop
3 been made on that particular car.

4 Q. And did you go to that location?

5 A. Yes, I went to that location.

6 Q. And when you arrived at that location, what did you do?

7 A. Ah, I met the officer on scene. These are marked traffic
8 units. So, we don't stop people in our unmarked cars.

9 I was advised by him that there was narcotics in that
10 vehicle. I then went out and took a photograph of the back of
11 the car just so I had that license plate information for my
12 report and so that I could keep my pictures in order, and then
13 I photographed the evidence that we had found inside that
14 vehicle.

15 Q. Now, when - - let me ask you a general investigative
16 question.

17 If you made the call and this person was suppose to be
18 making a delivery, did y'all request a traffic stop be made if
19 a violation occurred?

20 A. Yes, we did.

21 We had, ah, after the phone call was made, we had contacted
22 the marked units and said that we had some information that
23 there was being a quantity of narcotics being delivered, and we
24 asked for the marked units to, ah, if they were in the area and
25 if they saw that vehicle if they saw a traffic violation on that

1 car, then, you know, to make that traffic stop for us.

2 Q. And that's exactly what happened. Is that correct?

3 A. That's exactly what happened.

4 Q. And why would you prefer to do a traffic stop over allowing
5 him to come or whoever it is to come and actually make the
6 delivery?

7 A. We try to protect our informants the best that we can
8 because in dealing in the business that we're in, it could be
9 dangerous for them. Ah, if they don't have to meet face to
10 face, then that was just a - - a better way of doing it that
11 we've been taught through our training to do.

12 Q. And the location where the car was stopped, was that in
13 close proximity to your drop location?

14 A. Yes, it was actually right in front of the informant's
15 house.

16 Q. Okay.

17 So, this particular car and the car that you were on the
18 lookout for, the gold Lincoln, was actually stopped in - - was
19 in the vicinity of where the drugs were suppose to be delivered?

20 A. Yes.

21 Q. Did you run a what we call a title history on this vehicle?

22 A. Yes, I did.

23 Q. And I will show you State's Identification #4. Is that
24 what you ran?

25 A. Yes, it is.

OFFICER GUTHINGER - DIRECT EXAMINATION BY MS. ELDER

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1 MS. ELDER: I'd like to introduce it at this time, Your
2 Honor.

3 MR. TAYLOR: Without objection, Your Honor.

4 THE COURT: Without objection.

5 (The Court Reporter accepts State's Exhibit #4 into
6 evidence.)

7 Q. And could you tell us whose name that car belongs to?

8 A. It's registered to a Theresa Lisben.

9 Q. A female. Is that correct?

10 A. That is correct.

11 Q. And what is the address on that?

12 A. Myrtle Beach, South Carolina, 29577.

13 Q. And did you have an opportunity to look at the defendant's
14 driving history and the address on his driving history?

15 A. Yes. Yes, I did.

16 Q. Was that, in fact, the same address?

17 A. Yes, it is.

18 Q. Now, when you got on the scene, you said you took some
19 pictures. Is that correct?

20 A. Yes, I did.

21 Q. Tell me where the drugs were located.

22 A. The drugs were located, ah, on the floorboard of the
23 driver's side of the vehicle, just, ah, a little under - - under
24 the front seat there, like, probably just like an inch or so
25 under the front seat on the floorboard next the floor mats.

OFFICER GUTHINGER - DIRECT EXAMINATION BY MS. ELDER

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1 Q. Okay.

2 And I want to show you what's been marked as State's
3 Exhibit #2. Did you take that picture?

4 A. Yes, I did.

5 Q. And was that a picture of the drugs prior to them being
6 removed?

7 A. Yes, it is.

8 MS. ELDER: I would like to introduce this at this time,
9 Your Honor.

10 THE COURT: What say the defendant?

11 MR. TAYLOR: I have no objection, Your Honor.

12 THE COURT: Without objection.

13 (The Court Reporter accepts State's Exhibit #2 into
14 evidence.)

15 Q. And I - - is that your hand in the picture?

16 A. Yes, it is.

17 Q. And the drugs in there, they're on the floor mat. Is that
18 what - - is that an accurate description of that?

19 A. Yeah. They're partially on the floor mat and partially on
20 the regular carpet of the vehicle.

21 Q. And when you - - after you photographed the drugs in this
22 case, did you take them into custody?

23 A. Yes, I did.

24 Q. Okay.

25 What's marked as State's - - for State's Identification #5,

OFFICER GUTHINGER - DIRECT EXAMINATION BY MS. ELDER

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1 tell me about what you do when you take drugs into custody.

2 A. When I take the drugs into my possession, I, ah, I keep
3 them in the original packaging material which is the - - in this
4 case it was the corner of the baggie that they were placed in.
5 I then take that, and I put this into a tamper- proof, ah, we
6 call them an Horry County BEST Packet, BEST Evidence Packet.
7 They're numbered, and there are several forms that we fill out
8 with that, and I put the drugs into the - - into this tamper-
9 proof bag. I remove a piece off of it, and there are some
10 directions on how to seal the bag which you pull this little
11 tape out, and that controls this red seal here, and then once
12 it's sealed up, then I sign it, the date that I signed it, who
13 sealed it which was me. I put my employee number on that for
14 the county, and then I put my - - my signature on that.

15 There's a - - which we don't have here. There's another
16 tab on the top which matched the number on the evidence packet.
17 Then I can put that into my case file. So that - - I know that
18 that was my bag that I had. I keep half of it.

19 I put that into an envelope, again, with that same control
20 number on it with all the required paperwork, and I take that
21 the Horry County Evidence where I give that to the Horry County
22 Evidence, and then they log it into the computer, and, you know,
23 I have a receipt for it there that I dropped the evidence off.

24 Q. And you, ah, when you took the drugs between the time that
25 you took the drugs and the time that you dropped them into

OFFICER GUTHINGER - DIRECT EXAMINATION BY MS. ELDER

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1 evidence, were they in your complete control and possession?

2 A. Yes, they are. They're either in my possession or they're
3 locked in an area that I have the only key to.

4 Q. And, in fact, that was what was done in this case?

5 A. Yes, sir, it was.

6 Q. So, there was no way anybody could tamper or change them or
7 do anything else to them?

8 A. No.

9 MS. ELDER: Your Honor, at this time we would like to
10 introduce State's Exhibit #5 into evidence.

11 MR. TAYLOR: No objection, Your Honor.

12 THE COURT: Without objection.

13 (The Court Reporter accepts State's Exhibit #5 into
14 evidence.)

15 MS. ELDER: Your Honor, I don't have any other questions
16 of this witness.

17 MR. TAYLOR: No questions, Your Honor.

18 THE COURT: You may come down and are excused.

19 (The witness leaves the witness stand.)

20 MS. ELDER: Your Honor, the State would call Officer
21 Quintard Tucker.

22 (The witness takes the witness stand.)

23

OFFICER TUCKER - DIRECT EXAMINATION BY MS. ELDER

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1 OFFICER QUINTARD HASON TUCKER, BEING
2 DULY SWORN, TESTIFIES AS FOLLOWS:

3 CLERK OF COURT: Please state your name for the record
4 and spell your last.

5 OFFICER TUCKER: QUINTARD HASON TUCKER,
6 Q-u-i-n-t-a-r-d H-a-s-o-n T-u-c-k-e-r.

7 DIRECT EXAMINATION BY MS. ELDER:

8 Q. Officer Tucker, where are you employed?

9 A. The City of Myrtle Beach, Myrtle Beach Police Department.

10 Q. And in what capacity?

11 A. I'm a corporal within the Street Crimes Unit and also a - -
12 a supervisor over the canines.

13 Q. And on February 20th of 2008, were you asked to assist
14 Officer Guthinger in Drug Enforcement Unit?

15 A. Yes, ma'am.

16 Q. And you had a marked vehicle, obviously, at that time?

17 A. At that time, yes, ma'am, I did.

18 Q. Okay.

19 And tell me how you came to look for the vehicle that you
20 eventually stopped, that being Termain Cooper.

21 A. Yes, ma'am. I - - -

22 Q. Or the one he was operating. Excuse me.

23 A. Prior to the traffic stop, I received information from one
24 of the DEU officers on that vehicle. They did give me a
25 description of that vehicle and a possible driver for that

1 vehicle.

2 Q. And were you looking for a male or female?

3 A. Male, black male.

4 Q. And, um, did you have an opportunity to observe this
5 vehicle?

6 A. Yes, I did.

7 Q. And did you get in behind the vehicle and follow it?

8 A. Yes, I did.

9 Q. Did you observe any traffic violation?

10 A. Yes, I did.

11 Q. What were they?

12 A. The subject didn't use his turn signal on a couple of his
13 turns as well as he didn't have his seatbelt on.

14 Q. Okay.

15 Did you initiate a traffic stop?

16 A. I did.

17 Q. And was it on and I'm going to show you a picture, State's
18 Exhibit #1 this particular Lincoln?

19 A. Yes, ma'am.

20 Q. And before we get in the specifics of this particular stop,
21 in general, how long have you been a police officer?

22 A. Fifteen years.

23 Q. And when you initiate a traffic stop, ah, what do you
24 typically do?

25 A. Depending on what the traffic stop is for, typically -

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1 typically, I will approach the car. I'll explain to them why
2 they're being stopped informing that the conversation is being
3 recorded.

4 Q. In this particular case, you had - - you had gotten
5 information that there was narcotic - - possibly narcotics. Is
6 that correct?

7 A. Yes, I did.

8 Q. Did you approach the vehicle - - what manner did you
9 approach the vehicle in a narcotics suspicious stop?

10 A. With this one, they wanted it to look like a regular
11 traffic stop. Therefore, an initial traffic stop was
12 performed. However, I still approached the car in the same
13 manner I would any other car.

14 I approached, and I spoke to the individual that was
15 driving which was Mr. Cooper.

16 Q. Did you remove him from the vehicle?

17 A. Yes, I did.

18 Q. And did you place him in handcuffs?

19 A. Yes, I did.

20 Q. And why did you do that?

21 A. Mr. Cooper explained to me that, ah, he didn't have a
22 driver's license, and, ah, for my safety, I always place the
23 individual under driver's license - - it's a possibility he may
24 be placed under arrest, and I was also by myself.

25 Q. So, you put handcuffs on him but at that time you had not

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1 determined whether to place him under arrest?

2 A. No, I hadn't yet ran his driver's license.

3 Q. Okay.

4 You hadn't at that point?

5 A. Not at that point, no.

6 Q. And when you got Mr. Cooper out of the car, he told you he
7 did not have a driver's license. Is that correct?

8 A. Yes, he did.

9 Q. Is that what you testified to?

10 And did - - did you do anything with Mr. Cooper at that
11 point? Did you search him? What did you do?

12 A. At that point I walked Mr. Cooper back to my truck which I
13 was operating a Ford Explorer at the time. It was fully
14 marked. And, ah, I asked him if he had any weapons on him for
15 my safety.

16 He said, "No."

17 Then he informed me that he had drugs - - -

18 MR. TAYLOR: I object. It's hearsay.

19 THE COURT: Sir?

20 MR. TAYLOR: It would be hearsay as to what he's about to
21 say what my client said.

22 THE COURT: It's not hearsay. He can testify as to what
23 the defendant said. It's for the jury to determine whether he
24 said it or not but it's certainly not hearsay.

25 MR. TAYLOR: Okay.

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1 THE COURT: I'll let the jury make a determination of
2 whether it was or was not said.

3 Proceed.

4 Q. Officer Tucker, you inquired - - you were saying that you
5 inquired about whether or not he had weapons on him?

6 A. Yes, ma'am.

7 Q. And what was his response?

8 A. He stated, "No."

9 He didn't have any - - he stated, "No." But he had
10 something in the car. He had drugs in the car.

11 Q. Okay.

12 And did you - - had you asked him about the car?

13 A. No.

14 Q. And when you questioned him, he was still not under arrest.
15 Is that correct?

16 A. Not at that point.

17 Q. And tell me about asking him about weapons.

18 A. Strictly for our safety, we ask, ah, individuals that may
19 be placed under arrest or out of the car if they have any
20 weapons, ah, in that a lot of people who carry guns whether
21 they're concealed weapons permit holders or not as to anything
22 that may harm us during the course of that traffic stop.

23 Q. And is that standard to do?

24 A. Yes.

25 Q. Okay.

1 And do you pat them down as well?

2 A. Yes.

3 Q. Kind of like you see on television?

4 A. Pretty much?

5 Q. You're feeling for weapons.

6 A. Yes.

7 Q. And you had not asked Mr. Cooper about drugs, had you?

8 A. No, I did not.

9 Q. And did he voluntarily provide that, what was in the car?

10 A. Yes, he did.

11 Q. And at some point later, did you have an opportunity to
12 observe drugs, in fact, in Mr. Cooper's vehicle?

13 A. Yes, I did.

14 Q. All right.

15 And where was the location of those drugs?

16 A. Beneath the driver's side seat, front driver's side seat.

17 Q. All right.

18 And were they way underneath? Were at the edge?

19 A. No. They were just far enough back to where you couldn't
20 see them outside of the car.

21 Q. Okay.

22 Was the door open or closed when you approached the vehicle
23 after you removed Mr. Cooper?

24 A. The door was open.

25 Q. He had left the door open?

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1 A. Yes.

2 Q. Okay.

3 So, if you are approaching the vehicle and you are looking
4 in, can you see the drugs if the door was open?

5 A. You'd have to bend down to see them.

6 Q. You had to kind of squat down?

7 A. Yes.

8 Q. But you, in fact, saw drugs?

9 A. Yes, I did.

10 Q. And did you touch them or do anything with them?

11 A. No, I did not.

12 Q. And did you notify Officer Guthinger the location of what
13 could be narcotics?

14 A. Yes, ma'am. I called him to the scene and informed him
15 what I had.

16 Q. And he took those narcotics into custody?

17 A. Yes, he did.

18 Q. And was the vehicle towed?

19 A. I believe it was. It was towed by the DEU.

20 Q. Is that standard practice?

21 A. Yes.

22 Q. And did you issue any citation for the traffic violations
23 that you observed?

24 A. Yes, ma'am, I did. I cited him for driving under
25 suspension as well as the seatbelt violation.

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1 Q. Okay.

2 And you didn't charge him with the improper lane change?

3 A. No, ma'am. I didn't charge him with the turn signal
4 violations simply because I really don't feel the need to stack
5 tickets on people whenever I stop them. It's just not my
6 practice.

7 Q. Okay.

8 MS. ELDER: I have no further questions, Your Honor.

9 MR. TAYLOR: I have no questions, Your Honor.

10 THE COURT: You may come down.

11 Thank you.

12 (The witness takes the witness stand.)

13 THE COURT: Any further witnesses?

14 MS. ELDER: No, sir, Your Honor.

15 That would be the State's case.

16 THE STATE RESTS

17 THE COURT: I'll let you go to the jury room just a
18 minute. I'll be calling you back out very shortly.

19 (The jury retires to the jury room at 12:16 p.m.)

