Volume II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Horry County

G. Thomas Cooper, Jr., Circuit Court Judge

REGGIE PINKNEY,

RESPONDENT,

V.

STATE OF SOUTH CAROLINA,

PETITIONER

APPELLATE CASE NO. 2016-000117

APPENDIX

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YOU'D FEEL A 25 TO 30 IS AN APPROPRIATE SENTENCE, BUT IF YOU DIDN'T YOU'D HAVE NO DISCRETION TO DO ANYTHING OTHERWISE. NOT SAYING THAT YOU WOULD THINK A LESSER SENTENCE IS APPROPRIATE BUT, WHEN YOU'RE DEALING WITH SOME EVIDENCE OF A LESSER INCLUDED WE THINK IT'S APPROPRIATE, PROPER TO CHARGE.

THE COURT: MR. MEACHAM, HOW DO YOU REPLY TO WHAT THE TESTIMONY OF THE CHEMIST WAS THAT IT COULD HAVE BEEN LESS THAN THAT? SHE WOULDN'T KNOW ONE WAY OR THE OTHER IF IT WAS MIXED WITH SOMETHING ELSE?

MR. MEACHAM: JUDGE, THERE'S NO SPECIFIC AMOUNT IN WHICH WAS TESTIFIED TO THAT WAS LESS THAN 10 GRAMS, THAT'S ACTUALLY, THAT CLEARLY WOULD BE A COMMENT, WOULD BE ---

THE COURT: WELL SHE TESTIFIED IT WAS CLEARLY COCAINE IN WHAT SHE TESTED.

MR. MEACHAM: AND SHE ALSO TESTIFIED BEYOND ANY QUESTION IN HER MIND THAT THIS IS 20 GRAMS OF COCAINE BASE AND SHE ALSO TESTIFIED AFFIRMATIVELY TO THAT, TO THAT SPECIFIC QUESTION. NOW IT'S EITHER, IT'S EITHER 20 OR 23, WE HAVE NO OTHER TESTIMONY EITHER WAY. SHE NEVER TESTIFIED IT WAS A SPECIFIC AMOUNT LESS THAN 10 GRAMS, YOUR HONOR. IT'S EITHER A TRAFFICKING CRACK COCAINE OR IT IS NOT.

THE COURT: MR. OFFICER BACK THERE, IS SOMEBODY BACK THERE?

DEPUTY GREEN: I DON'T SEE ANYONE, SIR.

THE COURT: JUST GO SEE IF THE FOREMAN IS, ASK THE FOREMAN HAVE THEY MADE A DECISION WE'RE GOING TO DO THE ARGUMENT CHARGE TONIGHT OR THEY WANT TO COME BACK TOMORROW MORNING.

DEPUTY GREEN: YOUR HONOR, HE JUST REACHED A DECISION OR THE JURY HAS.

THE COURT: THEY HAVE?

DEPUTY GREEN: I'LL BRING HIM IN.

THE COURT: WELL WHAT DID HE TELL YOU?

DEPUTY GREEN: WELL HE DIDN'T TELL ME.

THE COURT: ALL RIGHT, I JUST WANT TO SEE THE FOREMAN.

DEPUTY GREEN: ALL RIGHT, I'LL BRING THE FOREMAN IN.

(WHEREUPON, THE FOREMAN ENTERED THE COURTROOM.)

THE COURT: YES, SIR, MR. FOREMAN?

THE FOREMAN: THEY WOULD LIKE TO GO AHEAD AND HEAR THE CLOSING ARGUMENTS AND HEAR THE CHARGE AND THEN WE PROBABLY WON'T DO ANY DELIBERATING UNTIL IN THE MORNING.

THE COURT: OKAY.

THE FOREMAN: IF THAT'S OKAY BUT LIKE YOU SAID WE'LL PROBABLY GO AHEAD AND HEAR ALL THE CLOSING ARGUMENTS AND THE CHARGE.

THE COURT: STEP BACK FOR A MINUTE, JUST DON'T

GO BACK TO THE JURY ROOM YET.

(WHEREUPON, THE FOREMAN RETIRED FROM THE COURTROOM.)

THE COURT: ANYBODY GOT ANY PROBLEM WITH THAT?

MR. MEACHAM: THE STATE HAS NONE.

MR. LONG: NO, SIR, YOUR HONOR.

THE COURT: OKAY. OKAY, GO AHEAD AND CALL THE HOTELS SO I HAVE A PLACE FOR THEM TO STAY FOR TONIGHT.

MR. LONG: THAT WILL CHANGE THEIR MIND.

THE COURT: ALL RIGHT. MY DECISION IS I'M ASSUMING YOU'RE MAKING ANOTHER MOTION FOR DIRECTED VERDICT, TOO?

MR. LONG: YES, SIR, YOUR HONOR.

THE COURT: RENEW ALL THOSE OTHER MOTIONS?

MR. LONG: RENEW MISTRIAL AND RENEW OUR MOTIONS FOR DIRECTED VERDICT ON THE SAME GROUNDS.

THE COURT: ALL RIGHT, I DENY THOSE AND I'M GOING TO LET THE JURY DECIDE GUILT OR INNOCENCE UP OR DOWN ON THIS MATTER ONE WAY OR THE OTHER. OKAY, ARE YOU READY TO PROCEED, MR. LONG, YOU'LL GO FIRST?

MR. LONG: YES, SIR, YOUR HONOR.

THE COURT: ALL RIGHT, BRING THE JURY IN.

(WHEREUPON, THE JURY RETURNS TO THE COURTROOM AT 4:59 P.M.)

THE COURT: OKAY, LADIES AND GENTLEMEN, WE'RE

NOW READY TO ENTER THE FINAL PHASE OF THIS TRIAL AND THE FINAL PHASE THE ATTORNEYS WILL BE PERMITTED TO GIVE YOUR THEIR CLOSING ARGUMENTS TO DISCUSS WITH YOU WHAT THEY FEEL THE CASE HAS SHOWN OR HAS NOT SHOWN AND AFTER THAT I'LL CHARGE YOU ON THE LAW. ACCORDING TO WHAT THE FOREPERSON TELLS ME IS THAT YOU ALL WOULD, HE SAID PROBABLY RATHER DELIBERATE TOMORROW MORNING. WHAT WILL HAPPEN IS IF YOU, WHEN WE FINISH ALL THIS WE'LL LET YA'LL STEP INSIDE THERE. IF YOU WANT TO COME BACK TOMORROW MORNING LET ME KNOW, WE'LL COME ON BACK TOMORROW MORNING. I'LL JUST GIVE, I CAN JUST GIVE YOU AN INSTRUCTION BEFORE YOU LEAVE TONIGHT ABOUT WHAT YOU CAN AND CANNOT DO.

NOW, LADIES AND GENTLEMEN, PLEASE LISTEN ATTENTIVELY AS WE GO THROUGH THIS. YOU'VE LISTENED ATTENTIVELY SO FAR, PLEASE CONTINUE TO DO SO. IT'S A VERY IMPORTANT CASE TO BOTH SIDES, BOTH TO THE STATE AND TO THE DEFENSE, AND VERY SHORTLY THE MATTER WILL BE IN YOUR HANDS FOR YOU TO DECIDE.

AS I TOLD YOU EARLIER WHAT THE ATTORNEYS SAY IS NOT EVIDENCE, HOWEVER THEY ARE PERMITTED TO GIVE YOU THEIR VIEW OF WHAT THE CASE ONCE AGAIN HAS SHOWN OR HAS NOT SHOWN SO PLEASE LISTEN AS THEY GO THROUGH THIS.

THE PROCEDURE IS AS FOLLOWS: FIRST THE DEFENSE WILL GIVE ITS CLOSING ARGUMENT AND THEN THE STATE AND THEN I WILL CHARGE YOU ON THE LAW. I'M ANTICIPATING THIS MATTER

WILL LAST ABOUT AN HOUR OR LESS, ALL RIGHT, WE'LL PROCEED, MR. LONG, I'LL RECOGNIZE YOU, SIR.

MR. LONG: THANK YOU, YOUR HONOR.

CLOSING ARGUMENT

BY MR. LONG:

LADIES AND GENTLEMEN, WE'VE MOVED THROUGH THE TESTIMONY FROM FOUR WITNESSES, FIVE WITNESSES. NORMALLY YOU CAN FIGURE THE SAME, FOUR TO FIVE, SIX HOURS OR SO FROM PUTTING UP THAT TESTIMONY AND WE'VE MOVED THROUGH IT. THAT'S NOT TO SAY THAT EITHER SIDE THINKS IT LESS IMPORTANT BECAUSE WE'VE MOVED THROUGH RELATIVELY QUICKLY. YOU MAY FEEL DIFFERENT THAN I DO BUT WE'VE REACHED THIS STAGE IN THE TRIAL AND TO ME AS I STATED TO YOU I FEEL THIS IS THE LEAST PRODUCTIVE PART OF THE TRIAL BECAUSE BY MY RESPONSIBILITY AS ATTORNEY IS TO COME IN AND TELL YOU WHAT I THOUGHT THE EVIDENCE WAS; WHAT I THINK IT MEANS; HOW I THINK YOU SHOULD APPLY IT TO THE LAW AS HIS HONOR GIVES IT YOU; AND WHAT I FEEL THE VERDICT SHOULD BE. THAT'S NOT MY RESPONSIBILITY. THIS IS AN OPPORTUNITY FOR US TO SAY WHAT YOU KIND OF SHOULD THINK OR WHAT YOU KIND OF SHOULD SEE.

AGAIN, AS I EXPLAINED TO YOU IF I STATE ANYTHING INCORRECTLY FROM WHAT CAME FROM THE WITNESS STAND DISREGARD WHAT I SAY BECAUSE I'VE MADE A MISTAKE. I'M NOT TRYING TO PUT WORDS IN THEIR MOUTH, I WANT YOU TO DO YOUR JOB. I WANT YOU TO USE THE TESTIMONY AND EVIDENCE THAT CAME FROM

THE WITNESS STAND.

THIS CASE AS SOME MAY SAY INVOLVES A TRAFFIC STOP OF A MAN DRIVING HIS MOTHER'S PICKUP TRUCK WITH A PASSENGER IN THE VEHICLE. OFFICER WILLIAMS SAYS HE WAS SITTING ON THE SIDE OF THE ROAD AND A TRUCK WENT BY AND HE SAW THE TAG WAS CROOKED AND UP GOES THAT POLICE RADAR, OKAY, THAT ANTENNA THAT SAYS, OKAY, SOMETHING WRONG HERE, BLACK MALE DRIVING PICKUP TRUCK, TWO BLACK MALES IN A PICKUP TRUCK WITH TAGS HANGING CROOKED, I THINK SOMETHING IS GOING ON HERE, AND HE TESTIFIED THAT HE CALLED FOR BACKUP. I THINK OFFICER BRADLEY TESTIFIED WELL HE JUST HEARD SOMETHING ON THE RADIO THAT HE WAS GETTING READY TO INITIATE A TRAFFIC STOP AND THOUGHT HE BETTER RESPOND BUT THAT'S BESIDE THE POINT. SO THEN HE CALLED IN THE TAG AND HE SAYS THE TAG CAME BACK SUSPENDED AND HE ALSO TOLD YOU HE DIDN'T WRITE A TICKET FOR A SUSPENDED TAG.

NOW EITHER THE TAG WAS SUSPENDED AND HE WAS IN VIOLATION OF THE LAW FOR DRIVING A VEHICLE WITH A SUSPENDED TAG AND THE OFFICER'S RESPONSIBILITY AND DUTY IS TO WRITE HIM A TICKET FOR THAT OR NOT, BUT THERE WAS NO TICKET ISSUED FOR THAT.

I AM NOT TRYING TO BE CRITICAL OF ANY OF THE OFFICERS. I KNOW MANY POLICE OFFICERS AND I HAVE MANY GOOD FRIENDS THAT ARE POLICE OFFICERS. IF I'M IN TROUBLE OR MY FAMILY IS IN TROUBLE THAT'S GOING TO BE THE FIRST PERSON I

CALL IS A POLICE OFFICER. THIS IS AN ADVERSARIAL PROCESS WHICH MEANS THE SIDES ARE PITTED AGAINST EACH OTHER WITH A VERSES IN THE MIDDLE AND I'M NOT TRYING TO BE OVERLY CRITICAL OF THE OFFICERS BUT JUST LIKE ME THOSE OFFICERS ARE JUST AS HUMAN AS I AM. THEY HAVE CHIPS ON THEIR SHOULDERS, THEY HAVE EGOS, THEY MAKE MISTAKES, THEY SEE THINGS THROUGH ROSE COLORED GLASSES, AND SOMETIMES YOU BEND THINGS TO FIT YOUR PERCEPTION OF THE EVENTS AND SO I'M NOT GOING TO TELL YOU THAT THE OFFICERS COME IN HERE AND LIE TO YOU UNDER OATH. I'M TELLING YOU THEY'RE HUMAN AND THEY CAN MISINTERPRET SOME THINGS BUT WHAT WE THINK THE EVIDENCE SHOWS YOU IS A SHAKE DOWN.

HE'S GOT A CROOKED TAG, TAG SUSPENDED, DIDN'T WRITE A TICKET FOR THE TAG. WE PULLED HIM OVER, YEAH, REGGIE GAVE ME DRIVERS LICENSE, REGISTRATION, PROOF OF INSURANCE, EVERYTHING THE LAW REQUIRES TO DO. I WENT BACK TO THE CAR, THESE TWO OTHER OFFICERS SHOWED UP. THERE'S THREE PATROL CARS, OKAY, FOR A CROOKED TAG OR A SUSPENDED TAG, AND BY CROOKED TAG I MEAN HE SAID ONE BOLT WAS HOLDING IT UP OR SOMETHING, IT WAS HANGING CROOKED; AND THREE OFFICERS SHOW UP AND THEN ONE OFFICER SAYS WELL, YOU KNOW, HE GAVE ME THE CELL PHONE TO TALK TO HIS MAMA ABOUT THE INSURANCE ON THE VEHICLE OR TALK TO HIS MAMA ABOUT SOMETHING ABOUT THE TAG OR WHATEVER; AND YEAH, I TALKED TO HER WHATEVER, WHAT'S THAT, THIS MUST BE A DRUG CASE, AND

PUT IT ON TOP OF THE VEHICLE. THESE OFFICERS ARE TRAINED. THEY DIDN'T PUT THE MONEY ON TOP OF THE VEHICLE. THEY DIDN'T PUT THE DRUGS ON TOP OF THE VEHICLE, BUT WHAT THEY SAY IS THE LYNCH PIN IN CONVERTING A TRAFFIC STOP INTO A DRUG SEARCH AND ARREST WAS SOMETHING THAT THEY CAN'T EVEN BRING TO YOU IN COURT AND THEY'RE TRAINED TO COLLECT EVIDENCE.

SO THEN THE OFFICER TESTIFIES ASKED HIM TO STEP OUT OF THE VEHICLE, THIS THAT AND THE OTHER. I WAS GOING TO PAT HIM DOWN. I WAS CONCERNED HE HAD A WEAPON OR SOMETHING CAUSE HE WAS ACTING A LITTLE OVER NERVOUS OR THIS THAT AND THE OTHER. WHO WOULDN'T BE NERVOUS WITH THREE PATROL OFFICERS THERE? YOU'RE DRIVING YOUR MAMA'S TRUCK, YOU'RE TRYING TO LET THEM TALK TO YOUR MAMA ABOUT WHAT THE TAG SITUATION WAS OR WHATEVER AND THERE THEY ARE AND HE TESTIFIES WELL I STARTED TO PAT HIM AND I HIT HIS POCKET. YOU KNOW, THAT'S WHERE HE WAS KIND OF DEFENDING THAT POCKET, KIND OF RIGHT THERE, AND I REACHED IN THE POCKET. I ASKED HIM WHAT IT WAS, HE SAID I DON'T KNOW, OR SOMETHING NON COMMITTAL, AND I REACHED IN THE POCKET AND I PULLED OUT OF THE POCKET SOME BILLS AND A LIGHTER. THAT'S NOT A WEAPON, THAT DOESN'T FEEL LIKE DRUGS AND THEN WHEN HE STARTED TO PUT IT BACK IN THE POCKET THAT'S WHEN HE SAID, "OKAY, REGGIE WAS CROUCHING DOWN LIKE HE WAS GOING TO RUN," OKAY. "WELL HE MAY HAVE MOVED NOT MORE THAN AN ARMS

LENGTH."

IF AN OFFICER, IF I MYSELF, OKAY, AND THE WORST THING I HAD ON ME WAS A POCKET KNIFE ATTACHED TO MY KEY CHAIN OR SOMETHING, BUT IF I'M STOPPED WITH THREE PATROL OFFICERS, PULLED OVER ON THE SIDE OF THE ROAD; I KNOW I HAVEN'T DONE ANYTHING WRONG; THEY'RE STEPPING ME TO THE BACK OF THE VEHICLE, THINGS OF THAT NATURE, AM I GOING TO BE NERVOUS? YOU DAGGONE RIGHT I AM. AND WHETHER HE MISINTERPRETED OR MISAPPLIED OR MISCHARACTERIZED REGGIE JUST BEING NERVOUS OR WHATEVER AND, YOU KNOW, HEY, WHAT ARE YOU DOING, WHY ARE YOU SEARCHING, LEAVE ME ALONE, AND HE WAS PUSHED AND TACKLED AND ROLLED AND FLIPPED OVER THE HEAD.

ANOTHER OFFICER WAS THERE THAT DIDN'T COME TO TESTIFY TODAY BUT BASICALLY THREE OF THEM PUT HIM IN LEG CUFFS, HANDCUFFS. THEN THE OFFICER TESTIFIED, I BELIEVE IT WAS OFFICER WILLIAMS TESTIFIED TWICE, ONCE WHEN THE SOLICITOR ASKED HIM AND ONCE I ASKED HIM, DID HE WATCH OR OBSERVE, DID HE SEE OFFICER BRADLEY REMOVE THE DRUGS AND HE SAID, YEAH, HE SAW HIM REMOVE THE DRUGS FROM THE JACKET. DO YOU REMEMBER THAT? I HOPE YOU DO. I HOPE YOUR RECALL IS 12 TIMES BETTER THAN MINE BECAUSE THAT'S WHAT I'M REMEMBERING THE OFFICER TESTIFYING TO THAT HE SAW HIM REMOVE THE DRUGS FROM THE JACKET.

THE OTHER OFFICER TESTIFIED, NOPE, I WENT IN THE

POCKET PATTED THAT, WHAT'S THAT, DO YOU MIND IF I GO IN THE POCKET, REGGIE SAID, SURE, GO RIGHT AHEAD, I PULLED OUT SOME DOLLAR BILLS OR WHATEVER AND I WAS ATTEMPTING TO PUT IT BACK IN WHEN REGGIE STARTED TO RUN OR WHATEVER. BUT WHERE DID HE FIND THIS COCAINE? IN THAT POCKET, AND IT JUST SOMETIMES BELIES BELIEVABILITY THAT IT CAN BE RATIONALLY RIGHT FOR THINGS TO HAVE HAPPENED LIKE THAT, JUST KIND OF FALL INTO PLACE.

THE OFFICERS TAKE THE DRUGS IN, YOU'LL HAVE THIS IN YOUR JURY ROOM. THIS IS WHAT WAS TESTED POSITIVE IS 20.68 GRAMS OF COCAINE, POWDER BASE COCAINE. THIS IS THE THICKER PLASTIC ZIPLOC BAG THAT IS USED BY THE LAB BUT THERE'S ANOTHER LITTLE BAG, AND YOU LOOK IN HERE, YOU CAN SEE THE CRINKLED UP THIN WHAT APPEARS TO BE LIKE THE REGULAR SANDWICH BAGGY OR WHATEVER, BUT THEY SAY, OH, NO, WE WEIGHED THE DRUGS AND IT WAS 23 POINT APPROXIMATELY, 23.3 GRAMS.

NOW APPROXIMATELY MEANS 25, 23, 21, SOMETHING, APPROXIMATELY 23.3, OH, WELL WE WEIGH THE BAG, TOO. WHY DO YOU WEIGH THE BAG, TOO? ARE YOU SAYING THAT BAG WEIGHS 2.62 GRAMS? AND I TELL YOU THAT HIS HONOR MAYBE WON'T LET YOU OPEN THIS BEST EVIDENCE KIT BUT YOU GOT THE SCALES IN EVIDENCE IF YOU WANT TO WEIGH THE BAG YOURSELF AND SEE IF IT WEIGHS 2.62 GRAMS, FOUND THAT IN THE VEHICLE. DID THEY FINGERPRINT IT TO SEE WHETHER IT BELONGED TO THE PASSENGER

OF THE CAR THAT KIND OF JUST TOOK OFF AS HE LEFT OR WHATEVER? NO, THEY DIDN'T.

DID THEY ATTEMPT TO FINGERPRINT THE BAG ITSELF, ANYTHING OF THAT? NO, THEY DIDN'T ATTEMPT TO DO THAT. THEY TELL YOU THAT THEY PULLED IT FROM REGGIE'S JACKET, OR POCKET, WHEN HE WAS TRYING TO RESIST ARREST FOR FAILURE TO FOLLOW INSTRUCTIONS OF AN OFFICER AND WE WANT HIM TRIED AND CONVICTED FOR TRAFFICKING IN COCAINE.

NOW IT DISTURBS ME, ONE, I HAVE TWO TEENAGE DAUGHTERS, WELL 21 AND 15, AND I SEE DRUGS AS A BLIGHT ON SOCIETY AND I'M SURE THE SOLICITOR WILL TELL YOU WHAT A BLIGHT ON SOCIETY IT IS. WHAT BOTHERS ME ABOUT IT, THOUGH, IS WE'VE BEEN FIGHTING A WAR ON DRUGS FOR DECADES AND IT'S MUCH MORE AVAILABLE NOW THAN IT EVER WAS BEFORE. I HAVE ALL SUSPICIONS THAT THE REASON IT CONTINUES TO BE A WAR AND AVAILABLE IS BECAUSE THERE'S PROFIT IN IT. I AM NOT BY ANY MEANS TELLING YOU TO VIOLATE YOUR OATH AS JURORS; I AM TELLING YOU YOU LISTEN TO THE EVIDENCE. YOU APPLY THE LAW THAT HIS HONOR GIVES YOU, HE GIVES YOU THE LAW, BUT IF YOU HAVE AN OPPORTUNITY TO SPEAK TO YOUR LEGISLATURE, TO A LEGISLATURE, SENATOR, REPRESENTATIVE, WHATEVER, HOW WE GOING TO WIN THE WAR ON DRUGS? WE TAKE THE MONEY OUT OF IT AND IF YOU TAKE THE MONEY OUT OF IT NOBODY WANTS TO BE INVOLVED WITH IT.

IF I SEE A WINO LAYING ON A CURB WITH AN EMPTY

BOTTLE OF MAD DOG 20-20 BESIDE HIS HEAD AND HE'S COVERED IN BODY FUNCTIONS OR WHATEVER, DOES THAT MAKE ME WANT A BOTTLE OF WINE? ABSOLUTELY NOT, THAT'S DISGUSTING STUFF. I DON'T WANT ANYTHING TO DO WITH THAT. BUT JUST LIKE HAPPENED DURING PROHIBITION, IF YOU MAKE THAT BOTTLE OF WINE ILLEGAL AND YOU MAKE IT SO PEOPLE CAN GET $20 A BOTTLE FOR IT SELLING IT ON THE STREET AND THOSE PEOPLE ARE MAKING MONEY HAND OVER FIST AND DRESSED IN FINE CLOTHES AND A LOWERED TINTED LEXUS AND GOLD CHAINS AND THIS THAT AND THE OTHER, DOES THAT MAKE SOME YOUNG IMPRESSIONABLE PERSONS WANT TO GET INVOLVED IN IT? WOW, LOOK AT THAT, MAN. YOU GOT A WAD OF A CASH IN HIS POCKET AND CHAINS AND GOLD AND CARS AND MONEY AND HAVING A GOOD TIME, HE'S INVOLVED WITH WINE; AND YOU MAY WANT TO TALK TO A LEGISLATURE ABOUT THAT. YOU MAY WANT TO THINK MAYBE THAT'S THE ONLY WAY WE CAN WIN THE WAR ON DRUGS, MAY BE A TOUGH TRANSITION PERIOD, THINK ABOUT IT.

