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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM NEWBERRY COUNTY
Court of General Sessions

SC Court of Appeals

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Indictment No.: 2012-GS-36-0267

The State,.....Respondent,

v.

Toaby Alexander Trapp,.....Appellant.

APPENDIX TO THE RECORD ON APPEAL

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Index to Appendix to the Record on Appeal

Trial Transcript:

Closing Argument	
Counsel for the Defendant	351
Counsel for the State	361
Jury Charges	369

1 (Whereupon, the jury came into open court at
2 approximately 5:13 p.m.)

3 THE COURT: Before we start closings I have selected
4 Ms. Hedgepeth to be our foreperson. And she is going to
5 do an excellent job. You don't get paid extra. Trick or
6 treat, you are it. I always select the foreperson. All
7 right. Are you going to open first or waive that?

8 MR. SCOTT: I will just waive it, Judge, and close
9 all together.

10 THE COURT: All right. Mr. Lake.

11 MR. LAKE: Thank you, Judge. Another word for
12 justice is fairness. Fairness isn't a process. You sat
13 there and I want to thank y'all again. This is the last
14 place you want to be and the last place I want to be also.
15 But, I really appreciate you all taking the time to come
16 here and listen to this particular case. As I told you at
17 the beginning, things aren't necessarily all as they
18 appear. And you had an opportunity to listen to very
19 skint, limited evidence. There is really only one person
20 who was there at the scene, Investigator Epps, Captain
21 Dennis. You heard from investigator, now, Captain Dennis
22 regarding what happened on that particular night. Very
23 limited information. And it is unfortunate that
24 Investigator Bouknight is not here. And I am quite sure
25 that all of the investigators, the Judge, prosecutors and

1 everybody including myself wish he was here. But I ask
2 you to set aside all of those things, those personal
3 feelings as to why he is not here and simply look at the
4 facts of the case. We never got the one explanation or
5 the one answer that I would ask someone who was a former
6 prosecutor, I never got the answer to one question that I
7 wanted to hear. And that question is, why would I look at
8 the photograph of number 6 that has the T.V., the
9 Alka-Seltzer thing, you see the white little envelope, you
10 actually see the ashtray. Investigator Spreng, because
11 you heard Officer Epps, he went in and the condition was
12 the same as when I went in there. Because he identified
13 those initial photographs. And when you look at these
14 particular photographs, you will get a chance to look at
15 them. And when you see, you just walk into a room and you
16 are trying to take pictures of everything that is around
17 here, you do not see the pill bottle. And I never got an
18 explanation. The only person that gave it really,
19 Investigator Epps said, I didn't see it. He didn't see it
20 until Investigator Spreng said, oh, I found this. They
21 didn't see it simultaneously. He couldn't even testify to
22 that. And Captain Dennis never said why, like I said, a
23 picture is worth a thousand words. Somebody has got to
24 explain why as in these particular photographs, you see no
25 pill bottle, what would be number 13 also. And remember

1 when we asked Investigator Epps, did he see anything, did
2 he see that same pill bottle in there. No. You don't see
3 it in those particular photographs. Another panned out
4 photograph where you don't see the pill bottle and as you
5 get to exhibit number 8, then all of a sudden it
6 disappears. This is not something that is hard to miss
7 when you are kind of looking into the room. You have got
8 a view looking in and you have got a view looking right
9 here, an upclose picture of it. Where is that little
10 white top, where is that little orange pill bottle that
11 you would expect to see on this particular photograph.
12 Where is it. Why didn't Captain Dennis tell us where it
13 was in these photographs. We never got that explanation.
14 Because something can't be, you know, it is not there one
15 minute and then all of a sudden when you get a little
16 closer it just miraculously appears. Things just don't
17 happen that way. They don't miraculously just show up
18 just because you get closer to it. It is either there or
19 it is not there. And thank God, I wish he was here so I
20 could ask him some questions, Investigator Spreng, and
21 explain to us why the pill bottle is not in these
22 photographs. All of the boxes are still there. You can
23 see that the burglary has already occurred. Every one of
24 these photographs, you can see in this particular area, is
25 an undisturbed area where the burglary has occurred. No