20 MOTIONS AND RULING OF THE COURT

21 THE COURT: Any motions for the defense?

22 MR. TAYLOR: Your Honor, at this time I'd move for the
23 directed verdict.

24 As you can see, it's very, very rare for me. I did not ask
25 any questions of any of these two officers. I didn't need to

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1 the Evidence Custodian or the examiner but the two officers that
2 were involved, the officer that made the stop and the officer
3 that took the drugs.

4 I don't see where they've met the burden of proof of
5 proving that my client is guilty beyond a reasonable doubt. In
6 this situation they go to a CI which is not here today. The CI
7 makes the phone call to a male. The officer that was there with
8 the CI does not know the male. Doesn't know who he's calling.

9 There's no evidence whatsoever that they've done an
10 investigation as to where this male is coming from. The only
11 description of a vehicle, the possible description, they - - I
12 believe they've put, basically, shown a picture of what my
13 client was in but there's no year. There's no real make on
14 the car. It's a gold or reddish color car.

15 They tell an officer in that area, and the phone call,
16 apparently, appears to be coming from this side of town to an
17 officer on this side of town looks for a car matching this
18 description. Stops it. It's possibly this guy the CI talked
19 to.

20 They stopped the vehicle based on that pretense. Searched
21 the vehicle and arrest my client. The vehicle did not belong to
22 my client. There's no establishment that my client that vehicle
23 or had a history of driving that vehicle or through their
24 surveillance had been driving that vehicle. Um, they don't even
25 know where that vehicle has been to. Nobody talked to the

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1 owner of the vehicle, Theresa Lisben, to determine if my client
2 had been driving that vehicle on a regular basis. Nobody even
3 knows who Theresa Lisben who is the owner of the car is.
4 Nobody questions her. They just give her the car back, and they
5 want this jury to convict my client based on those facts.

6 Now, if they'd done some more investigation or if there had
7 been more testimony - - -

8 THE COURT: That's - - that's an argument for the jury.
9 Let me hear what the Solicitor says.

10 MS. ELDER: Your Honor, they received information. It's
11 a gold Lincoln. It's a black male. They have the
12 conversations. They make - - they make a buy - - a purchase
13 request. They give him a location. He is stopped almost right
14 in front of the CI's house where he is to make the delivery.

15 It's the exact car, a gold Lincoln. It's a black male.
16 They do a legitimate stop at the time, Your Honor. They don't
17 even base that on narcotics. They base that on a traffic
18 violation which they're certainly permitted to irregardless of
19 the narcotics information, and we've already gone through the
20 Suppression Motion.

21 So, even if we didn't have the prior information regarding
22 the buy and delivery, we still have the traffic violation. We
23 still have a proper stop. We still have a proper arrest for
24 DUS, and we have a proper inventory subject to that arrest even
25 without the narcotics.

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1 THE COURT: The evidence, Mr. Taylor, undisputed here,
2 shows that the defendant was driving the car. The drugs were
3 found under the driver's seat, and there is testimony that he
4 admitted that the drugs was in the car.

5 I've already told the jury that they can accept it or
6 reject. It's for them to decide whether he said it or not.
7 I'll explain that again but standing alone his admissions if
8 believed is sufficient for the jury to consider.

9 So, I deny your motions respectfully.

10 MR. TAYLOR: Thank you, Your Honor.

11 THE COURT: Now, do you have any witnesses that you
12 desire to put up?

13 MR. TAYLOR: Ah, no, sir.

14 THE COURT: Okay.

15 Well, when we bring the jury out, you can rest in the
16 presence of the jury.

17 MR. TAYLOR: Yes, sir.

18 THE COURT: And I will consider your motion as made not
19 only at the end of the State's case but at the end of all the
20 case by way of directed verdict request.

21 MR. TAYLOR: Yes, sir.

22 THE COURT: The record will reflect that I accept your
23 comments as a motion for insufficiency of the evidence.

24 MR. TAYLOR: Yes, sir.

25 THE COURT: All right.

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1 Since you didn't - - you're entitled to the last jury - -
2 charge.

3 MR. TAYLOR: Yes, sir.

4 THE COURT: So, let's bring the jury back out.

5 MS. ELDER: We're going to go into close immediately,
6 Your Honor?

7 THE COURT: Pardon me?

8 MS. ELDER: We're going to go into close and charge?

9 THE COURT: I would think so. It's just twenty after
10 twelve here. Let's just go on and work until see where we are.
11 If you're long-winded, we'll deal with that but we got forty
12 minutes here to go.

13 MS. ELDER: Yes, sir.

14 THE COURT: I would think that the verdict's not going
15 to take long, either not guilty or guilty. So, let's proceed
16 certainly towards 1:00, and we'll see where we are.

17 Is that right with you?

18 MR. TAYLOR: Yes, sir, that's fine.

19 Your Honor, assuming that the State is rested, I just renew
20 all of my motions that I had made at pretrial as well as my
21 objections to trial just for the purposes of appeal because I'm
22 assuming that my client whenever he is picked up in the future
23 is going to want to appeal this.

24 THE COURT: I understand.

25 MR. TAYLOR: Preserved for the record, Your Honor.

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1 Thank you.

2 THE COURT: At the beginning of this trial, I made that
3 prior hearing a part of this record.

4 MR. TAYLOR: Yes, sir.

5 THE COURT: All right.

6 Bring the jury in, please.

7 MS. ELDER: Your Honor, you're going to charge
8 constructive possession?

9 THE COURT: Pardon me?

10 MS. ELDER: You're going to charge trafficking and
11 constructive possession?

12 THE COURT: Constructive possession, sure.

13 Donna, is there any report from the bondsman in this
14 matter?

15 MS. ELDER: No, sir, Your Honor.

16 THE COURT: Come on back, please.

17 (The jury returns to the courtroom at 12:23 p.m.)

18 THE COURT: Are we missing somebody?

19 BAILIFF: No, sir. We've got this extra one.

20 THE COURT: Pardon me?

21 BAILIFF: We've got thirteen.

22 THE COURT: Have her take the appropriate seat, please.

23 Thank you.

24 THE DEFENDANT RESTS

25 THE COURT: The State has now rested. What say the

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1 defendant?

2 MR. TAYLOR: Your Honor, we rest at this point based on
3 what evidence has been presented to the Court.

4 THE COURT: All right.

5 So, we'll go forward, then, with the closing arguments at
6 this time.

7 You may proceed, Ms. Donna.

8 SUMMATION BY MS. ELDER

9 MS. ELDER: Thank you, Your Honor.

10 I'm back up here again to address you guys.

11 I told you it was going to be quick but that does not,
12 obviously, diminish the significance of this case for the State,
13 for the officers, for - - for anybody involved.

14 It is a big - - it's an important case to us. In this
15 particular situation it just happens to be that there are so few
16 people involved in it that we don't have to put up a hundred
17 witnesses or a hundred pieces of evidence to show our case.

18 Trafficking cocaine as I - - or crack as I had mentioned in
19 my opening a few moments ago is about possession, possession of
20 an illegal substance, cocaine base over a certain weight, and
21 the judge is going to charge you on that.

22 That's all the State has to prove. That's it.

23 It doesn't have to be an attempt to distribute. There
24 doesn't have to be a distribution. There doesn't have to be any
25 of that. The mere fact that you possess what has been

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1 determined to be cocaine base or crack over an amount of ten
2 grams makes you guilty of trafficking cocaine, and that's it.

3 You don't have to have it on your person. The judge is
4 going to give you the law of what we call constructive
5 possession.

6 So, if I've got this bracelet on, I'm in actual possession
7 of it. The pen I've been using over here has been under my
8 control. I'm in constructive possession. I don't have it in my
9 hand but we all know I've been using it. We all know that I
10 have control over it. It's mine. I'm in constructive
11 possession.

12 Now, Mr. Taylor in his opening statement said the police
13 were too quick to jump. Made the arrest too quick.

14 I don't think so. I think they did exactly what they
15 should have done in order to protect someone, the confidential
16 informant.

17 You heard Officer Guthinger say why they didn't let the
18 delivery take place. If the delivery had taken place, somebody
19 could have been in danger.

20 If you are driving your vehicle and make a traffic
21 violation, you know they are going to stop you. Why should they
22 not do the same for this defendant.

23 If you're out there driving a car without a driver's
24 license and driving under suspension, they're going to arrest
25 you, too. Why would they not do it for this defendant? It

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1 doesn't make any sense. Of course they're going to do it.

2 They have to initiate the traffic stop. He's observing it.
3 It's in his presence. He doesn't have a choice. He's going to
4 - - there's a law being violated. He's going to have to pull
5 that vehicle over, and that's what he does.

6 And what does Mr. Cooper do when he gets out of the car?

7 "Well, I ain't got a driver's license."

8 What else?

9 Mr. Tucker is patting him down as they always do. He's not
10 under arrest.

11 "Got anything on you that I should be concerned about,
12 weapons?"

13 "No but I got drugs in the car."

14 And Mr. Taylor wants you to believe that because this
15 vehicle belonged to some female in his house that he didn't know
16 there were drugs in there? If he didn't know there were drugs
17 in there - - if he didn't know there were drugs in there, how
18 did he tell Officer Cooper (sic), "I've got drugs in my car."

19 Now, we also have information that there was a call made,
20 a request to buy drugs. A black male, male on the phone, gold
21 Lincoln. Now, isn't it coincidental that Termain Cooper drives
22 up in a gold car, male, gets out of the car and says, "There are
23 drugs in my car," in almost the specific location of where the
24 drugs are to be delivered, almost in front of the CI's house?

25 That's beyond coincidental. That's knowledge. He knew

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1 those drugs were in there. He told that to Officer Cooper
2 (sic). It was over ten grams of crack. Lisa Floyd told you it
3 was, in fact, cocaine base, and it was 11.97 grams. That's it.

4 Finding all of that, you must find that Termain Cooper is,
5 in fact, guilty of what the State has presented here to you
6 today, and that's trafficking cocaine base.

7 Thank you very much for your time.

8 SUMMATION BY MR. TAYLOR

9 MR. TAYLOR: Thank you, Your Honor. Please the Court?

10 The Solicitor was right in this matter. This was a quick
11 case. It's the quickest one I've been involved in.

12 It's also I'm still scratching my head, and I hope that
13 whenever you go back and you start deliberating about this case,
14 you scratch your head just the same as I have because there's
15 just not enough here to prove my client did what he's alleged to
16 have done.

17 There's two issues here that you're going to - - the State
18 wants you to hang your hat on in order to convict my client.

19 Number one, that the stop was made by the CI's house, and
20 I'm going to come back to that in a second.

21 And the second is is that my client admitted that these
22 drugs were his and that the drugs in the car were - - the drugs
23 were in the car. He made that statement.

24 Now, going back to the CI, the State states that they were
25 trying to protect their CI. They were trying to protect the

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1 CI's identity for the CI's purpose. If you're going to do that
2 - - or the CI's protection, excuse me. If you're going to do
3 that, you're not going to stop the CI, I mean, the deliverer of
4 the drugs right in front of the CI's house.

5 You all have common sense and the judge is going - - we all
6 do, and the judge is going to tell you whenever you talk about
7 reasonable doubt that is to use your common sense that a
8 reasonable person would hesitate to act, and he'll give you the
9 exact definition on it but it comes down to common sense, and,
10 really, that is what from the defense standpoint to use in this
11 matter.

12 Going back to the beginning of this case and thinking about
13 those two issues that the State wants you to hang their hat or
14 your hat onto to convict my client, there is this officer over
15 here in uniform, that he goes to a CI and talks to the CI about
16 making a buy. There's no testimony about whether this CI was
17 one that was, you know, convicted of a criminal act or one that
18 was being paid.

19 Ah, he makes - - the CI makes a call under this officer's
20 observation but there's nothing presented to you about who that
21 CI is, the person of who he called, what the person who he
22 called's name is, the location. Was that location under
23 surveillance? Had that location been under surveillance? Was
24 the person that they were calling somebody that was known to be
25 a drug dealer?

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1 None of that's been - - been brought up as far as an
2 investigation, as far as to get you to, ah, who my client is and
3 why my client should have been stopped.

4 He - - because after the call is made, he leaves. He goes
5 down the road. We don't know where he goes. He goes down the
6 road. Maybe with another officer, maybe with ten but he goes
7 down the road. None of those officers are here. It's just
8 this officer.

9 So, they say - - they call, apparently, across town to
10 another officer that's on patrol, and they say, "There's going
11 to be a car coming in this direction through where you live that
12 is this color. Stop this vehicle because it's going to have
13 drugs in it."

14 Think about how much of a violation that is against your
15 constitutional rights. They're just going to pick a car out
16 because of the color. They don't know who is driving it. It
17 hasn't been followed from the location of where it's coming.
18 It's just - - it's going to possibly come passing through, and
19 that person, you need to stop that car because there's going to
20 be drugs in the car.

21 Now, this car stops, and you'll see the location of where
22 this car was coming from. It's a high drug area. You're
23 going to see that, and you're also going to see that it was not
24 owned by client.

25 As you heard, my client has no driver's license. He

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1 doesn't have a car. So, he's driving somebody else's vehicle.

2 He doesn't know what's in the car, and, circumstantially,
3 you - - you may think, "Well, I want to convict this person."

4 You may want to convict my client but there's not enough
5 here to get to the point where there is guilt beyond a
6 reasonable doubt. That hurdle, it's kind of like a football
7 field.

8 You know, imagine we're watching football here. The ball
9 gets kicked off down here from the Steelers going down here to
10 the Colts. The Colts are now coming back, and they're trying to
11 score on the Steelers, and they're moving that ball down that
12 field, and they get, you know, they're doing good, and they get
13 to the fifty yard line. They get to the forty yard line, and
14 they get stopped at the thirty.

15 You got to cross that goal line to convict my client, and
16 the Colts could move that ball just as great, you know, great
17 down the field to the thirty but if they're not crossing the
18 field - - if they're not crossing over that line, they haven't
19 met their burden to get points on the board, and they haven't
20 passed that ball down over that field to get to the point where
21 they're going to score, and now they want you at the thirty yard
22 line to say, "Put seven on the board for us."

23 And that's not enough, and that's not the oath you took.

24 And you may - - you may hate the fact that we've got this -
25 - this scourge of our society that's killing people and as she

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1 talked about is in schools and it's killing people. You may
2 hate what's in my hand but you cannot convict somebody just
3 because they're charged with this because you all were not there
4 but you heard the evidence, and the evidence is not enough to
5 convict somebody for that.

6 My client is driving a car that does not belong to somebody
7 or does not belong to him. It belongs to somebody else. Who is
8 this person that belongs to the car? You'll see it on the - -
9 her name is Theresa Lisben, I believe. It's on her registration
10 for her vehicle. Who is that person?

11 Nobody talks to that person. Nobody knows if - - anything
12 about her. They don't know that, you know, she may be the drug
13 dealer. They don't know what she's involved in. She may be a
14 drug addict. May be my client's sister who is a known drug
15 addict but you don't know that because they didn't do a thorough
16 investigation. If they did, they don't want to tell you about
17 it.

18 And now they're telling you that my client on the roadside
19 made an admission but that's their word against my client's, and
20 the judge is going to tell you about credibility. You got to
21 believe what they say.

