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SC SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Charleston County

Roger E. Henderson, Circuit Court Judge

TIMOTHY YOUNG,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002162

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2010-GS-10-05622-05624

STATE OF SOUTH CAROLINA
Plaintiff

V.

TIMOTHY YOUNG,

Defendant.

TRANSCRIPT OF RECORD

August 31, 2011 and
September 1, 2011
Charleston, South Carolina

B E F O R E :

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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

Ms. Culver McClain, Assistant Solicitor
Mr. Chad Simpson, Assistant Solicitor
Representing The State

Ms. Cantrell Frayer, Assistant Public Defender
Ms. Lorelle Proctor, Assistant Public Defender
Representing The Defendant

Anne Bouley Meyer, RPR
Circuit Court Reporter

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1 THE COURT: Sir, you are Mr. Young?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Mr. Young, you are represented by
4 Ms. Frayer.

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Sir, I just needed to make sure that
7 you understand the deal that the State has extended to
8 you. Hindsight can often be 20/20.

9 And for post-conviction relief purposes, I need
10 to make sure that the offer was fully explained to you.
11 And that if you have rejected it, that you have done
12 that freely and voluntarily and of your own will having
13 been fully advised by your attorney.

14 You have been charged with several offenses;
15 those being threatening a public official, possession
16 with intent to distribute cocaine base, possession with
17 intent to distribute cocaine base within proximity of a
18 school, and resisting arrest.

19 What is the deal that has been extended to him?

20 MS. MCCLAIN: Your Honor, the State extended a
21 plea offer to a PWID of cocaine base second, proximity,
22 resisting arrest and threatening an official.

23 THE COURT: So all of the charges would still
24 remain?

25 MS. MCCLAIN: Yes, Your Honor.

1 THE COURT: Okay. What does threatening a
2 public official carry?

3 MS. McCLAIN: Zero to 10, Your Honor.

4 THE COURT: Possession would be 5 to 30; is that
5 right?

6 MS. McCLAIN: Yes, Your Honor.

7 THE COURT: Within proximity of a school, what
8 would that be?

9 MS. McCLAIN: The proximity of a school for
10 crack -- excuse me, cocaine base under the old law is
11 10 to 15.

12 THE COURT: So you are leaving that? I
13 thought --

14 MS. McCLAIN: Your Honor, the State is fine to
15 drop that at part of the offer as well.

16 THE COURT: And then the resisting arrest would
17 remain?

18 MS. McCLAIN: Yes, Your Honor.

19 THE COURT: Sir, do you understand that under
20 the deal your exposé would be a minimum of 5 and a
21 maximum of 30, with the State not being opposed to you
22 receiving the minimum sentence; versus you having a
23 mandatory exposure without the deal of a mandatory 15
24 at 80 percent, as well as a mandatory I believe 10 on
25 the proximity, as well as the other offenses which

1 would carry 90 days to 30 years on the resisting
2 arrest?

3 Sir, do you understand, basically I'm trying to
4 put it in a nutshell, that your exposure would go from
5 a minimum of 5 to a minimum of 15 if you reject the
6 deal?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Do you wish to accept or reject the
9 deal?

10 THE DEFENDANT: Reject it.

11 THE COURT: Okay. You are doing that freely,
12 voluntarily and of your own will?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And you believe that's in your best
15 interest?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Ms. Frayer, is that with or against
18 your advice?

19 MS. FRAYER: He is rejecting the offer against
20 my advice, Your Honor.

21 THE COURT: And you have fully explained it to
22 him?

23 MS. FRAYER: Yes, I did.

24 THE COURT: Sir, has your lawyer fully explained
25 to you the terms of the offer?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Okay. Are you doing this freely and
3 voluntarily and of your own will?

4 THE DEFENDANT: Of my own will.

5 THE COURT: Are you suffering from any mental
6 disabilities or under the influence of any drugs or
7 alcohol?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Okay.

10 would you mind telling -- I guess I'm just a
11 little befuddled as to why you would give yourself that
12 level of exposure when you have such a -- really, I
13 sort of twisted the State's arm to re-extend an offer
14 to you because they weren't inclined to do it.

15 I'm just curious as to why -- and don't
16 incriminate yourself now. Don't tell me something that
17 could be used against you. But I'm just curious to
18 know why you would give yourself that level of
19 exposure.

20 Fifteen years at 85 percent is a whole lot more
21 than 5 years at 85 percent where you've already done a
22 year and a half.

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Choose your words carefully, now. I
25 don't want you to incriminate yourself.

1 THE DEFENDANT: Ma'am, I feel that, you know
2 what I'm saying, all right, I'm guilty of the dope, but
3 I ain't had the dope as much as they say I had.

4 THE COURT: I don't want you to incriminate
5 yourself. It's not a quantity issue. Doesn't matter
6 how much -- they're charging you with possession of it,
7 and being within proximity of a school. But they're
8 willing to drop the proximity charge.

9 But your issue is the fact of the number of
10 offenses you've had because of your record. They get
11 enhanced every time you get another offense. So you
12 are at a third. That's a minimum mandatory of 15 years
13 at 85 percent. That's 14. -- my math, 14.something.

14 And I just need to make sure that you are freely
15 and voluntarily rejecting what they're offering which
16 is the minimum of 5, which is 4.something years versus
17 14.something years.. And I need to make sure you are
18 making a rational decision about that.

19 I can't make a decision about your guilt or
20 innocence. I wasn't there. I don't know what
21 happened. I abide by whatever the jury tells me.
22 That's the one great thing about this job, I don't have
23 to make the decision, the jury makes it.

24 But I need to make sure because what happens on
25 post-conviction relief is people come back later and

1 they say, I want my deal back. which, you know, they
2 say their lawyer never explained everything to them.

3 So my goal today is to make sure everything was
4 explained to you, and that you are making a free and
5 voluntary decision, and that your decision really is
6 based on something that is rational, and that you fully
7 understand what you are doing.

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: So you're telling me that you fully
10 understand what you are doing?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And you wish to reject the offer?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Okay. I will abide by your
15 decision.

16 MS. FRAYER: Thank you, Your Honor.

17 THE COURT: I will see if I have enough jurors
18 to pick both of them.

19 (Whereupon, a recess was taken.)

20 (Whereupon, the prospective jurors enter the
21 courtroom.)

22 THE COURT: Ladies and gentlemen, while you all
23 have been waiting, we have been working. As we bring
24 the jury panel back up, although it may have seemed
25 some time for you all, you all had to wait a little

1 while today, that prevents me from having to bring you
2 back tomorrow.

3 And as you can well imagine, it costs a pretty
4 penny to bring everybody up to the courthouse. So when
5 Judge Young needed you all this morning, we had to try
6 to consolidate and get as much done as possible so that
7 I potentially would not have to bring you all back
8 tomorrow.

9 So hopefully I will have enough jurors to be
10 able to get all of that done. So again we truly
11 appreciate your patience. And please know that when
12 you are waiting on us, we are working.

13 We are going to select a jury for the State
14 versus Timothy Young. Are we going forward on all of
15 the indictments?

16 MS. MCCLAIN: Yes, Your Honor.

17 THE COURT: Does the defendant wish to have a
18 formal arraignment?

19 MS. FRAYER: No.

20 THE COURT: Ladies and gentlemen, as I have
21 indicated we are going to select a jury for the case of
22 State of South Carolina versus Timothy Young. And they
23 are indictments 2010-GS-10-5621, which is an indictment
24 for threatening a public official.

25 And that indictment reads: That in Charleston

1 County, South Carolina, on or about May 29, 2010, the
2 defendant, Timothy Young, knowingly and willfully did
3 deliver or convey to a public official, teacher or
4 principal of an elementary or secondary school, by way
5 of writing, electronic or verbal communication, a
6 threat to take the life of or to inflict bodily harm
7 upon such public official, teacher or principal or his
8 immediate family, and such threat was directly related
9 to his professional responsibilities, to wit: the
10 defendant did threaten to shank the officer. Alleging
11 a violation of code section 16-3-1040 of the code of
12 laws as amended.

13 And indictment 2010-5622, an indictment for
14 possession with the intent to distribute cocaine base.
15 And that indictment alleges as follows: That in
16 Charleston County, South Carolina, on or about May 29,
17 2010, the defendant, Timothy Young, did manufacture,
18 distribute, dispense, deliver, purchase; or did aid,
19 abet, attempt or conspire to manufacture, distribute,
20 dispense, deliver, or purchase; or did possess with the
21 intent to distribute, dispense or deliver a controlled
22 substance or controlled substance analog, to wit:
23 cocaine base. Alleging a violation of code section
24 44-53-375 of the code of laws as amended.

25 And 2010-5623, an indictment for possession with

1 the intent to distribute cocaine base within proximity
2 of a school or park. And that indictment alleges that
3 in Charleston County, South Carolina, on or about May
4 29, 2010, the defendant, Timothy Young, unlawfully did
5 possess, with intent to distribute, dispense, sell,
6 purchase or manufacture a quantity of cocaine base
7 within a one-half mile radius of the grounds of Martin
8 Park, located at Jackson Street. Alleging a
9 violation of code section 44-53-455.

10 And indictment 2010-5624, an indictment for
11 resisting arrest. And that indictment alleges that in
12 Charleston County, South Carolina, on or about May 29,
13 2010, the defendant, Timothy Young, knowingly and
14 willfully did oppose or resist the efforts of Officer
15 Moody, a law enforcement officer of this state, to make
16 a lawful arrest of the defendant when he knew or
17 reasonably should have known that Officer Moody was a
18 law enforcement officer. Alleging a violation of code
19 second 16-9-320, subsection (A), of the code of laws as
20 amended. And alleging that all of these actions to be
21 against the peace and dignity of the State of South
22 Carolina.

23 We are going to go through a process which is
24 called voir dire, which is just a legal term meaning
25 that I'm going to ask you all some questions so that

1 the attorneys can more effectively exercise their
2 preemptory challenges.

3 If a question applies to you, please stand and
4 in a loud and clear voice, give us your name and your
5 juror number and an answer to the question if
6 applicable and remain standing until the Court has
7 completed questioning you.

8 Before we do that, I'm going to ask counsel for
9 the State to introduce herself and anyone who will be
10 assisting her in the trial of this case, as well as
11 publishing the names of her office. And also ask
12 counsel for the defense to provide us with the same
13 information and have your client stand and face the
14 panel.

15 You may proceed when you are ready.

16 MS. MCCLAIN: Thank you, Your Honor. My name is
17 Lindsey McClain. I work for the 9th Circuit
18 Solicitor's Office. Assisting me in this case is
19 Assistant Solicitor Chad Simpson.

20 Other solicitors in our office include Scarlet
21 Wilson. Bruce Durant. Spencer Compton. Stephanie
22 Linder. Rutledge Durant. Greg Voight. Michael
23 Nelson. Dale Savage. Amy Harrell. Julie Cardillo.
24 Jennifer Shealey. Shannon Elliot. Natasha
25 Chisolm. Timmy Finch. Mariane Askins. Culver Kidd.

1 Jim Stack. Michael Sahn. Tyler Whitaker. Adam Young.
2 Meg Haley. Jessica Baldwin. Debbie Herring-Lash.
3 Elizabeth Gordon. Burns Wetmore. Jennifer Kinzeler.

