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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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NOV 24 2015

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

Dietrich A. Lake  
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Attorney for Respondent

**Index to Appendix to the Record on Appeal**

**Trial Transcript:**

Testimony of Ben Chapman Counsel for the State .....	379
Direct Verdict Motion .....	382

1 Q What about Jerry Wright, retired Jerry Wright, did  
2 you take over for him?

3 A Yes.

4 Q October 8th of 2011 was it you or Jerry Wright who  
5 was over the non-narcotic evidence?

6 A The non-narcotic evidence would have been Jerry  
7 Wright.

8 Q And what were you doing then?

9 A I was the training officer at that time.

10 Q Who was in charge at that time of the narcotics  
11 evidence?

12 A Investigator Bouknight.

13 Q Okay. So he was the Evidence Custodian for all the  
14 drug related evidence that was kept at the sheriffs  
15 department?

16 A Yes.

17 Q And where did he keep all of the drug evidence?

18 A At that particular time the evidence was kept in a  
19 secured building behind the trailers that we were  
20 presiding in at the time.

21 Q Outdoor unit storage building?

22 A Yes.

23 Q Was it climate controlled?

24 A It was not.

25 Q You remember Nick passed away?

1 A Yes.

2 Q And what would become of all the evidence that was in  
3 the locker?

4 A When Nick passed away, being that I was the Evidence  
5 Custodian over the other evidence, I took control over all  
6 evidence including the narcotic evidence at that time.

7 Q I am confused. You were a training officer under  
8 Jerry, how does that work?

9 A October of 2011 I was the training officer. I became  
10 the Evidence Custodian when Jerry left December the 31st  
11 of 2012. So, I took over the evidence December of 2012.  
12 And I took over the narcotic evidence when Nick passed  
13 away in May of 2013.

14 Q Got you, okay. And now the two are the, are  
15 narcotics pieces of evidence still kept separately from  
16 other, I guess, non-narcotic evidence?

17 A Yes. I am in control of all of the evidence but the  
18 narcotic evidence is kept separate from the other  
19 evidence.

20 Q It is only like one room though, isn't it?

21 A It is in a room inside a room.

22 Q But before, I guess, in early October, October 8th,  
23 2011 you would have had your drug evidence in one unit,  
24 storage unit outside back behind the trailers of the old  
25 sheriffs department?

1 A Correct.

2 Q And then where would the other stuff be?

3 A It was in a different building.

4 Q Okay.

5 A In the same general area.

6 Q I am sorry, I think I asked you this or you started  
7 on it. But when Nick passed who was it that went in and  
8 inventoried the evidence he had collected in his evidence  
9 locker?

10 A That was me.

11 Q All right. And what did you do with it?

12 A I went in and inventoried it and made sure it was  
13 there. And until we moved into the new building and it  
14 stayed in that building.

15 Q Do you recognize this piece of evidence right here,  
16 it is State's number 30, it has got the various contents  
17 in it. Do you recognize that?

18 A I do.

19 Q When was the, I guess, did you bring that to court  
20 yesterday?

21 A I did.

22 Q And how did it appear then?

23 A It was sealed, this bag was sealed across here.

24 Q And after the day was over yesterday what did you do  
25 with it?

1 all you are going to hear from the State. I will hear a  
2 few motions and y'all step in the jury room and I will get  
3 you right back in, don't discuss the case.

4 (Whereupon, the jury was excused from open court.)

5 THE COURT: All right, Mr. Lake.

6 MR. LAKE: At this time the Defense would make a  
7 motion for directed verdict in this particular case. I  
8 don't think there has been no, there has been insufficient  
9 information, no substantial evidence to for this case to  
10 go back to the jury. There hasn't been any evidence of  
11 any type of possession. What you essentially have is an  
12 uncorroborated alleged statement of an item that was found  
13 in the household. This is after an arrest has occurred.  
14 Your Honor, I think at this particular time, again, you  
15 are really looking at speculation as to, you know, whether  
16 he in fact possessed these particular drugs. Again, you  
17 know, if you look at what would be Captain Dennis'  
18 testimony. I think the Court has an opportunity, I guess,  
19 to weigh that. I know you can argue constructive  
20 possession and dominion and control based upon the fact  
21 that it was at a place where he resided. The State hasn't  
22 even established that he actually owned that particular  
23 home, whether he was renting it or that someone else  
24 presided in that household with him, they haven't  
25 established anything. The only thing that we know is that

1 a burglary has occurred and some items are alleged to be  
2 found in that particular room. There is absolutely no  
3 testimony essentially to corroborate essentially Captain  
4 Dennis' testimony. I think you have to look in the  
5 totality in terms of the fact that weighing the  
6 credibility of it. Again, I go back to the point that Mr.  
7 Trapp wasn't arrested that particular night. They never  
8 testified to it, I guess we never introduced that  
9 information also. But the Court has heard that proffered  
10 testimony and things of that particular sort, consider as  
11 it relates to our directed verdict motion. But I do think  
12 there is some serious and significant questions as whether  
13 that alleged statement was made under duress, under any  
14 kind of threat. Most certainly the fact that he was  
15 arrested until months later, actually was allowed to turn  
16 himself in, you know, appears to be at least at a minimum  
17 a promise. So if you take that particular testimony out  
18 then what you have got is a mere presence case or you have  
19 got an intervening factor of a burglary that occurred at  
20 that location. But based upon the insufficient evidence  
21 of possession, insufficient evidence of knowledge. I will  
22 tell you, Your Honor, some of the testimony I got a little  
23 confused on in terms of when Miranda occurred, when it  
24 didn't occur. But I thought initially it started when he  
25 first got there outside and then the next thing I know it

1 is on the porch and then it was inside the location. Did  
2 it occur before or after these items are found and things  
3 of that sort which was not clear. So, you know, I think  
4 what you really have is just a suspicion of guilt. So,  
5 based upon that, Your Honor, I ask for a directed verdict.

6 THE COURT: All right, I understand your argument.  
7 But the testimony in light to the State would be the  
8 officers are out there on the scene, observe drugs in  
9 plain view, get a search warrant, provide Miranda, get an  
10 admission. There is constructive possession, perhaps even  
11 dominion and control of the bedroom. I think that gets  
12 you by directed verdict so respectfully I deny that. Now,  
13 any other motions?

14 MR. LAKE: Nothing else.

15 THE COURT: Are you going to put anything up?

16 MR. LAKE: No, sir.

17 THE COURT: I didn't think you would. That would be  
18 my guess. Okay. Are y'all ready to go on?

19 MR. SCOTT: Yes, sir.

20 MR. LAKE: Your Honor, give me a minute to grab a few  
21 things.

22 THE COURT: Is there anything that y'all want in, I  
23 think y'all can stipulate that it is in.

24 (Whereupon, a short break was taken.)

25 THE COURT: Let's bring the jury in.

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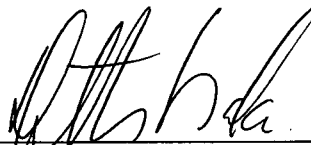
v.

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

AS

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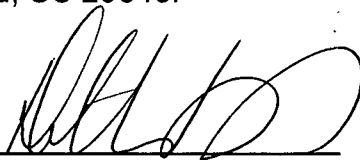
v.

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 24, 2015



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*[Handwritten mark]*

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SC Court of Appeals

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November 24, 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

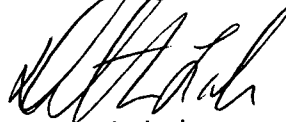
Dear Ms. Kitchings:

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. Blich, Jr.

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

With kind regards,



Dietrich A. Lake

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