22 So, they're going to say, and I want you to think of that
23 from a credibility standpoint. They got two issues they're
24 trying to prove my client guilty, two, and on those two, I'm
25 telling you that one of them is not credible, and if one of them

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1 is not credible, I tell you that both of them aren't credible
2 because if they're going to - - if they're going to try and
3 protect their CI and not burn their CI and do what's in the best
4 interest of the CI to protect his identity and protect his
5 safety, they're certainly not going to stop somebody in front of
6 their house that's delivering drugs. That's going to absolutely
7 burn the CI, confidential informant right then. The person
8 delivering drugs is going to know right then. That's common
9 sense.

10 So, that's not credible, and they told you that, and they
11 want you to believe something that common sense says is not
12 credible, not truthful.

13 And if that's that way, then it's going to be on the second
14 one as well because they haven't produced any evidence of that
15 to you, um, and I just cannot buy the fact that they're
16 protecting the confidential informant, the CI, so, they're going
17 to stop a drug deliverer in the guy's front yard.

18 Here's the second thing. They haven't told you where the
19 CI lives. They haven't told you an address, a street, anything.
20 They want you to take that word as well but in their own
21 testimony, they've shot themselves in the foot.

22 So, going back to the beginning and going through it again,
23 we've got a confidential informant who is not here today who we
24 don't know who is not here today who is going to - - who made
25 the phone call to a person that nobody knows who that person is

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1 through the officer's own testimony coming from an unknown
2 location that's not under surveillance, driving a car that's a
3 certain color, and they stop that car, and they found drugs in
4 that car.

5 And I didn't dispute that there were drugs in that car
6 because they're sitting right here in front of you but what I'm
7 saying is is that my client is not the person that they called,
8 and they can't prove that my client was the person that they
9 called.

10 The CI is not here today to say, "That person is - - " and
11 they have a picture of him in their file from his booking photo.
12 "That's the person I called. That's the person I buy dope
13 from."

14 That evidence is not here today. It would be nice if it
15 was but it's not.

16 So, you got that problem.

17 So, they stop the car. Drugs are found in the car.

18 So, forget about the confidential informant because I'm
19 telling you that - - there's no way that's my client, and they
20 can't prove it.

21 The drugs are there. So, now, the issue is whether it's my
22 client, and they can't prove that either because he doesn't own
23 the car, and there's nothing that links him to those drugs.

24 Now, circumstantially, you all may be thinking, "Well,
25 let's convict him anyway because trafficking in crack cocaine is

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1 terrible, and he's been charged, and, obviously, if he was
2 charged, it must be right."

3 Think about that because you all could be charged with
4 something, and you could be absolutely innocent of it. There
5 are people tried in this courthouse all the time that are found
6 not guilty.

7 There's a murder case going on next door. That person may
8 be found not guilty but he's charged with murder. That's worse
9 than this.

10 People get charged all the time, and it's not them, and
11 that's why we have that burden that you've got to get to.

12 And if you start from your standpoint convicting people
13 because, "Hey, what they were charged with was a terrible
14 offense, and he must be a bad person because they charged him
15 with it," then you erode - - you might as well burn this
16 courthouse down and just, you know, start having - - start
17 having court out at the jail in the parking lot and just send
18 people inside.

19 I ask that you find my client not guilty. I did not ask
20 questions today because the evidence was what it was. They
21 testified to it. There was nothing more to show, and they
22 didn't have anything more to show, and there's just not enough
23 here to convict my client, and you violate your oath and you
24 violate everything about this courthouse and what we're suppose
25 to do here to make sure that people have fair trials by

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1 convicting him just because you don't like crack cocaine.

2 And, therefore, I'd ask that you find my client not guilty
3 and, finally, he's not sitting there at the table and that's
4 because he doesn't have to, and after hearing this, I don't know
5 that I would either but you can't hold that against him, and I'd
6 ask that you find him not guilty of this because I do not think
7 that this rises to the level of guilt beyond a reasonable doubt
8 to confront - - to convict him of this.

9 Thank you.

10 THE COURT: Thank you, Solicitor, and thank you - -

11 MR. TAYLOR: Yes, sir, Your Honor.

12 THE COURT: - - Mr. Taylor.

13 CHARGE OF THE COURT

14 THE COURT: Mr. Foreman, members of the jury, the State
15 of South Carolina has charged this defendant, one Termain Omar
16 Cooper, with the offense of trafficking in cocaine base of more
17 than ten grams, and, of course, this indictment has been read to
18 you, and you'll have it in the jury room with you.

19 To this indictment this defendant has specifically pled not
20 guilty.

21 Now, I charge you that this indictment and the allegations
22 there are mere allegations. It's not evidence. The State must
23 prove these allegations to your satisfaction beyond a reasonable
24 doubt.

25 Now, I want to emphasize to you again that this a trial in

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1 the absence of the defendant which is a perfectly permissible
2 procedure. Do not hold that against the State of South
3 Carolina, and I tell you, too, that there is no adverse
4 inference to be derived that the defendant is not here
5 participating. His absence to participate must not even enter
6 into your deliberations in the jury room.

7 You will base your verdict of not guilty or guilty on the
8 evidence and law as I have given it - - will give it to you
9 heard in this courtroom.

10 Now, as you know, to this indictment the defendant has pled
11 not guilty which places upon the State of South Carolina the
12 burden of proving the defendant guilty beyond a reasonable
13 doubt.

14 A person charged with committing a criminal offense in
15 South Carolina is never, ever required to prove himself
16 innocent. The State must prove him guilty beyond a reasonable
17 doubt.

18 I charge, therefore, that it is a vital, important rule of
19 law of evidence that the defendant in a criminal case no matter
20 how great or serious may be the offense with which he is charged
21 must always be presumed innocent until his guilt has been proven
22 beyond a reasonable doubt.

23 This presumption of innocence remains with this defendant
24 at all times from the moment of his arraignment throughout the
25 trial and until you, the jury, have upon the testimony and

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1 evidence presented reached a verdict of guilty beyond a
2 reasonable doubt. For it is the solemn duty of the jury if not
3 clearly convinced of his guilt beyond every reasonable doubt to
4 the contrary to acquit the defendant.

5 Now, the State of South Carolina has the burden of proving
6 the defendant guilty beyond a reasonable doubt. Some of you
7 may have served as jurors in civil cases where you were told
8 that it is only necessary to prove a fact that's more likely
9 true than not.

10 In criminal cases the State's proof must be more powerful
11 than that. It must be beyond a reasonable doubt.

12 Ladies and gentlemen, proof beyond a reasonable doubt is
13 proof that leaves you firmly convinced of the defendant's guilt.
14 There are very few things in this wide world that we know with
15 absolute certainty, and in criminal cases the law does not
16 require proof that overcomes every possible doubt.

17 If, based on your consideration of the evidence, you are
18 firmly convinced that the defendant is guilty of the crime
19 charged, you must find him guilty. If, on the other hand, you
20 think there is a real possibility that he is not guilty, you
21 must give him the benefit of that doubt and find him not guilty.

22 Now, ladies and gentlemen of the jury, under the
23 Constitution and laws of South Carolina, you and you alone are
24 the sole and only finders of the facts in this case. I as
25 presiding judge am not entitled to a factual opinion, and I

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1 absolutely have none. You twelve are the sole and only judges
2 of the facts in this case.

3 And I would say to you that if any word, ruling or
4 mannerism of mine might tend to indicate to any of you how I
5 feel about any factual situation, please disregard that. I am
6 not entitled to a factual opinion, and I have none.

7 You folks are also the judges, the sole judges of the
8 credibility and believability of the witnesses who have
9 testified in this case.

10 In passing upon their credibility you may take into
11 consideration many things if you choose to such as the
12 appearance and manner of a particular witness sometimes referred
13 to as the demeanor of a witness.

14 You may consider. Was a witness forthright or hesitant?
15 You are entitled to consider if you choose. Was a witness'
16 testimony consistent or did it contain discrepancies? What was
17 the ability of a particular witness to know about the facts
18 which he or she may have testified to?

19 Obviously, you would consider whether or not a particular
20 witness had a cause or reason to be biased or prejudiced in
21 favor of the testimony that he or she may have given.

22 You may consider if you choose. Was the testimony of a
23 particular witness corroborated or made stronger by other
24 testimony or evidence or was it made weaker?

25 These are matters for you and you alone to determine.

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1 I can tell you as jurors you have a right to believe a
2 small portion of a witness' testimony and disregard the larger
3 or vice versa. You may believe all of a witness' testimony or
4 none. Again, as finders of the facts, that's for you to
5 determine.

6 Most certainly, Mr. Foreman, and ladies and gentlemen, you
7 do not determine the truth or matter of credibility by counting
8 up the number of witnesses who may have testified for one side
9 or the other.

10 Ladies and gentlemen, throughout this entire process in
11 assessing credibility you have but one single objective, and
12 that is to seek the truth, to seek the truth regardless of from
13 what witness that testimony may be derived.

14 All of these things you will consider bearing in mind that
15 you must give the defendant the benefit of every reasonable
16 doubt.

17 Now, having said to you that you are the sole and only
18 finders of the facts, I charge you, too, that I am the
19 instructor in the law, and under your oath you are required to
20 accept the law as I charge it to you even though your or I might
21 disagree with what the law is or ought to be. Please instruct
22 - - please accept these instructions as the appropriate law in
23 this case.

24 Now, one of the issues in this case is an alleged statement
25 made by the defendant. You first must determine whether or not

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1 that statement was made beyond a reasonable doubt. If you
2 conclude that it was, you may give that statement of the
3 defendant such weight as you determine it should receive.

4 Now, the defendant is charged with trafficking in cocaine
5 of ten ounces or more, it being alleged here that he had in his
6 possession that cocaine and that quantity which, of course, is
7 denied by his plea of not guilty.

8 I charge you in that connection any person who has in his
9 possession knowingly, actually or constructive a quantity of
10 cocaine of ten ounces or more is guilty of trafficking in
11 cocaine.

12 Now, this indictment charges in substance that on or about
13 - -

14 MR. TAYLOR: Your Honor - - -

15 THE COURT: February of 2008 - - -

16 MR. TAYLOR: Your Honor, can we approach?

17 THE COURT: Yes, sir.

18 Excuse me.

19 (Bench conference held by the Court with both counsel in
20 the presence of the jury but outside the presence of the jury.)

21 THE COURT: Thank you for calling that to my attention.

22 I said ounces. I should have said ten grams, and they very
23 properly called that to my attention.

24 There are certain elements of this offense which the State
25 must prove beyond a reasonable doubt before the defendant can be

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1 convicted and found guilty of each of these elements, and should
2 you find - - and should you fail to find beyond a reasonable
3 doubt all of these elements existed, you must then find the
4 defendant not guilty.

5 First, you must find that the defendant did possess a
6 quantity of a controlled substance at the time and place in the
7 manner alleged.

8 I charge you that cocaine is a controlled substance.

9 With regards to that, possession requires that a person be
10 in the actual or constructive possession of a controlled
11 substance with actual knowledge of its presence.

12 Actual possession of a controlled substance exists when the
13 controlled substance is found in the actual physical custody of
14 the person charged with possession.

15 Constructive possession of a controlled substance exists
16 when a person, although not in actual physical possession of the
17 controlled substance, exercises dominion and control over the
18 controlled substance or has the right to exercise dominion and
19 control over the controlled substance.

20 A person has possession of a controlled substance within
21 the meaning of the law when he has the power and intent to
22 control its disposition or use.

23 It must be shown that this defendant had possession of the
24 controlled substance, actual or constructive; that the defendant
25 knew of the controlled substance in his possession. Knowledge

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1 of the presence of the controlled substance by the defendant is
2 essential.

3 Secondly, the State must prove beyond a reasonable doubt
4 that the substance was cocaine which I charge you is a
5 controlled substance.

6 Thirdly, that the quantity of the controlled substance was
7 in excess of ten grams, and the State must prove that to your
8 satisfaction beyond a reasonable doubt.

9 Now, Mr. Foreman, you've been selected as fair and
10 impartial jurors sworn to impartially try and determine the
11 facts in this case, and when you comply with your oath to do so,
12 then no one will have a right to criticize your verdict, and you
13 will have fully discharged your duty as jurors.

14 You must not be influenced by opinions or expressions of
15 opinions, if any, which you may have heard on the outside but
16 you are to decide this case according to the testimony that you
17 have heard from the lips of the sworn witnesses along with such
18 other evidence that may have been introduced.

19 This indictment will be with you in the jury room, and, ah,
20 on the back of the indictment is the word "Verdict". There are
21 two possible verdicts in the case. One is not guilty, and one
22 is guilty, and, of course, as I told you and tell you again, you
23 must find him guilty to your satisfaction beyond a reasonable
24 doubt, and you must find beyond a reasonable doubt the existence
25 of the elements that I have told you.

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1 Now, Mr. Foreman, it is ten till one. This is the only
2 case for your consideration today. Please go to your jury
3 room, and if you desire to go ahead and deliberate now and be
4 discharged after the finding of your verdicts for the rest of
5 the day, fine.

6 If, instead, you wish to go to lunch and come back at 1:30
7 and begin, ah, 2:30 and begin your deliberations, we'll do that.

8 I'm going to let you go to the jury room, and you come out
9 and you tell me whether you want to proceed now or come back at
10 2:30.

11 THE COURT: These matters, Mr. Foreman, that are in
12 evidence will be with you during your deliberations.

13 Just let me know what the jury wants to do.

14 FOREMAN: In few minutes, if we want to stay and deliberate
15 or go to lunch.

16 THE COURT: That's right. You just let me know.
17 Either way suits us fine.

18 FOREMAN: Okay.

19 THE COURT: Wait a minute. Hold the alternate, please.
20 Bring him back.

21 All right. First, let me talk about this.

22 For the State, any exceptions or additions to the charge,
23 Ms. Donna?

24 MS. ELDER: No, sir, Your Honor.

25 THE COURT: How about you?

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1 MR. TAYLOR: I have no problem with the charge, Your
2 Honor.

3 THE COURT: Sir?

4 MR. TAYLOR: I have no problem with the charge, Your
5 Honor.

6 ALTERNATE RELEASED

7 THE COURT: All right.

8 Where is the alternate? Bring him back, please.

9 (The alternate returns to the courtroom.)

10 THE COURT: Mr. Alternate, my jury looks healthy, and I
11 don't think anything is going to happen but please. I had a
12 murder case in Charleston one time, and I let my alternate go,
13 and right after that one had a epileptic attack. So, do not
14 discuss this case until the jury renders a verdict. I don't
15 think I'll be calling you back but don't discuss the case until
16 the jury has concluded its deliberations. So, I'm going to let
17 you go. Okay?