HIS HONOR WILL TELL YOU THAT THE LAW IN THIS STATE, SUMMARIZED, IS THAT IT IS UNLAWFUL TO POSSESS ACTUAL OR CONSTRUCTIVE POSSESSION 10 OR, 10 TO 28 GRAMS OF CRACK COCAINE, THAT CONSTITUTES THE OFFENSE OF TRAFFICKING IN CRACK COCAINE. JUST FOR YOUR UNDERSTANDING, I WISH I HAD A NICKEL ON ME, A NICKEL, A U.S. MINTED NICKEL WEIGHS FIVE GRAMS SO TWO NICKELS WEIGHT IN A DRUG CONSTITUTES TRAFFICKING IN THAT DRUG AND HIS HONOR WILL CHARGE YOU THAT THAT IS THE OFFENSE FOR WHICH HE IS CHARGED. THAT IS THE

OFFENSE FOR WHICH YOU ARE TO REACH A VERDICT.

YOU HEARD THE CHEMIST TESTIFY. THE STATE FOR WHATEVER REASON DOESN'T EVEN CARE IF WE'RE TALKING ABOUT PURE OR TRASH, DOESN'T EVEN CARE IF WE'RE TALKING ABOUT ONE PART COCAINE OR 99 PARTS OF SOMETHING ELSE, DOESN'T CARE IF WE'RE TALKING ABOUT 50-50, 10-90, WHATEVER THE CASE MAY BE. AND SO IT'S POSSIBLE YOU CAN FIND THERE WAS NOT 10 GRAMS OF COCAINE BASE IN THAT CAUSE THEY DON'T TEST IT. THEY DON'T BOTHER TO TEST THAT FOR YOU AND TELL YOU HOW MUCH COCAINE IS ACTUALLY IN IT.

IT BOTHERS ME THAT I HAVE TO STAND HERE AND MAKE A CLOSING ARGUMENT TO YOU WHEN YOU'VE HEARD A PICTURE IS WORTH A THOUSAND WORDS, OKAY? AND I HOPEFULLY COULD HAVE SAVED MYSELF THREE THOUSAND, FOUR THOUSAND, I DON'T KNOW HOW MANY I'M UP TO YET, I HOPE I'M NOT GOING ON TOO LONG, BUT IF I COULD HAVE BROUGHT IN A PICTURE OR A VIDEO AND SAID LOOK THIS IS WHAT HAPPENED. THIS TOOK PLACE, WATCH RIGHT HERE, WATCH RIGHT HERE, LET ME SLOW IT DOWN, PAUSE, PAUSE, FAST FORWARD, AND SHOW YOU EXACTLY WHAT HAPPENED. HERE IT IS BLOWN UP ON A POSTER BOARD. YOU SEE RIGHT THERE, SEE THIS, I REST MY CASE. BUT WE DON'T HAVE THE ABILITY TO DO THAT.

THE STATE IS SUPPOSED TO HAVE VIDEO CAMERAS IN THEIR PATROL VEHICLES AND ALL THREE OF THESE PATROL VEHICLES MARKED, LIGHT RACKED, PATROL VEHICLES DON'T HAVE A

CAMERA TO SHOW TO YOU WHAT HAPPENED THAT DAY, WHAT TOOK PLACE, WHERE DID HE RUN, WHERE DID THE STATE SAY THEY PULLED SOMETHING FROM.

HIS HONOR WILL TELL YOU THAT YOU MUST FIND GUILT BEYOND A REASONABLE DOUBT. AGAIN THIS IS NOT SOMETHING THAT DEFENSE ATTORNEYS DREAM UP. WE DON'T GET TOGETHER AT A SEMINAR AND SAY HOW CAN WE GET GUILTY CLIENTS OFF. IT'S AN IMPORTANT DOUBT. IT'S IMPORTANT LIKE THAT PRESUMPTION OF INNOCENCE. IF SOMEONE IS ACCUSED OF A CRIME, IF I'M ACCUSED OF A CRIME, ANY OF US ARE, WE ALL HAVE THE SAME RIGHTS TO SAY, UH-UH, YOU SAY I'M GUILTY YOU PROVE IT, OKAY? CAUSE I'M SOMEBODY'S SON, I'M SOMEBODY'S HUSBAND, I'M SOMEONE'S FATHER, AND I'M PRESUMED INNOCENT AND YOU PROVE ME GUILTY. THOSE SAME THINGS APPLY TO REGGIE PINCKNEY AND HE IS ASKING YOU TO CONSIDER THE EVIDENCE THAT YOU HEARD, FIND AND SIFT THROUGH THAT EVIDENCE THAT YOU HEARD AND DETERMINE WHAT IS CREDIBLE, BELIEVABLE EVIDENCE BEYOND A REASONABLE DOUBT AND I CAN SAY, OKAY, THAT HAPPENED. I CAN CONVINCE MYSELF AND I'LL BE FULLY SATISFIED IN SAYING THAT IS THE FACT ONCE YOU SIFT FROM ALL THE TESTIMONY, REACH YOUR VERDICT, WE'LL BE SATISFIED. THANK YOU.

THE COURT: OKAY, THANK YOU VERY MUCH, MR. LONG, -- ALL RIGHT, CLOSING ARGUMENT FOR THE STATE.

CLOSING ARGUMENT

BY MR. MEACHAM:

MR. LONG, JUDGE LOCKEMY, LADIES AND GENTLEMEN OF THE JURY, THANK YOU FOR YOUR TIME. I APPRECIATE YOUR PATIENCE AND I APPRECIATE YOU HEARING THIS CASE TODAY. YOU KNOW WHEN YOU DON'T HAVE THE FACTS WHAT YOU GO TO IS YOU TYPICALLY GO TO WOULD HAVE, COULD HAVE, SHOULD HAVE. WAS REGGIE PINCKNEY IN POSSESSION OF CRACK COCAINE ON FEBRUARY 24TH? WAS HE? DO YOU HAVE ANY OTHER EVIDENCE THAT HE WASN'T? DO YOU HAVE ANY OTHER EVIDENCE THAT THEY GOT IT FROM, THEY GOT THE DRUGS FROM THE PASSENGER? DO YOU HAVE ANY OTHER EVIDENCE THAT IT CAME FROM ANYWHERE OTHER THAN REGGIE PINCKNEY'S PERSON; YOU DON'T. WAS HE IN POSSESSION OF THIS ON FEBRUARY 23RD, QUESTION NUMBER ONE.

I WILL NOT GO INTO THE FACT THAT HE WAS IN POSSESSION OF THIS ON HIM. HE WAS ALSO IN POSSESSION OF $4,500 ON HIS PERSON ON FEBRUARY 23RD; YOU HAVE NO OTHER EVIDENCE THAT HE WASN'T IN POSSESSION OF THAT QUANTITY OF MONEY.

YOU HAVE NO OTHER EVIDENCE THAT THIS, THESE SCALES TO WEIGH THE DRUGS THAT HE WAS GOING TO CUT UP TO MAKE MONEY OFF OF BUT THAT WAS NOT IN HIS TRUCK, OF COURSE IT WAS.

LADIES AND GENTLEMEN, THIS AIN'T CSI, THIS IS THE REAL WORLD. THIS IS RIGHT DOWN HERE ON NINTH AVENUE HERE IN CONWAY WHEN THIS MAN WAS STOPPED FOR A TRAFFIC VIOLATION

AND IT IS NOT FOR YOU TO DETERMINE WHETHER THE STOP WAS APPROPRIATE. YOU'RE TO DETERMINE THREE THINGS, WHETHER HE WAS IN POSSESSION OF CRACK, WHAT THE QUANTITY OF THAT CRACK COCAINE WAS, THAT'S IT, AND WHETHER IT WAS CRACK COCAINE.

NOW WAS HE IN POSSESSION, YEAH, THERE'S NO OTHER EVIDENCE OTHERWISE. YOU DON'T HAVE ANYTHING, SO IF YOU DON'T HAVE THE FACTS WHAT YOU DO IS YOU COME SAY WOULD HAVE, COULD HAVE, SHOULD HAVE DONE. THAT'S WHAT YOU DO. YOU COULD HAVE, WELL MAYBE, YOU KNOW, MAYBE THIS COULD HAVE, MAYBE THEY COULD HAVE HAD A CAMERA. WELL THE TRUTH OF THE MATTER IS THIS ALL THE FACTS YOU GOT THE DRUGS CAME FROM REGGIE PINCKNEY.

TWO, DO YOU HAVE ANY OTHER EVIDENCE THAT THERE WASN'T BETWEEN 10 TO 28 GRAMS OF CRACK COCAINE, YOU DON'T. YOU DO, WOULD HAVE, COULD HAVE, SHOULD HAVE, MAYBE SHOULD HAVE, MAYBE SHOULD HAVE, YOU KNOW, IT'S BETWEEN 10 TO 28 GRAMS. THE ANALYST SAID THAT, THE OFFICER TESTIFIED 23 GRAMS CAUSE THE BAG WAS INCLUDED, IT'S A ROUGH SCALE. THEY SENT IT TO THE ANALYSIS, TO THE DRUG ANALYSIS LAB AND THEY DO A CLOSE MEASURING OF IT. THEY TAKE IT OUT OF THE BAG, AND YOU GET AN ACCURATE READING OF 20.68 GRAMS OF CRACK COCAINE, BETWEEN 10 TO 28 GRAMS OF CRACK COCAINE AND THAT DETERMINES TRAFFICKING, THAT ALONE.

THE JUDGE IS GOING TO CHARGE YOU THE WEIGHT ALONE WILL DETERMINE WHETHER IT'S TRAFFICKING OR NOT AND THE

WEIGHT ALONE IN THIS CASE AND THE ONLY EVIDENCE YOU HAVE IS IT IS BETWEEN 10 AND 28 GRAMS OF CRACK COCAINE.

NOW DO YOU BELIEVE IT'S NOT CRACK COCAINE? DO YOU BELIEVE IT'S NOT CRACK COCAINE? YOU BELIEVE THAT THESE OFFICERS AND ALL OF THIS THING WE SCHEMED THIS THING UP AND HID CAMERAS AND CAME IN HERE AND WANTED TO BRING 12 OF YOU IN HERE TO CONVICT THIS MAN AND, AND MAKE UP SOMETHING, PUT SOME BAKING SODA IN FRONT OF YOU AND SAY THAT'S NOT CRACK COCAINE. THIS IS CRACK COCAINE. YOU PEOPLE HAVE COMMON SENSE, YOU KNOW THAT. WALKS LIKE A DUCK, TALKS LIKE A DUCK, IT'S A DUCK.

FOLKS, THE TRUTH OF THE MATTER IS WE'VE PROVEN THE THREE THINGS WE NEED TO PROVE IN THIS CASE AND THAT'S ALL THAT'S EXPECTED. THAT'S ALL WE NEED TO DO. BEYOND VERY REASONABLE DOUBT, BEYOND ANY POSSIBLE DOUBT WE'VE DONE THAT AND THESE OFFICERS HAVE ARRESTED THIS MAN FOR POSSESSING BETWEEN 10 TO 28 GRAMS OF CRACK COCAINE, A TRAFFICKING OFFENSE, HERE IN CONWAY. THEY'VE DONE THEIR JOB, YOU DO YOURS, THANK YOU.

THE COURT: THANK YOU, MR. MEACHAM.

JURY CHARGE

NOW, LADIES AND GENTLEMEN OF THE JURY, IT NOW BECOMES MY DUTY TO CHARGE YOU ON THE LAW. PLEASE LISTEN ATTENTIVELY AS I GO THROUGH THIS.

LADIES AND GENTLEMEN OF THE JURY, I TOLD YOU WHEN

THE CASE BEGAN THAT THE STATE OF SOUTH CAROLINA CHARGES ONE REGGIE ALLEN PINCKNEY WITH THE CRIME OF TRAFFICKING IN CRACK COCAINE. TO THIS CHARGE, LADIES AND GENTLEMEN, THE DEFENDANT HAS PLED NOT GUILTY AND THEY'VE BEEN BROUGHT TO YOU BY MEANS OF AN INDICTMENT.

NOW YOU SHOULD UNDERSTAND, LADIES AND GENTLEMEN, THAT THIS INDICTMENT, THIS CHARGE IS JUST THAT, A CHARGE. IT IS NOT EVIDENCE THAT THE DEFENDANT HAS COMMITTED ANY CRIME WHATSOEVER.

I CHARGE YOU IT'S A VERY VITAL AND IMPORTANT RULE OF LAW THAT A PERSON IS PRESUMED INNOCENT AND A PERSONS PRESUMPTION OF INNOCENCE STAYS WITH HIM THROUGHOUT ALL OF THE PROCEEDINGS IN THE CASE AND IT IS NEVER REMOVED UNLESS THE STATE PROVES GUILT BEYOND A REASONABLE DOUBT. THAT PRESUMPTION OF INNOCENCE STAYS IN AN INDIVIDUAL THROUGHOUT ANY AND ALL PROCEEDINGS.

NOW, LADIES AND GENTLEMEN, IT IS A BURDEN OF THE STATE TO PROVE SOMEONE GUILTY BEYOND A REASONABLE DOUBT. IT IS NOT THEIR BURDEN TO PROVE THEMSELF INNOCENT.

SOME OF YOU MAY HAVE SERVED AT SOME POINT IN TIME IN A CIVIL CASE OR A CIVIL TRIAL. YOU MAY HAVE BEEN A WITNESS OR A JUROR OR A PARTY IN A CIVIL CASE. IF YOU WERE THERE YOU WOULD HAVE HEARD THE JUDGE TELL THE JURY THAT THE ENTITY, THE PARTY BRINGING THE SUIT, BRINGING THE ALLEGATIONS OF A CIVIL CASE THAT THAT PARTY HAS THE BURDEN

OF PROVING THAT SOMETHING IS MORE LIKELY TRUE THAN NOT AND THAT IS TRUE IN A CIVIL CASE BUT IN A CRIMINAL CASE THE GOVERNMENT'S PROOF MUST BE MUCH MORE POWERFUL THAN THAT. IT MUST BE PROOF BEYOND A REASONABLE DOUBT.

PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. OUR COURT'S HAVE DECIDED THAT A REASONABLE DOUBT IS A DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT. HAVING SAID THAT LET ME ALSO SAY THIS, THOUGH, LADIES AND GENTLEMEN, THERE ARE FEW THINGS, THERE ARE FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. THE STATE MUST PROVE GUILT BEYOND A REASONABLE DOUBT.

REASONABLE DOUBT MAY ARISE, LADIES AND GENTLEMEN, FROM THE EVIDENCE IN THE CASE OR FROM THE LACK OR ABSENCE OF EVIDENCE IN THE CASE. YOU THE JURY YOU DETERMINE WHETHER OR NOT REASONABLE DOUBT EXISTS AS TO THE GUILT OF THE DEFENDANT.

IF BASED FROM YOUR CONSIDERATION OF THE CASE YOU'RE FIRMLY CONVINCED OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT THEN YOU SHOULD FIND HIM GUILTY. IF ON THE OTHER HAND YOU'RE NOT FIRMLY CONVINCED OF THE DEFENDANT'S GUILT OR YOU HAVE A REASONABLE DOUBT AS TO THE DEFENDANT'S GUILT THEN YOU SHOULD FIND HIM NOT GUILTY.

LADIES AND GENTLEMEN OF THE JURY, UNDER THE CONSTITUTION OF THIS STATE YOU ARE THE DECIDERS OF FACT, NOT I. IN FACT THE LAW SAYS I HAVE NO OBLIGATION, NO REQUIREMENT, NO AUTHORITY TO GET INVOLVED WITH THE DECISION OF THE FACTS, ONLY YOU CAN DO THAT, SO, LADIES AND GENTLEMEN, IF FOR SOME REASON I HAVE MADE SOME EYE CONTACT WITH YOU WHEN I'M MAKING SOME OBJECTION OR I MADE SOME GESTURE ONE WAY OR THE OTHER AND YOU FELT THAT MEANT I HAD SOME OPINION ABOUT THE FACTS IT IS NOT. I DO NOT, I LEAVE THAT TOTALLY UP TO YOU.

IN DECIDING THE FACTS, LADIES AND GENTLEMEN, YOU MUST NECESSARILY PASS UPON THE CREDIBILITY, THE BELIEVABILITY OF THE EVIDENCE THAT'S PRESENTED BEFORE YOU AND IN DOING SO, LADIES AND GENTLEMEN, YOU MAY TAKE CERTAIN THINGS INTO CONSIDERATION, FOR EXAMPLE, THE DEMEANOR OR THE MANNER OF A WITNESS TESTIFYING BEFORE YOU, WHETHER A WITNESS HAS A REASON OR CAUSE TO BE BIASED IN REGARD TO THE TESTIMONY HE OR SHE GAVE, WHETHER OR NOT A WITNESS WAS PREJUDICED, BIASED OR IN SOME WAY INVOLVED IN THE CASE, WHETHER OR NOT A WITNESS HAD AN OPPORTUNITY, REASONABLE OPPORTUNITY FOR OBSERVATION AND KNOWLEDGE OF THE FACTS ABOUT WHICH HE OR SHE TESTIFIED. WAS A WITNESS' TESTIMONY CORROBORATED OR MADE STRONGER BY SUCH OTHER TESTIMONY EVIDENCE OR WAS IT MADE WEAKER BY THE LACK OR OF SUCH OTHER EVIDENCE AND TESTIMONY IN THE CASE? YOU THE JURY YOU

DECIDE ALL THOSE ISSUES.

HOWEVER, LADIES AND GENTLEMEN, YOU DO NOT DETERMINE THIS MATTER OF CREDIBILITY BY COUNTING THE NUMBER OF WITNESSES ON EITHER SIDE. YOU CAN BELIEVE ONE WITNESS AGAINST MANY OR MANY AGAINST ONE. YOU CAN BELIEVE A SMALL PORTION OF A WITNESSES TESTIMONY, DISREGARD THE LARGER OR VICE VERSA.

IN ADDITION, LADIES AND GENTLEMEN, THE LAW DOES NOT REQUIRE NOR DOES IT DESIRE THAT YOU LEAVE YOUR COMMON SENSE AT HOME. THE LAW WANTS THE BENEFIT, LADIES AND GENTLEMEN, OF YOUR INDIVIDUAL, YOUR COLLECTIVE COMMON SENSE AS YOU COME INTO A COURT OF LAW AND YOU MAKE DECISIONS IN THESE MATTERS, SO, LADIES AND GENTLEMEN, USE YOUR COMMON SENSE AS YOU DISCUSS THIS CASE AND MAKE A DECISION IN THIS CASE.

JUST AS YOU ARE THE INSTRUCTOR OF THE LAW OF, EXCUSE ME, JUST AS YOU'RE THE FINDERS OF FACT, I AM THE INSTRUCTOR OF THE LAW AND, LADIES AND GENTLEMEN, YOU CANNOT IMPOSE THE LAW AS YOU THINK IT SHOULD BE AND YOU CANNOT IMPOSE A LAW OR DECIDE UPON THE MATTERS WITH THE LAW AS YOU THOUGHT IT WAS BEFORE YOU CAME IN HERE. YOU MUST ACCEPT THE LAW AS I GIVE IT TO YOU AND APPLY IT TO THE FACTS AS YOU FIND THEM TO BE.

THERE ARE TWO TYPES OF EVIDENCE ALMOST IN ALL CASES, LADIES AND GENTLEMEN. ONE IS DIRECT EVIDENCE.

DIRECT EVIDENCE IS TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT SUCH AN EYEWITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACTS TO BE PROVEN.

THEN THERE'S ANOTHER TYPE OF EVIDENCE, CIRCUMSTANTIAL EVIDENCE. CIRCUMSTANTIAL EVIDENCE IS THE PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF THE FACTS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES A COLLATERAL FACT FROM WHICH A MAIN FACT MAY BE INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON PERSONAL KNOWLEDGE OR OBSERVATION.

LADIES AND GENTLEMEN, THE LAW MAKES ABSOLUTELY NO DISTINCTION ABOUT THE WEIGHT TO BE GIVEN OR THE VALUE TO BE GIVEN BETWEEN CIRCUMSTANTIAL AND DIRECT EVIDENCE, NOR IS THERE GREATER DEGREE OF CERTAINTY REQUIRED OF EITHER ONE. YOU SHOULD WEIGH ALL THE EVIDENCE IN THE CASE AND AFTER WEIGHING ALL THE EVIDENCE IN THE CASE IF YOU'RE NOT CONVINCED OF GUILT BEYOND A REASONABLE DOUBT THEN YOU SHOULD FIND THE DEFENDANT NOT GUILTY.

LADIES AND GENTLEMEN, I INSTRUCT YOU AND EMPHASIZE THAT THE FACT THAT THE DEFENDANT IN THIS CASE DID NOT TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU AT ALL IN YOUR DELIBERATION AND YOUR CONSIDERATION ON THE QUESTION OF THE GUILT OR THE INNOCENCE OF THE DEFENDANT. IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER.

A DEFENDANT HAS A CONSTITUTIONAL RIGHT TO REMAIN SILENT AND THE ASSERTION OF THAT RIGHT MUST NOT BE CONSIDERED BY YOU ADVERSE TO THE DEFENDANT WHATSOEVER AND YOU SHOULD NOT EVEN DISCUSS IT OR EVEN CONSIDER IT IN YOUR DELIBERATIONS. I REPEAT, LADIES AND GENTLEMEN, UNDER YOUR OATH YOU'RE TO DRAW NO CONCLUSIONS WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN THIS CASE DID NOT TESTIFY. THE FACT THE DEFENDANT DID NOT TESTIFY AS I SAID SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM. REMEMBER THE BURDEN OF PROOF IN THIS CASE IS UPON THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT. THE DEFENDANT DOES NOT HAVE A BURDEN TO PROVE HIMSELF INNOCENT.

AND IN THAT REGARD, LADIES AND GENTLEMEN, ALSO THE FACT THE DEFENDANT IS NOT PRESENT IN THIS COURTROOM THAT IS NOT A FACTOR FOR YOU TO BE CONSIDERED ADVERSE TO THE DEFENDANT WHATSOEVER. IT IS NOT IN ANY WAY ANY EVIDENCE IN THE CASE EITHER WHATSOEVER. UNDER THE LAW OF THIS STATE A DEFENDANT MAY BE TRIED EVEN IF THE DEFENDANT DOES NOT ATTEND THE TRIAL, BUT THE FACT THE DEFENDANT IS NOT PRESENT MAY NOT BE CONSIDERED AGAINST THE DEFENDANT IN ANY MANNER WHATSOEVER, SO UNDER YOUR OATH YOU'RE NOT IN ANY WAY TO HOLD THAT ADVERSE TO THE DEFENDANT AT ALL. IT DOES NOT LESSEN THE BURDEN OF PROOF OF THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT AND IT DOES NOT LESSEN THE CONCEPT AND PRINCIPAL OF LAW THAT THE DEFENDANT IS PRESUMED

INNOCENT AND HAS NO OBLIGATION TO PROVE HIMSELF INNOCENT.