1 one has crossed on it, no one has stepped on these items.
2 It is in the same condition as they saw it when they first
3 got there. And in these photographs you see no pill
4 bottle. They allege that they now have found some crack
5 right here and some crack right here. And think about
6 this right here. They want you to believe that there is
7 crack right here. There has been no testimony as to how
8 these items got here, they just got there accidentally,
9 were they placed down there or anything. They want you to
10 believe that all of these items just kind of landed. They
11 want you to believe that these items appear in a
12 photograph and then somehow it disappeared in a
13 photograph. How can things all of a sudden move. There
14 is an item right here where they allege the drugs are
15 suppose to be at. This is some sort of container at the
16 very spot where they allege that this item is. Now, where
17 is this item at now. That is what happens when you take
18 photographs first. How drugs can be changed. They can be
19 manipulated. You will see again, look at these
20 photographs closely and they appear and they disappear in
21 a photograph without any explanation as to how these got
22 there, alleging my client, alleged that my client somehow
23 confessed, that he somehow remembered that three years
24 later. He remembered reading the Miranda rights. You had
25 an opportunity to hear Deputy Epps. Take away that report

1 from three years ago, nothing. He did not remember
2 anything. The sole purpose of taking a report is so that
3 you can remember three years later what you did, what you
4 saw, who was where, whether someone gave a confession. I
5 have never heard in my entire life, I have been
6 practicing, I have been a prosecutor, I have never in my
7 entire life, when you bring a guy in here, the only
8 witness, the main witness, the supervisor, the person who
9 said that someone has confessed to me and admitted
10 something to us. But there is absolutely not one document
11 from him to verify that. The only document that he has is
12 when my client called and tells them, I think I have got a
13 name. But did he do anything about that, not one single
14 thing, that is the only report. That is because my client
15 said that to him. Don't you think that would be
16 important. Don't you think it would be important to know
17 exactly what rights you advised my client if you are going
18 to allege that he made a statement. We don't have that.
19 Everybody has the same responsibility, same duties, to be
20 held to the same standards, professionalism, the way you
21 do your job. And the way they did their job is
22 despicable. It is embarrassing. To come in here and to
23 have a guy exposed to this right here because one witness,
24 and the very thing they testified, he testified he gave
25 Investigator Bouknight several things. One of the things

1 wasn't an extra quantity of white residue. I asked him
2 specifically, how did it get here. No one that gave an
3 explanation as to why this item or how it actually got
4 here. No one. I asked the chemist, she indicated, it was
5 in a bag. Described it as a rock. And he described it as
6 a residue. He didn't mention anything about a bag. Was
7 it something that he talked about or was it something
8 different, is it something new. They have already added
9 something new. We don't know and they are asking you to
10 come in here and convict him. Your presumption of
11 innocence is like a robe of righteousness. That is how
12 our Supreme Court is describing it. And it actually stays
13 with you and remains with you throughout this entire
14 process. And the only people that can remove that robe
15 are you, the jury. You can't scratch at it, you can't
16 claw at it, it actually has to be removed. You have to be
17 firmly convinced in order to convict him. You have to be
18 firmly convinced that your eyes are playing tricks on you
19 and that somehow that bottle is there but you don't see it
20 in this picture. That is what you need to do to be able
21 to convict him. The bottle is not there. And then
22 suddenly it appears. Now, the State bears the burden this
23 entire time. You know, when you are accused of something,
24 you don't have to prove yourself innocent. That is why
25 the State doesn't require you to do that, the government

1 doesn't require you to do that. Really, someone accuses
2 you of something there is really no other evidence out
3 there, no reports, no nothing. How can you defend
4 yourself. You are stuck. You have to come in here and
5 let the jury listen and hope that you listen to the facts
6 and take into consideration the facts that you didn't hear
7 and from the people that you didn't hear from. Don't be
8 fooled by this, we tried to call this case because it is a
9 Friday. We have been here all day. This case could have
10 been called here any time before Officer Spreng left.
11 They could have taken the time to call Investigator Spreng
12 or track him down. It is amazing how, when he was
13 testifying on direct, Captain Dennis said something, I
14 know he has got a home down there in Florida and he has
15 got family in Puerto Rico. Maybe he knows where he is at.
16 There was no attempt to get him here to testify. Why is
17 he not here. You have got to listen to all of the facts,
18 ladies and gentlemen of the jury, consider all of the
19 evidence. You know, you heard the witnesses testify. I
20 think each one of these witnesses testified. Some
21 questions you have to ask because they involve chain. You
22 remember a chain, what does that mean. A chain is
23 important. It is important especially in fungible type
24 cases. And fungible things are things that can be moved
25 around. You typically find that, you find a lot of times