4 And also assisting me in the trial will be my
5 investigator, Jim Harris.

6 THE COURT: Ms. Frayer.

7 MS. FRAYER: Good afternoon, ladies and
8 gentlemen, my name is Cantrell Frayer. I'm will be
9 representing Timothy Young in this case. Assisting me
10 will be Lori Proctor from our office.

11 Other attorneys with our office are Ashley
12 Pennington. Ted Smith. Martha Kent-Runey. Beattie
13 Butler. Reese Stidham. Jason King. Michelle Suggs.
14 Martha Dicus. Rhett Dunaway. Rodney Davis.

15 Herb Hoeffler. Cassandra Winslow. Victoria
16 Alexander. Maryellen Rankin. Tim Taylor. Alicia
17 Penn. Ben Lewis. Cody Groeber. Mary Ford. Karen
18 Barker.

19 THE COURT: Thank you.

20 Is there any member of the panel related by
21 blood or marriage to Timothy Young or Officer Moody
22 with the Charleston Police Department? I assume that's
23 officer Moody?

24 MS. MCCLAIN: Yes, Your Honor.

25 THE COURT: If so please stand at this time.

1 Does any member of the panel have a close
2 personal or social relationship with Timothy Young or
3 Officer Moody, if so please stand at this time.

4 The following are a list of potential witnesses.
5 I would ask that you listen very carefully. Officer
6 Patrick Gill. Officer Michael Moody. Officer
7 Christopher Brown, all of the Charleston Police
8 Department.

9 Linda Wilson, evidence custodian. Susan Moody,
10 evidence custodian, all of the Charleston Police
11 Department. And Elizabeth Mitchell, chemical analyst
12 with the Charleston Police Department. Burrdell Young.

13 Is there any member of the panel related by
14 blood or marriage to any of the people that I have just
15 listed, or does anyone have a close personal or social
16 relationship with any of those individuals, if so
17 please stand at this time.

18 Has any member of the panel ever been
19 represented by any of the attorneys involved in this
20 case or anyone in their offices, if so please stand at
21 this time.

22 Is there any member of the panel related by
23 blood or marriage to, or have a close personal or
24 social relationship with any of the attorneys involved
25 or anyone in their offices, if so please stand at this

1 time.

2 Yes, sir.

3 A JUROR: Scarlet Wilson is a very close
4 personal friend.

5 THE COURT: And your name and your juror number?

6 A JUROR: Jonathon Rucker, 226 I believe.

7 THE COURT: As a result of this experience, sir,
8 do you feel you can remain fair and impartial, and
9 render a fair and impartial decision in this case based
10 solely on the evidence as it will be presented and on
11 the law as the Court will instruct?

12 A JUROR: So I think I am fair and impartial. I
13 am also very loyal to my friends

14 THE COURT: Okay, and I appreciate your candour.
15 For the record I need a yes or a no answer. And I need
16 you to be as honest as you can.

17 I need you to search yourself and tell me
18 irregardless of what opinions you may have if you would
19 be able to set those aside and render a verdict based
20 solely on the evidence and the law as the Court will
21 instruct?

22 A JUROR: Yes, ma'am.

23 THE COURT: Thank you, sir.

24 Has any member of the panel formed or expressed
25 an opinion about any issue or matter involved in this

1 case, if so please stand.

2 Is there any member of the panel aware of any
3 bias or prejudice toward either the State or the
4 defense in this case, if so please stand at this time.

5 Is there any member of the panel -- was there
6 any member of the panel a member of the grand jury
7 which issued the indictments in this case, if so please
8 stand at this time.

9 Is there any member of the panel who is a member
10 of or contributor to any group which has as its primary
11 concern the promotion of law enforcement or victim's
12 rights?

13 These groups would include, but are not limited
14 to, Mother's Against Drunk Driving, Student's Against
15 Drunk Driving, Citizens Against Violent Crime, People
16 Against Rape, Citizens Advocating a Return to Decency
17 and Ethics, and Parents Empowered to Save Teens, or any
18 other type community watch group, if so please stand at
19 this time.

20 Yes, sir.

21 A JUROR: My name is Darren Mccants, Juror
22 Number 176. I'm on the board of directors of My
23 Sister's House, a non-profit domestic violence shelter.

24 THE COURT: As a result of this experience, sir,
25 do you feel that you can remain fair and impartial, and

1 render a fair and impartial decision in this case based
2 solely on the evidence as it will be presented and on
3 the law as the Court will instruct?

4 A JUROR: Yes, ma'am.

5 THE COURT: Thank you, sir, you may take your
6 seat.

7 Is there any member of the panel related by
8 blood or marriage to, or have a close personal or
9 social relationship with anyone employed with the
10 Solicitor's Office or anyone employed with the Public
11 Defender's Office, if so please stand at this time.

12 Is there any member of the panel who is a former
13 law enforcement employee, if so please stand at this
14 time.

15 Is there any member of the panel who has a
16 family member who is currently employed with law
17 enforcement, if so please stand at this time.

18 Tell us your name and your juror number starting
19 on the front row and remain standing.

20 A JUROR: Hendrika Leggett, Juror Number 162. I
21 have a son-in-law that works for the City Police
22 Department.

23 THE COURT: Behind you, yes, ma'am.

24 A JUROR: Mattie Singleton, Juror 246. I have a
25 cousin on the North Charleston Police Department

1 THE COURT: Sir, next to her.

2 A JUROR: Benjamin Richardson, 214. Got a
3 brother-in-law in law enforcement.

4 THE COURT: What agency, sir?

5 A JUROR: Correctional center.

6 THE COURT: At Charleston?

7 A JUROR: No, ma'am, Savannah.

8 THE COURT: Okay. As a result of these
9 experiences, do you all feel that you can be fair and
10 impartial, and render a fair and impartial decision in
11 this case based solely on the evidence as it will be
12 presented and on the law as the Court will instruct?
13 If your answer is yes, please take your seat.

14 Let the record reflect that all answered yes.

15 Is there any member of the panel who has a
16 moral, philosophical or religious opposition to the
17 consumption of illicit substances, that being drugs,
18 If so please stand at this time.

19 Is there any member of the panel who has read,
20 watched, or heard anything about the facts or
21 circumstances of this case either in the media or
22 otherwise, if so please stand at this time.

23 Is there any member of the panel who has ever
24 been the victim of a violent crime, if so please stand
25 at this time.

1 Yes, ma'am. Tell me your name and your juror
2 number.

3 A JUROR: 138, Leticia Jenkins.

4 THE COURT: Ma'am, as a result of this
5 experience do you feel that you can remain fair and
6 impartial, and render a fair and impartial decision in
7 this case based solely on the evidence as it will be
8 presented and on the law as the Court will instruct?

9 A JUROR: Yes.

10 THE COURT: Thank you, ma'am, you may take your
11 seat.

12 Is there any member of the panel has who has any
13 moral, philosophical or religious opposition to sitting
14 in judgment of a fellow human being, if so please stand
15 at this time.

16 Is there any member of the panel has had what
17 they would characterize as an unpleasant experience
18 with law enforcement such that it would affect your
19 ability to be fair and impartial, if so please stand at
20 this time.

21 Yes, sir, tell me your name and your juror
22 number.

23 A JUROR: Joel Timmons, 270.

24 THE COURT: Sir, as a result of this experience,
25 do you feel that you can be fair and impartial?

1 A JUROR: No.

2 THE COURT: Sir, I will excuse you from the
3 trial of this case only. You may take your seat.

4 Is there any member of the panel who believes or
5 holds the moral or philosophical position that drugs
6 should be legalized, if so please stand at this time.

7 Does any member of the panel know of any reason
8 whatsoever why he or she should not serve as a juror in
9 this case, with particular emphasis being placed on
10 your ability to be fair and impartial to both the State
11 and the defense, if so please stand at this time.

12 Yes, sir. Tell me your name and your juror
13 number.

14 A JUROR: Larry Jones, 143.

15 THE COURT: Okay, sir. You are -- is there a
16 reason you cannot be fair and impartial?

17 A JUROR: Yes. I would not be fair.

18 THE COURT: And tell me why that would be.

19 A JUROR: Can -- I need to speak to you up
20 front.

21 THE COURT: Sure, you can come forward.

22 (Whereupon, the following discussion was held at
23 the bench.)

24 THE COURT: Yes, sir.

25 A JUROR: I had been accused of possessing

1 cocaine at one time falsely.

2 THE COURT: You feel that impairs your ability
3 to be fair and impartial?

4 A JUROR: Yes, ma'am, because of the way the
5 police treated me.

6 THE COURT: Sir, you will be excused from the
7 trial of this case only. Thank you so much for your
8 candour. You may take your seat.

9 (In open court.)

10 THE COURT: Are there additional questions from
11 the State?

12 MS. MCCLAIN: None, Your Honor.

13 THE COURT: From the defense?

14 MS. FRAYER: None, Your Honor

15 THE COURT: Strikes are 5 and 5. Mr. Major, are
16 you going to demonstrate for me?

17 Ladies and gentlemen, if your name is called,
18 please come forward with all of your personal
19 belongings, stand where Mr. Major is standing, turn
20 around and face back toward the panel and remain there
21 until you are either selected or excused as a juror
22 from this panel.

23 And then return to your seat if you are excused,
24 or come forward to be seated in the jury box if you are
25 selected.

1 You may proceed.

2 THE CLERK: Ladies and gentlemen, when your name
3 is called come up with your belonging.

4 Juror number 226, Jonathan Rucker.

5 (Whereupon, a white male approaches.)

6 THE CLERK: What say you for the State?

7 MS. MCCLAIN: Please seat this juror.

8 THE CLERK: What say you for the defendant?

9 MS. FRAYER: Please excuse the juror.

10 THE CLERK: Sir, please return to your seat.

11 Juror Number 25, Jeffrey Brooks.

12 (Whereupon, a white male approaches.)

13 THE CLERK: What say you for the State?

14 MS. MCCLAIN: Please seat this juror.

15 THE CLERK: What say you for the defendant?

16 MS. FRAYER: Please seat this juror.

17 THE CLERK: Sir, please take a seat in the jury
18 box. You have been selected as a juror in the trial of
19 this case.

20 Juror Number 294, Larry Write.

21 (Whereupon, a.

22 THE CLERK: What say you for the State?

23 MS. MCCLAIN: Please excuse the juror.

24 THE CLERK: Sir, you may return to your seat,
25 you have been stricken from the trial of this case.

1 Juror Number 275, Calvin Washington.

2 (Whereupon, a black male approaches.)

3 THE CLERK: What say you for the State?

4 MS. McCLAIN: Please excuse the juror.

5 THE CLERK: Sir, you may return to your seat.

6 You have been stricken from the trial of this case.

7 Juror Number 246, Mattie Singleton.

8 (Whereupon, a black female approaches.)

9 THE CLERK: What say you for the State?

10 MS. McCLAIN: Please seat this juror.

11 THE CLERK: What say you for the defendant?

12 MS. FRAYER: Please seat this juror.

13 THE CLERK: Ma'am, you may take a seat in the
14 jury box. You have been selected for the jury in the
15 trial of this case.

16 Juror Number 138, Leticia Jenkins.

17 (Whereupon, a black female approaches.)