18 Please, ah, report after 6:00 tonight for further
19 instructions and thank you for your service.

20 The record will reflect there are no additions or
21 exceptions to the charge by the State or the defendant.

22 MS. ELDER: Thank you, Your Honor.

23 MR. TAYLOR: Thank you, Your Honor.

24 BAILIFF: Your Honor, they want to go ahead and begin their
25 deliberations.

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1 EXHIBITS AND INDICTMENT AGREED UPON BY COUNSEL

2 THE COURT: All right.

3 Take the exhibits back and tell them to begin.

4 COURT REPORTER: The exhibits have been reviewed and
5 approved and the indictment - - -

6 (The jury begins deliberations at 12:57 p.m.)

7 THE COURT: Okay.

8 And the indictment reviewed and approved.

9 (The Court recesses the trial of this case awaiting the
10 advice of the jury.

11 The jury advises a verdict is reached at 1:17 p.m.

12 The Court reconvenes the trial of this case to accept the
13 verdict of the jury.

14 The jury returns to the courtroom at 1:20 p.m.)

15 THE COURT: Mr. Foreman, have you and your jury reached
16 a unanimous verdict in this case?

17 FOREMAN OF THE JURY: Yes, sir.

18 THE COURT: If your verdict, whatever it is, is
19 unanimous, so signify by raising your right hand, please.

20 Please everybody raise their right hand if it be unanimous.

21 The jury has so signified.

22 Hand me the verdict, please.

23 VERDICT

24 THE COURT: Publish the verdict.

25 CLERK OF COURT: The State of South Carolina vs. Termain

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1 Omar Cooper, Indictment 2008-GS-26-2197, charge of trafficking
2 cocaine base ten to twenty-eight grams,

3 We, the jury, find the defendant guilty.

4 Larry Geddings, Foreperson.

5 Ladies and gentlemen of the jury, if this is your verdict,
6 so signify by raising your right hand.

7 (All jurors raise their right hands.)

8 THE COURT: Ms. Donna, for the jury's edification, let
9 them know what the prior record of this defendant is.

10 MS. ELDER: Yes, sir, Your Honor.

11 He has a prior conviction for assault, assault of a high
12 and aggravating nature, pointing and presenting a firearm, minor
13 in possession of a handgun, strong arm robbery, possession of
14 cocaine base, and possession of cocaine, second offense.

15 THE COURT: So, this is his third drug offense.

16 MS. ELDER: That would be correct, Your Honor. It is
17 his third drug offense. He is also as we have indicated prior
18 to starting the trial, he is not present. He cut his electric
19 monitoring last night and is not here today. He has got
20 warrants out pending for that. We have also issued a Bench
21 Warrant for his failing to appear yesterday, and that has been
22 extended for a nationwide pickup, Your Honor.

23 He also has other pending charges, ah, that are still
24 pending in our office as well.

25 THE COURT: I wanted this information so that you'll

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1 know why we tried him in his absence.

2 Last week he was arraigned. He was advised by Judge Hyman
3 at that time that he would be tried this week on this case. He
4 knew that yesterday, and he knew it Friday.

5 Even last night he was on electronic monitoring, and he
6 broke that which is an indication he's running from trial but he
7 had every opportunity to be here and did not.

8 I, ah, asked that she give you a prior record for this
9 reason. Sometime in a case, the paper comes up with the prior
10 record, and the jury says, "Well, why in the world didn't they
11 tell us that?"

12 Well, the reason is that's so highly prejudicial. We
13 wanted him if you found him guilty at all to be based on this
14 case and not his prior record. So, that's why it wasn't
15 presented to you. It would have been so highly prejudicial. I
16 just wanted you to know that.

17 You are discharged, now, for the day. Please call in after
18 6:00 tonight for additional instructions. I thank all of you
19 for your services in the case.

20 This is a case that needed to be resolved, and by your
21 efforts we've done so, and we deeply appreciate it.

22 You are now excused to call in after 6:00 tonight.

23 (The jury is released from the trial of this case and
24 departs the courtroom at 1:23 p.m.)

25 THE COURT: I want to get on the record with his prior

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1 record.

2 Before we do that, Mr. Taylor, you got any - - you got any
3 post-trial motions, let's hear them at this time.

4 MOTIONS AND RULING OF THE COURT

5 MR. TAYLOR: Yes, sir.

6 Your Honor, I - - I'd ask for a new trial based on the fact
7 that on my initial suppression when I made a motion to suppress
8 my client's statement where he said the drugs were in the car.
9 I made that motion based on the fact that he was not read
10 Miranda. He was, obviously, his freedom of movement was
11 detained. He was, obviously, in investigative detention at
12 that point. He had the right to Miranda, and that right was
13 violated when he was not read Miranda, and then that statement
14 was allowed to come in.

15 Secondly, based on that statement not coming in I believe
16 in the Gant case, Arizona vs. Gant, um, would then apply, and
17 the situation was, basically, on mirrors the facts of the Gant
18 case. Based on that, I'd ask that you grant him a motion, I
19 mean, a new trial, um, or in the alternative, dismiss this case.

20 THE COURT: You care to respond to that?

21 MS. ELDER: Ah, Your Honor, my - - my arguments
22 regarding Gant are on record. I would just renew those
23 arguments insofar as Miranda. Miranda is not required unless
24 they are in custody. This is not a case where that happened.
25 He was being interrogated at the time. Therefore, Miranda was

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1 not required in this particular case.

2 THE COURT: My ruling on that issue is the same as it is
3 now. I just respectfully decline your motion.

4 MR. TAYLOR: Yes, sir. I just wanted to renew it, Your
5 Honor.

6 PRIOR RECORD OF THE DEFENDANT

7 THE COURT: All right.

8 Let's - - you got certified copies of his prior record?

9 MS. ELDER: I do, Your Honor. If I could have maybe
10 two minutes. I need to run back and print these out for you.

11 THE COURT: That's fine.

12 Mr. Taylor, for the record, I want to thank you for your
13 services in this case. You exemplify what's the very best about
14 our Bar that even though he's running, you gave him the very
15 best defense you could.

16 MR. TAYLOR: Thank you, Your Honor.

17 THE COURT: Thank you for that.

18 (The Court goes off the record awaiting the return of the
19 Solicitor and then reconvenes the record of this trial.)

20 THE COURT: Yes, ma'am, you ready?

21 MS. ELDER: I'm ready to go back, Your Honor.

22 I apologize for the delay.

23 THE COURT: Okay.

24 MS. ELDER: Um, Your Honor, I'm going to forward up a
25 copy of the sentencing sheet on this matter since I assume this

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1 is going to be a sealed sentence.

2 THE COURT: It is.

3 MS. ELDER: Mr. Cooper is on a twenty-five to thirty
4 year mandatory sentencing range for the charge that he has been
5 convicted for.

6 He does have a prior record. I do have the certified
7 copies as follows:

8 A certified copy of assault of a high and aggravated
9 nature. That conviction was July of '02.

10 THE COURT: No, I'm interested in the prior drug.

11 MS. ELDER: Yes, sir, Your Honor. I'll get to those.

12 Pointing and presenting a firearm. That was July of '02.

13 Unlawful pistol. That was in July of '01.

14 Strong arm robbery. That was in July of '02.

15 Possession of crack cocaine. That was in July of '02.

16 Possession of cocaine, second offense. That was in August
17 of '05.

18 THE COURT: All right.

19 Make those a part of the record.

20 MS. ELDER: Yes, sir.

21 COURT REPORTER: That will be Court's Exhibit #5, Your
22 Honor.

23 (The Court Reporter accepts Court's Exhibit #5.)

24 THE COURT: Do you contest any of these prior
25 convictions?

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1 MR. TAYLOR: No, sir.

2 In fact, I represented him on the 2005 case.

3 THE COURT: Okay.

4 Thank you so much.

5 I will enter the appropriate sentence and seal it.

6 MS. ELDER: Thank you, Your Honor.

7 MR. TAYLOR: Thank you, Your Honor.

8 Have a nice day.

9 THE COURT: Okay.

10 Thank you.

11 MR. TAYLOR: Nice seeing you.

12 THE COURT: Donna, find out anything they have for me
13 today.

14 MS. ELDER: I will, Your Honor.

15 SEALED SENTENCE OF THE COURT

16 THE COURT: I have executed the appropriate sentence.

17 I have sealed it, and it will remain sealed until he comes
18 before the Court.

19 (The Court adjourns the trial of this case.)

20 - - - END OF TRANSCRIPT - - -

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TRIAL
STATE VS
COOPER

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Horry County Courthouse
RANDOM STRIKE SHEET

JUDGE NAME :

TRIAL TYPE : Criminal

PANEL ID : COTTINGHAM TUES

COURTROOM JAR

DESCRIPTION : COTTINGHAM TUES

Sorted by: Random Nbr

Trial

NAME	NUMBER	RACE	SEX	PLAINTIFF	DEFENDANT	STRIKE	REMARKS
1 Gannoe, Catherine E	124	W	F	()	()	()	✓
2 Lambert, Melissa L	202	W	F	()	()	()	✓
3 Dew, Gerald W	91	W	M	()	D	()	X
4 Geddings, Larry M	127	W	M	()	()	()	✓
5 Carroll, Jennifer D	63	W	F	()	D	()	X
6 Banks, Charles A	16	B	M	()	S	()	X
7 Rushow, Carol M	328	W	F	()	()	()	✓
8 Cormack, Graham C	79	W	M	()	S	()	X
9 West, Eddie C III	396	W	M	()	()	()	✓
10 Plyler, Darlene S	300	W	F	()	()	()	✓
11 D'errico, Charles V	85	W	M	()	D	()	X
12 Spencer, Jeffrey E	359	W	M	()	()	()	✓
13 Carroll, Donna M	62	W	F	()	D	()	X
14 Stout, Lynell H	365	W	F	()	()	()	✓
15 Thompson, Bernie L III	376	W	M	()	S	()	X
16 McLaughlin, Marie E	242 c?	O	F	()	()	()	✓
17 Boyd, Joyce A	43	W	F	()	()	()	✓
18 Schwanekamp, Lynda M	338	W	F	()	()	()	✓
19 Kershaw, Mark W	189	W	M	()	()	()	✓
20 ~~Myers, Thomas G~~ <i>Alternate</i>	271	W	M	()	()	()	✓
21 Fowler, Paulette R	117	W	F	()	()	()	
22 Hovermale, Terri P	167	W	F	()	()	()	
23 Johnson, John W	178	W	M	()	()	()	

Horry County Courthouse

RANDOM STRIKE SHEET

JUDGE NAME :

TRIAL TYPE : Criminal

PANEL ID : COTTINGHAM TUES

COURTROOM JAR

DESCRIPTION : COTTINGHAM TUES

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	PLAINTIFF	DEFENDANT	REMARKS
24 Sasher, Cecil E	333	W	M	()	()	()
25 Eckert, Richard G	103	W	M	()	()	()
26 Skipper, Wayne H	349	W	M	()	()	()
27 Hardin, Letecia L	153	W	F	()	()	()
28 Benton, Krystle S	28	W	F	()	()	()
29 Harrington, Katherine A	157	W	F	()	()	()
30 Plemmons, Roy S	298	W	M	()	()	()
31 Ferrebee, Joseph L	112	W	M	()	()	()
32 David, Rebbecca S	87	W	F	()	()	()
33 Warren, George M III	390	W	M	()	()	()
34 Benford, Colden E	26	B	M	()	()	()
35 Ledford, Angela G	210	W	F	()	()	()

Total Number of Jurors:

35

** END OF REPORT **

CERTIFICATE OF COURT REPORTER

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1 STATE OF SOUTH CAROLINA)

2 COUNTY OF HORRY)

3
4 I, the undersigned Linda W. McCall, Official Court
5 Reporter for South Carolina Court Administration, do hereby
6 certify that the foregoing is a true, accurate and complete
7 Transcript of Record of the proceedings had and evidence
8 introduced in the trial of the captioned case, relative to
9 appeal, in the Court of General Sessions of Horry County, South
10 Carolina.

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

13 January 27, 2011

14
15 Linda W. McCall

16 Linda W. McCall

17 Official Reporter
18
19

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF GENERAL SESSIONS
08-GS-26-02197

STATE OF SOUTH CAROLINA,

PLAINTIFF,

vs.

TERMAIN O. COOPER,

DEFENDANT.

TRANSCRIPT OF RECORD

SEPTEMBER 9, 2010
CONWAY, SOUTH CAROLINA

BEFORE:

THE HONORABLE, LARRY B. HYMAN, JUDGE

APPEARANCES:

BY: DONNA E. ELDER, ESQ.
ATTORNEY FOR STATE

BY: R. PAUL TAYLOR, ESQ.
ATTORNEY FOR TERMAIN COOPER

BRENDA R. BABB
Circuit Court Reporter

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SENTENCING - SEPTEMBER 9, 2010

3

1 MS. ELDER: TERMAIN OMAR COOPER; IT'S 2008-GS-
2 26-2197. YOUR HONOR, THIS IS TO UNSEAL A SENTENCE THAT WAS
3 GIVEN, I BELIEVE, BY JUDGE COTTINGHAM FROM MARCH OF 2010.
4 A BENCH WARRANT WAS ISSUED FOR MR. COOPER. HE DID NOT
5 APPEAR FOR TRIAL; WE HAD A TRIAL IN ABSENCE. AT THAT TIME
6 THE JURY CAME BACK WITH A GUILTY VERDICT AND JUDGE
7 COTTINGHAM SENTENCED MR. COOPER UNDER HIS CHARGE.

8 THE COURT: ALL RIGHT, LET THE RECORD REFLECT
9 THAT I HAVE BEEN PROVIDED WITH A SEALED ENVELOPE BEARING
10 THE DATE 3-9-2010. THE CAPTION ON THE FACE OF THE ENVELOPE
11 INDICATES THAT THIS IS THE STATE V. TERMAIN OMAR COOPER,
12 INDICTMENT NUMBER 2008-GS-26-2197, JUDGE EDWARD B.
13 COTTINGHAM, LINDA MCCALL, COURT REPORTER, TRIAL IN ABSENCE.
14 I AM OPENING AND REMOVING THE SENTENCE SHEET. THIS IS AN
15 INDICTMENT FOR TRAFFICKING IN COCAINE BASE MORE THAN 10
16 GRAMS BUT LESS THAN 28 GRAMS.

17 MR. COOPER, YOU ARE HERE REPRESENTED BY MR.
18 TAYLOR; IS THAT CORRECT?

19 DEFENDANT COOPER: YES, SIR.

20 THE COURT: ALL RIGHT, MR. TAYLOR, YOU WERE HIS
21 ATTORNEY AT THE TIME?

22 MR. TAYLOR: YES, I WAS, YOUR HONOR.

23 THE COURT: ALL RIGHT, SIR, THE CHARGES AS
24 INDICTED --

25 MS. ELDER: IT'S A THIRD OFFENSE, YOUR HONOR.

SENTENCING - SEPTEMBER 9, 2010

4

1 THE COURT: YES, SIR, I UNDERSTAND. I'M READING
2 THE SENTENCING SHEET, TRAFFICKING IN COCAINE BASE 10 TO 28
3 GRAMS THIRD OFFENSE. WHEREFORE, THE DEFENDANT IS COMMITTED
4 TO THE STATE DEPARTMENT OF CORRECTIONS FOR A DETERMINATE
5 TERM OF 30 YEARS. THE DEFENDANT IS TO BE GIVEN CREDIT FOR
6 TIME SERVED, EDWARD B. COTTINGHAM.