1 with drugs. And the reason why that is important is
2 because if an item is fungible then the State has to
3 establish a complete chain. And they have to establish a
4 complete chain to show that there is no possibility in the
5 world that these drugs haven't been manipulated. Well,
6 ladies and gentlemen of the jury, here is what we have
7 got. We have got an additional item which no one can
8 explain how it got there. That is scary. That is scary
9 that all of a sudden that evidence can appear and you have
10 no way to defend yourself against it. It is hard. That
11 is why he has to put his hands, put his faith with you all
12 as a jury to see whether they have met their burden. And
13 it is a substantial burden. I submit to you, ladies and
14 gentlemen of the jury, they have not met that particular
15 burden in this particular case. And as you go back there
16 in that jury, examine and scrutinize those photographs,
17 look as hard as you want at those photographs of the area
18 before, while the, you know the scene has been kind of
19 undisturbed. And try as hard as you can to see that pill
20 bottle in front of that white piece of paper that you
21 don't see, we know it is suppose to be in front of. Now,
22 ladies and gentlemen, if you do not find that I think we
23 know what that is evidence of. Now, we are not coming in
24 here saying what burden it is. I am telling you that
25 right now, I am not saying that. They said, oh, no, the

1 drugs are there. That is not what it is, there ain't
2 nothing there. I am saying those drugs were placed there
3 after Deputy Epps got there. By who, I don't know. Well,
4 we know it is not by Mr. Trapp because what did Deputy
5 Epps say. I was with him, he didn't add nothing, he
6 didn't touch nothing, he did nothing. He was with him the
7 entire time until the officers got there. So the only
8 people that can really know what happens after that
9 particular point when you got Investigator Epps and Mr.
10 Trapp together, there are only two people that are there.
11 He said he didn't know. That is Investigator Spreng and
12 Investigator Bouknight. And neither of them are not here.
13 Ladies and gentlemen of the jury, they have not met their
14 burden of showing possession, showing knowledge, showing
15 that he had dominion and control of those particular
16 items. And I ask that you discount that alleged statement
17 that there seems to be no report of. Not only did he not
18 do a report, but Investigator Spreng didn't do a report.
19 And neither one of them did a report that said that Mr.
20 Trapp confessed. Mr. Epps said that, even though he left
21 the scene and all of these other guys maybe came back. He
22 never said that he heard any kind of admission or he never
23 said that Mr. Trapp ever admitted that there is some drugs
24 in there or anything like that. The only person that
25 comes in here and says this is Captain Dennis who says

1 that, oh, Mr. Bouknight said that I said this. I don't
2 know if that is double hearsay or hearsay or what it is.
3 But I know it doesn't smell right, it doesn't pass the
4 smell test as far as I am concerned. How are you going to
5 remember exactly what you said, what you did three years
6 later. Now, what Investigator Epps said, when you look at
7 these photographs. You jurors are the fact finders when
8 you look at these items. He said I couldn't get in the
9 Trapp room due to the shoeboxes being all over the floor.
10 That is what you see right here. The only thing that you
11 also don't see is that pill bottle. Think about that,
12 ladies and gentlemen of the jury, when you go back there
13 to that jury. My time is over, I think I have said all
14 the things that I can say, I think you have heard all the
15 evidence that there is. I think you are going to be able
16 to consider the things that have been presented before
17 you. I ask, don't hold anything that I have done against
18 my client. I will tell you, I think I told you from the
19 very beginning, I will fight for my client. I believe in
20 him. And I am not going to let anybody get up there and
21 testify to things that they don't have any personal
22 knowledge about. I am going to fight hard. The Judge is
23 the final decider of the rules. And I respect that, we
24 all have to respect that. I am going to fight for my
25 client and I have fought for my client this entire day.

1 The fact that I have fought for my client and fought
2 aggressively I ask that you not hold that against him.
3 Because I think the only things that you as a jury should
4 consider is where a person had a personal knowledge, they
5 observe and what they knew and things that are admissible.
6 Again, ladies and gentlemen of the jury, my name is
7 Dietrich Lake. On behalf of my client, Mr. Trapp, I ask
8 that when you return from the jury room that you will find
9 my client not guilty of this particular offense. Thank
10 you.

11 THE COURT: Mr. Scott.

12 MR. SCOTT: Thank you, Your Honor. May it please the
13 Court.

14 THE COURT: Yes, sir.

15 MR. SCOTT: Ladies and gentlemen of the jury, Madam
16 Forelady, as you heard, October the 8th of 2011 I think we
17 all can agree was a bad day for Toaby Trapp. His house
18 was broke into, \$7,000.00 dollars in cash that he keeps in
19 a shoebox was stolen from him. So he is probably upset
20 about that. If you had \$7,000.00 dollars in cash in your
21 room and somebody broke in and stole it, somebody breaks
22 into your house to steal \$7,000.00 dollars cash you would
23 be upset as well. So he did and probably as most people
24 would do, the best chance you can get to recover your
25 \$7,000.00 dollars in cash money is to call law