18 THE CLERK: What say you for the State?

19 MS. McCLAIN: Please excuse the juror.

20 THE CLERK: Ma'am, you may return to your seat.

21 You have been stricken from the trial of this case.

22 Juror Number 20, Cristina Boland.

23 (Whereupon, a white female approaches.)

24 THE CLERK: What say you for the State?

25 MS. McCLAIN: Please seat this juror.

1 THE CLERK: What say you for the defendant?

2 MS. FRAYER: Please excuse the juror.

3 THE CLERK: Ma'am, please return to your seat.

4 You have been stricken from the trial of this case.

5 Juror Number 213, Virginia Ravenel.

6 (Whereupon, a white female approaches.)

7 THE CLERK: What say you for the State?

8 MS. MCCLAIN: Please seat this juror.

9 THE CLERK: What say you for the defendant?

10 MS. FRAYER: Please seat this juror.

11 THE CLERK: Ma'am, you may take your seat in the
12 jury box. You have been selected for the jury in the
13 trial of this case.

14 Juror Number 234, Deon Scott.

15 (Whereupon, a black male approaches.)

16 THE CLERK: What say you for the State?

17 MS. MCCLAIN: Please seat this juror.

18 THE CLERK: What say you for the defendant?

19 MS. FRAYER: Please seat this juror.

20 THE COURT: Sir, you have been selected as a
21 juror in the trial of this case. You may take your
22 seat in the jury box.

23 Juror Number 202, John Payne.

24 (Whereupon, a white male approaches.)

25 THE CLERK: What say you for the State?

1 MS. McCLAIN: Please excuse the juror.

2 THE CLERK: Sir, you may return to your seat in
3 the audience. You have been stricken from the trial of
4 this case.

5 State has used four strikes, they have one
6 remaining.

7 Juror Number 130, Barbara Hornak.

8 (Whereupon, a white female approaches.)

9 THE CLERK: What say you for the State?

10 MS. McCLAIN: Please seat this juror.

11 THE CLERK: What say you for the defendant?

12 MS. FRAYER: Please seat this juror.

13 THE CLERK: Ma'am, please take a seat in the
14 jury box. You have been selected as a juror in the
15 trial of this case.

16 Juror Number 214, Benjamin Richardson.

17 (Whereupon, a black male approaches.)

18 THE CLERK: What say you for the State?

19 MS. McCLAIN: Please seat this juror.

20 THE CLERK: What say you for the defendant?

21 MS. FRAYER: Please seat this juror.

22 THE CLERK: Sir, you may take a seat in the jury
23 box. You have been selected for the trial of this
24 case.

25 Juror Number 182, Donna Miller.

1 (Whereupon, a white female approaches.)

2 THE CLERK: What say you for the State?

3 MS. MCCLAIN: Please seat this juror.

4 THE CLERK: What say you for the defendant?

5 MS. FRAYER: Please seat this juror.

6 THE CLERK: Ma'am, you may take a seat in the
7 jury box. You have been selected as a juror in this
8 case.

9 Juror Number 124, Christina Hicks.

10 (Whereupon, a white female approaches.)

11 THE CLERK: What say you for the State?

12 MS. MCCLAIN: Please seat this juror.

13 THE CLERK: What say you for the defendant?

14 MS. FRAYER: Please seat this juror.

15 THE CLERK: Ma'am, you may take a seat in the
16 jury box. You have been selected as a juror in the
17 trial of this case.

18 Juror Number 157, Sherrell Ladson.

19 (Whereupon, a black female approaches.)

20 THE CLERK: What say you for the State?

21 MS. MCCLAIN: Please seat this juror.

22 THE CLERK: What say you for the defendant?

23 MS. FRAYER: Please seat this juror.

24 THE CLERK: Ma'am, you may take a seat in the
25 jury box. You have been selected as a juror in the

1 trial of this case.

2 Juror Number 39, Patrycya Capers.

3 (Whereupon, a black female approaches.)

4 THE CLERK: What say you for the State?

5 MS. MCCLAIN: Please excuse the juror.

6 THE CLERK: Ma'am, you may return to your seat
7 in the audience. You have been stricken from the trial
8 of this case.

9 State has exhausted their strikes.

10 Juror Number 152, Mitchell Kern.

11 (Whereupon, a white male approaches.)

12 THE CLERK: Any challenge from the State?

13 MS. MCCLAIN: None.

14 THE CLERK: What say you for the defendant?

15 MS. FRAYER: Please seat this juror.

16 THE CLERK: Sir, you may take a seat in the jury
17 box. You have been selected as a juror in the trial of
18 this case.

19 Juror Number 114, Joyce Habersham.

20 (Whereupon, a black female approaches.)

21 THE CLERK: Any challenge from the State?

22 MS. MCCLAIN: None.

23 THE CLERK: What say you for the defendant?

24 MS. FRAYER: Please seat this juror.

25 THE CLERK: Ma'am, have a seat in the jury box.

1 You have been selected as a juror for the trial in this
2 case.

3 Juror Number 239, Billy Shelton.

4 (Whereupon, a white male approaches.)

5 THE CLERK: Any challenge from the State?

6 MS. McCLAIN: None.

7 THE CLERK: What say you for the defendant?

8 MS. FRAYER: Please excuse the juror.

9 THE CLERK: Sir, you may return to your seat in
10 the audience. You have been stricken from the trial of
11 this case.

12 Juror Number 73, Elizabeth Dorn.

13 (Whereupon, a white female approaches.)

14 THE CLERK: Any challenge from the State?

15 MS. McCLAIN: None.

16 THE CLERK: What say you for the defendant?

17 MS. FRAYER: Please seat this juror.

18 THE CLERK: Ma'am, take a seat in the jury box.
19 You have been selected as a juror in the trial of this
20 case.

21 Your Honor, that's 12.

22 THE COURT: One alternate. Strikes are one and
23 two.

24 THE CLERK: Juror Number 248, Sue Sloane.

25 (Whereupon, a white female approaches.)

1 THE CLERK: What say you for the State?

2 MS. MCCLAIN: Please seat this juror.

3 THE CLERK: What say you for the defendant?

4 MS. FRAYER: Please seat this juror.

5 THE CLERK: Ma'am, you make take a seat in the
6 jury box. You have been selected as an alternate in
7 the trial of this case.

8 THE COURT: Are there any motions regarding the
9 selection of the jury from the State?

10 MS. MCCLAIN: None, Your Honor.

11 THE COURT: From the defense?

12 MS. FRAYER: Court's indulgence, Your Honor.

13 Nothing from the defense, Your Honor.

14 THE COURT: Ladies and gentlemen, you have been
15 selected for the case of the State of South Carolina
16 versus Timothy Young. We are going to begin this case
17 in the morning at 9:30.

18 During the break, please do not discuss the case
19 among yourselves or with anyone else. Please don't
20 speculate about what you think it may or could be
21 about. Please don't allow yourselves to be exposed to
22 any media coverage about this case, that includes
23 anything that could be in the newspaper, radio,
24 television or Internet.

25 And please don't do any Internet research on

1 your own such as any type of word search or other types
2 of queries to ascertain information outside of the
3 evidence.

4 As the fact finders in this case you will be
5 sworn to decide this case based solely on the evidence
6 that is presented and the testimony from the sworn
7 witnesses. So it is absolutely essential that you
8 maintain your impartiality.

9 You are going to return directly to the jury
10 room. Mr. Robinson is going to show you how to do
11 that. We will begin promptly at 9:30 in the morning.
12 We appreciate your patience. Have a wonderful day.
13 We'll see you tomorrow at 9:30.

14 (Whereupon, the proceedings in this matter
15 before the Court were adjourned for the day.)

16 * * * * *

1 MS. McCLAIN: Your Honor, the State would like
2 to seat the alternate.

3 THE COURT: Any exception from the defense? Who
4 we are missing, I will tell you who we are missing.
5 I'm sorry, I didn't mean for you to make a decision in
6 the blind. It is Number 124.

7 She works at Alcoa, which is Mount Holly is 10
8 miles from Moncks Corner. She'd have to come up 52. I
9 think I know where it is because I have to pass it to
10 go to Moncks Corner.

11 I think that with traffic, by the time she got
12 herself collected -- because she is a little frazzled
13 -- by the time she gets herself together and gets down
14 here it will be an hour, might take her longer than
15 that.

16 MS. FRAYER: What was the number again?

17 THE COURT: Number 124.

18 MS. FRAYER: Your Honor, may I have a minute.

19 THE COURT: What it means, sir, is that we would
20 replace that juror with the alternate. And I just need
21 to know if you all have any objection to that.

22 Ms. Proctor, to bring you up to speed, one of
23 the jurors called the jury information line instead of
24 following the instructions to come in at 9:30. She's
25 out at 52 at work out at Mount Holly. So it would take

1 her an hour to get here probably.

2 So what we are trying to determine is whether we
3 will excuse her and seat the alternate.

4 It's Number 124, Ms. Hicks, who works at Alcoa.

5 MS. FRAYER: We can seat the alternate, Your
6 Honor.

7 THE COURT: All right. Call her and tell her
8 she is excused.

9 The record should reflect that Number 124 is
10 excused without objection, and the alternate will be
11 seated with the main panel, and that is Ms. Sue Sloane,
12 Number 248.

13 Now for the record we have already pretrial
14 dealt with the motion to sequester, and that has been
15 agreed to by the parties. We have determined that the
16 motion in limine on prior convictions for purposes of
17 impeachment is premature until such time as the
18 defendant determines he may or may not testify.

19 And the motion to exclude prior bad acts, as I
20 understand, is premature because the State does not
21 intend to introduce any Lyle evidence other than the
22 purpose for the stop which is that there was a trespass
23 notice.

24 And that that would be referred to as
25 generically as possible. That really becomes part of

1 the res gestae of the offense as to why he was stopped,
2 so I don't know that it necessarily comes within a
3 prior bad act. But I think it could be dealt with with
4 a curative instruction out of an abundance of caution
5 if the defense wanted it.

6 But I would not want them to say something like
7 -- I think a trespass notice is sufficient. I think
8 everybody knows what that is without going into any
9 depth or detail as to why it was in place or if, it
10 isn't necessary, it just provides the purpose for why
11 he was stoped.

12 Is there any exception to approaching the issue
13 in that way from the State?

14 MS. MCCLAIN: None, Your Honor.

15 THE COURT: From the defense?

16 MS. FRAYER: None, Your Honor.

17 THE COURT: Okay. Now are we ready to proceed
18 with the suppression hearing?

19 MS. MCCLAIN: Yes, Your Honor.

20 THE COURT: State may proceed.

21 MS. MCCLAIN: State would call Officer Patrick
22 Gill.

23 THE COURT: Sir, if you would come to the
24 witness stand to be sworn.

25 MS. FRAYER: Your Honor, the officers are all

1 seated in the hall together. And --

2 THE COURT: Sequestration requires that they not
3 be in the courtroom to hear one another's testimony.
4 Where they sit, unless you have some indication they
5 are talking.

6 MS. FRAYER: After they have testified, if he
7 wants him to stay in the courtroom until if the other
8 one is called they need to be able to go back outside.