7 MS. ELDER: YOUR HONOR, THAT IS A BENCH WARRANT
8 WE ISSUED FOR MR. COOPER AT THE TIME.

9 THE COURT: ANYTHING YOU'D LIKE TO TELL ME. MR.
10 COOPER?

11 DEFENDANT COOPER: YES, SIR, I'M TRYING TO SAY
12 DURING THE TRIAL ALL THE TIME IT WAS STARTING UP I DIDN'T
13 REALLY KNOW EXACTLY WHAT WAS GOING ON AND THEN I HIRED
14 CAESAR BUT HE WAS TELLING ME SOMETHING ELSE CAUSE I HAD
15 PAID HIM MONEY BUT I HAD FOUND OUT HE WASN'T SUPPOSED TO
16 TAKE NO CLIENTS AT THE TIME SO HE WAS TELLING ME ONE THING
17 AND I AIN'T KNOW EXACTLY WHAT WAS GOING ON SO I JUST WAS
18 SCARED OF THE TIME AND JUST PANICKED AT THE LAST MINUTE,
19 SIR.

20 THE COURT: ALL RIGHT, SIR, BUT YOU HAVE BEEN
21 TRIED IN YOUR ABSENCE, FOUND GUILTY, AND THE SENTENCE IS 30
22 YEARS. MR. TAYLOR, ANYTHING FURTHER?

23 MR. TAYLOR: NOTHING FROM THE STATE (SIC), YOUR
24 HONOR. I EXPLAINED TO THE COURT AT THE TIME ---

25 THE COURT: HOW ABOUT FROM THE DEFENSE?

SENTENCING - SEPTEMBER 9, 2010

5

1 MR. TAYLOR: NO, SIR. I EXPLAINED TO JUDGE
2 COTTINGHAM AT THE TIME THAT WE, AT THE TIME THAT WE HANDLED
3 THE CASE MY CLIENT'S POSITION. HE HAD RETAINED, I BELIEVE
4 THE MATTER WAS BROUGHT BEFORE YOU AT THE TIME OF THE TRIAL
5 HE HAD RETAINED CAESAR MCKNIGHT ON SUNDAY AFTERNOON. MR.
6 COOPER WAS SUPPOSED TO COME IN TO FINALIZE TRIAL
7 PREPARATION WITH MR. MCKNIGHT. MR. MCKNIGHT WAS RETAINED
8 BUT WAS UNABLE TO SO I ENDED UP FOLLOWING WITH MR. COOPER
9 AND THIS MATTER IS BEFORE YOU. IT WAS EXPLAINED TO THE
10 COURT AT THE TIME. IT IS WHAT IT IS AT THIS POINT.

11 THE COURT: ALL RIGHT, SIR, THANK YOU VERY MUCH.

12 MR. TAYLOR: THANK YOU, YOUR HONOR.

13 END OF REQUESTED TRANSCRIPT....

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED BRENDA R. BABB, OFFICIAL COURT REPORTER THE SOUTH CAROLINA COURT ADMINISTRATION, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR HORRY COUNTY, SOUTH CAROLINA.

I DO FURTHER CERTIFY THAT I AM NEITHER KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

November 5, 2010

Brenda R. Babb

BRENDA R. BABB, CVR

OFFICIAL REPORTER

FORM 5

STATE OF SOUTH CAROLINA)

County of Horry)

IN THE COURT OF COMMON PLEAS

Termain Cooper #286396)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Inst. 386 Redemption Way McCormick SC.
29849
2. Name and location of Court which imposed sentence Horry County
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2008-GS-26-2197 Trafficking Cocaine Base

2008 MAR 27 PM 3:00
JANE HUGGINS-WARD
CLERK OF COURT
Horry County

14

1893

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) March 9, 2010 - Seated Sentence (30 years) received on September 9, 2010
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. Division of appellate defense P.O. Box 11589 Columbia SC 29201
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. July 18 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2012-UP-454
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) _____

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Violation of Miranda rights by the 5th and 14th Amendments
- (b) Violation of 6th Amendment right to counsel
- (c) Due Process violation by the 5th, 6th and 14th Amendments.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Appellant's confession should be suppressed because it was made while he was in custody and he was not Mirandized.
- (b) Appellant's constitutional right to an attorney of his choice was unduly denied.
- (c) Prosecution violated the Brady v. Maryland rule(s) disclosure.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Appeal from Horry County Court of General Sessions
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____

- iv. _____
- (c) the disposition thereof:
- i. Dismissed
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition:
- i. July 18, 2012
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. Unpublished opinion no. 2012-UP-454
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Violation of 6th Amendment right to counsel.
 - (b) Due Process: violation of 5th, 6th and 14th Amendments.
 - (c) Attorney neglected to raise issues above. ~~Reattached~~
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
 - (b) your trial, if any? Yes
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Robert Paul Taylor, Esquire P.O. Box 50388
Myrtle Beach, SC. 29579
 - ii. Tristan M Shaffer / Division of appellate defense
P.O. Box 11589 Columbia SC. 29211
 - iii. Wanda Carter Division of appellate defense
P.O. Box 11589 Columbia S.C. 29211
 - (b) the proceedings at which each such attorney represented you:
 - i. arraignment, trial, sentencing.
 - ii. Appeal
 - iii. Appeal

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1893

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

Sentence be vacated and dismissed due to constitutional violations

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

N/A

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Henri)

I, Termain Cooper #286396, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Termain Cooper

SWORN to and subscribed before me this 20th day of March, 2014.

Denny G. Martin (L.S.)
Notary Public

My Commission Expires Feb 28, 2018

FILED
CLERK OF COURT
2014 MAR 27 PM 3:00
HENRI COUNTY

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1893

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

I, Termain Cooper, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
20th day of March, 2014.


Notary Public

My Commission Expires: Feb 28, 2018

FILED
CLERK OF COURT
2014 MAR 27 PM 3:00
JANIE HUGGINS-WARD

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT

Termain Cooper, #286396,

) Case No. 2014-CP-26-1893
)

Applicant,

)

v.

)

RETURN

State of South Carolina,

)

Respondent.

)

)

Respondent, making its Return to the Application for Post-Conviction Relief filed March 27, 2014, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In June 2008, the Horry County Grand Jury indicted Applicant for trafficking cocaine base, 10-28 grams (2008-GS-26-2197). R. Paul Taylor, Esquire, represented Applicant. On March 9, 2010, Applicant proceeded to trial in his absence before the Honorable Edward B. Cottingham and a jury. The jury found Applicant guilty as indicted and Judge Cottingham issued a sealed sentence. On September 9, 2010, Applicant appeared before the Honorable Larry B. Hyman Jr., who unsealed and pronounced Judge Cottingham's thirty (30) year sentence.

Applicant filed a timely notice of appeal. Tristan M. Shaffer, Esquire, and Wanda H. Carter, Esquire, of the Office of Appellate Defense perfected the appeal with the filing of an Anders¹ brief.

¹ Anders v. California, 386 U.S. 738 (1967).

The South Carolina Court of Appeals dismissed Applicant's appeal on July 18, 2012. State v. Cooper, Op. No. 2012-UP-454 (S.C. Ct. App. filed July 18, 2012). The remittitur was returned to the circuit court on April 24, 2013.

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Violation of Miranda rights by the 5th and 14th Amendments"
 - a. "Appellant's confession should've been suppressed because it was made while he was in custody and he was not Mirandized"
2. "Violation of 6th Amendment right to counsel"
 - a. "Appellant's constitutional right to an attorney of his choice was undisputably denied"
3. "Due process violation by the 5th, 6th, and 15th Amendments"
 - a. "Prosecution violated the Brady v. Maryland rule (5) disclosure"

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the Application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCP.

Attached to this Return and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits that Applicant's allegations regarding his confession and his choice of

counsel should be dismissed for failing to state a cognizable claim for collateral review. Post-conviction relief “is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction.” S.C. Code Ann. § 17-27-20(b); see also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) (“It is uniformly held that an application for post-conviction relief is not a substitute for an appeal.”). Applicant’s allegations regarding his confession and his choice of counsel could have been raised on direct appeal. In fact, Applicant’s claim regarding his choice of counsel was raised at trial and Applicant’s claim regarding his confession was raised in his Anders brief. Because these alleged constitutional errors were raised at trial and direct appeal, they cannot be re-litigated in collateral review. Therefore, Respondent requests these allegations be dismissed pursuant to Rule 12(b)(6), SCRPC.

IV.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b). Post-conviction relief is not a substitute for an appeal. Simmons v., 264 S.C. at 423, 215 S.E.2d at 885. A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised the issue of prosecutorial misconduct on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant’s burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794 (1989). Respondent submits Applicant cannot demonstrate the State knowingly failed to “disclose evidence in its possession favorable to the accused and material to guilt or punishment.” Clark v. State, 315 S.C. 385, 388, 434 S.E.2d 266, 268 (1993) (citing Pennsylvania v. Ritchie, 480 U.S. 39 (1987)).

V.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held on those issues so requiring one

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

JOSHUA L. THOMAS
Assistant Attorney General
S.C. Bar No. 100777

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

Jan. 16, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	
	)	
	)	2014-CP-26-1893
TERMAIN COOPER, #286396	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

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

DATED this 16TH day of January, 2015.


 Norma Bigbee, Legal Assistant
 For Respondent

1 State of South Carolina) Court of Common Pleas
2 County of Horry) 2014-CP-26-01893

3

4 Termain Cooper

5 vs.

6 State of South Carolina

)
)
) Transcript of Record
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November 9, 2015
Conway, South Carolina

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11 BEFORE:

12 Honorable Thomas A. Russo, Judge.

13

APPEARANCES:

14

Daniel Selwa, Esq.
Attorney for the Applicant

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Jessica Kinard, Esq., Assistant Solicitor
Attorney for the State

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Teresa J. F. Bautz, RPR
Official Court Reporter

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I N D E X

WITNESS

DIRECT CROSS REDIRECT RECROSS

Termain Cooper

Mr. Selwa

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Ms. Kinard

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Robert Paul Taylor

Ms. Kinard

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Mr. Selwa

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E X H I B I T S

NO. DESCRIPTION

ID EV

No exhibits submitted.

1 (The hearing commenced at approximately 9:59 a.m.)

2 THE COURT: Thank you ladies and gentlemen, please
3 have a seat. Good morning. Good morning, folks. I
4 want to make sure that I turn all this stuff off. If
5 y'all have any electronics, turn them off.

6 All right. Are we going to go in order on the
7 roster here?

8 MS. KINARD: Yes, sir, relatively. Up there
9 you'll see I placed the judge's packets as well as an
10 updated roster. The first case us is actually going to
11 be the first case Termain Cooper, but after that we
12 might jump around a little bit.

13 THE COURT: Okay.

14 (Discussion off the record.)

15 THE COURT: All right. We're ready to proceed,
16 then, with regards to Mr. Cooper?

17 MS. KINARD: Yes, Your Honor.

18 THE COURT: Okay. Let me, before we get started,
19 I used to not do this, but after doing a lot of these,
20 I've come to feel like this is probably appropriate to
21 begin. And, Mr. Cooper, I'm going to just address a
22 couple of things with you that your attorney probably
23 has already talked to you about, but I just want to
24 make sure that we're all on the same page when we get
25 started here.

1 Mr. Cooper, you understand that this Court, the
2 only authority that I have, if I absolutely agree with
3 you on everything that you allege in your application,
4 that the only authority I have is to put you back in
5 the same position you were in before the disposition of
6 this case. In other words, I can't do anything to
7 change or alter your sentence. I can't do anything
8 other than to put you back where you were before -- was
9 this a plea or a trial?

10 MR. SELWA: Trial, Your Honor.

11 THE COURT: Okay. Then before your trial. You
12 understand that, sir?

13 THE APPLICANT: I do, sir.

14 THE COURT: Okay. And so what you're seeking is
15 to, if I understand, what you're seeking is basically
16 for the Court to agree with your allegations and to put
17 you back in the position you were in prior to going to
18 trial?

19 THE APPLICANT: Right.

20 THE COURT: Okay. All right. Well, then, I think
21 we're ready to proceed.

22 MS. KINARD: Thank you, Your Honor. This is the
23 case of Termain Cooper versus the State of South
24 Carolina. It's case number 2014-CP-26-1893. The
25 applicant's post conviction relief application was

1 filed March 27, 2014. In it he alleged he did not have
2 a choice of an attorney, he was not properly Mirandized
3 and that Rule 5 or Brady standards were not followed.

4 In June of 2008 the Horry County grand jury
5 indicted the applicant for trafficking cocaine base, 10
6 to 28 grams. Robert Paul Taylor represented the
7 applicant. On March 9th, 2010 proceeded to trial in
8 his absence before the Honorable Edward B. Cottingham
9 and a jury. The jury found the applicant guilty as
10 indicted, and Judge Cottingham issued a sealed
11 sentence.

12 September 9th, 2010, applicant appeared before
13 Judge Larry B. Hyman, Jr., who unsealed and pronounced
14 Judge Cottingham's 30-year sentence. Applicant filed a
15 timely notice of appeal. The Office of Appellate
16 Defense represented him perfecting the appeal with the
17 filing of an Andrews brief, and this was dismissed on
18 July 18th, 2012.

19 That is all for the call of the case. If the
20 applicant is ready to proceed on your motion.

21 THE COURT: All right.

22 MR. SELWA: Thank you, Your Honor.

23 THE COURT: Yes.

24 MR. SELWA: If it please the Court, I'd like to
25 call Termain Cooper to the stand.

1 THE COURT: All right. Mr. Cooper, if you don't
2 mind, if you would come around to be sworn.

3 TERMAIN COOPER, after being duly sworn, testified
4 as follows:

5 THE CLERK: Please have a seat and state your name
6 for the Court.

7 THE APPLICANT: I'm Termain Cooper.

8 DIRECT EXAMINATION

9 BY MR. SELWA:

10 Q Mr. Cooper, you filed a petition for a PCR; is
11 that correct?

12 A Right.

13 Q And what are you currently incarcerated for?

14 A Trafficking, third offense.

15 Q Okay. And how much time did you get, what was
16 your conviction?

17 A 30 years.

18 Q 30 years. Who represented you on that charge?

19 A At that time I had Paul Taylor and Cezar McKnight
20 at that time.

21 Q How long had you had Paul Taylor retained?

22 A I had Paul Taylor since 2008. I don't know what
23 month or date, but it was since 2008.

24 Q Did you know your trial to go forward?

25 A Well, I was arraigned, I think, on -- it was like

TERMAIN COOPER-DIRECT BY MR. SELWA

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1 March, I want to say around the 5th or the 6th, I
2 guess. When we was in trial, like I had told Paul
3 Taylor that I wasn't trying to stand trial because
4 that's something I wasn't trying to go through. But he
5 said he could beat it, so I was going off his word, and
6 I guess it wasn't a good word.

7 Q Okay. And how many times had you met with Paul
8 during the course of that representation?

9 A I was on a leg monitor at the time, and I had to
10 see Paul every Thursday. So I seen him probably like
11 four times a month.