1 enforcement. His day got a little bit worse because when
2 law enforcement gets there and they begin looking through
3 the rooms and walking through the mess that was made, it
4 was testified that it was ransacked, comes across that
5 pill bottle. Call in other officers, confronted him about
6 it. Mr. Trapp says, you got me, I forgot it was in there.
7 You got me. It was a bad day. That is what happened. I
8 mean, this trial, it was a three witness trial guys. I
9 had no clue we would have drug it out this far, I really
10 had no clue. But we are through with it now. I am going
11 to be very short. I just want to note a few things. The
12 defense, they tell you it is a prosecutor don't, really go
13 back over the defense, because if anything you are lending
14 some kind of credence to it. But I am not trying to do
15 that, I only bring it up to show really how preposterous
16 it has been. And I don't blame Mr. Lake for fighting for
17 his client. I don't. Every defendant I prosecute I think
18 deserves a robust defense. But that was fairly shameful
19 because what he just did was get in front of you people
20 and try to convince you that two deputies in this county
21 planted evidence on a person. That is what he just
22 insinuated to you all. He would have you believe that
23 these deputies went to a man's house, a man who called
24 them to his house over a burglary call. And before they
25 left the station they grabbed some crack cocaine in a pill

1 bottle and put it in a pocket and they put it on his
2 counter. Then they blamed him for it. It sounds great
3 for a Hollywood movie. But that is basically, he just
4 pulled that out of the air and tried to sell it to you
5 people. And I hope that is not lost on you. I am not
6 going to forget it. And the thing that really was just
7 kind of odd to me as I was trying to convince myself that
8 I was really hearing that. Did they plant the other two
9 bags of crack too that were found in Mr. Trapp's room.
10 What about the scale, did they plant that there too. I
11 mean, this was a really grand conspiracy theory. They all
12 came up with, they are called out to this man's house over
13 a burglary. And there were multiple people in on it. Are
14 we really going to suspend our logic and are we really
15 going, let's don't look at what the evidence is showing
16 here. Let's junk this crazy conclusion over here. Let's
17 believe this. No, because that defies reason and you all
18 aren't going to do that. And what about his own
19 statement. Robert Dennis, law enforcement here in
20 Newberry in your community for over 20 years, familiar
21 with Mr. Trapp, they are both from Newberry, they have
22 known each other years on a firsthand basis. Toaby, what
23 is this about. Honestly I forgot it was there. I wasn't
24 even thinking about it, I am thinking about my house
25 getting broken into, I am thinking about the \$7 grand

1 being missed. I am not thinking about a couple of crack
2 rocks sitting on my dresser in my room. But did Robert
3 Dennis make it up. You know, if you don't have a real
4 good answer for something just throw the kitchen sink in
5 there, just throw whatever you can against that wall and
6 just see what sticks. Because now we have gone from
7 officers who planted it and here is how we are going to
8 explain his statement that Robert Dennis just testified to
9 under oath. He made it up. Because this is the third
10 crooked cop we have got now. We have got Nick Bouknight
11 who has passed on. We have got Robert Spreng who is in
12 Florida. They are the ones that planted the drug
13 evidence. And Robert Dennis comes in, he concocts this
14 statement from Mr. Trapp. This is the defense so far,
15 y'all. That is what you just heard, is it not. He can't
16 remember, he can't remember that. He didn't do a report.
17 What do y'all think we were all shuffling around this
18 whole time, what do you think that Mr. Lake was up here
19 shuffling through. There were reports with this case. It
20 is a documented case. All cases are documented through
21 warrants, there are incident reports, there are
22 supplementals. But, no, we can't trust them either, he
23 made that statement up. The third defense is the chain
24 defense. That was the thing that was dragging us on so
25 long and we had to talk about, well, after Nick took it he

1 put it here and then he took it here and then SLED got it
2 and they moved it here. And we had to go through all of
3 that and it was painful. It was painful for me too. But
4 that was the chain argument that he is talking about that
5 is so important. And we covered it. But what occurred to
6 me that I guess you could bog down in it and you wonder,
7 and they throwed the kitchen sink defense at you. I have
8 got to answer this, and this and this and this. And then
9 when we are getting bogged down in the chain Dietrich
10 Lake's own words came to my mind. And he said these words
11 just this morning. And he said these words in his opening
12 statement to you all. We are not going to contest that
13 that was crack cocaine. This is a shotgun approach, this
14 is the kitchen sink defense. Let me see if I can convince
15 them about the planted evidence. If that doesn't work I
16 am going to challenge the chain. It is inconsistent
17 because he is saying it is not my crack. It is crack but
18 I am going to challenge the fact that it has been tampered
19 with and now it is something else. It is completely
20 inconsistent. If you don't have a clear answer just throw
21 the kitchen sink at the jury, confuse them enough for with
22 the writing on the wall you are going to convince at least
23 one or two of them that they don't see what all the
24 evidence shows you. I don't know what your thoughts on
25 drugs are. It is not really that important to me. This