9 THE COURT: Okay, we can do it that way.

10 Of course you know then they will hear what the
11 other officers are saying.

12 MS. FRAYER: No. What I'm saying is that once
13 Officer Gill gives his testimony, then if another
14 officer is called in he will go out and leave the
15 courtroom. If no other officer is called, then I want
16 him to sit in here instead of going out in the hall and
17 talking to the other two officers that are sitting out
18 there to tell them what he just testified about.

19 THE COURT: Well unless you can tell me they do
20 that, I'm not going to prevent them from going back
21 outside. I think they're bound and they know they're
22 not to discuss it.

23 MR. SIMPSON: We will discuss that with our
24 witnesses to make sure.

25 THE COURT: Thank you very much. Because if

1 they stay in the courtroom then they're going to hear
2 what the next witness says, and the next witness says
3 and then you are going to have a complaint about that
4 when they have to testify in the case in chief.

5 So I don't know any way to split that hair.

6 MR. PATRICK GILL,
7 after having first been duly sworn to state the truth,
8 the whole truth and nothing but the truth, testified on
9 his oath as follows.

10 THE COURT: You may proceed.

11 MS. McCLAIN: Thank you, Your Honor.

12 THE COURT: You're welcome.

13 DIRECT EXAMINATION

14 BY MS. McCLAIN:

15 Q Officer Gill, on May 29th of 2010 did you have
16 an occasion to become involved in an investigation
17 regarding this defendant, Timothy Young?

18 A Yes, ma'am.

19 Q Can you sort of explain exactly how that
20 investigation began?

21 MS. McCLAIN: Your Honor, permission to approach
22 the witness?

23 THE COURT: You may.

24 Q (By Ms. McClain) Here is a copy of your report.

25 A Thank you.

1 Q Officer, if you could briefly explain how that
2 investigation began?

3 A Yes, ma'am. On May 2010 at approximately 1610
4 hours I was aware of Mr. Young's trespass notice in a
5 certain area. I saw him in that area and I went to
6 attempt to talk to him.

7 He began to flee from me, ran in the middle of
8 the street, causing us almost to get hit by a car. A
9 brief pursuit happened, and a struggle happened over a
10 fence around [REDACTED] Nassau Street.

11 Other officers arrived on scene. We were able
12 to restrain him and detain him and we charged him
13 accordingly after we found some off-white rocklike
14 substance on his person.

15 Q Okay. The area in which this incident occurred,
16 where was that exactly?

17 A Line and Nassau, on the east side.

18 Q Okay.

19 A It originally started right at the corner of
20 Line and Nassau. And then the pursuit happened and the
21 struggle happened right around [REDACTED] Nassau Street.

22 Q Why were you originally in that area that day?

23 A It's part of my everyday patrol duty. Myself
24 and Officer Moody that day were on bike patrol. We had
25 been on bike patrol for about two hours. And we just

1 stopped.

2 It was really hot that day. We stoped to get
3 some water and take a break under the shade for a
4 second or two.

5 Q Then when, from that time you stopped, did you
6 see the defendant?

7 A As soon as we stopped we pulled up under the
8 Family Dollar, it has a little overhang behind it, and
9 it has shade. And we stopped to get some water.

10 As soon as we stoped we saw Mr. Young walking.
11 He continued to walk down Line Street. That's when --
12 then we went, I went to go advise him.

13 And then when I went to go advise him he was
14 already at Line and Nassau which was within his
15 trespass restrictions.

16 Q Without getting into any of the background or
17 context of why he may have been on trespass notice, can
18 you explain to the Court why you believed he was
19 restricted from that particular area?

20 A I believed Judge Steinard placed him on that as
21 a bond restriction.

22 Q Okay. When Judge Steinard issued those
23 restrictions, were you present?

24 A Yes, ma'am.

25 Q Did you make any, request any of those

1 restrictions?

2 A I did.

3 Q And what was the geographical area under your
4 understanding within which he was prohibited?

5 A It was from Line and Nassau -- I'm sorry, Nassau
6 to Aiken, from Line to Sheppard. With the exception
7 his ID at the time said he lived at ■ Aiken I believe,
8 or ■ Aiken, I'm not sure of the exact address off the
9 top of my head.

10 And Judge Steinard said he was allowed to go
11 down out of these parameters to go down, to walk down
12 Aiken to get to and from his house and that was it.

13 Q And he was only allowed down Aiken to get to his
14 residence?

15 A Yes. But he would have to go the back way, like
16 come off Lee Street past Sheppard. You have to go one
17 street over past Sheppard Street to get there.

18 Q Okay. And that would keep him from violating
19 those other geographic boundaries?

20 A Yes, ma'am.

21 Q Okay. Did you happen to note those particular
22 restrictions in the report you wrote for this case?

23 A I believe I did. Yes, ma'am, I did.

24 Q Okay. Exactly which restrictions did you write
25 down?

1 A On the report I put he was placed on trespass
2 restriction form Line Street, Aiken Street, Sheppard,
3 Nassau Street.

4 Q All right. You mentioned that when you
5 attempted to approach the defendant to advise him of
6 the trespass that he ran away; is that correct?

7 A Yes, ma'am. He took flight it would be
8 considered probably northwest or northeast across the
9 street towards [REDACTED] Nassau where a car was coming down
10 the street traveling southbound and actually almost
11 struck both of us. It was a white Ford Explorer.

12 Q You testified it almost struck both of you?

13 A Yes, ma'am. I gave chase after him and he ran
14 in front of the car. And I didn't see it until the
15 last minute. The car had to slam on its brakes to
16 avoid us.

17 I stopped briefly to avoid getting struck, the
18 car passed us, and then I went around the car.

19 Q Okay. You also mentioned that as you became
20 closer to the defendant or were able to apprehend him
21 that he resisted?

22 A Yes, ma'am. After we went around the car I was
23 able to grab a hand on him. He started swinging to
24 break loose of my grip on him.

25 He then broke free and went to jump over a

1 fence. I grabbed him again. He started actively
2 resisting, started pushing away and tried to push me
3 off the fence using the fence as leverage.

4 And then another officer came and restrained him
5 on the ground and we were able to detain him.

6 Q At that point for what offence was the defendant
7 being arrested?

8 A At that point we were arresting him for
9 trespassing, for the geographical trespass restrictions
10 that he was on; and disorderly conduct due to the fact
11 that he ran in front of a car and was making me struck,
12 and making the flow of traffic stop. And people
13 actually started coming out of their house to hear, to
14 see what was going on.

15 Q After you placed him under arrest for those
16 offenses, did you or any other officers conduct a
17 search incident to that arrest?

18 A We did. Once we got on the ground, he still
19 continued to struggle. He said some words to me. We
20 finally were able to detain him.

21 As our policy states search incident to arrest
22 we located some illegal narcotics, what we presumed
23 through training and experience to be illegal
24 narcotics, in his pocket.

25 We already had him detained and under arrest for

1 the other two charges. So we got him out of the area,
2 and we had it field tested and it was presumptive
3 positive for cocaine base.

4 MS. McCLAIN: Beg the Court's indulgence.

5 No further questions at this moment. Please
6 answer any that Ms. Frayer may have for you.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: You may proceed.

9 CROSS-EXAMINATION

10 BY MS. FRAYER:

11 Q Good morning, Officer Gill.

12 A Hi, ma'am.

13 Q Officer Gill, you stated that you were
14 attempting to make contact with Mr. Young because he
15 was in violation of a trespass order?

16 A Yes, ma'am.

17 Q Okay. And you were familiar with the case that
18 involved that?

19 A Yes, ma'am.

20 Q That gave rise to this?

21 A Yes, ma'am. It was my case.

22 Q It was your case. You were the arresting
23 officer on that case?

24 A For the original charge? Yes, ma'am.

25 Q The one that you say the trespass order came

1 from?

2 A Yes, ma'am.

3 Q And you are saying that this is the result of a
4 bond restriction?

5 A Yes, ma'am. That's how Judge Stienard stated
6 it.

7 Q Do you have a written bond order?

8 A No, ma'am. At that time I believe Judge
9 Steinard was going to do it after court.

10 Q I'm sorry?

11 A No, ma'am, I don't have a written order. I
12 believe Judge Steinard was going to do it after court.

13 Q Okay. When was that court hearing?

14 A I believe I have an e-mail that I wrote in
15 regards to this. I believe it was May 25th, 2010.

16 Q You said that you tried to approach Mr. Young
17 and he started running?

18 A Yes, ma'am.

19 Q And that was on Line Street?

20 A At the corner of Line and Nassau.

21 Q At the corner of Line and Nassau?

22 A Yes, ma'am.

23 Q The solicitor provided you with a copy of your
24 report, right?

25 A Yes, ma'am.

1 Q If you could look at that report just for
2 information purposes. In that report where did you say
3 that you first indicate observing Mr. Young?

4 A I first -- in the report it says I first saw him
5 at Line and Ducs Court.

6 Q Line and Ducs Court?

7 A Yes, ma'am.

8 Q So if you are on Line Street, would you get to
9 Ducs Court before you get to Nassau if you were walking
10 the way Mr. Young was walking?

11 A Depends which way you are walking, but, yes.

12 Q From the direction he was walking?

13 A Yes. He was walking from Meeting Street, he
14 walked past Ducs Court, down Line Street. And we
15 didn't make contact with him until he entered his
16 trespass restriction.

17 Q But you first observed him at Ducs Court before
18 he got to Nassau?

19 A Yes. We just observed him, we didn't say
20 anything to him.

21 Q Okay. On direct examination you indicated that
22 at some point you were -- that Mr. Young ran into the
23 street and almost got -- you guys almost got hit by a
24 car. You said that on direct?

25 A Yes, ma'am.

1 Q I mean when the solicitor was asking you
2 questions?

3 A Yes, ma'am.

4 Q You did write a report about this incident,
5 right?

6 A Yes, ma'am.

7 Q And this report that you wrote was written
8 fairly close to the time when this incident occurred?

9 A Yes, ma'am, fairly close.

10 Q It wasn't written today?

11 A No.

12 Q So it was written last year in May sometime?

13 A Yes, ma'am.

14 Q You have got training, you have been to the
15 academy, correct?

16 A Yes, ma'am.

17 Q And you understand the importance of the
18 incident report?

19 A Yes, ma'am.

20 Q And you understand that it's important to put
21 everything in the incident report that you remember?

22 A Yes, ma'am.

23 Q Okay. Because you realize that sometimes this
24 incident report is going to be relied on at a later
25 time like today?

1 A Yes, ma'am.

2 Q Because you can't remember everything?

3 A Yes, ma'am.

4 Q Okay. So in your report, if you look at your
5 report again, where in that report do you mention about
6 running in the street? That he was running and
7 crossing traffic and almost got hit? That you guys
8 almost got hit?

9 A Ma'am, I don't have that we almost got hit by a
10 car. But I do state that I attempted and he started to
11 run northbound down Nassau Street.

12 Q Right.

13 A You're correct. I did not put in the report
14 that we almost got struck, but that's why I charged him
15 with disorderly conduct.

16 Q Because he ran down Nassau Street?

17 A Yes, ma'am.

18 Q In your report you didn't say that he was
19 running down Nassau street in the street or on the
20 sidewalk; is that correct? The report doesn't say
21 that, yes or no?

22 A It says down Nassau Street.

23 Q Down Nassau Street?

24 A The street.

25 Q Okay. Then you indicated on -- that you

1 believed a bond restriction was in place but you had no
2 direct personal definite knowledge that one did exist?