12 Q Excuse me. Do you feel like you had adequate time
13 to prepare with Paul?

14 A I mean, I did. But when it -- like it was certain
15 of events that I wasn't agreed to, like some of the --
16 the trial date, it was coming up. So I fired him
17 because I wasn't agreement to the things that he was
18 telling me. And I hired Cezar, but at the same time I
19 hired Cezar I'm -- and, I don't know, it was like when
20 I had Paul Taylor, he was telling me certain things,
21 like he found me seven years violent. And I told him I
22 would take it, but the only way I could take that if I
23 told on somebody, and I wasn't agreed to that. So me
24 and him had a little argument, so I had to fire him and
25 I hired Cezar at the time.

1 Q Okay. Because time is very important here, when
2 did you actually fire Mr. Taylor?

3 A I fired Paul Taylor on, let me see, trial was
4 March. I fired Paul Taylor March the 6th in 2010.

5 Q Okay. And if the trial was on the 9th of March --
6 does that sound correct?

7 A Right.

8 Q You fired him prior to the arraignment hearing?

9 A Well, I fired him -- well, when we went to our
10 hearing and they had ten years on the table, I wanted
11 to take those ten years. The only reason I didn't take
12 those ten years is because I had other charges pending,
13 and I was like if they run all the charges concurrent,
14 I would take it. But he was like he can beat it in
15 trial, so I was like, okay, so I'm going to go off his
16 word.

17 And when it was March the 8th, I was at the
18 pretrial, and he came to me and he was like, look,
19 here's the plea, 25 years. I'm like, whoa, I kind of
20 panicked. I'm like, well, he told me seven years
21 violent, not 25, and so -- but at that time he was
22 fired, and Cezar was on some kind of order and he was
23 out of town. So I was calling Cezar, and he was
24 telling me like, look, if you go in there, they are
25 going to railroad you.

TERMAIN COOPER-DIRECT BY MR. SELWA

1 So I was like, you know what I'm saying, Paul
2 Taylor, he wasn't doing his job, so I had to fire him.

3 Q Okay. At what point did you retain Cezar
4 McKnight?

5 A I retained Cezar, it was on March 7th, yeah, it
6 was March 7th, 2010.

7 Q Okay. And you fully retained him by paying him
8 and --

9 A Yes, sir. I paid him cash, as soon as he -- me
10 and him met somewhere in the mall, and I paid him cash
11 money. He signed me my receipt, he fetched a copy to
12 the prosecutor's office and everybody. Yeah, I
13 retained him.

14 Q All right. And did you ever meet with
15 Mr. McKnight after that?

16 A I never seen him, period.

17 Q Okay. Other than him taking your fee?

18 A Yeah. I seen him that day, I paid him the money,
19 but as far as anything else, I haven't seen him at all.

20 Q Did you ever get your fee back?

21 A No, sir, I didn't get nothing back.

22 Q Okay. Did he show up to trial that Monday?

23 A No, sir. Well, I don't know because I didn't show
24 up. But I don't think he showed up either.

25 Q Okay. Who do you know that tried the case for

1 you?

2 A Well, in my transcript it said Paul Taylor had
3 tried my case for me.

4 Q Okay. And you had dismissed him at that point; is
5 that correct?

6 A Right, right.

7 Q How do you think Paul Taylor was ineffective for
8 you throughout this process?

9 A Well, I feel like he was ineffective because when
10 I like --

11 MS. KINARD: Objection, Your Honor. That's not an
12 allegation that's before the Court. He did not --
13 excuse me, he did not allege ineffective assistance of
14 counsel in his application.

15 THE COURT: All right. Let me get to his
16 allegations. Well, in C he alleges that the attorney
17 neglected to raise the issues of violation of Sixth
18 Amendment right to counsel and due process of his
19 Fifth, Sixth and Fourteenth -- or violation of his
20 rights under the Fifth, Sixth and Fourteenth Amendment.

21 So to the extent he -- I mean, he can address
22 those issues as far as his application. I guess you
23 could say that's ineffective assistance, but it needs
24 to be relegated to those issues that he states here.

25 MS. KINARD: Thank you, Your Honor.

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11

1 Q And so if you could understand the judge's
2 instructions, they are as they relate to your PCR
3 claims, how did Paul Taylor -- how was he ineffective?

4 A Well, he was telling me things that was like, for
5 example, when trial was starting, I told him off the
6 top I wasn't trying to take anything to trial, I'll
7 plead out to it. So he told me to -- somehow it got
8 there on trial date, it was March the 8th. I was in a
9 room from 8:30 to 12. And he was like he was going to
10 talk to Donna Ellerie, she was a prosecutor at that
11 time.

12 And he came back to me and he had promised me a
13 plea. But when she came from the room and she had 25
14 years, I was like, whoa, that's not what he had
15 promised me. And plus I had fired him as a lawyer, so
16 why is he, you know what I'm saying, on trial. Because
17 Cezar supposed to been there, but he was like, well,
18 Cezar couldn't attend trial because he had some kind of
19 order against him. And I just...

20 Q Was Cezar or Mr. McKnight, was he under an order
21 of protection which protected him from being called to
22 court?

23 A Right. But I knew nothing about that until the
24 trial date.

25 Q Did Mr. McKnight explain that to you?

1 A No, sir. I had tried to talk to him a while back
2 and he wasn't present. But he didn't tell me anything
3 about no order. Only thing I did, I called him up and
4 he told me a place to meet him. I met him. He signed
5 me like a little form, I paid him the cash, and I ain't
6 hear anything else from him.

7 Q Once you retained Mr. McKnight, do you feel like
8 that you withdrew yourself from Mr. Taylor and helping
9 prepare for your case?

10 A Right.

11 Q Okay. Had you gotten Mr. McKnight, how do you
12 feel like this would have been different?

13 A I mean, I feel like I think it would have played
14 out different. I wasn't trying to attend trial,
15 period, I just wanted like a good sentence. The reason
16 why I tried malaying (phonetic) myself, it wasn't
17 because I was running from the time or anything. It
18 was the fact that 30 years, come on, I didn't kill
19 anybody or anything, I just want a good sentence, so --
20 and Paul Taylor had promised me that.

21 And soon as he went against the promise, I fired
22 him and I called Cezar that same day during trial.
23 Because I think Judge Hyman had spoke to him in his
24 chambers or something, and he was already gone on a
25 flight. So I didn't know how to take it, so I just

1 panicked.

2 Q If you were given the opportunity to face
3 everything again, would you do so with Mr. McKnight?

4 A Yes, sir.

5 Q Okay. Do you feel like the outcome would be
6 different?

7 A I mean, yeah, I feel. But only thing I can do is
8 have faith.

9 MR. SELWA: All right. Please answer any
10 questions the AG's office would have.

11 CROSS-EXAMINATION

12 BY MS. KINARD:

13 Q Good morning, Mr. Cooper.

14 A How you doing.

15 Q So you stated that you were offered seven years
16 for a plea offer?

17 A No. Paul Taylor told me he -- him and the
18 prosecutor that came to a agreement to seven years
19 violent when I went to his office. And when I got to
20 the courtroom, the trial date, it was 25 years. So I
21 was like --

22 Q You didn't attend the trial date. Do you mean the
23 arraignment?

24 A I'm talking about the -- on March 8th at pretrial,
25 I been there from 8:30 to 12 o'clock.

1 Q Okay. So you were offered seven years violent at
2 one time?

3 A Um-hum.

4 Q And you were offered ten years?

5 A Ten years at the arraignment.

6 Q Okay. And you stated that you had adequate time
7 to speak with Mr. Taylor?

8 A Um-hum.

9 Q And you spoke to him about several different
10 strategies for trial?

11 A Right.

12 Q And you met with him multiple times?

13 A Right.

14 Q And you prepared with him to go forward with the
15 trial?

16 A Right.

17 Q Okay. And it wasn't until approximately three
18 days before the trial that you attempted to hire --

19 A No.

20 Q -- Mr. McKnight?

21 A Because I -- I met with Paul Taylor, it was on a
22 Thursday, and I went to see him. And on that Thursday
23 he told me that he came up with a plea agreement with
24 the prosecutor lady. And he was like it's seven years
25 violent, but I had to tell them on someone. So I told

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1 him no, I don't want that plea.

2 So when we went to the arrangement and when Judge
3 Hyman was like ten years, I told him like I'll take
4 that, but I want all my charges running concurrent.
5 I'm not going to take ten years for the trafficking and
6 I had other charges, then I'm not -- I wasn't going to
7 do that.

8 Q Okay, I understand that. But my question was you
9 attempted to hire Mr. McKnight approximately two days
10 before the trial was to begin?

11 A Right.

12 Q Okay. And did you ever see what we call a consent
13 order that would replace Mr. McKnight as your attorney?

14 A No, I never.

15 Q You never saw any paperwork --

16 A No, ma'am.

17 Q -- replacing your attorney?

18 A No, ma'am.

19 Q Did you understand that Mr. Taylor was your
20 attorney until you had another one?

21 A Right.

22 Q You did understand that?

23 A Right.

24 Q And you stated that you did not know Mr. McKnight
25 was on his way to Egypt for the week?

1 A I didn't know that.

2 MS. KINARD: Beg the Court's indulgence.

3 THE COURT: Yes, ma'am.

4 Q And you stated that when you found out
5 Mr. McKnight couldn't represent you, you panicked?

6 A Um-hum. Well, no, I didn't panic just because of
7 that, I panicked because when I was in the court, I
8 seen the 25 years, and Paul Taylor, he was fired as
9 attorney, I don't know why he even been there.

10 And Cezar was like, he was on a phone conference,
11 was like he's in New York. That's not what he told me
12 on the same day I paid him cash. He was like, okay, on
13 Monday I'll show up to court and, you know what I'm
14 saying, I'll do that. But here he goes, I show up to
15 court and he's not there. Paul Taylor had called him
16 on his phone, he was like he had an emergency in Egypt
17 or something.

18 Q There was testimony in your trial transcript,
19 granted not from you because you weren't there, that
20 you cut your ankle monitor the night before trial --

21 A Right.

22 Q -- is that correct?

23 A Right.

24 Q So you were never present at the day of trial?

25 A Right.

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1 Q Okay. And you understood that because
2 Mr. McKnight wasn't there, someone had to be there to
3 represent you?

4 A I didn't know, but now I do.

5 Q Now you do, okay.

6 MS. KINARD: No further questions for this
7 witness.

8 THE COURT: Anything on redirect?

9 MR. SELWA: No redirect.

10 THE COURT: All right. Thank you very much, sir.
11 You may step down.

12 (Witness excused.)

13 MR. SELWA: No further witnesses, Your Honor.

14 THE COURT: No further witnesses, all right.

15 MS. KINARD: Thank, Your Honor. On the roster it
16 states that Donna Elder was to be one of our witnesses.
17 As Mr. Cooper testified, she was the prosecutor in this
18 matter, and there is an allegation involving
19 prosecutorial misconduct as pertains to Rule 5.
20 However, Ms. Elder has had a family emergency, so she's
21 been released from that subpoena. I just wanted to
22 state that for the record.

23 THE COURT: All right.

24 MS. KINARD: At this time the State would call
25 Robert Paul Taylor.

1 THE COURT: All right. Mr. Taylor, if you would
2 please come around and be sworn, sir.

3 MR. TAYLOR: Thank you, Your Honor. Good morning.

4 ROBERT PAUL TAYLOR, after being duly sworn,
5 testified as follows:

6 THE CLERK: Please have a seat and state your name
7 for the Court.

8 THE WITNESS: Robert Paul Taylor, Your Honor.

9 MS. KINARD: Thank you. May it please the Court.

10 DIRECT EXAMINATION

11 BY MS. KINARD:

12 Q Good morning, Mr. Taylor.

13 A Good morning.

14 Q At the time of this case in 2010, how long had you
15 been practicing law?

16 A I was admitted to the bar in 2000 -- May 2002.

17 Q Okay. Was a chunk of that time spent in criminal
18 law?

19 A I was trained by Reese Joy in Charleston. It was
20 all criminal law.

21 Q Did you have experience at the time in trial
22 issues and law relating to serious drug offenses?

23 A Yes, ma'am. My former boss, employer, sent me to
24 every seminar possible that he could send me to. I
25 think I got overtrained actually.

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1 Q All right. And in 2010, at that time how long had
2 you been representing Mr. Cooper?

3 A I believe it was about two years.

4 Q Okay. And had you represented him on charges
5 other than this one?

6 A I believe this was the only charge and maybe it
7 was something in the past that I'd represented him on.
8 But this was the only thing at the time that I was
9 representing him on, the only charge.

10 Q Okay. How many times did you meet with him?

11 A I lost count, it was a lot. As he stated, I met
12 with him at least four times a month, maybe more.

13 Q Okay. Over the course of the two years or at
14 least --

15 A Yes, ma'am.

16 Q Okay. And upcoming to the trial especially?

17 A Yes, ma'am.

18 Q Did you discuss the elements of the charges and
19 what the State was required to prove?

20 A Yes, ma'am. We went over all of the discovery
21 once it was brought to me. Every time we had a roll
22 call which is where, you know, he would be brought in
23 to discuss the plea offer that was offered to him and
24 the evidence, he'd be brought to my office prior to the
25 roll call and we'd go through the evidence again.

1 I'd go through what was on the table as far as an
2 offer, what I thought about the case, good points, bad
3 points, what I thought, my opinion of the case was,
4 what I thought that I could do as far as an offer.

5 I remember discussing with him cooperation.
6 Obviously that was, the facts of this case, as I
7 recall, were very bad. And I had negotiated with the
8 prosecutor to have him cooperate in order to reduce his
9 sentence greatly. He wanted no part of cooperation.
10 So therefore, that's why the sentence was what it was.
11 I believe the sentence -- the offer was ten years at
12 the arraignment, and he rejected it at that point and
13 at that time it was set for trial.

14 Q And it was set for trial the next week?

15 A Yes, ma'am. And then we met, we met after the
16 arraignment at my office, and then I told him it's
17 going to be a trial. We're first up. We met over the
18 weekend on Saturday. We were supposed to meet again on
19 Sunday to finish preparing for Monday's trial. Sunday
20 he didn't show. I got a phone call from Cezar McKnight
21 on Sunday. Actually, before I got the call from Cezar,
22 I got a call from his uncle. His uncle was the one
23 that actually paid the fee to Cezar, talking to me
24 about the case.

25 And I said, you know, I really can't discuss it

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21

1 with you, but if you're going to retain counsel, you
2 understand that we're first up, and you just don't
3 retain counsel in order to continue a case, it doesn't
4 work that way. I explained to the uncle, I tried to
5 call my client, my client would not answer his phone.

6 Then Cezar McKnight called. Cezar advised me that
7 he was under an order of protection. And I advised
8 Cezar, Cezar, it doesn't work that way. Judge
9 Cottingham is not going to, you know, validate your
10 order of protection for a case that you're getting
11 retained on. It just doesn't -- doesn't work that way.
12 You don't go and accept a case as a lawyer knowing
13 you're under an order of protection, knowing that the
14 case is on Monday. You just -- that is not -- you
15 can't expect to do that and expect that your case is
16 not going to be called.