1 is a case, possessing crack cocaine and possessing it, an
2 amount over 10 grams. And the evidence showed and the
3 chemist weighed all of those three samples out, it is 21
4 something grams and a little bit over twice as much as the
5 threshold, the 10 gram threshold. That takes it from
6 being like a possession to a trafficking. Essentially
7 what he is accused of is possessing over 10 grams of crack
8 cocaine. I don't know how you all feel about that. The
9 fact is it is against the law. And the only reason we are
10 here, if you possess more than 10 grams of crack it is
11 against the law. I could sit here and argue to you that
12 is crack, it is led to decay, the downfall of many a life.
13 It is really not why we are here. I am not going to
14 preach to y'all about drugs and whether they are right or
15 wrong. The fact is it is against the law. And if you
16 find that the evidence has shown that Mr. Trapp, I have
17 got nothing personal against Mr. Trapp, okay. My job here
18 is when a crime is committed, law enforcement says a crime
19 is committed and I review the evidence and I have to
20 present it to a jury of his peers from this community and
21 I have got to prove it beyond a reasonable doubt. So the
22 elements that I have got to prove to you that he possessed
23 it. It is on his counter in his bedroom in his house. It
24 is on the floor in his bedroom in his house. That is
25 called constructive possession. He doesn't have to have

1 it in his pocket, in his hands, it is in his control and
2 dominion as in legal terms. Now, when you go in your
3 bedroom and you put your purse on the nightstand at night,
4 it is not on your shoulder but it is in your possession,
5 it is in your control. That is kind of the idea of what
6 constructive possession is. To show a quantity of crack
7 in your bedroom that is constructive possession. We have
8 got that. We have got to show you it is crack cocaine,
9 that is why the chemist was up there talking about it.
10 And then we have got to show that it is more than 10
11 grams. I know she tested it for three samples that we
12 introduced into evidence, 21.3 grams. I say if you find
13 all three of those things and you find that it is proven
14 to you beyond a reasonable doubt, reasonable doubt the
15 Judge is going to tell you leaves you firmly convinced.
16 It doesn't mean you can't have some doubt here or there.
17 It doesn't mean you have to know everything about this
18 case with one-hundred percent certainty. It is just
19 firmly convinced. And you can play the Dietrich Lake game
20 of, why, the picture, look at this, here is the crack here
21 but I can't see it from this angle. You can play that
22 game all you want and if that in your head is enough to
23 make you believe just forget everything else for this
24 case. Just because one of these pictures you can see it
25 and then from this other angle you can't see it. If that

1 is enough for you to kind of focus in on that and discount
2 everything else you have heard then find him not guilty.
3 If the picture trick is enough for you guys, I don't think
4 it is, but if it is enough for you that you are not firmly
5 convinced that he is guilty of that the Judge is going to
6 tell you you have got to find him not guilty. I submit to
7 you you are not going to fall for the picture trick. If
8 you look through all of the pictures you will see things
9 are moved. How do you think the drugs got here today. At
10 some point somebody has got to pick up the evidence, put
11 it in a bag and bring it to court, take it to the evidence
12 locker at the sheriffs department. It is going to have to
13 be moved at some point. His logic is so flawed here.
14 Because he is saying in one of these pictures I can't see
15 it and the other I can. A cop had to pick it up at some
16 point, that is how it got here. I am sorry, I have spoken
17 longer than I thought I would. I ask you to go back
18 there, consider the evidence as a whole and come to the
19 only really logical conclusion you can and that is he is
20 guilty. I mean, I don't see any other way. Let's just,
21 for argument sake, Dietrich Lake theory. Pill bottle,
22 what about the rest of the crack, that is still over 10
23 grams. I may have spoken too much. I see this to be a
24 very clearcut, very easy case to decide. I thank you for
25 your time. I am going to sit down. I ask you to go back

1 there and deliberate and come back with the verdict of
2 guilty. Thank you.

3 THE COURT: All right. Do y'all need a couple of
4 minutes or are you okay. My instructions will take about
5 fifteen minutes.

6 (No response.)