NOW, LADIES AND GENTLEMEN, THE CHARGE IN THIS CASE IS TRAFFICKING IN CRACK COCAINE. I'M GOING TO READ THE STATUTE TO YOU FIRST AND THEN AFTER I READ THE STATUTE I'LL READ A FEW OTHER THINGS. IT MIGHT BE A LITTLE REDUNDANT BUT I FEEL IT WOULD MAKE EVERYTHING CLEAR.

A PERSON WHO'S GUILTY OF TRAFFICKING IN COCAINE THE STATUTE SAYS THIS, "A PERSON IS GUILTY, ANY PERSON WHO KNOWINGLY SELLS, MANUFACTURE, CULTIVATES, DELIVERS, PURCHASES, OR BRINGS INTO THIS STATE, OR WHO PROVIDES FINANCIAL ASSISTANCE OR OTHERWISE AIDS, ABETS, ATTEMPTS, OR COMPRISE," EXCUSE ME, "CONSPIRES TO SELL, MANUFACTURE, CULTIVATE, DELIVER, PURCHASE, OR BRING INTO THIS STATE OR WHO IS KNOWINGLY IN ACTUAL OR CONSTRUCTIVE POSSESSION OR WHO KNOWINGLY ATTEMPTS TO BECOME IN ACTUAL OR CONSTRUCTIVE POSSESSION OF," AND IN THIS CASE THE ALLEGATIONS ARE, "MORE THAN 10 GRAMS BUT LESS THAN 28 GRAMS OF CRACK COCAINE." IF A PERSON IS FOUND TO BE GUILTY OF VIOLATING THAT STATUTE THEN THEY'RE GUILTY OF THE CRIME.

THE STATE MUST PROVE THEN BEYOND A REASONABLE DOUBT HERE THAT THE DEFENDANT EITHER SOLD, EITHER MANUFACTURED, CULTIVATED, DELIVERED, PURCHASED, BROUGHT INTO THE STATE, PROVIDED FINANCIAL ASSISTANCE OR OTHERWISE AIDED, ABETTED, OR ATTEMPTED, OR CONSPIRED TO SELL OR MANUFACTURE OR DELIVER OR PURCHASE OR BRING INTO THE STATE

CRACK COCAINE OR THE STATE MUST PROVE THAT THE DEFENDANT WAS IN ACTUAL OR CONSTRUCTIVE POSSESSION KNOWINGLY OF MORE THAN 10 GRAMS OF CRACK COCAINE. SO, THEREFORE, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DRUG WAS IN FACT CRACK COCAINE. THEY GOT TO PROVE THAT AND THEN AFTER THEY PROVED IT WAS CRACK COCAINE THEY MUST PROVE THAT THE DEFENDANT WAS IN ACTUAL OR CONSTRUCTIVE POSSESSION OF MORE THAN 10 GRAMS OF CRACK COCAINE OR ANY MIXTURE CONTAINING COCAINE.

IT IS THE WEIGHT OF THE DRUGS, LADIES AND GENTLEMEN, NOT THE DEFENDANT'S KNOWLEDGE OF THE WEIGHT THAT DETERMINES CRACK COCAINE.

TO PROVE POSSESSION, HERE THE STATE ALLEGES THE DEFENDANT HAD POSSESSION OF MORE THAN 10 GRAMS OF CRACK COCAINE AND THE, WHEN I SAY MORE THAN 10 GRAMS A WHILE AGO I SAID LESS THAN 28 GRAMS, SO THOSE ARE CLASSIFICATIONS. THERE ARE OTHER CLASSIFICATIONS IF SOMEONE HAS MORE THAN 28 GRAMS. HERE THE STATE IS ALLEGING MORE THAN 10 GRAMS BUT LESS THAN 28 GRAMS. OF COURSE MORE THAN 28 GRAMS WOULD EVEN BE A HIGHER CRIME BUT HERE THEY'RE ALLEGING MORE THAN 10 BUT LESS THAN 28, THAT HE HAD POSSESSION OF CRACK COCAINE IN THOSE AMOUNTS.

TO PROVE POSSESSION THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT HAD BOTH THE POWER AND THE INTENT TO CONTROL THE DISPOSITION OR USE OF THE CRACK

COCAINE. POSSESSION MAY BE EITHER ACTUAL OR CONSTRUCTIVE.

ACTUAL POSSESSION MEANS THAT THE CRACK COCAINE WAS IN THE PHYSICAL CUSTODY OF THE DEFENDANT.

CONSTRUCTIVE POSSESSION MEANS THAT THE DEFENDANT HAD DOMINION AND CONTROL OR THE RIGHT TO EXERCISE DOMINION OR CONTROL OVER EITHER, EXCUSE ME, OVER THE CRACK COCAINE THAT WAS FOUND.

MERE PRESENCE AT THE SCENE WHERE DRUGS ARE FOUND IS NOT ENOUGH TO PROVE POSSESSION. ACTUAL KNOWLEDGE OF THE PRESENCE OF THE CRACK COCAINE IS REQUIRED AND EVIDENCE OF THE DEFENDANT'S ATTEMPT TO CONTROL ITS DEPOSITION OR USE.

THE DEFENDANT'S KNOWLEDGE AND POSSESSION MAY BE INFERRED WHEN A SUBSTANCE IS FOUND UNDER THE DEFENDANT'S CONTROL, HOWEVER THIS INFERENCE IS SIMPLY AN EVIDENTIARY FACT FOR YOU, LADIES AND GENTLEMEN, TO TAKE INTO CONSIDERATION ALONG WITH ALL THE OTHER EVIDENCE IN THE CASE AS YOU MAKE A DECISION ON THIS CASE.

LADIES AND GENTLEMEN, A COUPLE OF DAYS AGO YOUR NAME WAS DRAWN, TAKEN OUT OF A CYLINDER, YOU WERE CALLED FORTH TO COME FORWARD, STAND IN FRONT OF THE ROOM THERE IN FRONT OF EVERYBODY. EVERYBODY LOOKED AT YOU, AND BOTH SIDES COULD HAVE SAID SEND THEM BACK TO THE AUDIENCE. BOTH SIDES SAID, NO, WE'LL TAKE THIS JUROR. WE FEEL THIS JUROR WILL BE FAIR AND IMPARTIAL AND THEN YOU WERE ASKED TO SIT IN THAT ROOM DOWNSTAIRS. YOU WERE LATER BROUGHT UP THE

STAIRS HERE. YOU WERE THEN PUT UNDER OATH AND THEN I BEGAN MY BRIEF CHARGE TO YOU ON THE INTRODUCTION OF THE CASE AND THEN YOU SAT AND YOU LISTENED TO THE EVIDENCE AND NOW YOU'VE HEARD THE FINAL ARGUMENTS AND I'VE, I'M ALMOST FINISHED MY INSTRUCTIONS ON THE LAW. YOUR OBLIGATION IN A SHORT WHILE, WHETHER YOU DO NOW OR WHETHER YOU DO IT TOMORROW, IS TO AMONG YOURSELVES DISCUSS THESE MATTERS, DISCUSS WHAT YOU'VE HEARD, MAKE A DECISION WHICH YOU FEEL SPEAKS THE TRUTH. THAT'S ALL THE LAW ASKS OF YOU, REQUIRES OF YOU, DEMANDS OF YOU.

YOU, LADIES AND GENTLEMEN, ARE SITTING IN A BOX HERE IN HORRY COUNTY, SOUTH CAROLINA SIMILAR TO A BOX THAT PEOPLE SIT IN ALL OVER AMERICA, SOME OF YOU A BOX THAT PEOPLE HAVE SAT IN OVER TWO HUNDRED YEARS IN AMERICA WHERE PEOPLE OF A COMMUNITY DECIDES THESE ISSUES AND NOT PERSON IN A ROBE OR NOT PROFESSIONALS, BUT INDIVIDUALS, YOU. WHEN YOU GO BACK IN THAT JURY ROOM, WHEN YOU DISCUSS THESE MATTERS, WHEN YOU COME TO A DECISION WHICH YOU FEEL SPEAKS THE TRUTH, WHICH YOU FEEL REPRESENTS THE FACTS AND THE LAW, AND YOU WRITE THAT DOWN ON THAT VERDICT FORM, IT WILL BE SIGNED BY THE FOREPERSON, BUT HIS SIGNATURE INDICATES 12 PEOPLE. WHEN YOU DO THAT NOBODY CAN CRITICIZE WHAT YOU'VE DONE BECAUSE YOU'VE DONE WHAT THE LAW SAYS. TWELVE PEOPLE TALKED ABOUT IT, 12 PEOPLE TALK AFTER THEY'VE LISTENED TO EVERYTHING, AND THEY MAKE A DECISION USING THE LAW AND THE

FACTS, AND THAT'S WHAT AMERICA IS ALL ABOUT. THAT'S WHAT YOUR DUTY IS ALL ABOUT. THAT'S ALL WE CAN ASK OF YOU.

AS I'VE INTIMATED AND SAID EARLIER YOUR VERDICT MUST BE UNANIMOUS, ALL 12 OF YOU MUST AGREE ON THIS VERDICT.

WHEN YOU'RE BACK THERE DELIBERATING, LADIES AND GENTLEMEN, IF YOU HAVE ANY QUESTIONS, FOR EXAMPLE, YOU DON'T REMEMBER SOMETHING THAT WAS SAID OR SOMETHING OF THAT NATURE, OR YOU HAVE SOME QUESTIONS ABOUT THE LAW, YOU WANT ME TO RESTATE SOMETHING TO YOU, PLEASE SEND OUT A NOTE AND I'LL LOOK AT THE QUESTION AND SEE IF I CAN RESPOND TO IT AND I WILL RESPOND TO IT IN SOME FORM OR FASHION, SO JUST SEND IT OUT. IF YOU DON'T HAVE ANY QUESTIONS ONCE YOU DO REACH A DECISION THEN PLEASE LET ME KNOW. LET ME KNOW AND WE'LL BRING YOU BACK OUT AND WE WILL RECEIVE, WE'LL RECEIVE YOUR VERDICT.

IT IS RIGHT NOW 5:30. WHAT I'M GOING TO DO IS I'M GOING TO LET YOU GO BACK IN THE JURY ROOM, GET YOURSELF ADJUSTED AWAY AND ALL THAT. I'VE GOT TO MAKE SURE I DIDN'T FORGET TO TELL YOU ANYTHING.

MR. FOREPERSON, TALK TO YOUR JURY. IF YA'LL WISH TO GO HOME RIGHT NOW YOU CAN OR YOU CAN DELIBERATE FOR A WHILE AND THEN LET ME KNOW IF YOU WANT TO GO HOME LATER ON. IT'S TOTALLY UP TO YOU. ONCE I GIVE THE CASE TO YOU WE'RE REALLY WORKING UNDER YOUR SCHEDULE SO YOU LET US KNOW,

OKAY?

NOW HORRY COUNTY, AS YOU KNOW, IS A BIG COUNTY SO WHEN WE COME BACK TOMORROW MORNING IT'S PROBABLY GOING TO COME BACK IN SOMEWHERE AROUND 9:30, 9:45 IF YA'LL CHOOSE TO COME BACK IN TOMORROW MORNING SO EVERYBODY FROM ALL FAR REACHES OF THE COUNTY CAN GET HERE. SO YOU LET ME KNOW THAT. YOU ALL GO INTO THE JURY ROOM. DO NOT, DO NOT DELIBERATE AT ALL. THE ONLY QUESTION I WANT YOU TO DISCUSS IS WHETHER YOU WANT TO DELIBERATE ANY TONIGHT OR NOT. ONCE, IF I DON'T BRING YOU BACK OUT HERE WE'LL SEND THESE EXHIBITS IN THERE WITH YOU AND THEN YOU CAN DELIBERATE UNTIL YOU TELL ME YOU WANT TO GO HOME OR YOU SAY TELL THE JUDGE I WANT TO GO HOME NOW AND I'LL BRING YOU BACK OUT AND GIVE YOU A SHORT LITTLE INSTRUCTIONS AND YOU GO ON HOME; IS THAT CLEAR, MR. FOREMAN?

MR. FOREMAN: YES, SIR.

THE COURT: ALL RIGHT, PLEASE DON'T DELIBERATE YET. STEP TO THE JURY ROOM. MY TWO ALTERNATES GO WITH THEM ALSO RIGHT NOW.

THIS IS THE INDICTMENT WHICH IS NOT EVIDENCE. ON THE BACK OF IT IS THE WORD VERDICT. YOU'LL HAVE ONE OF TWO POSSIBLE VERDICTS, EITHER GUILTY OR NOT GUILTY. NOT GUILTY OR GUILTY, ONE OF TWO, ONE OF TWO, NOT TWO, NOT THREE, ONE OF TWO, AND THERE'S NO PREFERENCE THE WAY I SAY IT. I'VE GOT TO SAY ONE BEFORE THE OTHER, GUILTY OR NOT GUILTY, NOT

GUILTY GUILTY. SO ONE OF THOSE TWO IS WHAT YOU WOULD REACH AND SIGN ON THE BACK OF THIS FORM ONCE YOU DECIDE UNANIMOUSLY, OKAY? PLEASE STEP TO THE JURY ROOM.

(WHEREUPON, THE JURY RETIRED TO THE JURY ROOM AT 5:25 P.M.)

THE COURT: ANY OBJECTIONS BY STATE?

MR. MEACHAM: NONE FROM THE STATE, JUDGE.

THE COURT: DEFENSE?

MR. LONG: NONE, YOUR HONOR.

THE COURT: ONE THING I DIDN'T DO IS I DIDN'T RECHARGE THEM ON EXPERT, DOES EITHER ONE OF YOU ALL WANT ME TO RECHARGE THEM ON EXPERT? I'D ALREADY SAID THAT WHEN SHE TESTIFIED.

MR. MEACHAM: I THINK THAT WAS APPROPRIATE.

MR. LONG: NONE, YOUR HONOR, YOUR DURING IN TRIAL CHARGE WAS ---

THE COURT: ALL RIGHT, IF YA'LL WOULD MAKE SURE WE'VE GOT THE EXHIBITS UP HERE AS FAR AS ALL THE EXHIBITS. THE CHARGE I GAVE WAS DRAFTED BY A VERY ABLE LAW CLERK ABOUT FOUR YEARS AGO, NAME WAS B.J. I THINK IT WAS.

MS. LANDRUM: THANK YOU, YOUR HONOR.

THE COURT: I'VE MADE MANY CHANGES TO IT SINCE THEN.

MS. LANDRUM: I'M SURE YOU HAVE, YOUR HONOR.

THE COURT: WOULD YA'LL MIND IF I JUST BRING THE

FOREPERSON OUT AND GIVE HIM THE EXHIBITS AND TELL THEM NOT TO OPEN THAT PACKAGE?

MR. MEACHAM: NO, SIR.

MR. LONG: NOT AT ALL, YOUR HONOR.

THE COURT: OKAY, EVERYONE STAY IN PLACE. BRING THE FOREPERSON OUT, PLEASE, AND THAT'S ALL THE EXHIBITS RIGHT THERE?

MR. LONG: YES, SIR.

MR. MEACHAM: YES, SIR.

(WHEREUPON, THE FOREPERSON RETURNED TO THE COURTROOM.)

THE COURT: MR. CARROLL, HERE ARE THE EXHIBITS AND HERE IS THE INDICTMENT; DO YOU FEEL YOUR JURY WISHES TO DELIBERATE FOR A WHILE?

MR. FOREMAN: YES, SIR.

THE COURT: ALL RIGHT, GO AHEAD AND TAKE THOSE IN AND YA'LL MAY BEGIN YOUR DELIBERATIONS. NOW THAT CONTAINER THERE ---

MR. FOREMAN: YES, SIR.

THE COURT: SEE THAT PLASTIC CONTAINER?

MR. FOREMAN: YES, SIR.

THE COURT: RIGHT THERE. DO NOT OPEN IT.

MR. FOREMAN: OKAY.

THE COURT: ALL RIGHT, IF YOU NEED TO LET ME KNOW. IF YOU NEED TO OPEN IT, YOU LET ME KNOW AND WE'LL

COME OUT IN THE COURTROOM AND DO IT.

MR. FOREMAN: ALL RIGHT, THE ALTERNATES DO THEY STAY?

THE COURT: TELL THE TWO OF THEM TO COME OUT, GLAD YOU REMINDED ME OF THAT, BRING THEM ON OUT THE TWO ALTERNATES. START YOUR DELIBERATIONS.

(WHEREUPON, THE VERDICT FORMS AND EXHIBITS WERE DELIVERED TO THE JURY ROOM AT 5:37 P.M. WITH INSTRUCTIONS TO BEGIN DELIBERATIONS.)

THE COURT: GOODNESS, I'VE BEEN A JUDGE FOR 15 YEARS, I ALMOST FORGOT TWO ALTERNATES.

ALL RIGHT, THEY'RE GOING TO DO SOME DELIBERATIONS AND ALL THAT, TELL YOU WHAT I WANT YOU ALL TO DO, I WANT YOU ALL TO GO HOME AND I WANT YOU TO LEAVE YOUR PHONE NUMBER WITH THIS OFFICER RIGHT HERE, OKAY. IF FOR SOME REASON I LOSE A JUROR, I DO NOT WANT YA'LL TO TALK ABOUT IT OR DO ANYTHING AT ALL. I COULD VERY WELL LOSE A JUROR OVERNIGHT IF THEY GO HOME AND COME BACK AND I MAY CALL YOU ALL TO COME IN, SO LEAVE THE PHONE NUMBER WHERE YOU'RE GOING TO BE TOMORROW BETWEEN THE HOURS OF 9 AND 11, OKAY? DO NOT DISCUSS THIS CASE WITH ANYONE, WITH YOUR FAMILY OR ANYONE ELSE. ALL RIGHT, AND IF HE WANTS TO HE'LL GIVE YOU A NUMBER YOU CAN CALL TOMORROW, IN FACT, CLERK, YOU STILL ARE, CHRISTINA, CHRISTINA, PROBABLY BE BETTER, GET THEIR NUMBER AND GIVE THEM YOUR NAME AND CALL YOUR TOMORROW YOU

TOMORROW IF THEY HAVE A QUESTION, WALK OUT IN THE HALLWAY. BY THE WAY IN CASE I DON'T SEE YOU LET ME SHAKE YOUR HAND AND THANK YOU VERY MUCH FOR YOUR SERVICE, I DO APPRECIATE IT, THANK YOU, SIR. YOU'RE MY HERO. I WANT TO DO THE SAME THING WHEN I GET THROUGH MILITARY. I'M GOING TO GET ME A LITTLE PONY TAIL BACK THERE.

(WHEREUPON, THE JURY KNOCKED WITH A VERDICT AT 5:45 P.M.)

THE COURT: LET ME SEE YOU A MINUTE, MR. MEACHAM AND MR. LONG.

(WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD OUT OF THE PRESENCE OF THE JURY AND HEARING OF THE COURT REPORTER.)

THE COURT: MADAM CLERK -- I'M JUST TRYING TO SEE WHAT WE'VE GOT AVAILABLE, OKAY. BRING IN THE JURY.

(WHEREUPON, THE JURY ENTERED THE COURTROOM AT 5:52 P.M. TO DELIVER ITS VERDICT.)

THE COURT: OKAY, MR. FOREMAN, THE BAILIFF HAS INFORMED ME YOU'VE REACHED A VERDICT, HAVE YOU, SIR?

MR. FOREMAN: YES, SIR, YOUR HONOR.

THE COURT: IF YOU WOULD, MADAM CLERK, GO GET THE DOCUMENT. MR. LONG, WOULD YOU PLEASE STAND WHEN SHE READS THE VERDICT, PLEASE, SIR?

MR. LONG: YES, SIR.

THE COURT: YOU MAY PROCEED.

MADAM CLERK: THE STATE OF SOUTH CAROLINA V. REGGIE ALLEN PINCKNEY, INDICTMENT NUMBER 2005-GS-26-1401, TRAFFICKING CRACK COCAINE MORE THAN 10 GRAMS LESS THAN 28 GRAMS WE JURY BY UNANIMOUS CONSENT FIND THE DEFENDANT GUILTY; RICHARD CARROLL, FOREPERSON DATED 1-12-06. LADIES AND GENTLEMEN OF THE JURY, IF THIS IS YOUR VERDICT SO SIGNIFY BY RAISING YOUR RIGHT HAND.

(WHEREUPON, ALL JURORS RESPONDED AFFIRMATIVELY.)

THE COURT: OKAY, ANY FURTHER POLLING REQUESTED BY THE STATE?

MR. MEACHAM: NONE FROM THE STATE, THANK YOU.

THE COURT: BY THE DEFENDANT?

MR. LONG: NO, YOUR HONOR.

THE COURT: LADIES AND GENTLEMEN OF THE JURY, I WANT TO THANK YOU VERY MUCH FOR YOUR SERVICE. THIS WILL CONCLUDE YOUR SERVICE FOR THE WEEK. YOU'RE NOW FREE TO RETURN HOME AND YOU WILL NOT HAVE TO COME BACK TOMORROW. I WANT TO THANK YOU VERY MUCH AND PLEASE UNDERSTAND THAT IN THIS COUNTRY REGARDLESS OF WHETHER OR NOT A PERSON IS HERE OR NOT, AND I HAD TO MAKE CERTAIN FINDINGS BEFORE WE EVEN PROCEEDED IN THIS MATTER. FOR EXAMPLE, I HAD TO MAKE A FINDING THAT THE DEFENDANT WAS AWARE OF HIS RIGHT TO BE HERE, WAS NOTICED, IN FACT HE WAS SENT TWO SUBPOENAS NOTIFYING OF THE TRIAL, THIS TERM OF COURT. HE WAS TRIED ALSO IN THIS MATTER, FOR YOUR INFORMATION, A COUPLE OF

MONTHS AGO IN THIS CASE. IT WAS A HUNG JURY IN THE THING. HE WASN'T HERE FOR THAT EITHER AND WE MADE EFFORTS TO FIND HIM BUT HE WON'T, HE WILL NOT COME. IN FACT, WE HAVE DIRECT EVIDENCE TO KNOW HE WAS AWARE LAST NIGHT THAT WE WOULD BE STARTING TODAY AND HE STILL CHOSE NOT TO COME AND THE POLICE CAN'T FIND HIM RIGHT NOW. SO IT'S NOT LIKE PEOPLE ARE TRIED IN THIS FASHION EVEN WHEN THEY DON'T KNOW WHAT'S GOING ON OR HAVEN'T BEEN GIVEN SOME SORT OF NOTICE TO BE HERE.

THOSE FINDINGS, THOSE DECISIONS TO PROCEED ON WERE MADE BY ME BEFORE WE STARTED THE TRIAL. I WOULD NOT HAVE TRIED THE CASE AND IF, SAY, HE WERE OUT OF TOWN OR DIDN'T KNOW ABOUT IT OR DIDN'T GET ENOUGH TIME TO BE HERE OR ANYTHING IN THAT NATURE. I WOULDN'T WANT YOU TO THINK THAT JUSTICE IS SUCH THAT THOSE THINGS ARE DONE. BUT IN A CERTAIN PERIOD OF TIME SOMEBODY GETS OUT ON BOND, IN FACT THIS GENTLEMAN IS OUT ON BOND BY A PROFESSIONAL BONDSMAN AS WELL AS HIS MOTHER PUTTING UP LAND GUARANTEEING HIS EXISTENCE WHICH IS RATHER SAD. BUT THERE'S, BUT THERE IS DEFINITE INFORMATION AND KNOWLEDGE THAT HE KNEW HE SHOULD BE HERE AND WAS TOLD TO BE HERE AND JUST CHOSE NOT TO SHOW UP AND SO IN THAT REGARD WE, WE WENT AHEAD AND DID THE TRIAL AND I WANT TO THANK YA'LL VERY MUCH FOR YOUR PRESENCE HERE.