17 So I explained that to Cezar, we talked at length.
18 He didn't care about that, he said he was going to move
19 forward anyway on his order of protection. I said,
20 good luck with that. I knew that I still had to be
21 here, I had obligations to my client. I was here
22 Monday morning, I finished preparing for trial. Still
23 no answer, you know, to my phone calls to the client.
24 I was here and advised Judge Hyman and Judge Cottingham
25 what was going on, what had happened.

1 Of course they immediately said, no, this case is
2 going to go forward. They tried to contact Cezar. I
3 tried to contact Cezar. Cezar finally answered his
4 cell phone. He was at LaGuardia boarding a -- about to
5 board a plane to go to Egypt on vacation. It's my
6 understanding that he still hasn't returned the money
7 because I ran into the uncle about a year after the
8 trial, I think, and he advised me that he had never
9 gotten his money back.

10 So that's how that occurred, it was -- and then I
11 was stuck trying the case. I understand he -- he never
12 actually fired me. Like I said, I got a phone call
13 from Cezar saying, I had been retained, which was kind
14 of blind-sided me. But I wish that he had tried the
15 case, would have let me -- I would have had a couple
16 days off and not had to try the case, but that didn't
17 work out that way.

18 Q To the best of your memory, was a consent order or
19 any order relieving counsel or substituting counsel
20 ever created?

21 A No, ma'am. I was never forwarded that. And then
22 he told me, Cezar told me to go ahead and mail him a
23 copy of the file. And I said, well, I can't fax it to
24 you, it's too thick. I mean, it was like this thick
25 (indicating). I said, you know, that's not going to

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23

1 work. You can come by my office and pick it up, and he
2 said, no. As I stated, he's going on vacation.

3 He told me he didn't need it at the time because
4 he was going on. And then he went on about how, you
5 know, the client was entitled to pick his lawyer. And
6 that's true, he could pick his lawyer, he just can't
7 pick one that's going on vacation.

8 Q You mentioned earlier that you reviewed discovery
9 with Mr. Cooper several times?

10 A Yes, sir.

11 Q Did you have any issues containing discovery
12 materials?

13 A No, ma'am, I didn't. I mean, I obtained the
14 materials as I needed them. You know, sometimes they
15 come in as the case is going. You don't always get the
16 whole file initially whenever you get the case, it
17 takes a little while to get everything. But by the
18 time it got to the arraignment, I had everything I
19 needed.

20 Q And you felt adequately prepared to try this case?

21 A Yes, ma'am. And I was.

22 Q And in fact you tried this case without the
23 Defendant present?

24 A That's correct. And I advised the uncle that that
25 was what was going to happen if the client was not

1 here. And as he stated, he cut his ankle monitor. I
2 got a phone call from the solicitor telling me that
3 because she knew I was working on the case. We were
4 communicating with each other about what we were doing
5 with the case.

6 Because I was still trying to negotiate a plea
7 offer because of the facts the case, still trying to
8 work towards that, something that I thought the client
9 would take if he did show up.

10 Q Okay. And you believe you got him a good deal, a
11 good plea offer?

12 A I did, considering what he was facing. And it
13 was, you know, his prior record, prior drug
14 convictions. I thought the facts of this case, I
15 thought that it was the best that could be
16 accomplished. Nobody ever wants to do any time. But,
17 you know, they give you a pen when you graduate law
18 school, they don't give you a magic wand. And
19 sometimes I can't make evidence disappear, it is what
20 it is.

21 The client, you know, has to accept that whenever
22 he commits crimes he's -- if the evidence is against
23 him and he gets caught and you go see a lawyer, I don't
24 care how good the lawyer is, you can't always make that
25 go away. So you try to do the best you can and get the

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1 best deal offered. He didn't like that deal. The
2 prosecutor wasn't going to give a better one, and I
3 couldn't force her to do so.

4 Q So just to recap briefly, Judge Cottingham, you
5 stated that Judge Cottingham basically said you could
6 represent him, or he could go pro se?

7 A That was what Judge Hyman and Judge Cottingham
8 said at -- that we had a meeting in chambers with
9 myself and the prosecutor in the case, Donna Elder, and
10 explained the situation, what was going on. I
11 explained to them that I, you know, received a phone
12 call. I told them I'd actually not talked -- spoken
13 with the client, that obviously that was what the
14 client wanted, otherwise the lawyer would have not
15 called. And they said, well, where is he at. And I
16 explained the situation, as I stated. And they said,
17 well, we're going forward with trial.

18 Q And you believe that your strategy in trying this
19 case was a valid one?

20 A It was the only option I had.

21 Q Okay.

22 MS. KINARD: No further questions at this time.

23 THE WITNESS: Thank you.

24 MR. SELWA: Court's indulgence.

25 (Discussion off the record.)

1 MR. SELWA: Your Honor, we may approach.

2 THE COURT: Yeah.

3 (Discussion off the record.)

4 MR. SELWA: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. SELWA:

7 Q Good morning, Mr. Taylor.

8 A Good morning.

9 Q At any time during that period where Mr. McKnight
10 called you and during or prior to the trial, did you
11 make any motion to be relieved?

12 A No, I did not make a motion to be relieved,
13 because they told me unless he was -- unless he was
14 there, you know, to say he was -- I don't even think he
15 had even sent a letter of rep at that point, I'm not
16 sure. But they said, you're still attorney of record,
17 and we're not relieving you, I mean, you're not
18 relieved. So I didn't waste the time of trying to file
19 a motion with the Court to be relieved because they
20 said, you're still his lawyer, so...

21 Q And had you continued to prepare after you had
22 gotten that call from Mr. McKnight?

23 A I did, because I knew that I was still going to
24 have to try the case. Because as I stated, Cezar said,
25 I'm getting on a plane, I'm going to Egypt for

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1 vacation, so I knew I was going to get stuck trying the
2 case.

3 Q Had you had more time with him or had Termain
4 gotten in contact with you during that period when he
5 was out of contact with you, do you feel like you would
6 have been able to talk with him and eventually have him
7 accept the offer?

8 A No, I don't think he was going to accept the
9 offer.

10 Q What was the last offer that was made?

11 A I believe it was ten years.

12 Q Ten years. Would that then -- did the ten-year
13 offer require cooperation?

14 A No. The prior offers of that were lower, were the
15 ones that required cooperation.

16 Q Okay. So the last offer on the case was ten
17 years, and he went to trial in his absence and received
18 30; is that correct?

19 A Correct. Because it was his third offense.

20 Q Okay. And you don't feel that that extra time
21 with him to explain that to him would have helped him
22 at all?

23 A Well, it would have if he would have answered his
24 phone call. I mean, he knew what he was facing because
25 we had sat down numerous times and went over his prior

1 record and what he was facing. So he knew what he was
2 facing when he went to trial. But, I mean, I tried to
3 call him to talk to him about Cezar being retained to
4 explain, you know, you're number one on the trial and
5 you can't just get the case continued because you go
6 and hire a new counsel, you know, I mean.

7 Q And I know you can't testify as to what he was
8 thinking, but if another attorney had told him not to
9 contact you or talk to you, wouldn't that not have
10 interfered with your representation of the client?

11 A I don't know what he was told, to be honest with
12 you.

13 Q But you just know that he didn't contact you?

14 A I know that the client would not answer my phone
15 calls. Because obviously whenever I got the phone call
16 from Cezar, I wanted to talk to my client to find out
17 what was going on. Because as I stated, he was
18 supposed to meet with me at my office at around 11 or
19 11:30 on Sunday to finish getting ready for trial on
20 Monday, and he didn't show.

21 So whenever he didn't show, I tried to call him to
22 find out, you know, you got car problems, what's going
23 on. And then that's whenever I get a phone call from
24 the uncle, you know, wanting to know -- wanting to talk
25 about the case. And I said, I really can't -- because

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1 I believe he confided in his uncle, I mean, his uncle
2 was kind of like a father figure to him, and he looked
3 to his uncle. And his uncle wanted to really know,
4 hey, what's going on, because his uncle and I had not
5 spoken previously about it.

6 And I explained to him, ethically I can't discuss
7 the case with you. I mean, this is -- he's up for --
8 your nephew is up for trial. And then next thing I
9 know Cezar is calling me and Cezar is saying, well, I'm
10 being retained, as I stated before.

11 Q Did you actually get an opportunity to discuss the
12 ten-year offer with him, or was it just the seven-year
13 offer?

14 A No. That was made at the arraignment. And then
15 Donna told me, well, if he's not going to take it, then
16 I'm going to try him on -- so we went out in the
17 hallway and, you know, it was roll call, you know how
18 it works. And when we went out in the hallway and
19 discussed it, he didn't want to take it. And we went
20 back in and told Donna.

21 Donna of course scribbled through it and got very
22 upset about him not taking it, and then said, well,
23 he's first up for trial, then, on Monday. And then we
24 went back out in the hallway and talked about that, I
25 explained to him, and he still didn't want to take it.

1 Q Okay. And that was the ten years?

2 A That was the ten years.

3 Q Okay.

4 MR. SELWA: No further questions, Your Honor.

5 THE COURT: All right. Anything on redirect?

6 MS. KINARD: No, sir. And that is it for the
7 State's case.

8 THE COURT: All right. Thank you, Mr. Taylor.

9 THE WITNESS: Nice to see you, sir.

10 THE COURT: Good to see you, sir.

11 (Witness excused.)

12 (Discussion off the record.)

13 MR. SELWA: Your Honor, I don't know if we had to
14 put that on the record what we discussed up there or
15 not.

16 THE COURT: Sure. I mean, we'll -- I certainly
17 note for the record. Go ahead.

18 MR. SELWA: I just asked the Court to take
19 judicial notice of Mr. Taylor's ethical issues with the
20 bar.

21 THE COURT: All right.

22 MS. KINARD: And I objected to that regarding
23 relevance because that has nothing to do with this case
24 at hand.

25 THE COURT: All right. Anything to sum it up?

1 MR. SELWA: Your Honor, I think Mr. Cooper got
2 caught between two lawyers here, trapped up in the
3 system. He received 30 years, which is quite a
4 substantial sentence. I think a part of what he went
5 through, I think, it's my opinion that maybe he was
6 deferring to Mr. McKnight's advice. And I don't think
7 he fully cooperated with Mr. Taylor, and I don't think
8 Mr. Taylor fully cooperated with him.

9 THE COURT: I'm sorry, give me one second. All
10 right.

11 MR. SELWA: I'm sorry, Your Honor. And so I think
12 that Mr. Cooper is a victim of the system right now. I
13 think he would have part of his life back had he had
14 Mr. McKnight and had the opportunity to go forward on
15 that and just got some false representation there.

16 And he testified he'd like to have this put back
17 to where it was at the beginning, he wants to start
18 over. And he knows the risks, I've counselled him on
19 that. He wants the opportunity to have the attorney
20 that he wished for or asked for and retained, and he
21 wants to try to face this the right way, the way that
22 he wanted to face it. It mean, this is a significant
23 amount of time for a person his age, essentially it's a
24 life sentence.

25 And so, Your Honor, he's asking that you grant him

1 a new trial so that he may retain the services of
2 Mr. McKnight and face the charges the way that he ought
3 to.

4 THE COURT: All right. Thank you, sir.
5 Ms. Kinard.

6 MS. KINARD: Thank you. I agree with Mr. Selwa in
7 that he may have gotten caught between two attorneys,
8 but I also think that this is a trap by Mr. Cooper's
9 own making. He had been working with Mr. Taylor for
10 over two years. He had received several plea offers
11 that Mr. Taylor negotiated that gave him opportunities
12 for quite significant less amounts of time.

13 He did not fully cooperate with Mr. Taylor insofar
14 that he didn't show up to his own trial. And granted,
15 that should not be held against him, but at the same
16 time I think it's indicative of the way that he handled
17 the situation with his representation with Mr. Taylor.
18 I think with Mr. Taylor's testimony, he showed that he
19 prepared up until the very end. He did everything he
20 could to represent his client, even against his
21 client's own wishes, but that is our duty as attorneys.

22 And I think the applicant has failed to carry his
23 burden to show that Mr. Taylor did anything wrong, that
24 he was ineffective in any way. And I do not believe
25 that there is any reason for this Court to grant him

1 the relief he's requesting. Thank you.

2 THE COURT: All right, thank you. Well, I
3 reviewed the facts and the allegations contained in the
4 application. And although, you know, it's a -- we can
5 cite the law, but it's got to be done in the context of
6 the facts that are before the Court. That someone has
7 a Sixth Amendment right to counsel is absolutely
8 correct. Are they entitled to the counsel of their
9 choosing, I don't think that's a correct expression of
10 the law. They are entitled to representation and
11 counsel. We don't allow indigent folks to hand pick
12 their public defenders.

13 In this case, though, a person does have the right
14 to retain whoever they would like to retain. And in
15 this case, Mr. Cooper initially retained Mr. Taylor.
16 I've known Mr. Taylor for a long time, I've known
17 Mr. McKnight for a long time, both very accomplished
18 criminal lawyers, both do an excellent job. But
19 Mr. Taylor, I saw nothing in the record and there
20 doesn't appear to be anything in the record to indicate
21 that Mr. Taylor was anything but prepared to go
22 forward.

23 He prepared the case, he worked on the case, he
24 met with his client, even to the point of the week
25 prior to trial getting a couple of substantially

1 reduced plea offers to which Mr. Cooper rejected and
2 absolutely has the right to reject.

3 Mr. Taylor was correct in his assessment of the
4 way the Court is going to handle these situations where
5 there is a change of attorney. While the testimony was
6 going on, I had the Court's file here that -- excuse
7 me, the clerk's file here, which is the official record
8 of the Clerk of the Court. And there's nothing in this
9 thing at all, Mr. McKnight's name doesn't even appear.
10 And so there's no record from the clerk that
11 Mr. McKnight filed an appearance on behalf of
12 Mr. Cooper.

13 And it could be that he just didn't have the
14 opportunity because, if I understood the testimony, it
15 was over the weekend that Mr. Cooper's folks hired
16 Mr. McKnight, and Mr. McKnight was on his way out of
17 the country. I don't know if -- and there was no one
18 to testify to that conversation. So I don't know if
19 Mr. McKnight made them aware of the fact that he was on
20 his way out of the country and that -- but my point
21 being is that no one on behalf of Mr. Cooper, and that
22 would have been either Mr. Cooper himself or
23 Mr. McKnight, appeared before the Court seeking a
24 continuance.

25 Mr. Taylor did exactly what he was required to do,

1 and he appeared on Monday morning even though under his
2 own assessment of the facts that he had, he was going
3 to be dealing with a client who had tried to hire
4 another attorney. But he appeared and he appeared
5 regardless of that, and he appeared ready to go to
6 trial.

7 It just does not appear that there's anything in
8 the record that would support any violation of
9 Mr. Cooper's Sixth Amendment right to trial. He had an
10 extremely competent and excellent attorney there on his
11 behalf and represented his interest. Would it have
12 benefitted him to appear and to continue to cooperate
13 with Mr. Taylor, more than likely it would have.