7 THE COURT: Ms. Hedgepeth and members of the jury, I
8 will now instruct you on the law of this case. As I told
9 you earlier, the State of South Carolina has charged Toaby
10 Trapp with the offense of trafficking in crack cocaine.
11 Bear in mind he has pled not guilty and by that plea he
12 has denied all of the allegations in that indictment and
13 that places the burden of proving his guilt upon the
14 State. Mr. Trapp comes into this court clothed with the
15 presumption of innocence. And that presumption stays with
16 him throughout the case and entitles him to a verdict of
17 not guilty unless and until it is dispelled by the
18 evidence satisfying you twelve beyond a reasonable doubt
19 of his guilt of the offense charged. The State must prove
20 each and every element of these charges beyond a
21 reasonable doubt. Now, the same constitution of laws
22 which makes you the finders of fact, which I discussed
23 with you earlier on, makes you the finder of facts on the
24 evidence, makes me the Judge sole and instructor of the
25 law. Y'all as a group must accept the law as correct

1 which I am stating to you now and accept it as I am
2 stating it to you and disregard any belief or
3 understanding or what you may have heard on the street
4 corner or read on the internet or saw on TV. I am
5 instructing you the law of South Caroline and you must
6 accept that law under your oath. If I should make an
7 error in applying the law there is another time and there
8 is another place for that error to be considered and if
9 necessary corrected. But for the matter here before us
10 today you must accept it as I am instructing it.

11 Now, as I told you every criminal prosecution in
12 South Caroline and other states as I am aware, the State
13 has the burden of proof. The defendant, Mr. Trapp, has no
14 burden whatsoever as he comes to court presumed innocent.
15 So, the prosecution must prove their case to the standard
16 called beyond a reasonable doubt before a finding of guilt
17 can occur. So if the State fails to meet that burden then
18 the defendant will be entitled to a verdict of an
19 acquittal or not guilty, which is the same thing.

20 Now, since y'all as a group are the judges of the
21 facts of the case you must evaluate the credibility of the
22 witnesses who have testified. And credibility is
23 believability. You must pass upon their credibility, you
24 can take things that you use every day, particularly your
25 common sense and your good judgment. But also in passing

1 on the credibility you can take into consideration other
2 things such as the manner and appearance of the witness
3 who testified. Was the witness straightforward or not.
4 Was the witness hesitant in answering. How did the
5 witness come to know the facts to which he or she
6 testified. How was their ability to know these facts. Is
7 there some reason a witness would want to give testimony
8 which would help or hurt one side or the other. In other
9 words, was a witness biased or prejudiced one way or the
10 other. Was the testimony of a witness strengthened or
11 weakened by testimony of other witnesses. You, the jury,
12 may believe as much of one witness or of all the witnesses
13 you deem appropriate. You can believe some of the
14 testimony of a witness and disregard the rest. You can
15 believe one witness over that of the others or just the
16 opposite. The fact that testimony is not controverted
17 does not mean you must accept it as true, as y'all are
18 still gauging the credibility of all the witnesses who
19 have testified and offered facts for your consideration.

20 Now, I told you during the trial there is one, I call
21 it an exception to the rules of evidence. An expert or a
22 witness to testify as to opinions and conclusions and that
23 is an expert witness. One witness was qualified as an
24 expert in this trial and that witness would be one whom by
25 education, experience has become an expert in some art,

1 science or profession. And so that witness could state an
2 opinion as to a relevant or material matter in which the
3 witness claims to be an expert. Now, you can consider the
4 expert opinion received in the case as evidence just like
5 the other evidence. If you decide that the opinion of the
6 expert is not based upon sufficient education and
7 experience or if you conclude that reasons given in
8 support of the opinion are not sound or that the opinion
9 is outweighed by the other evidence you may disregard the
10 expert's opinion. An expert's opinion is just testimony
11 that is to be given no greater weight or less weight than
12 that of lay witnesses. You are not required to accept an
13 expert's opinion even though it is not contradicted.

14 Now, as the sole fact finders you should have
15 listened to the evidence testified to closely. I observed
16 you to do that. Weighing evidence is entirely a mental
17 process. You do not put it on a scale, you put it in your
18 minds eye scale. You must weigh the evidence using these
19 instructions, your good judgment and your common sense.

20 Now, there are generally two types of evidence
21 presented in trials and in this case there were both
22 types. There is direct evidence and there is
23 circumstantial evidence.