THE CLERK WILL SEND, WILL ARRANGE FOR THE COUNTY

TO SEND YOUR JUROR CHECKS TO YOU. IN ADDITION, THERE WILL BE SOME STATEMENT THERE ABOUT YOU WERE HERE FOR JURY DUTY, IF FOR SOME REASON YOU NEED THE LADY TO GIVE YOU SOMETHING TODAY REGARDING YOUR PRESENCE SHE WILL DO SO FOR YOUR EMPLOYER BUT YOUR CHECK CAN'T BE GIVEN TODAY; IT WILL BE MAILED TO YOU.

IF YOU WOULD I WOULD LIKE TO HAVE THE OPPORTUNITY, THOUGH, I STILL GOT MATTERS TO DO IN THIS CASE. FOR EXAMPLE, AT THIS STAGE NOW THE QUESTION IS WHETHER OR NOT THIS IS A SECOND OFFENSE OR A THIRD OFFENSE SO I HAVE SOME LEGAL DECISIONS TO BE MADE IN THAT REGARD BECAUSE THAT DOES AFFECT HOW MUCH TIME HE COULD BE SENTENCED TO.

WHAT WILL HAPPEN IS ONCE I DECIDE WHAT IT IS I'LL THEN DECIDE MY SENTENCE. I'LL THEN WRITE MY SENTENCE ON A SENTENCING SHEET INDICATING HOW MUCH TIME I'VE SENTENCED HIM TO. IT WILL THEN BE PUT INTO AN ENVELOPE AND SEALED SO THAT NO ONE CAN SEE WHAT I ACTUALLY SENTENCED HIM TO. WHEN HE IS, AND EVENTUALLY HE WILL BE PICKED UP, WHEN HE IS PICKED UP HE'LL THEN COME BEFORE ANOTHER JUDGE, MOST LIKELY OR IT COULD BE ME, AT THAT POINT IN TIME HE WILL MAKE A REQUEST TO THAT JUDGE TO HAVE A NEW TRIAL, RECONSIDERATION OF THE SENTENCE, REDUCTION OF THE SENTENCE, THINGS OF THAT NATURE, AND, AND THAT JUDGE THEN WILL MAKE A DECISION WHETHER TO DO THAT OR TO REDUCE THE SENTENCE OR TO IMPOSE

IT AS IT, AS IT IS, SO THAT IS WHAT THE PROCEDURE IS GOING TO BE FROM, FROM HERE OUT, OKAY.

I THOUGHT, YOU KNOW, YOU ALL MIGHT HAVE QUESTIONS ABOUT THAT, YOU MIGHT BE WONDERING ABOUT IT, AND YOU KNOW YOU HAVE A RIGHT TO KNOW, TO KNOW THESE THINGS. OTHER THAN THAT YA'LL KNOW EVERYTHING ELSE I KNOW CAUSE YA'LL HEARD ALL THE EVIDENCE I HEARD IN REGARD TO THIS CASE, OKAY.

IF YA'LL WOULD I'M GOING TO STEP TO THE DOOR WHEN YA'LL GO OUT AND AFTER YA'LL TURN IN THOSE $5,000 BUTTONS I'D LIKE TO HAVE THE HONOR, AND I DO MEAN THE HONOR AS WELL AS THE PLEASURE, OF SHAKING YOUR HAND AND PERSONALLY THANKING YOU FOR YOUR JURY SERVICE; AND YOU DON'T HAVE TO SERVE AGAIN FOR THREE YEARS SO LET ME STEP OUT TO THE BACK. I'LL BE RIGHT BACK, GENTLEMAN FOR YOUR MOTIONS.

(WHEREUPON, THE JURY WAS EXCUSED FOR THE EVENING AT 6:00 P.M.)

THE COURT: ANY MOTIONS BY THE STATE, HEARING NONE, MOTIONS BY THE DEFENSE?

MR. LONG: YES, YOUR HONOR, WE'D MOVE FOR A NEW TRIAL ON THE BASIS OF THE ARGUMENTS ASSERTED DURING OUR MOTION FOR A MISTRIAL AND A MOTION FOR A DIRECTED VERDICT. WE FEEL THE PREJUDICIAL EFFECT OF THE MARIJUANA CONVICTION COULD HAVE CONTRIBUTED TO THE EASE OF THE JURY FINDING HIM GUILTY OF THIS OFFENSE AND SO WE'D ASK FOR A NEW TRIAL OR FOR A MISTRIAL FOR THE SAME, SAME REASONS STATED

PREVIOUSLY.

THE COURT: OKAY, WELL I STATED MY CONCERN REGARDING THE MARIJUANA INTRODUCED INITIALLY ESPECIALLY THE STATEMENT OF HE PLED GUILTY BUT I THINK THE EVIDENCE WAS OVERWHELMING. IF THERE WAS AN ERROR THERE, IF THERE WAS SOMETHING THAT SHOULDN'T HAVE BEEN DONE I, I DON'T THINK IT IN ANYWAY AFFECTED THIS VERDICT. I THINK THE EVIDENCE WAS OVERWHELMING AND DID NOT AFFECT THE VERDICT SO I WOULD NOT GRANT YOUR MOTION, AND SO YOUR MOTION FOR A MISTRIAL IS DENIED. DID YOU HAVE A MOTION, IS THERE A DIRECTED VERDICT MOTION AT THIS TIME, MR. LONG?

MR. LONG: WELL, YOUR HONOR, JUDGMENT NOTWITHSTANDING THE VERDICT, SOMETHING OF THAT NATURE. WE WOULD MOVE THAT AGAIN THE EVIDENCE THERE WAS POSSIBLE CONCLUSIONS THAT THE JURY COULD HAVE FOUND NOT GUILTY AND FOR THE SAME REASONS WE STATED IN OUR MOTION. AGAIN, YOUR HONOR, WE FEEL THAT A SUPPRESSION HEARING WAS JUSTIFIED IN THIS CASE, THAT JUDGE DENNIS' ORDER SHOULD NOT HAVE BEEN CARRIED FORWARD AND USED BY THIS COURT TO PREVENT US FROM HAVING A SUPPRESSION HEARING AND WE'D ASK ---

THE COURT: WELL YOU REALLY THINK YOU WERE PREVENTED FROM HAVING A SUPPRESSION HEARING? WHAT QUESTIONS WERE YOU ASKED YOU DIDN'T ASK? I EVEN PUT THE OFFICER UP OUT OF THE PRESENCE OF THE JURY LET YOU ASK HIM MORE QUESTIONS.

MR. LONG: AND I CAN ONLY COMPLIMENT YOUR HONOR ON THE WAY YOU HANDLED THAT AS BEING THE LEAST INTRUSIVE WAY OF BOTH APPLYING JUDGE DENNIS' ORDER AND PERMITTING US TO GO INTO THOSE ISSUES THAT WE MAY HAVE WOULD HAVE WANTED TO RAISE, YOU KNOW, AT A SUPPRESSION HEARING, BUT WE JUST FEEL THAT A NEW TRIAL SHOULD BE GRANTED WITH A FULL SUPPRESSION HEARING.

THE COURT: ALL RIGHT, I WILL DENY THAT MOTION.

MR. LONG: YES, SIR.

THE COURT: NOW I'M READY TO PROCEED WITH SENTENCING. I UNDERSTAND THERE'S A STATEMENT, THE STATE CONTENDS THIS IS A THIRD OFFENSE. IS THERE SOME EVIDENCE OF WHAT OFFENSE IT IS?

MR. MEACHAM: IF YOUR HONOR PLEASE, I'LL BE HAPPY TO PRIOR SENTENCING SHEET, CERTIFIED CONVICTIONS OF WHICH THERE'S A MULTIPLE COUNT DISPOSITION, HOWEVER, INVOLVED. THIS IS THE SENTENCING SHEET IN THIS PARTICULAR CASE. ON SEVERAL DIFFERENT DATES, THE DATE OF THE OFFENSE THE DETERMINING EVENT DETERMINED WHEN IT'S A PRIOR CONVICTION. YOU WILL NOTICE THERE'S A CONVICTION, I BELIEVE, IN AUGUST, AUGUST 12TH, THE DATE OF OFFENSE AUGUST 12TH, 1998, AUGUST 14TH, 1998 A DATE OF OFFENSE, AND THEN THERE'S ANOTHER ONE THAT'S OCTOBER 1998 AND THEN I BELIEVE IT'S A FOURTH ONE THAT'S A DIFFERENT DATE.

IF YOUR HONOR PLEASE, CLEARLY OUR POSITION THAT

THIS WOULD BE A FOURTH OFFENSE. THE FACT THAT SOMEONE ACTUALLY PLEADS ON A MULTIPLE COUNT DISPOSITION DOES NOT NECESSARILY, IT IS THE DATE OF THE PARTICULAR INCIDENT NOT THE DATE --

THE COURT: HE WAS FOUND GUILTY OF POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE; POSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINE; DISTRIBUTION OF CRACK COCAINE; AND DISTRIBUTION OF CRACK COCAINE. HE WAS GIVEN PROBATION?

MR. MEACHAM: JUDGE, I'M NOT GOING TO COMMENT ON THE SENTENCING.

THE COURT: AM I RIGHT?

MR. MEACHAM: IN FACT, JUDGE, I DON'T KNOW FOR SURE, THAT PORTION ---

THE COURT: NO, NO, HE WAS, I SEE HE GOT EIGHT YEARS DIRECT SENTENCE HERE.

MR. MEACHAM: I THOUGHT THAT WAS IT. I THOUGHT HE HAD DONE AN ACTIVE SENTENCE AT ONE TIME.

THE COURT: IS THAT RIGHT, MR. LONG?

MR. LONG: YES, SIR, THAT'S RIGHT, YOUR HONOR. I BELIEVE HE SERVED TWO AND A HALF YEARS OR TWO AND A QUARTER YEARS IN PRISON THEN HE HAD PROBATION.

THE COURT: THEN HE HAD PROBATION ON THE LAST SENTENCE, OKAY, OKAY, ALL RIGHT. ALL RIGHT, AND YOU CONTEND THAT SINCE THESE ARE DIFFERENT EVENTS ALTHOUGH THE

PLEA WAS AT THE SAME DAY IT MAKES IT MORE THAN SECOND OFFENSE?

MR. MEACHAM: YES, SIR, THAT'S OUR POSITION.

THE COURT: ALL RIGHT, MR. LONG?

MR. LONG: THANK YOU, YOUR HONOR. I'VE SUMMARIZED AUGUST 11TH, 1998, AUGUST 14TH, 1998, AUGUST 28TH, 1998, AND OCTOBER 7TH, 1998 WERE THE OFFENSE DATES FOR THESE FOUR OFFENSES THAT HE PLED TO AND RECEIVED A SENTENCE ON. OUR ARGUMENT IS ONE SIMILAR TO AN ESTOPPEL ARGUMENT, YOUR HONOR.

THE STATE TOOK HIS PLEA IN A MULTI COUNT PLEA ON JUNE THE 16TH OF 1999 AND ACCEPTED PLEAS TO ALL FOUR OF THOSE AND ALL SENTENCES WERE BOUND CONCURRENT, RUN CONCURRENT, OR WERE TO HAVE PROBATION CONSECUTIVE TO THE TIME THAT HE WAS TO SERVE ON THOSE. I THINK THE STATE IS SOMEWHAT ESTOPPED THEN FROM TRYING TO SAY THAT WE, BECAUSE OF JUDICIAL EFFICIENCY, PUT ALL THESE CASES TOGETHER, PLED THEM TOGETHER, SENTENCED THEM TOGETHER; AND IT WAS OVER BASICALLY A TWO-WEEK PERIOD IN AUGUST WHEN THE SAME OR SIMILAR TYPE OFFENSES WERE CHARGED AND THEN OCTOBER 7TH IS THE LONE STRAGGLER OFFENSE WHICH IS STILL ONLY A MONTH AND A HALF APPROXIMATELY FROM THE AUGUST, WELL LESS THAN A MONTH AND A HALF FROM THE AUGUST 28TH OFFENSE.

THE OFFENSE DATE WHEN TAKEN AND WHEN THEY THEN APPLY THEM AND DO A PLEA WITH CONCURRENT SENTENCES WE THINK

GIVES RISE TO, YOUR HONOR, THAT CONSTITUTING A PRIOR OFFENSE. HE WAS IN COURT. HE PLED GUILTY ON JUNE THE 16TH OF 1999, HE RECEIVED A SENTENCE. HE WAS SERVED A SENTENCE WHICH APPLIED TO ALL FOUR CASES. FOR THAT REASON, YOUR HONOR, WE WOULD ASK THAT THIS BE CONSIDERED A SECOND OFFENSE AND THAT HE BE SENTENCED ACCORDINGLY UNDER A SECOND OFFENSE.

THE COURT: OKAY, YOUR POSITION IS IT'S THE CONVICTION DATE THAT MATTERS?

MR. LONG: NO, IT'S NOT SO MUCH THE CONVICTION DATE THAT MATTERS. IT'S THE STATE HAS AGREED THAT ALL PRIOR, ALL PRIOR OFFENSES, WHETHER THEY BE DIFFERENT OFFENSE DATES OR WHATEVER, THOSE WERE CONSIDERED BY THE STATE AND DEALT WITH BY THE STATE AS ONE, SO THE STATE HAS ALREADY DEALT WITH THOSE AS ONE. NOW THE STATE IS SOMEWHAT ESTOPPED FROM COMING BEFORE YOUR HONOR AND SAYING, NO, NO, YOUR HONOR, WE THINK NOW YOU OUGHT TO DEAL WITH THEM AS SEPARATE.

THE COURT: IS THERE ANY CLEAR CASE LAW ONE WAY OR THE OTHER?

MR. LONG: NO, YOUR HONOR.

MR. MEACHAM: YOUR HONOR, WELL EVEN IF, I DO WANT TO SAY I DON'T SEE HOW, CAN I ADDRESS, YOU GOT TWO SEPARATE SENTENCES. HE GOT AS YOUR HONOR KNOWS HE GOT PROBATION ON ONE SENTENCE AND HE GOT AN EIGHT-YEAR

SENTENCE, YOU CAN'T GET BOTH.

THE COURT: THEY WERE ALL CONCURRENT.

MR. MEACHAM: WELL BUT, JUDGE, THE FACT OF, THE FACT OF THE MATTER IS THAT HAD HE, BECAUSE HE PLED AT ONE TIME TO SEVERAL OFFENSES, DOES NOT MAKE THAT ONE OFFENSE. IT'S NOT THE CONVICTION DATE, IT'S SEVERAL INSTANCES. NOW HE SAYS THEY'RE ACTUALLY THREE INCIDENCES IN AUGUST AND THEN ---

THE COURT: WELL MY QUESTION IS THERE'S NEVER BEEN ANY CASE LAW ON THIS ISSUE?

MR. MEACHAM: YOUR HONOR, I'M NOT AWARE OF ANY.

THE COURT: THAT GOOD PROSECUTOR'S HANDBOOK YOU GOT HAS NONE?

MR. MEACHAM: THAT'S WHAT I WAS LOOKING AT, YOUR HONOR, TO SEE IF THERE WAS SOMETHING THAT ADDRESSED IT SPECIFICALLY.

THE COURT: I MEAN, WHERE DID YOU GET THE COMMENT THE DATE OF THE OFFENSE?

MR. MEACHAM: IF YOUR HONOR PLEASE, IT DOES SAY -- I'M SORRY.

THE COURT: OKAY, GO AHEAD?

MR. MEACHAM: IN OTHER WORDS, IT DOES SAY "BY THE PREPONDERANCE OF THE EVIDENCE THE DEFENDANT HAS TO PROVE THAT THE SENTENCING ENHANCEMENT THAT'S APPLIED IN THIS CASE IS DEFECTIVE." THE BURDEN IS ON THE DEFENDANT,

NOT ON THE STATE TO DO THAT.

THE COURT: OKAY, BUT THE EVIDENCE IS CLEAR HE WAS CONVICTED ON THE 16TH OF JUNE IN '99 TO FOUR OFFENSES AND THE OFFENSES DID NOT OCCUR ON THE SAME DATE?

MR. MEACHAM: THAT'S CORRECT, I THINK WE CAN ALL STIPULATE.

THE COURT: SO THE EVIDENCE IS THERE?

MR. MEACHAM: YES, SIR.

THE COURT: SO THE QUESTION IS DOES THAT MEAN THAT THIS IS A THIRD OFFENSE OR IS THIS A SECOND OFFENSE; IS THERE ANY CASE LAW ANYWHERE?

MR. LONG: YOUR HONOR, I CAN HAND UP THE CASE OF STATE V. DUPREY, IT IS NOT DIRECTLY ON POINT BUT THE COURT DOES DISCUSS THE CODE SECTION WHICH SETS FORTH SECOND OR SUBSEQUENT OFFENSES. THE STATUTORY CONSTRUCTION LANGUAGE OF THAT STATUTE IS IS THAT PENAL STATUTES ARE CONSTRICTLY CONSTRUED, STRICTLY CONSTRUED AGAINST THE STATE AND IN FAVOR OF THE DEFENDANT.

THE COURT: OKAY, BUT WHAT DOES THE STATUTE OTHER THAN SECOND OR SUBSEQUENT OFFENSE? I'M READING, I MEAN IS THERE SOME STATUTE SOMEWHERE THAT TALKS ABOUT WHAT THE SUBSEQUENT OFFENSES ARE OR SHOULD I JUST READ THIS STATUTE FOR THIS PARTICULAR CRIME?

MR. LONG: THIS CASE WHICH WAS THE CLOSEST I COULD FIND DOES NOT GO TO EXPLAIN THE STATUTE. THE STATUTE

SIMPLY SAYS "AN OFFENSE IS CONSIDERED SECOND OR SUBSEQUENT OFFENSE IF PRIOR TO HIS CONVICTION OF THE OFFENSE THE OFFENDER HAS AT ANY TIME BEEN CONVICTED UNDER THIS ARTICLE OR UNDER ANY STATE OR FEDERAL STATUTE RELATING TO NARCOTIC DRUGS, MARIJUANA, DEPRESSANT, STIMULANT, OR HALLUCINOGENIC DRUGS." THAT'S THE STATUTE AND HE HAS ---

THE COURT: SOUNDS FOR HIM THERE, MR. MEACHAM. WHERE DID YOU GET THE STATEMENT "IT DOESN'T MATTER ON THE DATE OF THE CONVICTION OR THE DATE OF THE OFFENSE?"

MR. MEACHAM: I READ THE CASE LAW ON THAT, YOUR HONOR. BUT IT'S THE DATE OF THE OFFENSE DETERMINES, DETERMINES THE CONVICTION IS WHAT I'M SAYING. THE DATE OF THE OFFENSE DETERMINES THE EVENT ITSELF NOT THE DATE THAT HE PLEADS GUILTY.

THE COURT: BUT WHAT HE READ IS THAT, WHAT'S THE CODE SECTION YOU JUST READ FROM?

MR. LONG: 44-53-470 AND I DO HAVE A COPY OF IT.

THE COURT: I'VE GOT 470 RIGHT HERE. OKAY, DO YA'LL DO THE SHEPARDIZING THING AND READ ALL THE NOTES UNDERNEATH IT TRYING TO FIND SOME NEW CASE LAW AND STUFF? HERE'S ONE WHERE BOND FORFEITURE WASN'T A CONVICTION.

ALL RIGHT, MR. LONG, DO YOU CHALLENGE HIS CONVICTION IN JUNE OF 1999 OF SEVERAL CRACK COCAINE OFFENSES?

MR. LONG: NO, YOUR HONOR.

THE COURT: ALL RIGHT, I'M TREATING THIS AS A SECOND OFFENSE. ALL RIGHT, NOW LET ME PROCEED TO MY, ANYTHING REGARDING SENTENCING, ANYTHING ELSE FROM THE STATE REGARDING SENTENCING?

MR. MEACHAM: YOUR HONOR, HE DOES HAVE OTHER PRIOR CONVICTIONS.

THE COURT: BY THE WAY, READING THE STATUTE THAT MEANS THAT MY RULING HE'S SUBJECT TO FIVE YEARS, NO MORE THAN, MINIMUM FIVE YEARS UP TO 30 AND A FINE OF $50,000. SO THAT CHANGED ---

MR. MEACHAM: SEVEN TO 25.

THE COURT: I'M READING RIGHT HERE 10 GRAMS OR MORE BUT LESS THAN 28 GRAMS, THAT'S COCAINE. NOW THE LAST STATUTE THIS PAST YEAR THEY CHANGED IT?

MR. MEACHAM: IT'S SEVEN TO 25.

THE COURT: THIS PAST YEAR THEY CHANGED IT. THEY PUT THE CRACK AND THE COCAINE TOGETHER?

MR. MEACHAM: YES, SIR.

THE COURT: SO YA'LL AGREE NOW IT'S SEVEN?

MR. MEACHAM: THE MINIMUM IS SEVEN, AND THE MAXIMUM 25.

MR. LONG: THE STATUTE APPLICABLE AT THE TIME OF THIS OFFENSE IS SEVEN TO 25.

THE COURT: OKAY, SEVEN TO 25, SEVEN TO 25?

MR. LONG: YES, SIR.

THE COURT: ALL RIGHT, MINIMUM SEVEN AT LEAST 25. I WOULD GIVE HIM AT LEAST SEVEN NO MATTER WHAT THE STATUTE SAID ANYWAY.

MR. LONG: YES, SIR.

THE COURT: I'M SURE WITH HIS PRIOR RECORD AND $50,000 IS STILL THE FINE?

MR. LONG: YES, SIR, I BELIEVE SO.

THE COURT: OKAY, SO SEVEN TO 25. WHAT OTHER CONVICTIONS DOES HE HAVE?

MR. MEACHAM: IF YOUR HONOR PLEASE, HE HAS CONVICTION FOR RESISTING ARREST IN 1998.

THE COURT: HOW DID THEY CATCH HIM GRAB HIM BY THE BACK AGAIN?

MR. MEACHAM: IF YOUR HONOR PLEASE, NOW HE HAS A CONVICTION FOR FAILURE TO STOP FOR A BLUE LIGHT SO IT'S THE STATE'S POSITION THAT AS INNOCENT AND GERMANE AS THAT MAY SOUND THAT THEY GRABBED HIM BY THE BACK THIS MAN RUNS FROM THE LAW CONSTANTLY.

THE COURT: I BELIEVE OFFICER WILLIAMS MENTIONED THAT.

MR. MEACHAM: NO QUESTION ABOUT IT THAT HE'S DONE IT ON REPEATED OCCASIONS AND WE THINK HE'S, WE SHOULD GET A SUBSTANTIAL SENTENCE IN LIGHT OF THAT.

THE COURT: ALL RIGHT, MR. LONG?

MR. LONG: YOUR HONOR, I COULD TELL HIM ABOUT,

TELL YOU ABOUT HIS BACKGROUND, EDUCATION THINGS OF THAT NATURE WHICH MAY BE PERTINENT, 26 YEARS OLD. I DON'T THINK HE COMPLETED HIGH SCHOOL. HE PRIMARILY DID LABOR IN VARIOUS OCCUPATIONS. THE THING THAT ---

THE COURT: MR. LONG, WHILE YOU'RE TALKING WOULD YOU COME SIGN THIS FOR ME TO SHOW YOU WERE HERE.