3 A Well I had personal knowledge that one did exist
4 because I was in court when Judge Steinard verbally
5 told him and verbally told me on May 25th.

6 I believe Judge Steinard was going to actually
7 do a written order, which was common at that time they
8 did after court. Now we have made sure to have it
9 right then and there at the time of court.

10 Q So at the time of the pursuit you did not have a
11 written order?

12 A No, ma'am.

13 Q At the time that you did your incident report,
14 you wrote your report; you didn't have a written order?

15 A No, ma'am.

16 Q Do you have a written order today for this
17 hearing?

18 A No, ma'am. Judge Steinard passed away. I did
19 make several attempts to contact him during that time.
20 I'm not sure if you can recall but Judge Steinard was
21 very ill, and I couldn't get in touch with him, and
22 then he passed away.

23 Q Thank you. You said Nassau, the area of Nassau,
24 Line, and those areas, that's your general work area on
25 a daily basis?

1 A It expands a little further than that, but, yes,
2 ma'am.

3 Q About last year about how often would you make
4 an arrest for trespass and loitering?

5 A How often?

6 Q Uh-hum.

7 A I don't know how often, but I would say a decent
8 amount. When we first got over there it was extremely
9 saturated area with a lot of crime.

10 And we used trespassing and loitering to start
11 getting a lot of people to stop hanging on the corners
12 and other people's property and the streets and
13 drinking in public, and stuff like that.

14 Q Okay. Now the trespass order that you say Judge
15 Steinard gave orally, was Mr. Young permitted to -- he
16 had a house on there or he just couldn't be in the
17 street or could he be in the house?

18 A He could not be in that area, that small
19 geographical area until his jury trial. Like I
20 previously stated, he was allowed to go around the
21 geographical area to go down Aiken Street.

22 His ID at the time I believe said ■ or ■, I'm
23 not sure exactly, I know it was in the ■s. And Judge
24 Steinard specifically said, because his objection to
25 the trespass restriction was I live on Aiken Street.

1 And Judge Steinard said, I understand that. We can
2 keep these restrictions and I'm going to allow you on
3 Aiken Street to go to and from your house.

4 Q Okay.

5 A I have ■ Aiken, which is on this ID.

6 Q Okay. And you said that when you first observed
7 him you were under the awning at the Family Dollar
8 getting cooled down?

9 A Yes, ma'am. We stopped for a brief second to
10 grab a drink water. Like I said, it was hot that day.
11 We had been riding the bike for like two hours, maybe
12 even longer.

13 Q Okay. And when you pursued Mr. Young down the
14 street, you indicated that you were trying to arrest
15 him at that point? Or were you still trying to give
16 him notice?

17 A Well when I first -- I was going to notify him.
18 But at the time he went to Line and Nassau he violated
19 the trespass restriction and then I was going to place
20 him under arrest. And I said he was under arrest to
21 him.

22 Then when he ran into the street I then advised
23 him by name that he was under arrest.

24 Q And if you can look at your incident report
25 again. It says that officer attempted to stop the

1 defendant on Line Street. Did you say in your report
2 anything about telling him that he was under arrest?

3 A No, ma'am, it's not in the report.

4 Q Okay. At some point when you were pursuing him,
5 you did make contact with him and you were able to
6 apprehend him; is that correct?

7 A Yes, ma'am. After a couple of brief struggles
8 we were able to detain him.

9 Q Was another officer running with you?

10 A Officer Moody was about I would say
11 approximately 5 to 10 feet behind me with officer -- I
12 believe another officer was a little further behind
13 him.

14 Q All you guys, you were on your bikes?

15 A Yeah. Me and Officer Moody were the closest.
16 He was about 5, 10 feet behind me.

17 Q So at some point you got off your bike and
18 started running. Is that what you did?

19 A Yes, ma'am. I turned the corner on Line and
20 Nassau and he was right there. I attempted to
21 apprehend him. He pulled away. At that time I was
22 partially on and off my bike so I pursued on foot.
23 That's when we ran across the street.

24 when the car passed us I tried to grab him again
25 and he started swinging to get away. He broke free of

1 my grasp. He jumped a fence and I grabbed him over the
2 fence and I just held him on the fence until another
3 officer could come and detain him.

4 Q Okay. You said that you were familiar with Mr.
5 Young. Had he ever run from you before when you tried
6 to make contact with him?

7 A No, ma'am.

8 MS. FRAYER: Beg the Court's indulgence.

9 Q (By Ms. Frayer) And last question, Officer Gill.
10 You said that he was in violation of a bond
11 restriction; is that correct?

12 A Yes, ma'am. That's how Judge Steinard
13 established it.

14 Q With violations of bond restrictions he would
15 have had to have a hearing, is that right? He would
16 need a hearing to show that he was in violation of a
17 restriction, correct?

18 A I assume so, ma'am. I believe so. I can tell
19 you that's not how municipal court does it.

20 Q You have been to bond -- I'm sorry.

21 A I know the process. I have been through the
22 prelims. I have never been to bond court, I have been
23 through prelims. I just know that's how the municipal
24 courts establish that.

25 When they show up for trial and they ask for a

1 jury trial or a continuance or pled guilty with
2 loitering, they place them on -- if they pled guilty it
3 was a little different because in the statute they say
4 they can be placed on a geographical restrictions.

5 How the City of Charleston municipal court was
6 doing it, and still is doing, now they're getting a
7 hard copy right away, is most guys get a PR bond. And
8 then when they come to the court the judges -- when
9 they ask for a jury trial or a continuance for whatever
10 reason, the judge puts them on a restriction until that
11 continuance or the jury trial as a bond restriction is
12 how they explain it to them and explain it to us.

13 Q So if you see somebody that you think is
14 violating their bond restriction, what do you believe
15 is your authority?

16 A I did some research on this.

17 Q Back on May 29, 2010, what did you believe was
18 your authority at that time?

19 A That you could place them under arrest for
20 trespassing. That's how it was explained to us by the
21 courts.

22 Q Okay. Do you -- the underlying charge you said
23 was loitering, that's why he got the trespass?

24 A The first original charge that I arrested him
25 for?

1 Q Uh-hum.

2 A Yes, ma'am, it was a loitering charge at 25 Line
3 Street.

4 Q And do you know the disposition of that charge?

5 A I don't, ma'am.

6 Q You don't?

7 A I don't recall.

8 Q Okay.

9 A I do want to say I think it's still in holding
10 because of this trial. But I'm not 100 percent
11 positive.

12 Q So you really don't know?

13 A I don't know.

14 Q Okay.

15 MS. FRAYER: No further questions.

16 THE COURT: Any redirect?

17 MS. MCCLAIN: Yes, Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. MCCLAIN:

20 Q Officer Gill, is it your testimony that you were
21 present at the hearing in which Judge Steinfeld issued
22 the boundaries within which the defendant was
23 prohibited from being?

24 A Yes, ma'am.

25 Q Did you hear Judge Steinfeld issue those

1 restrictions from the bench?

2 A I did, ma'am. And Mr. Young actually
3 acknowledged that he understood the restrictions.

4 Q And you said that hearing occurred sometime
5 around May 25th?

6 A May 25th, at 1:30.

7 Q So was that four days prior to the date of this
8 incident on May 29th?

9 A Yes, ma'am.

10 Q And is it also your testimony you first made
11 contact with the defendant once he reached beyond those
12 geographical boundaries?

13 A Yes, ma'am.

14 Q Did you wait for him to cross over into that
15 restricted area before approaching him?

16 A Yes, ma'am.

17 Q And once he fled from you and crossed over
18 Nassau and the car screeched, did you understand you at
19 that point had probable cause to place him under arrest
20 for public disorderly conduct?

21 A Yes, ma'am.

22 Q Did you attempt to place him under arrest for
23 that offense?

24 A Yes, ma'am.

25 Q And when you were attempting to arrest him for

1 that, did he resist?

2 A Yes, ma'am.

3 Q At that point was it your understanding that he
4 was -- he committed two offences for which you could
5 arrest him for?

6 A Yes, ma'am.

7 Q What offenses did you arrest him for?

8 A All of the offences? We placed him under arrest
9 for the trespassing, the public disorderly conduct.
10 When we found the illegal narcotics and we field
11 weighed it, it was 5.2 grams, we charged him with PWID
12 cocaine base, possession with intent to distribute,
13 possession with intent to distribute in close proximity
14 to a park, and we also charged him with resisting
15 arrest, and threatening the life of a public official.

16 Q Okay.

17 MS. MCCLAIN: Beg the Court's indulgence.

18 Q (By Ms. McClain) Just to recap, prior to the
19 search of his person, you believed you had probable
20 cause to arrest him for public disorderly conduct and
21 resisting arrest?

22 A Yes, ma'am. And trespassing too.

23 MS. MCCLAIN: No further questions.

24 THE COURT: Any objection to the witness being
25 excused for purpose of this hearing, from the State?

1 MS. MCCLAIN: None from the State.

2 THE COURT: From the defense?

3 MS. FRAYER: No, Your Honor.

4 THE COURT: Sir, you are excused subject to
5 being recalled.

6 Anything further from the State?

7 MS. MCCLAIN: No, Your Honor.

8 THE COURT: Anything from the defense?

9 MS. FRAYER: Yes, Your Honor.

10 THE COURT: You may proceed. Do you have
11 witnesses?

12 MS. FRAYER: Yes.

13 THE COURT: Call your witness.

14 MS. FRAYER: We call Mr. Timothy Young.

15 MR. TIMOTHY YOUNG,

16 after having first been duly sworn to state the truth,
17 the whole truth and nothing but the truth, testified on
18 his oath as follows:

19 THE COURT: You may proposed.

20 MS. FRAYER: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MS. FRAYER:

23 Q Mr. Young, have you ever been arrested for
24 loitering?

25 A Yeah.

1 Q And when you were arrested for loitering, did
2 you ever get a notice of being on trespass restriction?

3 A No.

4 Q And the incident reports in this case indicate
5 that -- what is your address?

6 A ■ Aiken Street.

7 Q Okay. And on -- let's go to May 29th when you
8 were arrested this time. Where were you coming from
9 when you saw Officer Gill?

10 A From the Church's parking lot on Line, Meeting
11 and Line Street.

12 Q Meeting and Line Street. And where were you
13 headed?

14 A Down Line Street.

15 Q Okay. And where were you going?

16 A Down Aiken Street. Towards Aiken Street.

17 Q Toward Aiken Street?

18 A Yeah.

19 Q And what's on Aiken Street?

20 A My house.

21 Q So to get from Church's Chicken to Aiken Street,
22 what is the shortest way?

23 A Down Line Street. Line Street will lead all the
24 way to Aiken Street.

25 Q Line Street runs into Aiken Street?

1 A Yeah.

2 Q Then what do you do after that? Which way do
3 you turn, left or right to get to your house?

4 A Left.

5 Q Okay. You were sitting in here and you heard
6 Officer Gill testify that you guys had a hearing, a
7 bond hearing on about May 25th for a loitering charge.
8 Do you remember that day?

9 A Yeah.

10 Q What happened when you went to that hearing?

11 A Well the judge stated -- judge stated to him in
12 the courtroom that if I loitering on any one of these
13 streets, then he can lock me up for trespassing.