24 Direct evidence is testimony of a person who has or
25 asserts a claim to have actual knowledge of a fact such as

1 an eyewitness. Circumstantial evidence on the other hand
2 is proof of a chain of facts and circumstances indicating
3 the existence of another fact. Our law makes no
4 distinction between the weight or value to be given to
5 either direct or circumstantial evidence. Nor is a
6 greater degree of certainty required of direct evidence or
7 circumstantial evidence. You should just weigh all the
8 evidence presented to you in this trial. And after
9 weighing all the evidence if you are not convinced of the
10 guilt of Mr. Trapp beyond a reasonable doubt you must find
11 him not guilty.

12 Now, the term reasonable doubt has been used quite a
13 great deal. Reasonable doubt is simply this. It is the
14 kind of doubt which would cause a reasonable person to
15 hesitate to act. Reasonable doubt may arise from evidence
16 which is in the case or the lack or absence of evidence in
17 this case. Proof beyond a reasonable doubt is proof that
18 leaves you firmly convinced of the defendant's guilt. It
19 is the kind of doubt which one can assign a reason, if the
20 assignment can be done reasonably, firmly and
21 convincingly.

22 Now, I charge you that the defendant is entitled to
23 every reasonable doubt that may arise in this case. And
24 what that means is, if any of you including the alternate
25 has any doubt about anything during the trial you will be

1 required to resolve that doubt in Mr. Trapp's favor. I
2 also instruct you that the jury will partake, enjoy a full
3 and free discussion on the issue of guilt and not guilt.
4 That does not automatically mean that a reasonable doubt
5 exist. You, the jury, must make the determination of
6 whether or not a reasonable doubt exist as to the guilt of
7 Mr. Trapp. If you find that the State has not met the
8 burden of proof beyond a reasonable doubt then he would be
9 entitled to a verdict of not guilty.

10 Now, specifics of the law regarding his charge are
11 codified, are written in the State code under section
12 44-53-375(c). It is trafficking in crack cocaine. In
13 order to sustain a conviction for that offense, that is
14 written in the indictment, the elements, the State must
15 prove beyond a reasonable doubt that Mr. Trapp knowingly
16 sold, manufactured, cultivated, delivered, purchased,
17 brought into this State, provided financial assistance to
18 or otherwise aided, abetted, attempted or conspired to
19 sell, manufacture, cultivate, deliver, purchase or bring
20 into the State and was knowingly in actual or constructive
21 possession. Knowingly attempt to become in actual or
22 constructive possession of crack cocaine. The State must
23 also prove an additional element beyond a reasonable doubt
24 that the amount of crack cocaine was more than 10 grams
25 but less than 28 grams. To prove possession the State

1 must prove beyond a reasonable doubt that Mr. Trapp had
2 both the power and intent to control, the disposition or
3 use of the crack cocaine. Possession may be either actual
4 or constructive. Actual possession means the crack
5 cocaine was in actual, physical custody of the defendant.
6 Constructive possession means that the defendant had
7 dominion and control or the right to exercise dominion and
8 control of either the crack cocaine itself or the property
9 on which the crack cocaine was found. Mere presence at
10 the scene where the drugs were found is not enough to
11 prove possession. A defendant's knowledge and possession
12 may be inferred when the substance is found on the
13 property under his control. However, this inference is
14 simply an evidentiary fact to be taken into consideration
15 by you along with the other evidence presented to you in
16 this trial.

17 Now, I instruct and I emphasize to you that Mr. Trapp
18 comes into this court presumed innocent. He has the
19 constitutional right to remain silent and he has exercised
20 that right and has not testified. The fact that he did
21 not testify is not a factor to be considered by you in any
22 way in your deliberations and in your consideration of the
23 question of the guilt or innocence of him. It must not be
24 considered by you in any manner whatsoever. A defendant
25 has this constitutional right to remain silent and his

1 assertion of this right must not be considered or even
2 discussed by you in your deliberations. So under your
3 oath you are not to draw any conclusion whatsoever from
4 the fact that he exercised this right and chose to not
5 testify. The fact that he did not testify should not even
6 be discussed in the jury room. The burden of proof is
7 upon the State and you must consider that issue based on
8 what has been presented to you. A defendant is not
9 required to prove his innocence. The burden remains upon
10 the State to prove the guilt of the defendant beyond a
11 reasonable doubt.