MR. LONG: YES, SIR.

THE COURT: ALL I'VE DONE IS SIGN THE BOTTOM, I HAVEN'T PUT ANY SENTENCE ON IT YET.

MR. LONG: ON THE BOTTOM PART HERE, YOUR HONOR?

THE COURT: WHERE IT SAYS ATTORNEY.

MR. LONG: YES, SIR.

THE COURT: ALL RIGHT, THANK YOU, SIR.

MR. LONG: YES, SIR. THE THING THAT OUR GENERAL ASSEMBLY HAS DONE, AS YOU'RE WELL AWARE, IS TO DESIGNATE CERTAIN OFFENSES AS BEING 85 PERCENT CASES SO NO MATTER WHAT SENTENCE YOU GIVE, YOUR HONOR, YOU GIVE HIM, YOUR HONOR, HE'S GOING TO HAVE TO SERVE 85 PERCENT OF THAT WITHOUT PAROLE AND I WOULD JUST ASK YOU TO TAKE THAT INTO CONSIDERATION.

THE COURT: DOES THIS MAKE THIS A SERIOUS AND MOST SERIOUS AT ALL, DOES THAT STATUTE NOT ADDRESS THAT?

MR. LONG: IT'S AN 85 PERCENT.

MR. MEACHAM: IT'S AN 85. IT DOES MAKE ---

THE COURT: I KNOW BUT IS IT A SERIOUS AND MOST

SERIOUS?

MR. MEACHAM: MOST SERIOUS.

MR. LONG: MOST SERIOUS?

MR. MEACHAM: DOES NOT MAKE IT A MOST SERIOUS.

THE COURT: IS IT A SERIOUS?

MR. MEACHAM: SERIOUS, YES, SIR.

MR. LONG: YES, SIR.

THE COURT: IT'S NOT CHECKED ON HERE.

MR. LONG: YES, SIR.

MR. MEACHAM: YES, SIR, IT'S SERIOUS.

THE COURT: AND IS CONSIDERED A VIOLENT?

MR. MEACHAM: YES, SIR.

MR. LONG: YES, SIR.

THE COURT: OKAY.

MR. LONG: SO ---

THE COURT: I'LL TAKE THAT INTO CONSIDERATION THE FACT HE'S GOT TO SERVE 85 PERCENT.

MR. LONG: YES, SIR, THANK YOU, YOUR HONOR.

THE COURT: WHAT ABOUT -- MA'AM, YOU'RE HIS MOTHER, MA'AM?

MS. PINCKNEY: YES, SIR.

THE COURT: MA'AM, LET ME JUST LET YOU KNOW, SOME OF THE JURORS WHEN I WAS TALKING TO THEM ON THE WAY OUT THEY SAID THEIR MAIN CONCERN WAS THEY FELT VERY MUCH SADNESS FOR YOU AND WHAT IS YOUR NAME, MA'AM?

MS. PINCKNEY: CLARA PINCKNEY.

THE COURT: NOW, MS. PINCKNEY, IF YOU DON'T FEEL LIKE YOU CAN SAY ANYTHING I'M NOT GOING TO REQUIRE YOU TO, MA'AM, OKAY?

MR. LONG: WOULD YOU RATHER SIT DOWN TO TALK TO HIM? SHE'D LIKE TO CONTINUE TO SET IF YOU DON'T MIND, YOUR HONOR?

THE COURT: OKAY, BUT IF YOU TALK YOU NEED TO TALK VERY LOUD FOR ME, MS. PINCKNEY, SO THAT THEY CAN HEAR YOU UP HERE. MS. PINCKNEY, WOULD YOU LIKE TO TELL ME ANYTHING, MA'AM?

MS. PINCKNEY: HE'S MY BABY AND I NEED HIM. I HAD A STROKE ABOUT 12 YEARS AGO AND HE ---

THE COURT: YES, MA'AM.

MS. PINCKNEY: --- HE WAS THE ONE THAT WAS TAKING CARE OF ME CAUSE MY LEG GIVES WAY, MORE THAN GONE, AND TILL THIS HAPPENED --

THE COURT: OKAY, MA'AM, I UNDERSTAND. YOUNG LADY, WOULD YOU LIKE TO SAY SOMETHING? YOU CAN IF YOU WISH, MA'AM.

MS. MCCRAY: I WOULD WISH THAT ---

THE COURT: OKAY, STAND UP FOR ME, IF YOU WOULD. WHAT IS YOUR NAME, MA'AM?

FAMILY MEMBER: MY NAME IS HENRIETTA MCCRAY.

THE COURT: AND HOW ARE YOU RELATED OR KNOW MR.

PINCKNEY?

MS. MCCRAY: THAT'S MY BABY BROTHER.

THE COURT: ALL RIGHT, MS. MCCRAY, WHAT WOULD YOU LIKE TO SAY?

MC. MCCRAY: I WOULD ASK THAT THE COURT HAVE A LITTLE LENIENCY ON HIM, YOU KNOW WHAT I'M SAYING? WE ALL MAKE MISTAKES AND I KNOW THAT HE WAS WRONG. I BELIEVE HE KNOWS THAT HE WAS WRONG. CIRCUMSTANCES PREVENT HIM FROM BEING HERE AND I WISH THE COURT WOULD HAVE LENIENCY ON HIM.

THE COURT: THANK YOU, MA'AM, MS. MCCRAY. ANYONE ELSE, ANYONE AT ALL? OKAY, DID HE HAVE ANY TIME IN JAIL BEFORE HE WAS ABLE TO GET BONDED OUT?

MR. MEACHAM: YES, SIR, IN FACT A LITTLE HISTORY OF THE BENCH WARRANT, IN FACT WE HAD PREVIOUSLY ISSUED A BENCH WARRANT. HE WAS IN JAIL, HE BONDED OUT THE NEXT DAY ON THIS PARTICULAR CASE, THEN WE ISSUED A BENCH WARRANT FOR FAILURE TO APPEAR SOME, IN JUNE. THAT BENCH WARRANT WAS LIFTED IN JULY SO HE HAD ABOUT 25 DAYS I BELIEVE IN JAIL. IS THAT, THAT'S MY UNDERSTANDING.

MR. LONG: YEAH.

MR. MEACHAM: YOU MOVED TO HAVE THE BENCH WARRANT LIFTED LAST, JUNE 3RD, 2005. IS WHEN WE ISSUED A BENCH WARRANT, I BELIEVE, JULY 12TH, 2005. IS WHEN THE BENCH WARRANT WAS LIFTED?

MR. LONG: YOUR HONOR, I DON'T THINK HE SPENT

MORE THAN TWO DAYS IN JAIL ON THESE OFFENSES UNTIL BOND WAS POSTED AND THEN THE ---

THE COURT: TWENTY-FIVE DAYS IS WHAT HE SPENT SO EVERYBODY AGREES TO THAT?

MR. LONG: YES, SIR, YOUR HONOR.

THE COURT: TODAY IS JANUARY WHAT?

MR. LONG: 12TH.

THE COURT: I OPENED ONE OF THESE, I OPENED ONE OF THESE MYSELF IN CHARLESTON ONCE AND THE GUY HAD BEEN PICKED UP IN OKLAHOMA FOR POSSESSION OF CRACK AND HE THOUGHT HE HAD MADE IT THROUGH THE PTI, HE SAID, AND HE LEFT TO GO BACK TO OKLAHOMA AND HE DID MAKE IT THROUGH PTI. HE JUST DIDN'T GO TO THE LAST MEETING TO SIGN OFF AND HE GOT OUT OF THE NAVY OUT OF CHARLESTON, WENT BACK TO OKLAHOMA. HE GOT IN OKLAHOMA, WAS THERE ABOUT THREE YEARS, GOT PICKED UP FOR A TRAFFIC OFFENSE. THEY LOOKED ON THE RECORD AND SAW HE HAD A WARRANT BECAUSE ONCE HE DIDN'T SHOW UP FOR THE LAST PTI THE SOLICITOR MOVED THEN LATER ON TO TRY HIM IN HIS ABSENCE AND THEY TRIED HIM IN HIS ABSENCE AND JUDGE WALLER SENTENCED HIM AND I WAS THERE WHEN HE WAS BROUGHT BEFORE ME IN JANUARY OF 1990. THEY PICKED HIM UP IN APRIL AND, AND HE FOUGHT EXTRADITION, SAID "WHAT ARE YOU TALKING ABOUT? I THOUGHT THAT WAS PTI. I THOUGHT IT WAS OVER." HE WAIVED IT AND HE GOT A LAWYER AND FOUGHT IT. THE STATE OPPOSED AND WORKED OUT WITH OKLAHOMA HE DIDN'T

GET OUT OF JAIL, DIDN'T GET A BOND POSTED, STAYED IN OKLAHOMA IN JAIL TILL ABOUT JULY WHEN THEY FINALLY DECIDED THAT HE LOST HIS EXTRADITION ARGUMENT. PEOPLE IN CHARLESTON WENT TO PICK HIM UP. THEY WERE SLOW GETTING THERE AND SLOW GETTING BACK BUT HE FINALLY GOT BACK TO CHARLESTON SOMETIME IN LATE AUGUST. HE WAS SET TO COME TO COURT IN THE FIRST OF OCTOBER, END OF SEPTEMBER, BUT WHILE HE WAS SITTING IN THE COUNTY JAIL IN CHARLESTON HUGO HIT IN SEPTEMBER OF '89, SO THEREFORE HE WAS IN A COUNTY JAIL IN CHARLESTON WITH THE HURRICANE GOING ON AROUND THE PLACE AND THEY HELD HIM THERE AND THEN THEY HAD TO WAIT ANOTHER FEW MONTHS TO GET A COURT GOING AGAIN SO IN JANUARY OF 1990 THERE IN THE WAREHOUSE COURTHOUSE DOWN IN INDUSTRIAL WEST CHARLESTON, WAY OUT OF NORTH CHARLESTON. I GO THERE AND HE'S THERE BEFORE ME. EVERYBODY IS ASKING, PLEASE, HE'S BEEN IN JAIL NOW SINCE APRIL, IN JAIL LIKE, WHAT, SEVEN, EIGHT MONTHS, NINE MONTHS. PLEASE, JUDGE, RECONSIDER THE SENTENCE, CHANGE THE SENTENCE, RECONSIDER IT. I OPENED THE SENTENCE AND SAID, NO, I'M NOT. I'M GOING TO SENTENCE YOU JUST LIKE JUDGE WALLER, SAID, 30 DAYS. NINE MONTHS ON A 30 DAY SENTENCE, THE MAMA SAID I'M GOING BACK AND ARGUE WITH THAT LAWYER IN OKLAHOMA THEY SHOULDN'T HAVE FOUGHT EXTRADITION.

OKAY, MADAM CLERK, THERE'S THE SENTENCE, THANK YA'LL VERY MUCH. SEE YA'LL LATER.

MR. MEACHAM: THANK YOU, YOUR HONOR.

MR. LONG: YOUR HONOR, AM I INCORRECT IN ADVISING THE FAMILY THAT ANY APPEAL OF CONVICTION AND SENTENCE DOES NOT BEGIN UNTIL HE IS PICKED UP, SENTENCE IS IMPOSED?

THE COURT: THAT'S CORRECT, UNTIL HE'S FOUND AND HE'S TOLD IN OPEN COURT WHAT HIS SENTENCE IS.

MR. LONG: NOT TO PUT WORK ON THE SOLICITOR, YOUR HONOR, BUT WE STILL HAVE A PENDING ORDER, WE WOULD ASK THE SOLICITOR'S INTENTION WHETHER THAT ORDER IS TO BE COMPLETED AND MADE A PART OF ---

THE COURT: JUDGE DENNIS SAID COMPLETED.

MR. LONG: PART OF THIS RECORD AND IT BE APPEALED AT THAT TIME AS WELL?

THE COURT: I THINK IT WOULD BUT I'LL BE HONEST WITH YOU, I'VE ALREADY SAID I WOULD HAVE ADMITTED IT, TOO, FROM WHAT I'VE HEARD BUT WE'LL LET JUDGE DENNIS' ORDER, IT WAS A LOT OF CASE.

MR. LONG: I UNDERSTAND, YOUR HONOR. THANK YOU, YOUR HONOR, WILL YOU BE HERE TOMORROW AS WELL?

THE COURT: I'LL BE HERE TOMORROW MORNING, YES.

END OF REQUESTED TRANSCRIPT - - - -

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.

June 24, 2011

Brenda R. Babb

BRENDA R. BABB, CVR

OFFICIAL REPORTER

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS
2005-GS-26-1401

COUNTY OF HORRY

STATE OF SOUTH CAROLINA,)
)
-vs-)
)
REGGIE PINKNEY,)
)
Defendant.)

March 18, 2011

B E F O R E:

HONORABLE LARRY B. HYMAN, JR.

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

DONNA EARLS ELDER, Esquire
Attorney for the State

RUSSELL B. LONG, Esquire
Attorney for the Defendant

Henry P. Young
Court Reporter

P-R-O-C-E-E-D-I-N-G-S

MS. ELDER: Your Honor, this is the State versus Reggie Allen Pinkney, 2005-GS-26-1401, trafficking cocaine ten to twenty-eight grams. We're here to open a sealed sentencing, he was tried in absentia, it appears to be on January 12th, 2006. A sentence was, a verdict was rendered and a sentence was given. I believe the sentence has been handed to the Court by the Clerk of Court. At the time Mr. Bo Long represented Mr. Pinkney in the trial. Mr. Russell Long is standing in for that today, Your Honor.

THE COURT: All right. I have a sealed envelope, file number 2005-GS-26-1401, State versus Pinkney, Reggie Allen Pinkney. The envelope bears the signature of the Honorable James E. Lockemy, dated January 12, 2006. The sentence is sealed, I will open it.

I have before me the original true bill indictment which bears the signature of the jury foreman Richard Carroll, dated 1/22/2006. It has the verdict of guilty indicated. I also have the original sentencing sheets indicating that the defendant was tried in absentia for the offense of trafficking crack more than ten grams but less than

twenty-eight grams third offense. That corresponds with the charge indicated on the true bill indictment of trafficking crack cocaine more than ten grams less than twenty-eight grams. The sentence of the Court is that wherefore the defendant is committed to the State Department of Corrections for a determinate term of fourteen years, given credit for twenty-five days that he has served, it is specifically indicated. Signed by Presiding Judge James E. Lockemy, January 12, 2006.

All right, let me hear from you, Mr. Long.

MR. LONG: Your Honor, the only thing I would point out, Reggie has indicated to me he has actually been incarcerated during a period since January of '06. Is that right, Reggie?

THE DEFENDANT: Yes.

MR. LONG: I would just ask to look into that. He might be able to get credit for some more time served. I don't know exactly what the circumstances are there.

THE COURT: You don't know how long he has been incarcerated?

MS. ELDER: I might be able to help with that, Your Honor. We filed an interstate detainer

on him on April 17, 2007. He apparently had a North Carolina sentence. He was being held up in Wytheville, North Carolina, he was just recently transported down here for our charges. Our detainer has been in place on him since April 17, 2007.

THE COURT: All right. And what is the State's position on that? The order specifically gives him credit for twenty-five days.

MS. ELDER: Yes, Your Honor. That was in '06. There was a bench warrant issued after the trial. He was picked up in North Carolina, he was being held the entire time.

THE COURT: On the North Carolina charges?

MS. ELDER: Yes, sir. He couldn't have bonded out on those charges because we did in fact have an Interstate Compact detainer on him. I would think he would be due credit for that.

THE COURT: All right. Then do we need an order to that effect?

MR. LONG: I think it might clear things up a little bit. I will get an order together.

THE COURT: All right. Get the consent from Miss Elber on that order, please.

MR. LONG: Judge, I won't be able to get it

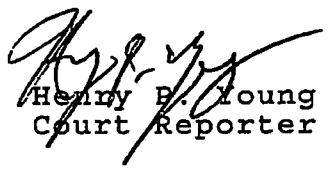
done today. Next week?

THE COURT: That's all right, I will be around next week.

I, the undersigned Henry P. Young, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case in the Circuit Court for Horry County, South Carolina, on the 18th day of April, 2011.

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

May 18, 2011



Henry P. Young
Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

James E. Lockemy, Circuit Court Judge
Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

REGGIE PINKNEY,

APPELLANT

APPELLATE CASE NO. 2011-188769

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in holding that the previous ruling overruling the motion to suppress the drugs was the law of the case?

STATEMENT OF THE CASE

On April 28, 2005, the Horry County Grand Jury indicted Reggie Allen Pinkney on the charge of trafficking crack cocaine between 10 – 28 grams third offense. On October 26-27, 2005, a trial was held in Pinkney's absence before the Honorable R. Markley Dennis and a jury. Pinkney was represented by J.M. "Buddy" Long, III, and the state was represented by Tim Meacham. The trial ended in a mistrial. On January 11-12, 2006, a second trial was held in Pinkney's absence before the Honorable James B. Lockemy and a jury. Pinkney was represented by J.M. Long, III, and the state was represented by Tim Meacham. The jury returned a verdict of guilty as indicted. Judge Lockemy held this was a second offense because Pinkney pled guilty in June 1999 to the prior offenses at one time. R. 259, ll. 22 – 25; R. 260, ll. 1 – 4. Judge Lockemy sealed his sentence. On March 18, 2011, Pinkney appeared before the Honorable Larry B. Hyman, Jr. for sentencing. Pinkney was represented by Russell B. Long, and the state was represented by Donna Earls Elder. Judge Hyman opened the sealed sentence and sentenced Pinkney to fourteen years. Pinkney's attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in holding that the previous ruling overruling the motion to suppress the drugs was the law of the case.

On February 23, 2005 around 1:15 in the afternoon, Officer Tyrone Williams, of the Conway Police Department, saw Pinkney driving a GMC truck. The license tag was not affixed properly to the vehicle. R. 104, ll. 16 – 25; R. 105, ll. 1 – 24; R. 106, ll. 1- 19. When he ran the tag number, Officer Williams learned that the tag was suspended and the car was registered to Clara Pinkney, Pinkney's mother. R. 108, ll. 1 – 13; R. 125, ll. 19 – 25; R. 126, ll. 1 – 6. Officer Williams called for back up and initiated a traffic stop. R. 108, ll. 7 – 23.

Officer Williams obtained the necessary information from Pinkney such as his driver's license, and went to the patrol car to have it checked. Officer Bradley and Officer Robinson arrived and stayed with Pinkney at the car. All were in marked police cars. R. 109, ll. 1 – 25.

Then Officer Williams saw Pinkney get out of the car. Later, he saw Pinkney running and the officers running after him. Then they were all on the ground. The officers were telling Pinkney to "please stop resisting." The officer finally handcuffed Pinkney, and Officer Williams put leg irons on him. They charged him with disobeying a police officer because he did not stop, and with simple possession of marijuana. Defense counsel objected, and the judge gave a curative instruction to the jury to disregard the testimony regarding the marijuana because it had nothing to do with this case. R. 110, ll. 1 – 25; R. 111, ll. 1 – 25; R. 112, ll. 1 – 12.

Officer Robert Bradley testified that he heard the traffic stop call and responded to the scene where Pinkney was. R. 144, ll. 14 – 25; R. 145, ll. 3 – 25. Officer Bradley went to stand by the vehicle when he saw Officer Williams go to his patrol car. Officer Robinson was standing at the passenger door because there was a passenger in the car. Pinkney held up his cell phone motioning for Officer Bradley to come over. When he did go over, he saw a torn piece of a plastic baggy with a knot in it on the floor. R. 146, ll. 1 – 25; R. 147, ll. 1 – 25.

Officer Bradley testified that in his experience, a torn bag with a knot in it was usually indicative of drugs being used. He then asked Pinkney to get out of the car as the officer wanted to be able to observe Pinkney in case he made any sudden moves. He noticed that Pinkney kept touching his side so the officer decided to pat him down for weapons. R. 147, ll. 24 – 25; R. 148, ll. 1 – 25; R. 149, ll. 25.

When he started the pat down, Officer Bradley felt a hard object in Pinkney's pocket. Pinkney gave consent for the officer to reach into his pocket. The officer did and retrieved money and a lighter. R. 149, ll. 23 – 25; R. 150, ll. 1 – 7.

When Officer Bradley started to put the objects back into Pinkney's pocket, Pinkney dropped into a crouch and started to run. The officer told him to stop, grabbed him, and pushed him into Officer Robinson who came around the car. They fell to the ground, and Officer Bradley jumped on top of Pinkney. They handcuffed Pinkney because he continued to struggle. R. 150, ll. 8 – 25; R. 151, ll. 1 – 9.

Officer Bradley started searching Pinkney and felt a lump inside his pocket which was on the inside of his pants. When the officer cut the pocket with his knife, he found a

white rock like substance which appeared to be crack cocaine. R. 151, ll. 10 – 25; R. 152, ll. 1 – 21.

Officer Bradley testified that Pinkney was not under arrest until he started moving away, and the officer told him to stop, and Pinkney did not stop. Pinkney was disobeying a "lawful order to stop", and then the situation became a full custodial arrest. R. 172, ll. 21 – 25; R. 173, ll. 1 – 25.

The officers seized the alleged crack cocaine, money in the amount of $4675, a lighter, and scales. R. 121, ll.12 – 22; R. 141, ll. 21 – 25; R. 154, ll. 15 – 25; R. 155, ll. 1 – 25; R. 156, ll. 1 – 25; R. 157, ll. 1 – 2.

Lisa Floyd was the forensic chemist who analyzed the white rock like substance. R. 200, ll. 11 – 25; R. 201, ll. 1 – 25; R. 202, ll. 1 – 25. She testified that it was crack cocaine in the amount of 20.68 grams. R. 204, ll. 1 – 22.

In pretrial motion, defense counsel moved for a suppression hearing to suppress the evidence which he incorporated as part of his motion for a continuance. R. 84, ll. 22 – 25; R. 88, ll. 5 – 17. Counsel explained to the court that there was a previous trial which ended in a mistrial. There was a suppression hearing and Judge Markley Dennis ruled that the drugs were admissible. R. 85, ll. 1 – 25. Following the mistrial, Judge Dennis held that his ruling at the suppression hearing to admit the drugs would be the law of the case. Judge Dennis planned to prepare a written order. Defense counsel argued it would complicate the case because he would need to appeal the suppression ruling. Judge Dennis informed him that the order on the suppression was an interlocutory order, and not subject to appeal. R. 85, ll. 18 – 25; R. 86, ll. 1 – 25.

Defense counsel argued that no ticket was issued for a suspended tag which was the reason for the stop. There was never a corner of a plastic baggy taken into evidence from the stop; and none of the three police vehicles had cameras so there was no video of this arrest. R. 87, ll. 1 – 16.

Counsel argued that this court may have a different ruling than Judge Dennis in the first trial or this judge may agree. Either way, counsel argued that without the ability of the defendant to assert his right to another suppression hearing, the case would be complicated. Counsel said they did not have a written order, nor a transcript from the first trial. R. 87, ll. 17 – 25; R. 88, ll. 1 – 25; R. 89, ll. 1 – 25.

This trial judge said he did call Judge Dennis and spoke with him about the suppression ruling and hearing. Judge Dennis told him that the key was that Pinkney ran a short distance, and was stopped for resisting arrest. He was then searched and the drugs found. Judge Dennis told him he ruled the drugs were admissible and that was to be the law of the case. The trial judge, Judge Lockemy, said he was then precluded from reviewing the admissibility of the evidence. The judge denied the motion for a continuance and suppression hearing. R. 90, ll. 1 – 25; R. 91, ll. 1 – 25; R. 92, ll. 1 – 25.