14 But I was walking down Line Street. I wasn't
15 standing out, sitting on down. I was walking down Line
16 Street.

17 Q When you say any one of those streets, what
18 streets are you talking about?

19 A He said Nassau, Line and Sheppard Street.

20 Q Okay.

21 MS. FRAYER: Beg the Court's indulgence.

22 Your Honor, may I approach the witness?

23 THE COURT: You may.

24 Q (By Ms. Frayer) Mr. Young, I'm showing you a map
25 of the area. Do you recognize the streets on this map?

1 A No.

2 Q Do you recognize these streets on this map?

3 A Yes, ma'am.

4 Q Okay. When you are looking at this map, are
5 those the streets that you just called out that you
6 were on the loitering notice for?

7 A Yeah.

8 Q Okay. Mr. Young, if you would turn around and
9 look at the map.

10 Can you point to Line Street?

11 A (Whereupon, the witness indicates.)

12 Q Okay. When you saw officer -- you said that you
13 were coming from Meeting and Line at the Church's
14 chicken?

15 A Yes.

16 Q Do you see Meeting Street on the map? Can you
17 point to Meeting Street?

18 A (Whereupon, the witness indicates.)

19 Q Now where is Aiken Street on the map where you
20 live?

21 A Right down here.

22 Q You live on that end of Aiken Street right
23 there?

24 A Yeah, going this way.

25 Q About where?

1 A Going forwards this way right here.

2 Q Okay. So you live past Sheppard Street?

3 A Yeah. A little past Sheppard Street.

4 Q Okay, you can have a seat. So you indicated

5 that in the bond hearing the judge told you that you

6 were on loitering. What is your understanding of

7 loitering?

8 A Loitering consists of if I just sitting around,

9 hanging around or standing around.

10 Q So it was your understanding that you could not

11 be hanging around, standing around on Line?

12 A None of these streets here.

13 Q None of those streets that are shaded in the

14 red?

15 A Right.

16 Q Did you ever get a written map or anything to

17 show you the areas where you could not be?

18 A No.

19 Q Did you ever get a written notice just

20 explaining, further explaining a bond restriction

21 order?

22 A No.

23 Q A bond order or anything from Judge Steinard?

24 A No.

25 Q And you heard Officer Gill testify that you, in

1 order for you to get to your house if you were coming
2 say from Church's Chicken, what route -- where is Lee
3 Street on the map?

4 A Lee Street would be -- Lee Street would be all
5 the way down this way. That would be going all out
6 that way. So that would be going all the way back
7 towards like Jackson Street over here where I got to go
8 near almost three or four blocks away.

9 Q So you would have to go up three or four blocks
10 up Meeting Street in order to get over to Lee street
11 and come down to Aiken Street where you live?

12 A Right.

13 Q Now, Mr. Young, the officer testified that you
14 ran from him this time when he approached you, when he
15 called to you. Where did you -- where were you when
16 you started to run from the officer?

17 A Around in the middle part of Line Street.

18 Q Can you point?

19 A I was walking down this street, would be right
20 here at the corner.

21 Q Right.

22 A So he went up in this area right here by Family
23 Dollar. So when he see me, when they come up I almost
24 be in the middle of the block almost facing Hanover
25 Street, getting ready to get to Hanover Street.

1 So when I get close to Hanover Street, Officer
2 Gill pull up on the side of me and he say to me, oh,
3 you must be kidding me. When I looked back at him, I
4 didn't really pay no attention because I think he might
5 be kidding. I thought he talking with someone else.

6 So by me, you know what I'm saying, by me, you
7 know, having, you know what I'm saying, a little
8 paraphernalia on me, I know he could lock me up if he
9 search me. So I couldn't let him search me because I
10 knew I had paraphernalia on me. He could lock me up
11 for the paraphernalia.

12 Q Okay. So you started running. He said that you
13 ran on [REDACTED] Nassau Street?

14 A Uh-hum.

15 Q So you turned around and started running?

16 A Yes. I started running from here.

17 Q Okay. So you were already past the corner of
18 Line and Nassau?

19 A Yeah.

20 Q And then you weren't stopped talking to anybody,
21 you weren't standing around, you were walking down the
22 street?

23 A No, I was walking down the street.

24 Q At some point Officer Gill testified that you
25 almost got hit by a car, you were running down the

1 street, you almost got hit by a car?

2 A No.

3 Q You tried to jump a fence?

4 A Yeah.

5 Q what happened when you tried to jump the fence?

6 A when I jumped the fence my pants get hooked on
7 the fence. So my pants stoped me from going over the
8 fence. And that's when Officer Gill grabbed me.

9 Q And then he pulled you?

10 A Then he pulled me. When he pulled me another
11 officer come from the back, officer threw me and threw
12 me across the fence in the yard.

13 when he threw me in the yard, that's when
14 officer Gill kept me and some more officers come. And
15 they all detained me.

16 Q So when they got you on the ground it was more
17 than one officer?

18 A More than one, yeah.

19 Q when you were on the fence it was just you and
20 officer Gill?

21 A Just Gill, yeah.

22 Q Uh-hum. Officer Gill, when he tried to subdue
23 you, his testimony was that you tried to break away
24 from him?

25 A No, I was hooked on the fence. I was hooked on

1 the fence trying to get off the fence. No, I wasn't.

2 Q Did you ever hear Officer Gill ever tell you to
3 stop, you were under arrest?

4 A No.

5 Q When you mentioned that the other officers
6 arrived, did any of the other officers tell you that
7 you were under arrest?

8 A No, they just searched me. And Officer Gill
9 tell them, he stated to them that I never run from him
10 so I must be, you know what I'm saying, I must be got
11 something, I must be drop something.

12 so officer Gill make attempt to walk back
13 towards, you know what I'm saying, from the way that I
14 run from. And all the rest of the officers detain me.

15 Q And you were on the ground?

16 A I was on the ground, yes, ma'am.

17 Q They put the handcuffs on you?

18 A Yes, ma'am.

19 Q You were on the ground, they put the handcuffs
20 on you?

21 A Yes, ma'am.

22 Q And you got searched?

23 A Yes, ma'am.

24 Q They found stuff on you? Contraband?

25 A Paraphernalia.

1 Q When you say paraphernalia, what do you mean?
2 what's paraphernalia?

3 A A stem.

4 Q What did you have on you?

5 A A stem.

6 Q And what's a stem?

7 A A crack pipe.

8 Q A crack pipe. And what else did you have?

9 A A little piece of crack with the pipe.

10 Q Okay. So the crack was in the pipe?

11 A No.

12 Q Where was the crack?

13 A The crack was in a little seal bag.

14 Q A little plastic bag?

15 A Yes, ma'am.

16 Q How many of those bags did you have?

17 A Just one.

18 Q Just one bag?

19 A Yeah.

20 MS. FRAYER: Beg the Court's indulgence.

21 Q (By Ms. Frayer) Did you ever threatened Officer
22 Gill?

23 A No, ma'am.

24 MS. FRAYER: Mr. Young, that's all the questions
25 I have. Please answer any questions the State has for

1 you.

2 THE COURT: Any questions for the witness?

3 MR. SIMPSON: Just briefly, Your Honor.

4 THE COURT: You may proceed.

5 MR. SIMPSON: Thank you.

6 CROSS-EXAMINATION

7 BY MR. SIMPSON:

8 Q Mr. Young, good morning.

9 A Good morning, sir.

10 Q Ms. Frayer asked you about receiving written
11 notice of this area, and I believe you stated you
12 didn't, correct?

13 A Right.

14 Q But you've lived in this neighborhood for some
15 time?

16 A All my life.

17 Q Was there any confusion on your part? You did
18 notice the confusion between loitering and merely
19 walking through the area, was there any confusion on
20 your part regarding the parameters of that highlighted
21 area behind you?

22 A No.

23 Q So you understood the geographic restrictions
24 that the judge placed you under?

25 A I mean as far as I'm concerned, yes, sir.

1 Q So when Officer Gill was just coming up to you
2 on the bike, you stopped to discuss with him your
3 confusion about the issue?

4 A No. No. No. Because the simple fact that when
5 I see Officer Gill, I knew he was going to try and
6 arrest me on the simple fact that he and I got some
7 kind of altercation.

8 Q So you knew at that point you were under arrest?

9 A No. He never told me I was under arrest.

10 Q I thought you said you knew that he was going to
11 arrest you?

12 A Yeah, for the simple fact that I had
13 paraphernalia on me. If he'd of searched me I knew
14 that he would lock me up for that paraphernalia.

15 Q You had paraphernalia and crack cocaine on your
16 person?

17 A Yes, sir.

18 Q So when you saw him approaching you took off,
19 right?

20 A Yeah.

21 Q And traffic in the east side, it's not heavy
22 traffic but it's pretty frequent traffic?

23 A Ain't not traffic coming, sir.

24 Q Okay. So you don't remember running in front of
25 a car?

1. A No, sir.

2 Q And you admit that as Officer Gill approached,
3 bam, you took off, correct?

4 A When I seen him, yeah.

5 Q Running away so fast that you even were willing
6 to jump over a fence to get away from Officer Gill?

7 A Yes, sir.

8 Q But didn't resist arrest?

9 A No. No, sir.

10 Q Okay. You jumped over a fence, but you wouldn't
11 do anything like push back at the officer or anything?

12 A My pants were hooked on the fence, I was upside
13 down, hanging upside down.

14 Q I believe you stated that Officer Gill stated a
15 suspicion that you might have something on you, right?

16 A Say that again?

17 Q He stated a suspicion that you might have had
18 drugs on you due to your flight, right?

19 A I don't know if he had -- I don't know if that
20 was his attention. I don't know what his attention was
21 on. But I knew what my attention was.

22 Q And it would, under the circumstances, be
23 reasonable to suspect you might have drugs on you,
24 correct? Because in fact you did?

25 A Yeah.

1 Q where did you get the drugs that you had on your
2 person?

3 A well I purchased that from my little dude.

4 Q How much did you pay for it?

5 MS. FRAYER: Objection, Your Honor.

6 THE COURT: Basis?

7 MS. FRAYER: Beyond the scope.

8 THE COURT: I'm going to give him a little
9 latitude.

10 Sir, you may answer the question.

11 Q (By Mr. Simpson) How much did that cost?

12 A I think 20, 20 or 30 dollars.

13 Q You don't remember 20 or 30?

14 A Dealing with me, no, I wouldn't pay for it like
15 that.

16 Q okay.

17 A I just did a little favor for it.

18 Q How much did you understand you were getting
19 when you purchased it?

20 A I just do favors for some little dudes around
21 there and they give me a little something, whatever
22 they got in the bag.

23 Q okay. A little something?

24 A Yeah.

25 Q Five grams, correct?

1 A No, I really doubt five grams were in that bag.

2 Q Okay. So you were willing to flee, correct,
3 right when you saw Officer Gill?

4 A Yeah.

5 Q But you said you didn't resist in any way, but
6 you were willing to jump a fence to get away, correct?

7 A Yeah, because I had paraphernalia. I didn't
8 want to go to jail.

9 Q And once Officer Gill caught up with you, isn't
10 it true that you stated, your lucky day, meaning the
11 other officers, got -- jumped on me because I was going
12 to shank your ass?