14 I can't say it would have or not, but -- and I
15 don't know that it would have changed the outcome. But
16 that's just something we're never going to know because
17 it didn't occur. He chose not to cooperate with
18 Mr. Taylor at that point, he chose not to appear for
19 his trial.

20 We haven't gone into any details with regards to
21 the trial, but there's nothing in this record that
22 would indicate to this Court that his rights under the
23 Fifth, Sixth and Fourteenth Amendments were violated.
24 There's just nothing in the record to support the
25 granting of this motion. I'm going to respectfully

1 deny the motion.

2 MS. KINARD: Thank you, Your Honor.

3 (The hearing concluded at approximately

4 10:42 a.m.)

5 (End of Transcript of Record.)

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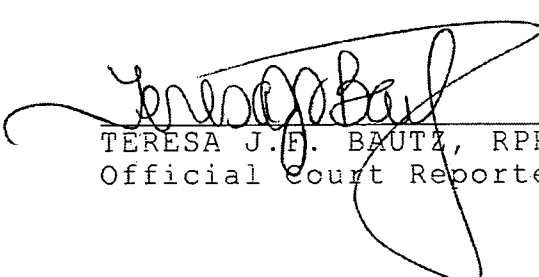
25

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)
4 COUNTY OF HORRY)
5

6 I, TERESA J.F. BAUTZ, Official Court
7 Reporter for the Fifteenth Judicial Circuit of the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete Transcript
10 of Record of the proceedings had and evidence
11 introduced in the trial of the captioned case, relative
12 to appeal, in the Court of Common Pleas for Horry
13 County, South Carolina, on the 9th day of March, 2016.
14

15 I FURTHER CERTIFY that I am neither of
16 kin, counsel nor interest to any party hereto.
17

18
19 
20 TERESA J.F. BAUTZ, RPR
21 Official Court Reporter
22
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Termain Cooper, #286396,)

Case No. 2014-CP-26-1893

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

HORRY COUNTY
2016 JAN -4 PM 2:29
MELANIE BURGESS-WARD
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 27, 2014. Respondent made a timely Return on or about January 16, 2015. The Court convened an evidentiary hearing into the matter on November 9, 2015, at the Horry County Courthouse. Applicant was present at the hearing and represented by Daniel A. Selwa, II, Esquire. Jessica E. Kinard, Esquire of the South Carolina Attorney General's Office, represented Respondent.

Applicant and his trial counsel, Robert Paul Taylor, Esquire¹ testified at the hearing. Donna Elder, Esquire was originally subpoenaed for the hearing due to the allegations of potential prosecutorial misconduct; however, she was released from the subpoena due to a family emergency. The Court had before it a copy of the plea transcript, the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. In June 2008, the Horry County

¹ Applicant requested that the Court take judicial notice of Mr. Taylor's current suspension from the practice of law in the State of South Carolina. The Court takes note of this fact, yet finds it has no relevance to these proceedings.

copy

Grand Jury indicted Applicant for trafficking cocaine base, 10-28 grams (2008-GS-26-2197). R. Paul Taylor, Esquire represented Applicant. On March 9, 2010, Applicant proceeded to trial *in absentia* before the Honorable Edward B. Cottingham and a jury. The jury found Applicant guilty as indicted and Judge Cottingham issued a sealed sentence. On September 9, 2010, Applicant appeared before the Honorable Larry B. Hyman Jr., who unsealed and pronounced Judge Cottingham's thirty (30) year sentence.

Applicant filed a timely notice of appeal. Tristan M. Shaffer, Esquire and Wanda H. Carter, Esquire of the Office of Appellate Defense perfected the appeal with the filing of an Anders² brief. The South Carolina Court of Appeals dismissed Applicant's appeal on July 18, 2012. State v. Cooper, Op. No. 2012-UP-454 (S.C. Ct. App. filed July 18, 2012). The remittitur was returned to the circuit court on April 24, 2013.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "Violation of Miranda rights by the 5th and 14th Amendments"
 - a. "Appellant's confession should've been suppressed because it was made while he was in custody and he was not Mirandized"
2. "Violation of 6th Amendment right to counsel"
 - a. "Appellant's constitutional right to an attorney of his choice was undisputably denied"
3. "Due process violation by the 5th, 6th, and 15th Amendments"
 - a. "Prosecution violated the Brady v. Maryland rule (5) disclosure"

At the evidentiary hearing, Applicant proceeded on the allegations of a sixth amendment violation because he was denied his right to choice of counsel, and that Mr. Taylor was ineffective.

² Anders v. California, 386 U.S. 738 (1967).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

A. Ineffective Assistance of Plea Counsel

In this post-conviction relief action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, Applicant must prove trial counsel's "conduct so undermined the proper functioning of the adversarial process" that the trial "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's performance by its

"reasonableness under prevailing professional norms." *Id.* (citing *Strickland*, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 117-18, 386 S.E.2d at 625.

The Court finds Applicant failed to meet his burden of proof to demonstrate trial counsel was ineffective in any manner. Mr. Taylor testified he met with Applicant multiple times, and at least once a week in the months leading up to trial. Additionally, Taylor had represented Applicant on multiple charges, so an existing relationship existed. He testified Applicant never appeared to have any difficulty understanding their conversations. Taylor testified that he had negotiated a lesser sentence if Applicant cooperated with investigations, but Applicant refused this deal. Taylor then negotiated an agreement for ten (10) years, which was offered to the Applicant at arraignment the week before trial was scheduled.

Taylor testified that Applicant was cooperative in preparing for trial until the weekend before trial was set to begin on Monday. The two met on Saturday to prepare, but Applicant did not arrive for their scheduled meeting on Sunday. Taylor was contacted by another attorney, Cezar McKnight, Esquire, on Sunday, and he notified Mr. McKnight that trial was scheduled for the next day. McKnight informed Taylor that he had been retained, but had an existing order of protection and was on his way out of the country. The transcript reflects that this specific issue was taken in front of Judge Larry B. Hyman, who ruled that the trial would go forward the next day, whether with Taylor, McKnight, or with the Applicant appearing *pro se*. At a hearing later that day, the Honorable Edward B. Cottingham was informed that the Applicant had not appeared as directed, and a bench warrant was issued. Judge Cottingham ordered Taylor to proceed as the Applicant's attorney at trial, and that it would go forward the next day, with or

without the Applicant. Applicant did not appear for trial, and the Court proceeded with a trial *in absentia*.

The Court finds Applicant failed to demonstrate that trial counsel was deficient in any way. The Court finds very credible Taylor's testimony that he had been preparing for trial, continued to prepare for trial after Applicant attempted to relieve him, and even conducted a trial in absentia when Applicant failed to appear, thus satisfying his duty of representation to the Applicant. The Court also finds persuasive and credible Taylor's testimony that he met with Applicant multiple times, negotiated several plea offers, and prepared this case to the best of his ability. The Court also finds persuasive Applicant's testimony at the PCR hearing that he and Taylor had appropriate and adequate time to prepare for trial and that nothing was wrong with Taylor's representation³.

The Court further finds Applicant failed to demonstrate that he was prejudiced by Taylor's representation or, alternatively, by not having counsel of his choice. First, Applicant presented no evidence of Taylor representing him in a manner that was anything but professional and beneficial. Second, Applicant presented no evidence that another attorney would have performed any differently, especially considering his own lack of cooperation in the matter. Therefore, Applicant has not demonstrated that a different attorney would have changed the result of his proceedings.

B. All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any

such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. There is nothing in this record to show that trial counsel was anything but prepared, and this is particularly proven in the fact that he proceeded to trial without the Applicant. Everyone has the right to counsel, but not counsel of their choice; therefore, Applicant did not have the right to delay his trial by attempting to retain an attorney that was not ready to proceed at the time of trial. Nothing in the record indicates that the Applicant's fifth, sixth, or fourteenth amendment rights were violated. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

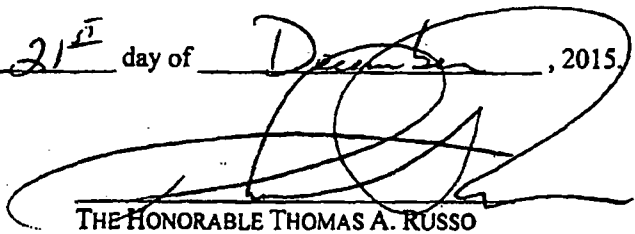
Signature follows.

³ This is in contradiction to Applicant's testimony that he felt the outcome would have different if he had been represented by the attorney he attempted to retain because he was panicked and did not have faith in Taylor. Based

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 21st day of December, 2015.


THE HONORABLE THOMAS A. RUSSO
Presiding Judge

Florence, South Carolina

on the cumulative evidence presented, the Court finds more persuasive the testimony in Taylor's favor.

WITNESSES

Mike Guthinger DEU - 15th Drug Enforcement Unit

DOCKET NO. 2008-GS-26- 2197

The State of South Carolina

County of Horry

Donna E. Elder

08H00898

COURT OF GENERAL SESSIONS

June, 2008 TERM

ARREST WARRANT NUMBER

J736854

CDR: 0452 44-53-0375(C)(1)

DOA: 2/20/2008

THE STATE

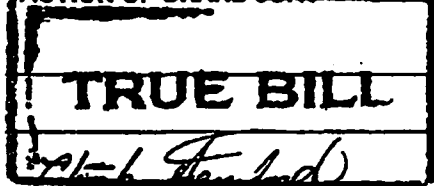
vs.

Termain Omar Cooper
U/ M

Myrtle Beach, SC 29577
DOB:
SSN:

ATTORNEY: Galtmore, James Cullen

ACTION OF GRAND JURY



Foreperson of Grand Jury
Date:

JUN 12 2008

VERDICT

GUILTY

Indictment for

Trafficking Cocaine Base 10-28 grams

J. Gregory Hembree, Solicitor

Foreperson of Petit Jury
Date:

Larry GEDDINGS
3/9/10

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on June 12, 2008, the Grand Jurors of Horry County present upon their oath:

TRAFFICKING COCAINE BASE
MORE THAN 10 GRAMS, LESS THAN 28 GRAMS

CDR: 0452 44-53-0375(C)(1)

That Termain Omar Cooper did in Horry County on or about February 20, 2008, knowingly, sell, deliver, purchase, or bring into this state; or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this state, or was in actual or constructive possession or attempted to become in actual or constructive possession of a quantity of Cocaine Base in an amount of more than ten grams but less than twenty-eight grams, same being a controlled substance all within the meaning of Section 44-53-110, et seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized and in violation of Section 44-53-375(C)(1), S. C. Code of Laws, 1976, as amended, for the crime of trafficking.

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


J. GREGORY AMBREE
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Horry

VS.

Termain Omar Cooper

AKA:

Race: B Sex: M Age: 28

DOB: 06-28-1981 SSN: 911-10-8860

Address:

City, State,

DL#:

SID#:

CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
FO: Trafficking in Cocaine Base/Meth, 10 to 28 grams, 3rd offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS2602197

A/W#: 1736854

Date of Offense: 2/20/2008

S.C. Code §: 44-53-0375(C)(1)(b)

CDR Code #: 0452

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0375(C)(1)(c) of the S.C. Code of Laws, bearing CDR Code # 0452

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Elder, Donna E.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

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

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

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

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

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

	\$
	\$
\$100	\$100.00
\$100	\$
\$12	\$
\$25	\$
\$500	\$25.00
\$25	\$100.00
\$100	\$
\$50	\$
\$40/ea	\$
\$5	\$5.00
\$	\$6.90
\$	\$236.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2041

Sentence Date:

03/09/2010

Clerk of Court/ Deputy Clerk

Court Reporter:

Melanie Huggins-Ward
Linda McCall

ARREST WARRANT

J-736854

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Myrtle Beach

THE STATE

DEU-08-010

Terrain Omar Cooper

Address:

Phone:

Sec: M Race: B Height: 6 Weight: 220

DL State: SC DL #: DOB: [REDACTED]

Prosecuting Agency: Myrtle Beach Police Department

Prosecuting Officer: M Gutthinger - 6423

Offense: Drugs / Trafficking in ice, crack or crack - 10 g or more, but less than 28 g - 2nd offense

Offense Code: 0451

Code/Ordinance Sec: 44-53-0375(C)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

is to be arrested and brought before me to be dealt with according to the law. The accused

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant on 2/20/2008

Signature of Judge

RETURN WARRANT TO:

General Sessions

PO Box 677

1301 2nd Avenue

Conway, SC 29528

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Myrtle Beach

Personally appeared before me the affiant M Gutthinger

being duly sworn deposes and says that defendant Terrain Omar Cooper

did within this county and state on or about 02/20/2008

violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Myrtle Beach

in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in ice, crack or crack - 10 g or more, but less than 28 g - 2nd offense

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

On 2/20/08 Officer of the Myrtle Beach Police conducted a traffic stop on the defendants vehicle in the area of 9th Ave S within the City Limits of Myrtle Beach. The defendant was arrested on unrelated traffic charges. Located within in the defendants vehicle was an off white in color rock like substance with a approximate weight of 13.5 grams, which field tested positive for the presence of cocaine base. A NCIC records check was inquired, showing a prior narcotics charge. There for there is probable cause to believe that the defendant did commit the offense of Trafficking Cocaine Base 2nd 44-53-375(C)(1)(B).

MAR 05 2008

SOLICITOR'S OFFICE

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

Myrtle Beach

Myrtle Beach

Affiant's Address 1101 Oak Street Myrtle Beach, SC 29577.

Affiant's Telephone

ARREST WARRANT

25,000 SUBST

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 2/20/2008 defendant Terrain Omar Cooper

did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of Myrtle Beach

as set forth below:

DESCRIPTION OF OFFENSE: Drugs / Trafficking in ice, crack or crack - 10 g or more, but less than 28 g - 2nd offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable. Sworn to and subscribed before me

on 02/20/2008

Signature of Issuing Judge

Sandra Carr

Judge Code: 6842

Judge's Address

1101 Oak Street Myrtle Beach, SC 29577.

Judge's Telephone

Issuing Court

☐ Magistrate

☒ Municipal

☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

Print/Approved by S.C. Attorney General April 21, 2008 SC04 618

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.

Termain Cooper,

Appellant.

Appeal From Horry County
Edward B. Cottingham, Circuit Court Judge

Unpublished Opinion No. 2012-UP-454
Submitted May 1, 2012 – Filed July 18, 2012

APPEAL DISMISSED

Appellate Defender Tristan M. Shaffer, of Columbia,
and Termain Cooper, pro se, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, and Senior
Assistant Deputy Attorney General Salley Elliott, all

of Columbia; and Solicitor J. Gregory Hembree, of Conway, for Respondent.

PER CURIAM: Termain Cooper appeals his conviction of trafficking in cocaine base, arguing the trial court erred in admitting his statement obtained in violation of Miranda v. Arizona, 384 U.S. 436 (1966). Cooper also filed a pro se brief. After a thorough review of the record and all briefs pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

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

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.