Defense counsel objected to Judge Lockemy's ruling, and asked for a motion to suppress the evidence which he asserted was illegally obtained from an improper stop. Counsel argued that it was improper for Judge Dennis to bind this court by his ruling and was not permitted by law. R. 93, ll. 1 – 25. Counsel argued that a mistrial meant that it was as if a trial did not occur. Judge Lockemy said: "Exactly." Then counsel argued that meant that the ruling did not occur. Judge Lockemy said no, that it meant only the trial did not

occur. Counsel again asked for a suppression hearing on the admissibility of the drugs and the "liability of the drugs being admitted into evidence." R. 94, ll. 1 – 25.

Judge Lockemy said he would give defense counsel leeway in questioning witnesses. He was not holding a full suppression hearing, and was not going to discuss the law issues. However, after all of the testimony, if any testimony was different from that before Judge Dennis, counsel could then make a motion for the ruling to be changed. If the judge found that the evidence was not admissible, he said he could always direct a verdict. The judge said this way, it could be "reviewed." R. 95, ll. 1 – 25.

At the close of the state's case, defense counsel for a directed verdict based the drugs being illegally obtained. R. 215, ll. 7 – R. 219, ll. 7. The judge denied his motion. He said:

> Judge Dennis has already ruled in this area. I wanted some evidence, though, before I made a decision to continue on with it. I think I have enough evidence with it; I will deny your motion for a directed verdict based on the Judge Dennis' ruling in this matter, and my review of it here today. We'll go forth. Motion denied.

R. 221, ll. 16 – 25; R. 222, ll. 1 – 25.

Following the verdict, defense counsel moved for a new trial or a JNOV. Counsel argued that a suppression hearing was "justified" in this case, and that Judge Dennis' order should not have been carried forward and used by this court to prevent Pinkney from having a suppression hearing. R. 252, ll. 10 – 25; R. 253, ll. 1 – 9.

Judge Lockemy then sentenced Pinkney on a trafficking crack cocaine second offense instead of a third because he pled guilty to several prior drug offenses at one time. He sealed the sentence. R. 253, ll. 14 – R. 260, ll. 4.

At the first trial held October 26-27, 2005, before Judge Markley Dennis, defense counsel moved to suppress the drugs. R. 6, ll. 8 – R. 7, ll. 25. A suppression hearing was

held with the three officers testifying in camera: Officers Williams, Bradley and Robinson. R. 8, ll. 1 – R. 65 ll. 25. Defense counsel argued that the drugs were illegally seized as Pinkney had a right to resist an unlawful search. R. 66, ll. 18 – R. 70, ll. 20.

Judge Dennis denied the motion to suppress and admitted the drugs. R. 70, ll. 21 – Supp. R. 1, ll. 17.

At the close of the trial following the mistrial, defense counsel stated to the court that it was his understanding that a mistrial meant that it was as if a trial never occurred. Judge Dennis replied: "Correct." R, 75, ll. 23 – R. 76, ll. 1. Defense counsel then said that meant that motions on suppressions did not carry over. Judge Dennis stated yes, they did. Judge Dennis said the order was interlocutory and was not appealable. Judge Dennis held that his ruling was the final ruling and order in this case. He said it could not be changed by another judge, and it was not proper for another judge to hear it. He stated:

> So I believe it has to be reduced to writing to preserve it.

R. 76, ll. 2 – R. 78, ll. 22.

In State v. Woods, 382 S.C. 153, 676 S.E.2d 128 (2009), the Supreme Court held that a mistrial was the equivalent of no trial and left the cause pending in the circuit court. The Court also held that a court ruling as to the admissibility and competency of testimony during a trial which is later declared a mistrial results in no binding adjudication of the rights of the parties.

In State v. Woods, id, Woods was charged with murder, burglary and criminal sexual conduct (CSC). Woods requested a transfer of venue due to extensive pre-trial publicity. The state consented, and the transfer was granted to another county, Marion. The

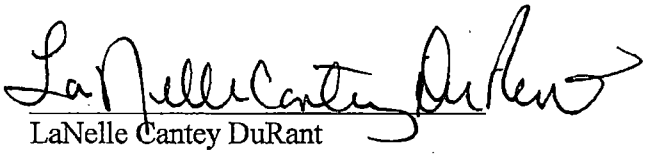
first trial ended in a mistrial. When the case was called for the second trial, the state withdrew its consent to transfer of venue. The trial was held in Clarendon County, and Woods was convicted. The Supreme Court affirmed the convictions and wrote that since the first trial resulted in a mistrial, it was a nullity and began anew when called again for trial.

The Supreme Court cited the case of Grooms v. Zander, 246 S.C. 512, 514, 144 S.E.2d 909, 910 (1965) which held that rulings of the trial judge in a proceeding ending in a mistrial represented no binding adjudication upon the parties as the mistrial left the parties in status quo ante.

CONCLUSION

Based on the above, the conviction should be reversed, and the case remanded for a new trial with a full suppression hearing.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 19th day of February, 2013.

CERTIFICATE OF COUNSEL

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

February 19, 2013

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

James E. Lockemy, Circuit Court Judge
Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

REGGIE PINKNEY,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Christina J. Catoe, Esquire, Assistant Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 19th day of February, 2013.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 19th day of February, 2013.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County
The Honorable James E. Lockemy, Circuit Court Judge
The Honorable Larry B. Hyman, Jr., Circuit Court Judge
Appellate Case No. 2011-188769

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

v.

REGGIE PINKNEY,

APPELLANT.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The issue raised has not been properly presented to the appellate court because there is no statement of argument or application of law to facts in the body of the brief. Even if the issue had been properly presented, the issue is moot and was waived and not preserved. Finally, Appellant suffered no prejudice from the trial judge's statements indicating that the previous judge's ruling admitting the drugs was the law of the case because the trial judge independently reviewed the evidence and determined that the drugs were admissible.

ARGUMENT

The issue raised has not been properly presented to the appellate court because there is no statement of argument or application of law to facts in the body of the brief. Even if the issue had been properly presented, the issue is moot and was waived and not preserved. Finally, Appellant suffered no prejudice from the trial judge's statements indicating that the previous judge's ruling admitting the drugs was the law of the case because the trial judge independently reviewed the evidence and determined that the drugs were admissible.

Issue Presentation

Initially, Respondent submits that Appellant's issue that "[t]he trial court erred in holding that the previous ruling overruling the motion to suppress the drugs was the law of the case" has not been properly presented to this Court. Other than the issue statement on page five and the conclusion statement on page twelve, Appellant's brief contains **no** statements of argument supporting his position. (See Brief of Appellant, p. 5-12). Instead, the brief merely recites the underlying facts and testimony, and arguments and rulings made below, then sets forth the facts and holding of State v. Woods, 382 S.C. 153, 676 S.E.2d 128 (2009), and the holding of Grooms v. Zander, 246 S.C. 512, 144 S.E.2d 909 (1965). These are the only two cases cited in Appellant's Brief. (See Brief of Appellant, p. 2.)

Appellant's brief contains **no** statements of analysis or application of these cases to the facts of Appellant's case. (See Brief of Appellant, p. 10-11). Appellant also does not adopt or incorporate trial counsel's arguments into his appellate argument. More importantly, Appellant never explains how or why he believes Judge Lockemy erred **or** how or why he suffered prejudice warranting a new trial.[1] See, e.g., State v. Smith, 230

[1] In that vein, Respondent would point out that any issue with the admission of the drugs and other items found as a result of the search was not properly preserved for review because when these items were offered for admission at trial, defense counsel's sole objection to these items was on the ground of an allegedly improper chain of custody. (See R. p. 117-121; p. 204-206). See, e.g., State v. Benton, 338 S.C.

S.C. 164, 168, 94 S.E.2d 886, 887 (1956) ("The burden is upon the appellant to satisfy this court that there has been prejudicial error."). Accordingly, because the argument on appeal is merely conclusory, this Court should find that the issue set forth in Appellant's issue statement has been abandoned.[2] See State v. Hill, 394 S.C. 280, 296-97, 715 S.E.2d 368, 377-78 (Ct. App. 2011) ("Based upon the *simple recitation of the extensive arguments raised at the trial level*, including several disruptions of side issues requiring in camera testimony, as well as the *lack of clarity on the ultimate issue at the appellate level* and the fact that appellate counsel *merely recites the extensive testimony and arguments of counsel without even adopting trial counsel's arguments*, along with appellate counsel's two sentence conclusory argument with citation to only Brady and *no analysis whatsoever as to why or how Brady applies*, we find this issue is abandoned. The mere fact that Hill cited to Brady does not provide this court with any guidance as to why the State should be deemed to have withheld material impeachment evidence entitling Hill to a mistrial.") (emphasis added); see also State v. Jones, 392 S.C. 647, 655, 709 S.E.2d 696, 700 (Ct. App. 2011) ("An issue is also deemed abandoned if the argument in the brief is merely conclusory.") (citation omitted); State v. Tyndall, 336 S.C. 8, 16-17, 518 S.E.2d 278, 282-83 (Ct. App. 1999) (argument was deemed abandoned where a single conclusory statement in the appellant's brief left un-argued the purported error being raised).

151, 156-57, 526 S.E.2d 228, 231 (2000) (issue not preserved if party argues one ground for objection at trial and a different ground on appeal).

[2] Notably, Appellant cannot correct this problem by addressing it in a reply brief. See Glasscock, Inc. v. U.S. Fidelity and Guar. Co., 348 S.C. 76, 82, 557 S.E.2d 689, 692 (Ct. App. 2001) ("an argument made in a reply brief cannot present an issue to the appellate court if it was not addressed in the initial brief") (citation omitted); Bochette v. Bochette, 300 S.C. 109, 112, 386 S.E.2d 475, 477 (Ct.App.1989) ("An appellant may not use either oral argument *or the reply brief* as a vehicle to argue issues not argued in the appellant's brief.") (citations omitted) (emphasis added).

The Issue is Moot

Assuming the issue set forth in Appellant's issue statement is properly before this Court, Respondent submits that the issue of whether Judge Lockemy erred in finding that Judge Dennis's previous ruling admitting the drugs was the law of the case is moot. Critically, Appellant does not assert on appeal that it was, in fact, error to admit the drugs. (See Brief of Appellant, p. 5-12). In other words, Appellant does not argue on appeal that Judge Dennis's substantive ruling - or Judge Lockemy's later substantive ruling - that the drugs were admissible was actually incorrect. (See Oct. 2005 Trial Tr., p. 6-72; Supp. R. p.1; R. p. 28-30; p. 215-222; p. 268, lines 15-18). Therefore, it is now the law of the case that the there was no Fourth Amendment violation warranting suppression of the drugs. See, e.g., State v. Black, 400 S.C. 10, 28, 732 S.E.2d 880, 890 (2012) & State v. Fripp, 396 S.C. 434, 441, 721 S.E.2d 465, 468 (Ct. App. 2012) (a ruling, right or wrong, that is not appealed becomes the law of the case). This renders moot any issue regarding whether or not Judge Lockemy erred in stating he was bound by Judge Dennis's previous ruling. See, e.g., Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001) ("An appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy.") (citation omitted); Sloan v. Greenville County, 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) (the appellate court does not concern itself with moot or speculative questions; a case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy) (citations omitted). Accordingly, there is no need for this Court to resolve the issue.

The Argument was Waived

Again, assuming the argument raised in Appellant's issue statement is properly before this Court, the issue was waived below. After Judge Lockemy changed his mind and decided that he *would* independently review the admissibility of the drugs and grant a directed verdict if he found they were not admissible (R. p. 85-97; see p. 95, line 11 – p. 97, line 10), Appellant's counsel did not raise any objection to this compromise procedure. (R. p. 95, line 11 – p. 97, line 10). Further, after the State rested, Appellant's counsel moved for a directed verdict of not guilty, and stated that "we have accepted the law of the case decision from Judge Dennis, the testimony that was before him you've heard here today." (R. p. 215, lines 7-11). Counsel then made the same argument he had made all along regarding the reasons why the drugs were not admissible, which was essentially that the traffic stop was a pretext for a "shake down" narcotics investigation and that the officers' testimony was skewed to cover this fact. (See Oct. 2005 Trial Tr., p. 13-29, p. 31, p. 40-64, & p. 66-70; see also R. p. 87, lines 4-16; R. p. 215-219).

After hearing the solicitor's response, and questioning the solicitor regarding some of the circumstances of the stop and search, Judge Lockemy ruled that the drugs were admissible and he explained his reasoning. (See R. p. 219-222). Judge Lockemy then stated: "Judge Dennis has already ruled in this area. I wanted some evidence, though, before I made a decision to continue on with it. I think I have enough evidence with it; I will deny your motion for a directed verdict based on Judge Dennis' ruling in this matter and my review of it here today. We'll go forth, motion denied." (R. p. 222, lines 20-25). Defense counsel's only response to this was "Thank you, Your Honor." (Supp. R. p. 2, line 1).

Indeed, Appellant did not raise any objection to Judge Lockemy's compromise procedure until after the jury reached its verdict. (See R. p. 252). At that point, Appellant's counsel stated: "Again, Your Honor, we feel that a suppression hearing was justified in this case, that Judge Dennis' order should not have been carried forward and used by this Court to prevent us from having a suppression hearing." (R. p. 252, lines 16-20). Judge Lockemy interrupted, "Well you really think you were prevented from having a suppression hearing? What questions were [there] you didn't ask? I even put the officer up out of the presence of the jury [and] let you ask him more questions. (R. p. 252, lines 21-25). Counsel responded, "And I can only compliment Your Honor on the way you handled that as being the least intrusive way of both applying Judge Dennis' order and permitting us to go into those issues that we may have would have wanted to raise, you know, at a suppression hearing, but we just feel that a new trial should be granted with a full suppression hearing. (R. p. 253, lines 1-7). Judge Lockemy denied the motion and proceeded with sentencing. (R. p. 253, lines 8-11).

Respondent submits that, because Appellant failed to *timely* object to Judge Lockemy's compromise procedure of independently reviewing the evidence during trial and making his own determination at the directed verdict stage regarding whether or not suppression was appropriate – and especially where defense counsel in fact complied with this procedure, failed to object until after trial, and, at one point, actually stated that Appellant "accepted the law of the case decision from Judge Dennis," he cannot now complain on appeal.[3] See State v. Williams, 303 S.C. 410, 411, 401 S.E.2d 168, 169 (1991) (a defendant must object at his first opportunity to preserve an issue for appellate

[3] Notably, as mentioned previously, Appellant also failed to preserve any objection to the actual admissibility of the drugs (a separate issue from the issue Appellant raises on appeal) because he failed to contemporaneously object except on the ground of "chain of custody." See *supra*, p. 5-6, n. 1.

review); State v. Benton, 338 S.C. 151, 156-57, 526 S.E.2d 228, 231 (2000) (holding that an issue conceded in the trial court cannot be argued on appeal); Ex parte McMillan, 319 S.C. 331, 335, 461 S.E.2d 43, 45 (1995) (issue is procedurally barred where appellant's counsel conceded issue in the trial court); State v. Castineira, 341 S.C. 619, 623-24, 535 S.E.2d 449, 451-52 (Ct. App. 2000) (where counsel acquiesces in judge's limitation and makes no further objection, the issue is not reviewable on appeal). Accordingly, Appellant's pre-trial request for a suppression hearing and objection to Judge Dennis's previous ruling being the "law of the case" was waived and the issue cannot properly be reviewed on appeal.

Appellant Suffered No Prejudice

Finally, assuming the issue is properly before this Court, and assuming Judge Lockemy did in fact err by stating that Judge Dennis's previous ruling was the "law of the case," Appellant suffered no prejudice because Judge Lockemy ultimately did make his own review of the evidence relevant to suppression of the drugs, and ultimately did make his own determination that the drugs were admissible.[4] Although Judge Lockemy initially indicated that he was precluded from reviewing the suppression issue because Judge Dennis's prior ruling that the drugs were admissible was the "law of the case," (R. p. 91, lines 16-23; p. 92, lines 22-23), he subsequently changed his mind and concluded that he would make his own evaluation of the admissibility of the drugs. (R. p. 95, line 11 – p. 97, line 10). Judge Lockemy stated he would allow defense counsel leeway with his questioning of the witnesses so that he would have the "full fact situation," and then,

[4] Appellant also suffered no prejudice where, as mentioned previously, he does not argue that either judge actually erred by admitting the drugs. See *supra*, p. 7. Again, he does not assert anywhere in his Brief that he suffered any prejudice. See *supra*, p. 5-6. See, e.g., State v. Smith, 230 S.C. 164, 168, 94 S.E.2d 886, 887 (1956) ("The burden is upon the appellant to satisfy this court that there has been *prejudicial* error.") (emphasis added).

at the defense's request, he would review the suppression issue and, if he determined the drugs were not in fact admissible, he would grant a directed verdict. (R. p. 95-96). Judge Lockemy stated that he felt this would be the best way to proceed under the circumstances considering issues of judicial economy. (See R. p. 96-97).

Prior to commencement of trial, defense counsel provided Judge Lockemy with a summary of the testimony from the previous suppression hearing (to which the solicitor stipulated), and Judge Lockemy, in the presence of the solicitor and defense counsel, discussed the suppression issue and the facts with Judge Dennis in chambers. (See R. p. 85-97). Thus, Judge Lockemy was familiar with both the facts and the issues involved in Appellant's suppression motion. Additionally, during trial, over the objection of the solicitor, Judge Lockemy allowed defense counsel to question the arresting officers in great detail regarding the circumstances surrounding the search of Appellant. (R. p. 95-96; p. 122-143; p. 159-175). Further, Judge Lockemy also questioned one of the officers *outside the presence of the jury* to fully ascertain the facts and circumstances leading up to the discovery of the drugs. (See R. p. 176-184). Both parties were given the opportunity to also question this witness outside the presence of the jury. (R. p. 184, lines 7-10).

After the State rested, Judge Lockemy heard Appellant's motion for directed verdict and his motion for suppression of the drugs. (See R. p. 215-219). Judge Lockemy also heard the solicitor's response to the motion to suppress. (See R. p. 219-221). Judge Lockemy then issued a detailed ruling explaining why he believed that the drugs were admissible. (See R. p. 221-222). He concluded by stating that, "Judge Dennis has already ruled in this area. *I wanted some evidence, though, before I made a decision to continue on with it. I think I have enough evidence with it*; I will deny your

motion for a directed verdict based on Judge Dennis' ruling in this matter *and my review of it here today.* We'll go forth, motion denied." After sentencing, Judge Lockemy again affirmed that regardless of Judge Dennis's previous ruling, he would have also admitted the drugs based upon the testimony he heard. (See R. p. 268, lines 15-18).

Based upon the foregoing, it is clear that Judge Lockemy conducted his own thorough review of the relevant evidence and independently concluded that the drugs were admissible. Therefore, because Appellant suffered no prejudice from Judge Lockemy's comments indicating that Judge Dennis's previous ruling was the law of the case, a new trial - with yet another suppression hearing - is not warranted. See, e.g., State v. Northcutt, 372 S.C. 207, 217, 641 S.E.2d 873, 878 (2007) (pointing out that determining whether the trial judge committed error is only the first step of the analysis; the second step is to determine whether the appellant was prejudiced or whether any error committed by the trial judge was harmless under all the circumstances of the case); see also State v. Mitchell, 330 S.C. 189, 194, 498 S.E.2d 642, 644-45 (1998).

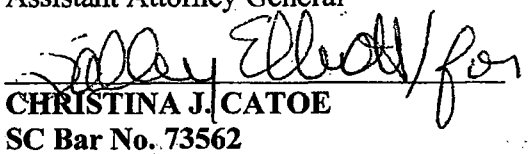
CONCLUSION

For the reasons discussed above, Respondent requests that this Court affirm Appellant's conviction and sentence.

Respectfully submitted,

ALAN WILSON
Attorney General

CHRISTINA J. CATOE
Assistant Attorney General



CHRISTINA J. CATOE
SC Bar No. 73562

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737
ATTORNEYS FOR RESPONDENT

February 19, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Horry County
James E. Lockemy, Circuit Court Judge
Larry B. Hyman, Jr., Circuit Court Judge

THE STATE, Respondent,

vs.

REGGIE PINKNEY, Appellant.

CERTIFICATE OF COUNSEL

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

ALAN WILSON
Attorney General

CHRISTINA J. CATOE
Assistant Attorney General

By: _____/for
CHRISTINA J. CATOE

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

ATTORNEYS FOR RESPONDENT

February 19, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Horry County
James E. Lockemy, Circuit Court Judge
Larry B. Hyman, Jr., Circuit Court Judge

THE STATE, Respondent,

vs.

REGGIE PINKNEY, Appellant.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Lanelle C. Durant, Esquire
Appellate Defender
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

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

This 19th day of February, 2013

Norma B. Bigbee

NORMA BIGBEE
Legal Assistant

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

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

REGGIE PINKNEY,

APPELLANT

APPELLATE CASE NO. 2011-188769

FINAL REPLY BRIEF OF APPELLANT

LANELLE CANTEY DURANT
Appellate Defender

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

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

ARGUMENT IN REPLY

The trial court erred in holding that the previous ruling overruling the motion to suppress the drugs was the law of the case.

The state argues that the issue was not properly presented to the appellate court. Rule 208(b)(1), SCACR, provides that the brief of appellant should include the following:

(A) Table of Contents

(B) Statement of Issues

(C) Statement of The Case

(D) Argument

(E) Conclusion

Appellant's brief contains all of the requirements as stated in the rule.

Section (D) regarding the argument, provides that discussion and citations of authority be included. The rule states that "A party MAY also include a separate statement of facts relevant to the issues presented for review with reference to the record on appeal, which MAY include contested matter and summarize the party's contentions." Appellant's brief contains citations to authority supporting appellant's issue on appeal.

The authorities cited by appellant are straightforward with a clear indication as to how they relate to appellant's issue. Both State v. Woods, 382 S.C. 153, 676 S.E.2d 128 (2009), and Grooms v. Zander, 246 S.C. 512, 144 S.E.2d 909, 910 (1965) provide that the rulings in a trial ending in a mistrial result in no binding adjudication upon the parties. It is clear that the application of these holdings to Pinkney's case mean that the ruling by Judge Dennis from the mistrial should not be applied to Pinkney's second trial before Judge Lockemy and that Judge Lockemy should not consider it. Defense counsel made this

argument to Judge Lockemy. R. 93, ll. 1 – R. 94, ll. 25. This argument is contained in the Brief of Appellant on pages 7-9.

The state argues that the issue is waived. This is in error as trial counsel made the pretrial motion for a suppression hearing in an effort to suppress the drugs. Counsel gave reasons as to why the drugs should be suppressed because they were obtained in an illegal stop. R. 87, ll. 1 – 25; R. 93, ll. 1 – 25. Counsel objected to Judge Lockemy's ruling denying the suppression hearing and asked for a motion to suppress the drugs. R. 93, ll. 1 – 25. Regarding counsel's response to Judge Lockemy's compromise procedure, counsel said he had nothing else at this time. R. 97, ll. 1 – 25. Counsel later objected again in his directed verdict motion by the drugs being illegally obtained. R. 215, ll. 7 – R. 219, ll. 7.

Counsel made the same argument following the verdict in his motion for a new trial by arguing that Judge Dennis' order should not have been used in the second trial to prevent Pinkney from having a suppression hearing. R. 252, ll. 10 – R. 253, ll. 9.