13 A Excuse me, I don't mean to laugh. No, sir. No,
14 never come out of my mouth.

15 Q And you didn't repeat later when placed under
16 arrest, repeating, I'm going to shank your ass for
17 harassment?

18 A No, sir. No, sir.

19 MR. SIMPSON: Nothing further, Your Honor.

20 THE COURT: Any redirect?

21 MS. FRAYER: Just one.

22 REDIRECT EXAMINATION

23 BY MS. FRAYER:

24 Q You were asked about a statement about shanking.
25 Did you have any weapons on you?

1 A No, ma'am.

2 MS. FRAYER: Thank you.

3 No further questions of this witness, Your
4 Honor.

5 THE COURT: Sir, you may step down.

6 THE DEFENDANT: Thank you, ma'am.

7 THE COURT: You're welcome.

8 Anything further from the defense?

9 MS. FRAYER: Nothing, Your Honor.

10 THE COURT: Anything further from the State?

11 MS. MCCLAIN: No, Your Honor.

12 THE COURT: Glad to hear argument.

13 MS. MCCLAIN: Thank you, Your Honor.

14 Your Honor, you heard Officer Gill testify to
15 the fact that he had what could be defined as a
16 good-faith belief that the defendant was in fact on
17 trespass notice for that area.

18 He was present in court when Judge Steinard
19 issued the geographical restrictions. It was his
20 understanding the defendant was not supposed to be
21 present in those restrictions. And so he had probable
22 cause at the time to arrest the defendant for trespass
23 violation.

24 If nothing else, he at least had a reasonable
25 suspicion to approach the defendant regarding potential

1 trespass. And after that immediate contact with the
2 defendant, several other charges started to pile up at
3 that point.

4 The defendant immediately fled from the officer
5 running into the street, as Officer Gill testified,
6 causing a car to come to a halt almost striking the
7 defendant and the officer.

8 At that point the defendant had caused -- excuse
9 me -- had committed the offence of public disorderly
10 conduct which Officer Gill had probable cause to arrest
11 him, which he did. During the attempted arrest the
12 officer testified that the defendant physically
13 resisted pushing away, throwing his arms, and was not
14 cooperative during that situation.

15 So at that point the defendant was lawfully
16 placed under arrest for at least two offenses that --
17 at least two offenses, if not three, the defendant
18 actually did commit under the officer's understanding
19 at that time.

20 After those lawful arrests he was lawfully
21 searched. And officers located crack cocaine in the
22 defendant's pocket, which the defendant has already
23 admitted he had on his person. So that's the reason
24 that he fled once the officer approached him.

25 Your Honor, under the law we believe that was a

1 proper and valid search of the defendant's person. And
2 certainly not any violation of the defendant's
3 constitutional rights, and thus not excluded from
4 evidence in this case.

5 Nothing further, thank you.

6 THE COURT: Anything from the defense?

7 MS. FRAYER: Yes, Your Honor, thank you.

8 THE COURT: You're welcome.

9 MS. FRAYER: Thank you, Your Honor, may it
10 please the Court.

11 THE COURT: Yes, ma'am.

12 MS. FRAYER: Your Honor, we filed this motion to
13 suppress the evidence in this case because we feel that
14 the Officer Gill lacked probable cause in this case to
15 arrest Mr. Young.

16 You heard the testimony from Officer Gill that
17 he believed there was a bond, that Mr. Young was in
18 violation of a bond restriction. In order to arrest
19 someone for violating a bond restriction there is a
20 motion to revoke the bond. There is a procedure to
21 revoke the bond so that he would have been placed back
22 in jail after a hearing.

23 You heard Officer Gill testify that he observed
24 Mr. Young near Ducs Court and Line Street before he
25 entered the no trespass zone. He allowed him to -- he

1 was stopping him, approaching him to warn him that he
2 was entering the zone. He allowed him to travel to the
3 zone where he believed that there was this order from
4 Judge Steinard saying that no trespassing.

5 Officer Young (sic) at the time of May 29, 2010,
6 he testified today that he did not know the procedure
7 for what should be done when someone, as he believed in
8 violation of a bond restriction, he stated that he did
9 some research today regarding -- for this hearing today
10 regarding that. But at the time when he was
11 approaching and pursued Mr. Young, he did not even have
12 the knowledge about whether he could arrest him at that
13 time.

14 Your Honor, there is no exigent circumstances of
15 a crime being committed in his presence where Officer
16 Gill could not have gone to the court and gotten a
17 warrant and done the trespass procedures or have the
18 bond restriction -- the bond revoked.

19 There was nothing that nobody was in threat of
20 danger or harm. No indication that when he saw him he
21 was selling any drugs or anything like that in his
22 presence. He indicated that he saw him walking from
23 Meeting Street. He got to Line and Ducs Court. He
24 continued to let him walk.

25 You heard Mr. Young testify that he was stopped

1 -- that officer Gill actually rode the bike along side
2 him and made some comments. He took off running
3 because he admits that he did have -- he knew that he
4 would be arrested because of what he had on his person.

5 He did not -- the report is what we rely on for
6 incidents like this. And his report does not mention
7 anything about almost being hit by a car as they ran
8 down Nassau Street. It does not mention anything about
9 that that was considered disorderly conduct, Your
10 Honor, which would give him a reason to arrest Mr.
11 Young.

12 We have this case and we believe that this case
13 is similar to State v Fowler where a cop stopped Mr.
14 Fowler while he walked down the street and conducted a
15 pat down and found weapons and he was arrested later.
16 The drugs in that case were suppressed because there
17 was no reason for the officer to make contact with him.

18 In this case if he wanted to warn Mr. Young that
19 you are about to enter the zone, he had -- and you
20 looked at the map, Your Honor -- he had sufficient time
21 to warn him.

22 Mr. Young could have turned around, gone the two
23 or three blocks up the street, Meeting Street to
24 Sheppard, even though there was no written order at the
25 time. There is no written order today stating that

1 that was a bond restriction. There is no transcript
2 that Officer Gill or the State has provided indicating
3 that that was a restriction made by the judge.

4 My client did indicate that he believed that it
5 was a loitering order, not a trespass order. And my
6 client was walking -- Mr. Young was walking. Officer
7 Gill said he saw him walking. There is no indication
8 that he stopped at any point on Line Street where --
9 before he was stopped by the officer.

10 The State has failed to produce any documents to
11 support the officer's claim. Officer Gill said that he
12 remembered this. I asked him about arrest during that
13 period of time, he said he arrested several people for
14 trespassing and loitering last year around May. He
15 could not remember how many.

16 Since the basis of the stop for Mr. Young was
17 based on something that did not exist, the good faith
18 of officer Gill, which the State said that he used, he
19 had a good-faith belief, that could have been verified.

20 Again there was no circumstance which would have
21 allowed him, or should have allowed him to arrest Mr.
22 Young, therefore he should not have been pursued.
23 Therefore the search incident to the arrest, the arrest
24 itself was unlawful

25 And nothing further, Your Honor.

1 THE COURT: Thank you.

2 The motion is denied. The officer's testimony
3 is credible. I do not find the testimony of the
4 defendant to be credible. There are particular
5 inconsistencies in his testimony that lead me to that
6 conclusion.

7 There does not have to be probable cause for the
8 original -- in other words, where there is an
9 appropriate stop, an arrest may be supported by
10 probable cause even though the offense for which the
11 arrest was made is not closely related to the offence
12 stated by the officer as the reason for the arrest.

13 Clearly there was probable cause for him to be
14 stopped. There was a reasonable and articulable
15 suspicion that criminal activity was afoot. And there
16 did not have to be probable cause -- it did not have to
17 rise to the level of an arrest.

18 There was certainly probable cause initially,
19 but certainly once he ran into the street and fled and
20 committed the act of public disorderly conduct in the
21 presence of the officer, it then rose to the level
22 certainly of probable cause for him to have been
23 arrested.

24 But backing up shortly a little in the
25 continuum, even if it was short of probable cause for

1 the original arrest, there certainly was probable cause
2 for him to have been briefly detained and questioned,
3 and that would have been proper, and that is what the
4 officer attempted to do.

5 But once he fled and then committed another
6 criminal act in the presence of the officer, clearly
7 there was probable cause for him to have been arrested
8 and there to be a search incident to the arrest; that
9 being him being put on notice that you are being
10 arrested, and him having resisted the arrest.

11 And also to be put on trespass, on notice that
12 he was trespassing and was going to be stopped for that
13 incident.

14 Now as I understand it, of course this is just
15 my understanding from how things are done in the
16 magistrate's court, and it surprises me to some extent,
17 but after researching the statutes it is completely
18 proper the way they do.

19 Magistrate's courts and municipal courts are not
20 courts of record. The statutes do not require them to
21 do written orders. The statute actually provides that
22 their ruling, or their order is sufficient once
23 articulated for the record.

24 But once they then take the act of reducing it
25 to writing, they have certain obligations. They don't

1 have any obligation to place it in writing. And you
2 are on notice as to what your restrictions are once
3 articulated from the bench. And that is my
4 understanding.

5 But even beyond that, now having dealt with this
6 issue on many occasions, it is my understanding that
7 these orders are never reduced to writing. That they
8 are simply notated in the computer, those being those
9 restrictions from each whether it's Magistrate's Court,
10 Municipal Court, or a city judge, they simply through
11 the case management system, and its predecessor,
12 notated those bond restrictions in a computer notation.

13 And so I learned that recently after having
14 dealt with this in a case with Judge Gosnell. And it
15 is my understanding that that is the way it is handled
16 through the city, through the county, and through the
17 magistrate's court. It is not actually put on any bond
18 form. It is actually put on a notation with the bond
19 notes in the computer at the time that the bond is
20 entered.

21 But even above and beyond that, it is clear, and
22 I find credible for the record, that Judge Steinfeld
23 articulated what the bond conditions were for; the
24 defendant, that he was present and that he acknowledged
25 and understood those restrictions. Now the testimony

1 regarding what his understanding of those bond
2 restrictions were, are not germane to whether probable
3 cause existed.

4 They may well be germane as to whether he is in
5 fact guilty of trespassing. But him being guilty of
6 trespassing is not the standard that is required for an
7 officer to articulate probable cause.

8 So clearly there was probable cause for him to
9 have have been stopped. Once he fled and committed
10 another criminal act there was certainly probable cause
11 for his arrest, and certainly probable cause for the
12 search incident to arrest at that point.

13 So the motion to suppress is denied.

14 Are we ready to proceed?

15 MS. PROCTOR: Can we take a two minute break?

16 THE COURT: It has to be very quick. I've had a
17 jury waiting since 9:30.

18 MS. PROCTOR: Thank you.

19 (Whereupon, a recess was taken.)

20 THE COURT: Is the State ready to proceed?

21 MS. MCCALIN: Yes, Your Honor.

22 THE COURT: Defense ready to proceed?

23 MS. FRAYER: Yes, Your Honor.

24 THE COURT: Please bring in the jury. Bring in
25 Number 214 as the foreperson.

1 (Whereupon, the jurors enter the courtroom.)

2 THE COURT: You may be seated. Ladies and
3 gentlemen, if you would stand for me, please, and raise
4 your right hands to be sworn.

5 (Whereupon, the clerk administers the oath to
6 the jury panel.)