12 Now, Ms. Hedgepeth and members of the jury, as y'all
13 retire to begin your deliberations I am going to express
14 the hope each of you will be mindful of the importance of
15 your duty here today. It is late in the afternoon,
16 Halloween night, but you are not called very often to
17 serve as jurors very often. You and I both are acting for
18 this community and for this State. It has been my job to
19 preside over two trials here in this county this week,
20 this being the second one. It is my job to see that the
21 legal issues were ruled upon fairly and justly according
22 to the law as I understand it and to see that Mr. Trapp
23 and the State receives fair and impartial justice. It is
24 your job as jurors to make ceratin that your verdict is
25 just and according to my instructions. Try and suggest

1 how you should decide the case, either way, it would be
2 improper for me to try to influence you in your duty in
3 finding the facts. But I must tell you that I am
4 convinced of whatever verdict y'all do reach will be from
5 the confining your deliberations to the evidence
6 presented, discussing it thoroughly, weighing it fairly
7 and impartially and reaching a unanimous verdict. And I
8 am convinced that y'all will do just that.

9 Now, the indictment will come back in the jury room
10 with you which is what we discussed. All of the evidence
11 which has been introduced will come back in the jury room
12 with you. And I tell you this, that if you need
13 additional instructions on any area of the law which I
14 have gone over write it on a note. Say, Judge, we would
15 like to hear the definition of reasonable doubt once more
16 or can we hear the elements of trafficking in crack
17 cocaine. I will be happy to reinstruct you on any part of
18 the law from which I have done in the last fifteen minutes
19 and I will reinstruct you if need be. Additionally, if
20 you would like to hear any testimony replayed, Ms. Holston
21 has made an audio recording of the testimony. You can say
22 we would like to hear a witness and just tell me who it
23 was. A witness who said such and such, or his name, her
24 name and we will replay that for you here in the
25 courtroom. So, if you have any questions, you need

1 additional instructions or you would like to hear the
2 testimony a second time through, you may get to
3 discussions and say this witness said thus and so. And
4 another juror may say, I thought he said that and so.
5 That is the purpose for your abilities to have the
6 testimony replayed if you so choose. Now, I need to go
7 over my instructions with the lawyers so I am going to
8 send you to the jury room. And so if my instructions were
9 complete and the lawyers are satisfied with my
10 instructions and I hope they are. But if they are not, I
11 may have omitted something. And if I did I will bring you
12 back in here and instruct you on that area. But if I was
13 complete in my instructions I will send you the evidence
14 and the indictment and it is then you can begin your
15 deliberations. All right. Now, once you reach a
16 unanimous verdict notify the bailiff and then I will show
17 you, I will show the indictment, Ms. Folk will show you
18 here where to write your verdict and to sign your name
19 right here when she brings it to you. All right, with
20 that all thirteen step in the jury room. Once
21 deliberations begin I will retrieve the alternate out.
22 Okay.

23 (Whereupon, the jury was excused from open court at
24 approximately 6:09 p.m.)

25 THE COURT: All right, any exceptions to the

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of General Sessions

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Indictment No.: 2012-GS-36-0267

The State,.....Respondent,

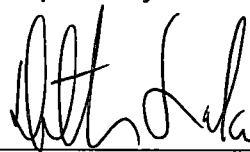
v.

Toaby Alexander Trapp,.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellant hereby certifies that the Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,



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Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of General Sessions

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Case No.: 2012-GS-36-0267

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SC Court of Appeals

The State, Respondent,

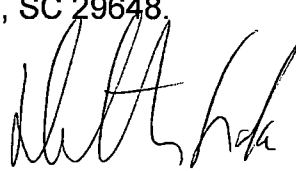
v.

Toaby Alexander Trapp, Appellant.

PROOF OF SERVICE

The undersigned counsel for the Appellant hereby certifies hereby
certifies that the Appendix to the Record on Appeal was served and
delivered upon counsel for the Respondent by U.S. mail to: Alan Wilson
and William M. Blich, Jr., Office of the Attorney General, PO Box 11549,
Columbia, SC 29211-1549; and David M. Stumbo, Eighth Circuit
Solicitor's Office, PO Box 516, Greenwood, SC 29648.

November 19, 2015


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NOV 19 2015

SC Court of Appeals

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Dietrich A. Lake

November 19, 2015

Hand Delivered

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, SC 29211

Re: The State v. Toaby Alexander Trapp
Appellate Case No.: 2014-002358

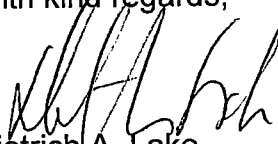
Dear Ms. Kitchings:

Enclosed please find the originals and one copy each of the following materials: 1) Appendix to the Record on Appeal and Proof of Service. Please file the originals and return the extra stamped copies.

Please note that we are supplementing the Record on Appeal pursuant to consent of opposing counsel, William M. Blitch, Jr.

By copy of this letter, I am serving opposing counsels with these supplemental documents.

With kind regards,



Dietrich A. Lake

cc: William M. Blitch, Jr. (w/enclosures)
David M. Stumbo (w/enclosures)