Rule 18, SCRCrimP provides that counsel shall not attempt to further argue any matter after he has been heard and the ruling of the court has been pronounced.

Judge Lockemy's ruling admitting the drugs was clearly prejudicial to Pinkney because there was a reasonable probability that he would not have been convicted without the drugs.

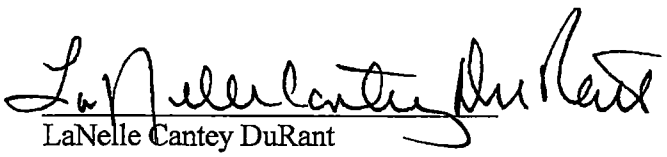
A reply brief can be considered in this case because no new issues are raised herein. According to the cases cited by the state in Footnote 2, no new issues can be presented in a reply brief. See Glasscock, Inc. v. U.S. Fidelity and Guar. Co., 348 S.C. 76, 82, 557 S.E.2d 689, 692 (Ct. App. 2001); Bochette v. Bochette, 300 S.C. 109, 112, 386 S.E.2d 475, 477

(Ct. App. 1989) which both hold that a reply brief cannot present or argue issues that were not included in appellant's brief. No new issues are presented in this reply brief.

CONCLUSION

For the foregoing reasons, this Court should hold that the previous ruling overruling the motion to suppress the drugs by Judge Dennis in the trial which ended in a mistrial should not have been considered as the law of the case in the second trial. Therefore, the case should be remanded for a new trial with a full suppression hearing.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT.

This 19th day of February, 2013.

CERTIFICATE OF COUNSEL

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

February 19, 2013

LaNelle Cantey DuRant
Appellate Defender

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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

REGGIE PINKNEY,

APPELLANT

APPELLATE CASE NO. 2011-188769

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Reply Brief of Appellant in the above referenced case has been served upon Christina J.Catoe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 19th day of February, 2013.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 19th day of February, 2013.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Reggie Pinkney, Appellant.

Appellate Case No. 2011-188769

Appeal From Horry County
James B. Lockemy, Circuit Court Judge
Larry B. Hyman, Jr., Circuit Court Judge

Unpublished Opinion No. 2013-UP-490
Submitted October 1, 2013 – Filed December 23, 2013

AFFIRMED

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

Attorney General Alan McCrory Wilson and Assistant Attorney General Christina J. Catoe, both of Columbia, for Respondent.

PER CURIAM: Reggie Pinkney appeals his conviction of trafficking cocaine, arguing the trial judge improperly relied on a pre-trial ruling denying a motion to

suppress from a proceeding that resulted in a mistrial. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Carlson*, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) ("A party cannot complain of an error which his own conduct has induced."); *id.* (holding the Appellant could not complain when he "consented to the procedure proposed by the trial [court]"); *State v. Whipple*, 324 S.C. 43, 51, 476 S.E.2d 683, 687 (1996) ("By proceeding . . . without further objection, [Appellant] waived any right to complain."); *State v. Patton*, 322 S.C. 408, 412, 472 S.E.2d 245, 247 (1996) ("[T]he trial court's denial of a suppression hearing in this case was harmless and did not prejudice Appellant."); *id.* at 412, 472 S.E.2d at 248 ("A careful review of the record in this case assures us that the trial court possessed all the necessary information on which to base its ultimate holding that no constitutional violations occurred, and we agree with that holding.").

AFFIRMED.[1]

FEW, C.J., and PIEPER and KONDUROS, JJ., concur.

---

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

602

CLOSING LETTER SENT
ON 1.9.14
Attorney initials HCO
Assistant initials PL

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

January 08, 2014

The Honorable Melanie Huggins-Ward
PO Box 677
Conway SC 29528-0677

REMITTITUR

Re: The State v. Reggie Pinkney
Lower Court Case No. 2005GS2601401
Appellate Case No. 2011-188769

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

Jenny A. Kitchings
CLERK

Enclosure

cc: LaNelle Cantey DuRant, Esquire
Christina J. Catoe, Esquire
Alan McCrory Wilson, Esquire

JAN 8 2014

FORM 5

STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry)

IN THE COURT OF COMMON PLEAS

14 2711

Reggie Pinkney #259522
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

APPLICATION FOR POST-CONVICTION RELIEF

INSTRUCTIONS - 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 veified (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 Tyger River C.I. Enoree S.C.
2. Name and location of Court which imposed sentence General Sessions County S.C.
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) 05-GS-26-1401 / Trafficking Crack Co.
   (b) _____
   (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
   (a) January 12, 2006 / 14 years
   (b) _____

Revised 3/2003

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) ✓ after a plea of not guilty Tried in Absentia

(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 "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. The State of S.C. Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. December 23, 2013

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. - See pages 8 and 9 for this section

ii. _____

iii. _____

9. If you answered "no" 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: See page 10 for this section

(a) _____

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See pages 10 and 11 for this section

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

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?

yes

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. Arguing the trial Judge improperly relied on a pre-trial

ii. ruling denying a motion to suppress from a proceeding

iii. that resulted in a mistrial

(b) the proceedings in which each ground was raised:

i. Direct appeal / without oral arguments

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) All of the grounds set forth in 10 besides

(b) (Prejudice of the courts) They were

(c) not direct appeal issues

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? yes

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. see page 12 for this section

ii.

iii.

(b) the proceedings at which each such attorney represented you:

i.

ii.

iii.

19. State clearly the relief you seek in filing this application:

Reconsideration or Vacating of sentence

20. Are you now under sentence from any other court that you have not challenged?

NO

·608

STATE OF SOUTH CAROLINA)
)
County of Horry)

VERIFICATION

I, , 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.

Reggie Parker

SWORN to and subscribed before me this 1st day of April, 2014.

Notary Public of S.C. (L.S.)

My Commission Expires: 1-14-2019

HORRY COUNTY
14 MAY -1 PM 2:14
CLERK OF COURT

Revised 3/2003

APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF 14 2711

I, , 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.

Keggi Pinkney
Applicant

SWORN or affirmed to and subscribed before me this 21st day of April, 2014.

Robert Johns, Jr.
Notary Public of S.C.

My Commission Expires: 1-14-2019

HORRY COUNTY
14 MAY -1 PM 2:
BELANE HIGGINS-WARD
CLERK OF COURT

Revised 3/2003

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Reggie Pinkney, Appellant.

Appellate Case No. 2011-188769

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James B. Lockemy, Circuit Court Judge
Larry B. Hyman, Jr., Circuit Court Judge

Unpublished Opinion No. 2013-UP-490
Submitted October 1, 2013 – Filed December 23, 2013

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Attorney General Alan McCrory Wilson and Assistant Attorney General Christina J. Catoe, both of Columbia, for Respondent.

PER CURIAM: Reggie Pinkney appeals his conviction of trafficking cocaine, arguing the trial judge improperly relied on a pre-trial ruling denying a motion to

suppress from a proceeding that resulted in a mistrial. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Carlson*, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) ("A party cannot complain of an error which his own conduct has induced."); *id.* (holding the Appellant could not complain when he "consented to the procedure proposed by the trial [court]"); *State v. Whipple*, 324 S.C. 43, 51, 476 S.E.2d 683, 687 (1996) ("By proceeding . . . without further objection, [Appellant] waived any right to complain."); *State v. Patton*, 322 S.C. 408, 412, 472 S.E.2d 245, 247 (1996) ("[T]he trial court's denial of a suppression hearing in this case was harmless and did not prejudice Appellant."); *id.* at 412, 472 S.E.2d at 248 ("A careful review of the record in this case assures us that the trial court possessed all the necessary information on which to base its ultimate holding that no constitutional violations occurred, and we agree with that holding.").

AFFIRMED.[1]

FEW, C.J., and PIEPER and KONDUROS, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

10) A. Ineffective Assistance of Counsel
B. Tampering of evidence
C. Lack of evidence
D. Illegle Search and Seizer
E. Entrapment
F. Prejudice of the Court
G. Prejudicial Testimony (Marijuana)
H. Reconsideration of Sentence

11) A. Mr. J. M. Buddy Long III ; Did not live up to agreement; Did not argue issues I addressed to him; I do not feel he investigated nor argued my case to the best of his ability; Attorney much over 90 days; Attorney caught crimanal charges; We never prepared for a trial; Attorney did not preserve Issues in trial for appeal correctly; Nor did Mr. Russell B Long Counsel me correctly

B. The officer issued scale read less weight; So officers used scale that was found in my vehicle because it read more weight

C. Corner of baggie not in evidence

D. Officer search me and my vehicle against my will; Nor was I under arrest

E. Officer up the weight of the drugs; officer push me and said I attempted to run; No in car camera; No charges of the probable cause of the stop

F. Judge denied me of a new suppression Hearing; Used suppression Hearing from Trial that was resulted a mistrial

G. Marijuana was irrelavant to trial

H. General Request for relief

18) A. i. Michael Suggs - 203 Laural St.
Conway SC. 29526

ii. J.M. Buddy Long III - 203 Laural St.
Conway SC. 29526

iii. Russell B. Long - 5307 North Kings Hwy
Myrtle Beach SC 29577

iiii. Orrie West - 203 Laaral St.
Conway S.C. 29526

iiiii. LaNelle DuRant - 1330 Lady St. Suite 401
Columbia S.C. 29201-3332

i. Arraignment

ii. Trial

iii. Sentencing

iiii. filed Notice of Appeal

iiiii. Direct Appeal

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
Reggie Pinkney, #259522, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2014-CP-26-2711 **RETURN**

Respondent, making its Return to the Application for Post-Conviction Relief filed May 1, 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 April 2005, the Horry County Grand Jury indicted Applicant for trafficking crack cocaine, 10-28 grams (2005-GS-26-91401). J.M. Long, III, Esquire, represented Applicant. On October 26, 2005, Applicant proceeded to trial before the Honorable R. Markley Dennis and a jury. However, Judge Dennis declared a mistrial after the jury failed to reach a verdict.

On January 12, 2005, a trial in abstentia proceeded before the Honorable James E. Lockemy and a jury. The jury found Applicant guilty as indicted. Judge Lockemy issued a sealed sentence. On March 18, 2011, Applicant appeared before the Honorable Larry B. Hyman, Jr., who unsealed and imposed Judge Lockemy's fourteen (14) year sentence. Russell B. Long represented Applicant at sentencing.

Applicant filed a timely notice of appeal. LaNelle Cantey DuRant, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on October 1, 2013. State v. Pinkney, Op. No. 2013-UP-490 (S.C. Ct. App. filed December 23, 2013). The remittitur was returned to the circuit court on January 8, 2014.

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of counsel"
    a. "Mr. J.M. Buddy Long III; Did not live up to agreement; Did not argue issues I addressed to him; I do not feel he investigated nor argued my case to the best of his ability; Attorney much over 90 days; Attorney caught criminal charges; We never prepared for a trial; Attorney did not preserve issues in trial for appeal correctly; Nor did Mr. Russell B. Long counsel me correctly"
2. "Tampering of evidence"
3. "Lack of evidence"
4. "Illegle (sic) Search and Seizer (sic)"
5. "Entrapment"
6. "Prejudice of the Court"
7. "Prejudicial Testimony (Marijuana)"
8. "Reconsideration of sentence"

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 Applicant's allegation of ineffective assistance of counsel is without merit. In a post-conviction relief action, the applicant bears the burden of proving the allegations in their 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 counsel as a ground for relief, the applicant must prove "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 the attorney 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 that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The 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 reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced the 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.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits Applicant's allegation regarding evidence tampering, lack of evidence, searches and seizures, entrapment, and testimony about marijuana should be dismissed. 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 allegation regarding the weight of the drugs is an inappropriate challenge to the sufficiency of the evidence. Simmons, 264 S.C. at 423, 215 S.E.2d at 885 ("[T]he Uniform Post-conviction Procedure Act 'shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction.'" (citing Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973))). These allegations are challenges to the sufficiency of the evidence used to convict Applicant, and are not properly raised in a collateral attack on his conviction. Therefore, Respondent request these allegations be dismissed pursuant to Rule 12(b)(6), SCRCP.

V.

Respondent submits Applicant's allegation regarding judicial prejudice is wholly without merit and should be dismissed. An allegation of judicial prejudice must be supported by evidence of bias. State v.

Howard, 384 S.C. 212, 218, 682 S.E.2d 42, 45 (Ct. App. 2009) (quoting State v. Cheatham, 349 S.C. 101, 561 S.E.2d 618 (Ct. App. 2002)). However, the alleged bias "must be personal, as distinguished from judicial, in nature." Id. Allegations of judicial bias based on a trial judge's adverse ruling are wholly frivolous and are not grounds for relief. See Reading v. Ball, 291 S.C. 492, 495, 354 S.E.2d 397, 399 (Ct. App. 1987) ("The fact a judge rules against a litigant is not proof of prejudice by the judge[.] We find Reading's argument clearly frivolous[.]").

Furthermore, PCR "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 judicial prejudice could have been raised at trial or on appeal. His failure to do so has waived these allegations as grounds for relief. Therefore, Respondent requests these allegations be dismissed pursuant to Rule 12(b)(6), SCRCP.

VI.

Respondent submits Applicant's request for a reconsideration of his sentence should be dismissed for failure to state a cognizable claim under the Post-Conviction Procedure Act. An applicant may commence a post-conviction relief action based on the following grounds:

> "(1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
> (2) That the court was without jurisdiction to impose sentence;
> (3) That the sentence exceeds the maximum authorized by law;
> (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
> (5) That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

(6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy...."

S.C. Code Ann. § 17-27-20(a). Reconsideration of a sentence is not available in a collateral action for post-conviction relief. Accordingly, Respondent requests this allegation be dismissed pursuant to Rule 12(b)(6), SCRCP.

VII.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VIII.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held on those issues requiring one.

Respectfully submitted,

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Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

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By: _____
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Dec. 17, 2014

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS
REGGIE PINKNEY, #259522 Applicant, vs STATE OF SOUTH CAROLINA, Respondent.	2014-CP-26-2711 AFFIDAVIT OF SERVICE BY MAIL

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 17TH day of December, 2014.

Norma Bigbee, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF HORRY)	**2014-CP-26-02711**
REGGIE PINKNEY,)	
)	
Applicant,)	**Transcript of Record**
)	Post-Conviction Relief
vs.)	
)	August 11, 2015
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	

B E F O R E:

Honorable G. Thomas Cooper
Horry County Courthouse
Conway, South Carolina

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

Daniel A. Selwa, II, Esquire
Attorney for Applicant

Joshua L. Thomas, Esquire
Attorney for Respondent

Kay H. Richardson
Circuit Court Reporter

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AUGUST 11, 2015 Pg.

EXHIBITS

No. ID EV

(No Exhibits were admitted during hearing.)

(AUGUST 11, 2015)

THE COURT: Yes, sir. You may proceed.

MR. THOMAS: This is Reggie Pinkney v. State of South Carolina. It's case number 2014-CP-26-2711. This was an April, 2005 indictment for trafficking crack cocaine, 10 to 28 grams. He proceeded to trial in absentia on January 11th through 12th, 2006. He was convicted as indicted. Judge Lockemy sentenced him to fourteen years for the trafficking. That sentence was actually read on March 18th, 2011 by Judge Hyman. He did file an appeal and LaNelle DuRant at the Office of Appellate Defense perfected that appeal. The Court of Appeals affirmed his conviction in an unpublished opinion 2013-UP-490. The remittitur was returned in January of 2014. He filed this PCR in May 2014 alleging ineffective assistance of counsel and by my count there are seven other allegations that appear to be Trial Court error. He's represented by Daniel Selwa and the State is ready to proceed.

At this time, the State would move to dismiss everything but the ineffective assistance of counsel claims. Everything else looks to be free-standing claims of some sort of violations and unless they're coming in as ineffective assistance of counsel, we would just submit that that's not appropriate for PCR.

THE COURT: Is this an amended application or is it the original application?

MR. THOMAS: I believe it's the original. The only one I have, Your Honor, is the one filed on May 1st, 2014.

THE COURT: Okay.

MR. THOMAS: And, Your Honor, I guess the grounds for the record that we are moving to dismiss are just tampering of evidence, lack of evidence, illegal search and seizure, entrapment, prejudice of the Court, prejudicial testimony about the marijuana and then reconsideration of sentence.

THE COURT: All right, Mr. Selwa.

MR. SELWA: Your Honor, I cannot articulate any reasons why those shouldn't be dismissed. Honestly, I don't have anything on the two, three -- I'm sorry -- tampering with the evidence, lack of evidence, illegal search and seizure, entrapment, prejudice of the Court, prejudicial testimony and the reconsideration of the sentence. I know that my client had filed those, but I don't have anything on those as far as PCR issues.

THE COURT: Well, as Mr. Thomas says, unless they somehow relate to the performance of counsel, I would agree that they are not properly considered in a post-conviction relief action. So, I'll grant the motions.

Now, of course, in other words, that they're not appropriate as stand-alone grounds, I mean, if some -- for some reason during the trial the counsel failed to object to something, illegal search or something, then it becomes

relevant but as independent grounds, the motion is granted.

You may proceed.

MR. SELWA: Your, I would call Reggie Pinkney to the stand.

THE COURT: Come around, Mr. Pinkney.

REGGIE PINKNEY, HAVING BEEN DULY SWORN, TESTIFIES AS FOLLOWS:

CLERK: Please have a seat. State your name for the Court and spell your last name.

MR. PINKNEY: You said state my name for the Court and spell my last name?

CLERK: And spell your last name.

MR. PINKNEY: Reggie Pinkney, P-I-N-K-N-E-Y.

DIRECT EXAMINATION OF REGGIE PINKNEY BY MR. SELWA:

Q: Mr. Pinkney, you're here for a post-conviction relief; is that correct?

A: Yes, sir.

Q: And your trial attorney was Mr. Long; is that right?

A: Yes, sir.

Q: Okay. Can you tell me, did you have any attorneys on your case prior to that?

A: Well, I had Public Defender's office, which started it, which I can't remember the -- Michael Suggs.

Q: Okay.

A: Michael -- yeah, Michael Suggs

Q: Did you meet with them, the Public Defender's office?
A: Yes, I have.
Q: Okay. And what prompted you to move to Mr. Long?
A: Well, when I first met with Mr. Suggs, you know, he had no knowledge of -- or he never even really met with me to discuss my case and all of a sudden, he offered me seven years, you know, just flat out seven years. And I said, well, do you want to hear my side of the story or, you know, do you want to, you know try to break this down to where we'll both feel, you know, have a mutual understanding about it. And he said, nah, the only thing, you know, I got for you is seven years. So, you know, that day, I left and I wound up going around to other attorneys asking them could they help me in the situation. And I wound up meeting Mr. Long and we -- we had a little conference and I told him what was going on with my situation and he gave me a quota [sic] of what he wanted. And the quota was $15,000 to represent me. And I asked him, I said, well, the -- with the $15,000 that you wanting, could that at least get me a better plea than the seven years that the Public Defender office had offered me, and he told me yeah. So, I kinda like banked on that and I got him ninety percent of the money.
Q: And so, did you reject the plea at that time?
A: What you mean?
Q: The seven years, did you decide to take that plea or did

you reject it?
A: You talking about through Mr. Long?
Q: Yes, I'm assuming the plea was still offered at that time, correct?
A: Well, the plea was still offered because I never told the other attorney, Mr. Suggs that I didn't want him to represent me. I just wind up going and trying to find a better source, you know, of -- a better, I don't know how to say it but I went to him hoping that I could get better than the seven years.
Q: And did you -- how many meetings did you have with Mr. Long?
A: I may have had probably, actually, I probably met him probably two times and we probably discussed a few issues but all in all, I met with him probably about four or five times in taking payments to him.
Q: Okay. Did he go over the case with you?
A: He didn't really actually go over the case with me because we didn't never really actually prepare for a trial, you know, it's like I told him what was going on, I told him what had happened, but we didn't actually collaborate on anything as far as a defense and going to trial.
Q: Did he explain the crime that you were accused of to you?
A: Not by my knowledge.
Q: Did he go over any of the elements of the crime and what

the State would have to prove in order to prove you guilty beyond a reasonable doubt?

A: No.

Q: Did he explain the elements of the crimes that you were charged with, the elements being the specific acts of that particular crime that the State would need to prove?

A: Well, I mean, at one point in time, he did -- he told me whatever decision I make is the -- what's gonna be the decision. But he said at the end of the day, he goes home. He did tell me that.

Q: And did he -- were there any discovery issues? Did you get to see your discovery? Did he go over the discovery with you?

A: I never had a motion to discovery.

Q: So, what you're saying basically is he didn't inform you enough for you to know whether or not take the plea or not?

A: Yes, sir.

Q: Okay. And you -- this case obviously proceeded to trial; is that right?

A: Yes.

Q: And you were not present; is that right?

A: Yes, sir.

Q: Okay. Can you tell me a little bit about why that was?

THE COURT: Just clarify for me, the return says he proceeded to trial before Dennis and jury, was that also in

absentia? Were there two trials?

MR. SELWA: Two trial, Your Honor, and both were in absentia.

THE COURT: Both were in absentia?

MR. SELWA: As I understand.

THE COURT: Okay. Go ahead. It says Applicant proceeded to trial, but -- go ahead.

BY MR. SELWA:

Q: Can you tell the Court why you were not present at the trial, particularly the second one?

A: Honestly and truthfully, it was like my back was pushed up against the wall for -- from all of a sudden, you know, I wasn't -- for one, I never planned to go to trial. Just like I said, I offered him to pay him, to hire him, to get me a better plea than the seven years. Because just like I say, I did get caught with drugs and I knew that I got caught with drugs and I knew that it was other issues that violated me but at the same time, I was willing to go ahead and take a lesser plea than the seven years and just go and get it on behind me.

Q: Was there any other offers of less than seven years?

A: No.

Q: Did he inform you of the second trial?

A: We had a conversation one time but I -- he told me there would be another trial and he told me that my name was on the roll call roster but it wasn't a set date.

Q: Okay. And did you know that your trial was going forward when it did?
A: Not that day.
Q: Okay. Would you have attended?
A: I had wanted to but I can't -- I can't honestly say yes or no. I really -- I don't know because I was, I was kinda furious, I mean, shooken [sic] up.
Q: In the transcript, it speaks of Mr. Long contacting you by phone prior to the trial; is that true?
A: He contact me by phone before the trial or ---
Q: Correct. Is that a true statement if it says that in the transcript?
A: He did not contact me prior to the trial. He contact me in reference to my name being on the roll call roster. He said he didn't know if any -- know about it -- have any knowledge of me going to trial.
Q: Okay. Would you have been able to help him during the trial?
A: Would I have been able to help him during the trial?
Q: Yes.
A: Yes, I would have.
Q: Would you have liked to attend the trial?
A: Yes.
Q: Do you think you would've heard some things that you could've expressed to him that may've changed the outcome of

that trial?
A: Yes.
Q: Anything specifically?
A: Well, you know, like when I read over my transcripts and I see some of the testimonies, I see where it was a debate about how much the drugs were. Okay. When I was arrested, it was a scale also found in my vehicle. They used that scale and the scale that they have at the police department. The scale that they got out my vehicle had showed more weight than the scale that they had at the police department. And these are some of the issues that I have addressed to him stating that, you know, it was like they were trying to railroad me.
Q: Your first trial was ended in a mistrial; is that correct?
A: Yes.
Q: Okay. And obviously, your second one, you got convicted; is that right?
A: Yes.
Q: Had you had enough time or notice to be at the second trial, do you think that the outcome would've been different had you been there?
A: Yes.
Q: Are you asking the Court today for a new trial?
A: Yes, I am.
Q: No further questions, Your Honor. Please answer any questions Mr. Thomas will have for you.

THE COURT: Mr. Thomas?

CROSS EXAMINATION OF REGGIE PINKNEY BY MR. THOMAS:

Q: Mr. Pinkney, you said you had only a couple of meetings with Mr. Long where you actually talked about your case?

A: Yes.

Q: But during those two meetings, you did get a chance to at least discuss some of the evidence that the State was gonna use against you?

A: Well, yeah, my first meeting, I explained to him basically the arrest and what they done to me. The second meeting, he gave me two pieces of paper, one was stating the case about something but I don't -- I didn't see it being related to my situation. And he gave me another paper which stated that I had a active bench warrant and for me leaving his office, I had to leave his office and go to the probation office after that because that was my route through town and going back home. And when I left his office and went to the probation office, I was trying to read his paperwork and understand it and I couldn't get a full understanding of it, so I asked my probation officer, I said, what is this right here and I say it's saying active BW; I said what is that? And she looked up at me and she said, where you get that paperwork from? I say, I got it from my attorney. She got up and walked out the office. He probably remember, I wound up getting up and I wind up leaving out the office and left the probation office

because now, I done figured out there's something going on and they about to lock me up.

Q: Okay. Well, let's talk about your meetings with Mr. Long. You said you had some issues at trial -- you read through the transcripts and you had some issues about the weight of the drugs and how there was a discrepancy.

A: Uh-huh (affirmative response).

Q: Did you get a chance to talk about that with Mr. Long?

A: Yes, yes, I did.

Q: And you told him -- you said you gave him basically your version of what happened when they arrested you?

A: Uh-huh (affirmative response).

Q: And you weren't at your first trial?

A: No, I wasn't.

Q: You did -- you said you talked to Mr. Long between trials, though, he just didn't tell you there was a trial coming up?

A: Yeah.

Q: Did you talk to him while the second trial was going on, on the phone?

A: No.

Q: Thank you, Mr. Pinkney, that's all I have.

THE COURT: Anything further?

MR. SELWA: No redirect, Your Honor.

THE COURT: All right. Come down. Thank you very much. You're through.

Next witness?

MR. SELWA: No other witnesses, Your Honor.

MR. THOMAS: The State would call Mr. Long, Sr.

J.M. LONG, III, HAVING BEEN DULY SWORN, TESTIFIES AS FOLLOWS:

MR. LONG: Full name is J.M. Long, III, L-O-N-G is the last name.

DIRECT EXAMINATION OF J.M. LONG, III, BY MR. THOMAS:

Q: Mr. Long, how long have you been practicing law?

A: Twenty-eight years.

Q: And at the time of Mr. Pinkney's trial, were you in private practice or were you working with the Public Defender's office?

A: I was in private practice.

Q: And were you retained, I guess, then?

A: Yes, I was.

Q: And did you file any sort of discovery motions, Rule 5, *Brady*, that type of thing?

A: Yes, sir.

Q: Did you -- do you think the State gave you a pretty full response to that?

A: They did. The Solicitor's office here is pretty good about -- they just give you whatever they have. If you notice anything is wrong, make a request -- missing, you make a request for it and they're pretty fair with it. I think we

had everything in this case.

Q: And just briefly, could you give us sort of an overview of what the State's case was against Mr. Pinkney?

A: This is unusual. One, I was coming back from lunch, I believe it was in Conway and I saw a police officer stopping a vehicle near the old Conway Hospital. Just curiosity, I stopped and parked, I think I had a Wendy's burger, Wendy's was right there or near there, and I ate my lunch while I was watching this arrest go down. It was maybe several months later, Mr. Pinkney came in and said I want to talk to you about a traffic stop and a trafficking charge and this, that and the other and put two and two together and realized that was the one I was watching. But it was a traffic stop, they claimed it was a suspended tag ---

THE COURT: Did he pick up your card?

A: Pardon me?

THE COURT: Did you pick up your card?

A: No, sir, Your Honor. I did not leave my card at the scene. But it was a traffic stop, I believe, for a suspended tag or no proof of insurance. Then search incident to an arrest or Terry frisk or something, they found drugs in Mr. Pinkney's possession. It was more than 10 grams of cocaine. I don't recall the SLED weight. There was some issue he discussed about -- there always is an issue about packaged weight versus actual tested weight but it came back from SLED

within 10 to 28 grams.

Q: And how many meetings do you think you had with Mr. Pinkney?

A: It's hard to say. As far as sit-down actual confer meetings, any time a case goes to trial, you have more of the meetings closer to trial. I would say it would not have been anywhere around two. We would've had more meetings as we got closer to trial. Some of the meetings were we came in and made a payment and talked to him briefly about the case, let him know the progress, what was going on. There may've been ten or fifteen meetings of which three, four, maybe five of them were more in depth.

Q: But you feel like you had an opportunity to discuss the facts of the case with him?

A: Oh, yes, sir. Yes, sir.

Q: And he gave you your version of events?

A: Yes, yes.

Q: Of what happened.

A: Yes.

Q: Based on that, what defense strategy did you develop?

A: Well, since it was found in his pocket, pretty much it was a suppression issue or nothing. We prepared, I think I gave him some case law about stops, traffic stops, things of that nature, discussed those issues with him. There was a passenger in the vehicle that just simply walked off during

the traffic stop. Police didn't do anything, just walked off. And we did have the some-other-dude-did-it defense then about the guy that walked off. But that was basically it; it was a suppression or nothing issue.

Q: And you filed a suppression motion and had an argument at the first trial?

A: Correct, yes, sir.

Q: And at the second trial, did you get to do that suppression motion again or how did that work out?

A: No, Judge Lockemy held that Judge Markley's order from the first trial, the suppression hearing was the law of the case and I disagreed with that. I tried to get Judge Lockemy to realize that the first trial ended in a mistrial. The Jury was hung. There was no verdict. And for that reason, the actual term mistrial means as if there were no trial and therefore the case law from the first suppression hearing couldn't be ruling on the second. It turns out I was wrong. The Court of Appeals said that was not, you know, an appealable issue or it was not correct but that was the reason we did not have a suppression hearing at the second hearing and I argued pretty vehemently I thought, as far I could go, I thought, with Judge Lockemy about the suppression issue.

Q: Judge Lockemy did say he was gonna give you a little leeway to question the witnesses regarding the suppression issue, maybe?

A: Yes, yes.
Q: And then he ruled at the end of the trial that -- or when the drugs were moved into evidence, he ruled that he would've admitted them anyway?
A: Correct, yes, sir.
Q: Did you -- let's talk about plea offers. Did you ever tell Mr. Pinkney that you could get him anything better than the seven years?
A: I don't think I've ever told any client I can. I may've told him I will try. But, the plea offers are up to the Solicitor and whether it be by arm twisting or kind of coercion or threat of trial or just simply it would take this case forever to try and why don't they just go ahead, for whatever tactics, a lot of times I'm able to get another plea offer. We were never able to get anything else in this case.
Q: So, the Solicitor never offered anything less than seven?
A: That's correct.
Q: At that point, did you start preparing for trial?
A: Not immediately. The trial docket at that point in time was a year to eighteen months, sometimes two years from the date of arrest. But then when we first got notice that it was on the trial roster and Tim Meachem was a pretty -- I won't say friend of mine, but we developed a good professional relationship, he would call me and say, look, I'm gonna put your case on trial for August or September, or whatever the

case may be and that's when we'd begin meeting a little more about, okay, here's what we got, here's what we need to do.

Q: As far as the first trial goes, did you tell Mr. Pinkney that that first trial was on the docket scheduled for the day it was scheduled to start?

A: Yes, sir. The procedure was, the Solicitor's office would send a subpoena to the Defendant at his address, would send us a copy also for roll call. Usually, when I got subpoenas for roll call, I'm trying to remember if in 2006 they were done on Friday or still done on Monday. We usually would make a telephone call to say, look, we got a subpoena in, just want to make sure you know. I don't think I spoke to him. Telephone number, I don't remember if I left a voice mail or not. There were some problems towards the end communicating but he did not show up for roll call. And that's when we found out for sure that we were scheduled for trial. During the weekend and/or the first of Monday was when I was frantically on the phone to him trying to explain, look, we're up for trial, we could be first up next week or fifth up next week, I need you to contact me, I need you to speak with me and I never heard back from him as I recall.

Q: And the first -- all right, so, the first trial happens and ends. Did you talk to him between the first trial and the second trial?

A: Yes, I about got in trouble with Judge Dennis at the first

trial. I had been calling and I'm trying to -- I'm trying to think I did finally speak with him Monday morning before we started the trial and explained what was going on, what was happening, what we were doing, you know, we are getting ready to call your case for trial and then I -- if I recall, it was something like, well, let me call you back or let me let you know something, whatever. Judge Dennis then got on me about where is your client, we need to take this case to trial, we're ready to draw a jury, we're gonna go without him or whatever. I went out in the hallway and made a call and I don't think he got an answer, forgot to turn my phone off or down but while I was in the courtroom, we were getting ready to draw the jury or in the process of drawing the jury when my phone rang in the courtroom but it was Mr. Pinkney then and I explained, look, you need to come here now. We're getting ready to try your case and I think he said he was fifteen minutes out or ten minutes away or whatever. And I informed the Court of that and I think we stood down for just a little bit until the fifteen minutes or twenty minutes was up and then we said we're -- the Judge said, we're proceeding, we're going forward.

Q: And as far as the second trial, did you talk to him and tell him the second trial was coming up?

A: I don't specifically recall whether I spoke to him face-to-face. I think at that time, I only had a telephone call.

When he failed to show up for a bench warrant and failed to show up for the trial, I think they issued -- I mean for the roll call and trial, they issued a bench warrant. And I believe I informed him that there was a bench warrant pending and, you know, this case will have to be retried. I think he understood that it was a mistrial and explained that procedure to him. And I think the only means I had of communicating and contacting with him was telephone then.

Q: And in fact, I think it looks like, reading the transcript of the second trial, you actually were in contact with him during the second trial by telephone?

A: Prior to the second trial and, again, I think the only communication I had with him was by telephone. He may've come by the office a time or two but I had no mail communication or whatever. When I informed him that we were going to trial, were on the trial roster the following week, he was basically on the lam, he was not ready to turn himself in or come in or something of that nature. And I did inform him, yes, they're calling this case for trial again, they have a right to, it was a mistrial the first time and, you know, we're gonna have to face it this way.

Q: As far as your defense at trial, do you remember arguing to the Jury or asking questions, sort of trying to get the point across that there was a weight difference between the field weight and the lab weight?

A: I don't recall specifically. The transcript would be -- as I recall the issue -- it's sometimes an issue in trials. I don't specifically recall this one, the package weight versus the actual weight as tested by SLED. But, whatever weight we were dealing with at trial would've been basically the weight as tested by SLED.

Q: And you said that basically, this was a suppression or nothing type case? If you don't get the drugs suppressed, it's kind of hard?

A: Basically, yeah.

Q: Was there any benefit to having had an opportunity to try it the first time before you actually tried it the second time to verdict?

A: There would've been at the suppression hearing. I think a second bite at the apple with the suppression hearing knowing then after the first one, you know, how the officers were gonna testify and things of that nature. I probably could've polished my arguments a little bit.

Q: Thank you, Mr. Long. That's all I have. I'll let you answer any questions Mr. Selwa might have.

A: Yes, sir.

CROSS EXAMINATION OF J.M. LONG, III, BY MR. SELWA:

Q: Mr. Long, at what point was the plea offer taken off the table?

A: I couldn't specifically tell you.

Q: Was there a point during the representation where he rejected the plea?
A: I'm pretty sure it was early on. His testimony refreshed my memory about Mr. Suggs and the plea offer in existence at that time. I think when the case came to me, it was we will offer you the same thing that was offered before. I don't think we did a formal arraignment or rejection of the plea. I don't think the Solicitor's officer was doing those at the time. So, it probably would've been within the first three or four months that I represented him that it was taken off the table.
Q: And what was your professional advice about either taking that or rejecting that?
A: Well, he's correct. I give my best advice and tell him, I go home, you know, no matter what the outcome of your trial. And I explain, as best I can, the percentages of what could happen, what may happen. You know, I don't have a crystal ball and I tell my clients that. Just my advice is, you know, if you reject it, then you're facing, I believe it was five to thirty at the time was the sentencing range, is that -- I believe.
Q: Since the first one was a mistrial, did you have any continued talks about accepting a plea or taking that plea as a good idea?
A: No, I think once we had the first trial, the Solicitor was

pretty much dead set on, you know, we're gonna reschedule it for trial and try it just as soon as possible, especially since it was a TIA.

Q: And so, the offer wasn't available during that period between trials?

A: I don't believe it was.

Q: Did you try to negotiate anymore about -- for a plea offer?

A: I may have. I don't specifically recall but as I recall Mr. Meachem, he dug in his feet pretty quickly. He said, no, that's it. If not for that then we'll just try the case and I don't think there was any further plea negotiations.

Q: All right.

A: Any successful ones, anyway.

Q: No further questions. Thank you.

MR. THOMAS: No redirect, Your Honor.

THE COURT: All right, sir. You may come down.

A: Thank you, sir.

MR. THOMAS: And that's all from the State.

THE COURT: Anything further?

MR. SELWA: I'm sorry, Your Honor?

THE COURT: Anything further from the Applicant?

MR. SELWA: No, Your Honor.

BY THE COURT:

THE COURT: All right. Thank you very much. Proposed

orders in thirty days.

MR. SELWA: Okay. Thank you, Your Honor.

(ADJOURNED - 10:27 A.M.)

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Reggie Pinkney versus State of South Carolina, held in the Court of Common Pleas for Horry County, Horry County Courthouse, Conway, South Carolina, on August 11, 2015.

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

Kay H. Richardson
Official Court Reporter

April 5, 2016.

copies mailed

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
Reggie Pinkney, #259522, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2014-CP-26-2711 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 1, 2014. Respondent made a timely Return on or about December 17, 2014. The Court convened an evidentiary hearing into the matter on August 11, 2015, at the Horry County Courthouse. Applicant was present at the hearing and represented by Daniel A. Selwa II, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, J.M. Long III, Esquire, also testified. The Court had before it a copy of the trial transcript, a copy of the mistrial 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 April 2005, the Horry County Grand Jury indicted Applicant for trafficking crack cocaine, 10-28 grams (2005-GS-26-1401). J.M. Long III, Esquire ("trial counsel"), represented Applicant. On October 26, 2005, Applicant

was tired *in absentia* before the Honorable R. Markley Dennis and a jury. However, Judge Dennis declared a mistrial after the jury failed to reach a verdict.

On January 11, 2005, a second trial *in absentia* proceeded before the Honorable James E. Lockemy and a jury. On January 12, 2005, the jury found Applicant guilty as indicted. Judge Lockemy issued a sealed sentence. On March 18, 2011, Applicant appeared before the Honorable Larry B. Hyman, Jr., who unsealed and imposed Judge Lockemy's fourteen year sentence. Russell B. Long represented Applicant at sentencing.

Applicant filed a timely notice of appeal, and LaNelle C. DuRant, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on October 1, 2013. State v. Pinkney, Op. No. 2013-UP-490 (S.C. Ct. App. filed December 23, 2013). The remittitur was returned to the circuit court on January 8, 2014.

II. ALLEGATIONS

In his application, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of counsel"
    a. "Mr. J.M. Buddy Long III; Did not live up to agreement; Did not argue issues I addressed to him; I do not feel he investigated nor argued my case to the best of his ability; Attorney much over 90 days; Attorney caught criminal charges; We never prepared for a trial; Attorney did not preserve issues in trial for appeal correctly; Nor did Mr. Russell B. Long counsel me correctly"
2. "Tampering of evidence"
3. "Lack of evidence"
4. "Illegle (sic) Search and Seizer (sic)"
5. "Entrapment"
6. "Prejudice of the Court"
7. "Prejudicial Testimony (Marijuana)"
8. "Reconsideration of sentence"

In its return, Respondent moved to dismiss allegations 2-8, as numbered above, pursuant to Rule 12(b)(6). The Court granted this motion at the outset of the evidentiary hearing, and Applicant proceeded only the allegations of ineffective assistance of counsel discussed infra.

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 Trial 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 trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, Court measures trial counsel's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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 to demonstrate trial counsel ineffective in any manner. Applicant testified he only met with trial counsel two times, and only discussed a few issues. He testified trial counsel did not go over the case with him and did not discuss the elements of the crime. He testified he never received the State's response to the motion for discovery. He testified he hired trial counsel to get him a better plea offer, but the State never offered one. Applicant alleged he did not know his trial was going forward, and that trial counsel did not contact him about the trial. He claimed he could have assisted trial counsel at trial by testifying about the discrepancies in the weight of the drugs. Applicant testified trial counsel did not preserve any arguments regarding the suppression motion.

Trial counsel testified he had been practicing law for twenty-eight years. He recalled being retained by Applicant, but denied promising Applicant he could get him a better plea offer. Trial counsel recalled ten to fifteen total meetings with Applicant, with three to five "in depth" ones. Trial counsel testified he shared discovery with Applicant. Trial counsel testified he discussed the facts of the case with Applicant and Applicant shared his version of events. Trial

GIC 4

counsel recalled there being a discrepancy with the weight of the drugs. However, he testified the only defense to the case was to suppress the drugs because of a bad search. He recalled making a suppression motion at the first trial. He also recalled Judge Lockemy adopting Judge Dennis' finding on the suppression motion at the second trial. Trial counsel testified he asked Judge Lockey to allow a second motion hearing, but recalled Judge Lockemy instead gave him latitude to challenge the search through cross-examination. Trial counsel recalled Judge Lockemy also independently ruled the drugs were admissible.

Trial counsel testified he started prepping for trial when the solicitor informed him it was on the trial docket. He recalled the solicitor subpoenaing Applicant for trial. He also recalled speaking to Applicant on the phone before the trial. He testified Applicant called him during the trial, but did not heed his advice to come to court. He also testified he spoke to Applicant on the phone between trials, but Applicant again did not appear at trial.

The Court finds trial counsel's testimony credible and gives it great weight. Correspondingly, the Court finds Applicant's testimony not credible. Applicant's allegation trial counsel promised him a better plea offer is without merit, and the court finds Applicant presented no credible evidence trial counsel promised Applicant a better plea offer.

Applicant's allegation trial counsel did not properly argue for suppression of the drugs is also without merit. The record indicates trial counsel made a compelling argument to suppress the drugs at the first trial, and appropriately raised the issue at the second trial. Applicant has presented no evidence of what further arguments could have been made in support of the suppression motion. Furthermore, Applicant's allegation trial counsel did not preserve the suppression issue is without merit. Initially, the Court notes the procedure used by Judge Lockemy was not improper. State v. Patton, 322 S.C. 408, 412, 472 S.E.2d 245, 248 (1996)

("The trial court afforded Appellant ample opportunity to interpose objections on constitutional grounds, and Appellant frequently availed himself of it."). The Court of Appeals clearly reviewed the record and determined Judge Lockemy did not err in admitting the drugs, and the Court agrees with that determination.

Applicants allegation trial counsel did not investigate the case is without merit. Failure to conduct an independent investigation is not *per se* ineffective assistance of counsel, especially where an investigation would not have uncovered any helpful information. See Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Applicant has not shown what further information could have been uncovered with a further investigation. Applicant's allegation trial counsel was not prepared for trial is likewise without merit. Applicant presented no evidence of how further preparation would have changed the outcome of his trial. See Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial.").

Applicant's allegation trial counsel did not meet with him and discuss the State's evidence is without merit. Trial counsel testified he met with Applicant several times, discussed the case, and reviewed the discovery response. The Court finds this testimony credible and dispositive. Regardless, Applicant presented no evidence of how further interaction with trial counsel would have affected his trial. Moody v. Polk, 408 F.3d 141, 148 (4th Cir. 2005) ("As to Moody's claim that his counsel did not meet with him frequently enough, there is no established 'minimum number of meetings between counsel and client prior to trial necessary to prepare an attorney to provide effective assistance of counsel.'" (citing United States v. Olson, 846 F.2d 1103 (7th Cir. 1988))). The Court also finds not credible Applicant's testimony he did not

review discovery. Regardless, he has again failed to demonstrate any adverse effect from not further reviewing the evidence. Hyman v. State, 397 S.C. 35, 49, 723 S.E.2d 375, 382 (2012) (applicant failed to demonstrate possibility of different outcome had he personally received discovery where he "was fully aware of the inculpatory nature of the [evidence])).

To the extent Applicant argues trial counsel failed to inform him this case was being called for trial, the Court finds this matter is not properly raised in post-conviction relief. See S.C. Code Ann. § 17-27-20(b) (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."); 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."). The issues of whether Applicant was properly tried in his absence was raised to the trial court, and cannot be re-litigated on collateral review. Furthermore, the Court finds credible trial counsel's testimony that he informed Applicant of the trial date and Applicant simply refused to appeal.

The Court finds trial counsel conducted a proper investigation, adequately conferred with Applicant, and was thoroughly competent in his representation. Applicant presented no evidence trial counsel was deficient in any way. He also presented no evidence of how he was prejudiced by any of trial counsel's alleged deficiencies. Furthermore, the record contains overwhelming evidence of Applicant's guilt, which precludes a finding of prejudice on any of Applicant's allegations. See Harris v. State, 377 S.C. 66, 79, 659 S.E.2d 140, 147 (2008) (applicant cannot prove prejudice where there is overwhelming evidence of guilt).

B. All Other Allegations

As to any and all allegations that were raised in the application 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. 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.

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 18 day of September, 2015.

G. Thomas Cooper

THE HONORABLE G. THOMAS COOPER JR.
Presiding Judge

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	2014-CP-26-2711
	)	
REGGIE PINKNEY, #259522	)	
	)	
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 filed copy of the Order of Dismissal, in 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 3rd day of December, 2015.

Norma Bigbee, Legal Assistant
For Respondent

Trial Judge:
Judge Lockemy
CR- Brenda Babb
Verdict Guilty
1/12/06

WITNESSES

ADDISON/CPD

DOCKET NO. 2005-GS-26-1401

THE STATE OF SOUTH CAROLINA

COUNTY OF HORRY

TEM 76755

COURT OF GENERAL SESSIONS

APRIL TERM 2005

THE STATE

VS.

Reggie Allen Pinkney B/M

[redacted]

Mike Suggs
Attorney

ARREST WARRANT NO. H-790415

CDR: 0452 44-53-0375 (C) (1)(c)

DOA: 02-24-05

ACTION OF GRAND JURY

TRUE BILL

Carolyn A Barker APR 28 2005
Foreman of Grand Jury

INDICTMENT FOR:
TRAFFICKING CRACK COCAINE MORE THAN 10 GRAMS, LESS THAN 28 GRAMS

ORIGINAL

J. GREGORY HEMBREE, SOLICITOR

VERDICT

Guilty

Richard Carroll 1/12/06
Foreman of Petit Jury Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT FOR

TRAFFICKING CRACK COCAINE MORE THAN 10 GRAMS, LESS THAN 28 GRAMS

At a Court of General Sessions, convened on April 28, 2005, the Grand Jurors of Horry County present upon their oath:

TRAFFICKING CRACK COCAINE
MORE THAN 10 GRAMS, LESS THAN 28 GRAMS

(CDR: 0452 44-53-0375(C)(1)(c))

That Reggie Allen Pinkney did in Horry County on or about February 23, 2005, 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 Crack Cocaine 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 by law, and being in violation of Section 44-53-375(C)(1)(c), 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.

SOLICITOR