7 THE COURT: You may be seated.

8 Ladies and gentlemen, let me first apologize for
9 you all having to wait this morning. Please know that
10 while you all have been waiting, we have been working.
11 It just has been one of those days.

12 I have another jury out deliberating. And
13 during that time I had to re-instruct them regarding
14 some things, and I had some other proceedings. And we
15 also had some matters of law in this case that we
16 needed to dispose of.

17 And we hope that by disposing of those, while
18 you had to wait, in the long run it saves us from
19 sending you in and out of the courtroom and having you
20 wait at a different time or point in the proceedings.

21 So please know that we do not take your time for
22 granted. We so appreciate you all giving of your time
23 here with us for the jury process.

24 As you have just been sworn for the case of the
25 State of South Carolina versus Timothy Young, I'm going

1 to give you some preliminary instructions to introduce
2 you to the trial of this case.

3 These remarks are not a charge on the law. And
4 so that you will you know, charge and instructions are
5 an interchangeable term. Charge is a legal term of art
6 that simply means instruction. So when you hear me use
7 that term, that is what I'm referring to.

8 These remarks are not a charge on the law. I
9 will instruct you on the law at the end of this case
10 before you retire to deliberate and to consider your
11 verdict. This is merely an explanation of the
12 procedure that we will follow in the trial of this case
13 so that you may better understand what is happening.

14 You will be given the opportunity to take notes.
15 And I will give you some further instructions regarding
16 that, but in the meantime if you could put your juror
17 number on the white sticker that is on the notebook so
18 that you be will be able to identify which note pad
19 belongs to you.

20 The defendant is charged by four indictments
21 filed with this Court with the crimes of threatening a
22 public official; possession with intent to distribute
23 cocaine base; possession with intent to distribute
24 cocaine base within proximity of a park; and resisting
25 arrest. The elements of which I will explain to you

1 prior to you considering your verdict in this case.

2 The indictments, ladies and gentlemen, are
3 simply the written documents by which the case is
4 brought into court. And they are not in any sense
5 evidence of any of the allegations they contain.

6 The defendant has pled not guilty to the
7 indictment. The state, therefore, has the burden of
8 proving each of the elements of the indictment beyond a
9 reasonable doubt. And it will be your duty, ladies and
10 gentlemen, to decide and determine whether the state
11 has met that burden or not.

12 Your purpose as jurors is to find and determine
13 the facts. You are the sole judges of the facts in
14 this case. If at any time I make any comment regarding
15 the facts, you must disregard it.

16 You are to determine the facts from the
17 testimony you hear, and the evidence introduced in
18 court. It is up to you to determine the inferences
19 which you feel may be properly drawn from the evidence.

20 It is especially important that you perform your
21 duty of determining the facts diligently and
22 conscientiously because ordinarily there is no way to
23 correct an erroneous determination of facts made by a
24 trial jury.

25 On the other hand, and with equal emphasis, the

1 same law that makes you the judges of the facts makes
2 me the judge of the law. The law as given by the Court
3 is the only law you may consider. You must accept and
4 follow it even though you may disagree with it. The
5 Court cannot tell you what the facts are, and you
6 cannot disagree with the Court about what the law is or
7 what the law should be.

8 Your responsibility, ladies and gentlemen, is to
9 take the law as it is instructed, and apply it to the
10 facts as you find them from the testimony of the
11 witnesses and the other evidence that will be
12 introduced during the course of the proceedings. After
13 doing that, you will render your verdict, a true and
14 just verdict, under the solemn oath that you have just
15 taken as jurors in this case.

16 Until I advise you to begin your deliberations,
17 you must not discuss this case with anyone. That
18 includes your fellow jurors, your friends, your family
19 members, or anyone involved in the case. After the
20 case is submitted to you, you must discuss it only in
21 the jury room with your fellow jurors.

22 The attorneys and the parties have been advised
23 that they shouldn't speak with you at all. So if you
24 should run into them say at a local restaurant or even
25 on the street, the garage or even an elevator and they

1 don't speak with you, please don't think they're being
2 unfriendly, they are simply following the Court's
3 instructions because we would not want an innocent
4 conversation to be misinterpreted.

5 During the trial please do not read, watch or
6 listen to any media reports about this case. That
7 includes anything that may be in the newspaper, on the
8 Internet, radio or television. And you are not to do
9 any independent research of any type on the Internet.

10 As tempting as I know that can be with the
11 availability of the Internet, it is absolutely
12 essential as the fact finders that you make a decision
13 based solely on the evidence as you will hear it from
14 the lips of the sworn witnesses, and the other evidence
15 that will be introduced.

16 You must not consider anything that you may have
17 read or heard about this case outside of the courtroom,
18 whether before or during the trial. It is essential
19 and important that you keep an open mind and not decide
20 any issue in this case until all of the evidence has
21 been presented, the parties have made their closing
22 arguments, and I have instructed you on the law.

23 It is your solemn responsibility to determine
24 the guilt or innocence of the defendant. And your
25 verdict must be based solely on the evidence as it is

1 presented to you in this trial, and on the law as I
2 will instruct you during and at the close of the trial.

3 In just a moment the solicitor will make an
4 opening statement in which they will outline what they
5 believe the issues to be in this case. Or what we
6 commonly refer to as what they believe the evidence
7 will show in this case. The attorney for the defendant
8 may make an opening statement, although they are not
9 required to do so.

10 Keep in mind, ladies and gentlemen, that what
11 the attorneys tell you during their opening statements
12 is only their contention as to what they believe the
13 evidence will show.

14 The evidence in this case will be presented to
15 you by the testimony of sworn witnesses, and other
16 exhibits that may be introduced during the trial. From
17 time to time you may hear one of the attorneys say
18 something like, Your Honor, I object. Just as in
19 sports, business or any other structured activity,
20 there are certain rules the we obey in the presentation
21 of evidence. These rules ensure that you receive the
22 most trustworthy and reliable evidence available.

23 An object is the procedure that an attorney uses
24 to call a possible violation of these rules to my
25 attention as the Judge of this court. And for that

1 reason, you should never hold an attorney's objection
2 against them. Nor should you conclude from the Court
3 overruling or sustaining an objection that I favor one
4 side or the other.

5 Also from time to time you may hear one of the
6 attorneys say something like, Your Honor, we have a
7 question of law, or a matter of law to discuss. Or
8 they may ask to approach the bench, or I may ask them
9 to approach the bench.

10 And we do that because it helps us minimize
11 sending you in and out of the courtroom sometimes when
12 we have very brief matters of law to discuss. And
13 during that discussion you'll hear this noise. And
14 that noise is designed to interfere with your hearing
15 so that you cannot hear what we are saying so that you
16 will not be influenced by it. And it's directly over
17 your heads.

18 I explain that because I had a juror once tell
19 me he couldn't hear me talking. And I always chuckle
20 when I think about it. And I had to explain to him
21 that that was by design. Because again as the fact
22 finders it is essential that you not be influenced by
23 anything that we may say or do in connection with the
24 facts of this case.

25 But as I have explained, sometimes when we have

1 matters of law it might be necessary for me to excuse
2 you from the courtroom for a short while while we are
3 discussing matters of law. Because sometimes when I'm
4 ruling on those matters, it might be necessary for me
5 to make some comment about the facts in connection with
6 apply a statute or an evidentiary rule or procedural
7 rule. And we excuse you because we would not want you
8 to be influenced by anything that the Court may say or
9 do in connection with the facts of a case.

10 In determining what the true facts are you must
11 decide whether or not the testimony of a witness or
12 witnesses is believable. It will be my responsibility
13 to rule as a matter of law as to whether certain
14 testimony is admissible at all or not. But once it is
15 admitted, whether or not you believe it is solely a
16 matter for you to determine.

17 In deciding whether to believe a witness you
18 have the right to consider the interest of any witness,
19 the bias of any witness, the prejudice of any witness,
20 the opportunity for the witness to have seen the
21 matters and things about which the witness may testify,
22 and the way the witness acts on the witness stand,
23 something we commonly refer to as demeanor.

24 You have a right, ladies and gentlemen, to
25 consider anything that is in the record that will help

1 you evaluate the testimony of the witnesses. That
2 means that it is your duty to pay close attention to
3 the witnesses, to observe them, to listen to them, and
4 to pay close attention to the attorneys and the Court.

5 Although I know it is very difficult sometimes,
6 please do not allow your thoughts to wander, but give
7 strict attention to the testimony. So that at the end
8 of the testimony, after the arguments of counsel and
9 the charge on the law as given by the Court, you will
10 then be in a position to determine what the true facts
11 are and apply the law to those facts and render a true
12 and just verdict in this case.

13 As I have told you, during this trial you are
14 given the opportunity to take notes. Please don't feel
15 compelled to take notes. It's an opportunity that you
16 can choose to exercise or not exercise. Not everyone
17 finds note-taking helpful to them. So please don't
18 feel that it is a requirement.

19 However, if you should decide to take notes,
20 please don't try to record everything that is said.
21 It's physically impossible. We all speak probably at
22 the rate of 200 words a minute, believe it or not, and
23 that's a lot of words.

24 It's funny how the mind processes information.
25 It's even as a good note-taker as I'd like to believe I

1 am, when I go back and listen to things, sometimes I
2 find that I use words that I would commonly use instead
3 of a word the person may have used. And sometimes even
4 the way the brain hears information, processes it, you
5 may even put the end of the sentence at the beginning
6 of the sentence depending on the way you have heard the
7 information.

8 So please do not try to take down the
9 information verbatim that you may be trying to record
10 because it's physically impossible.

11 The court reporter can do it because she is
12 trained in a very specialized and complicated form of
13 shorthand that allows her basically to take down words
14 phonetically, and allows her to take down a whole lot
15 of words in very few key strokes. But even with that
16 she goes back and listens to the backup tape to make
17 sure that she has gotten it accurate.

18 But you may want to try to keep an outline of
19 the main points and the arguments that are being made
20 so that when you retire to deliberation, you can allow
21 those notes to refresh your memory.

22 Please be reminded that your notes are for your
23 specific and your individual purposes. They're not to
24 be shared with anyone else. They're only to be used to
25 refresh your own memory of the general testimony,

1 evidence and other arguments that are being made.

2 During breaks and recesses, your notes will be
3 left in your seats. And we do that to make sure there
4 is no temptation to prematurely deliberate or talk
5 about matters that you may have heard during the course
6 -- before a break.

7 Also be reminded, ladies and gentlemen, that
8 your notes should not be considered anymore reliable
9 than someone else's memory. Their memory should be
10 considered just as reliable as notes that may have been
11 taken by another juror.

12 Mr. Foreman, it is your responsibility to fill
13 out the verdict form and to write out any questions
14 that the jury may have during deliberations. But I
15 will give you further instructions regarding that at
16 the conclusion of the trial.

17 Ladies and gentlemen, the foreperson is an
18 administrative function. That person does not have any
19 greater vote or voice than you do. It is a completely
20 random process that the Court employs to select a
21 foreperson. We do it to make sure a cross-section of
22 the community is represented.

23 I wish there was a formula, it would make it
24 easier, but it is completely random. So I emphasize
25 that that person has no greater vote or voice than you.

1 do. And their function is administrative to fill out
2 the verdict.

3 In order to preserve everyone's rights, I'm
4 going to give the parties an opportunity to take
5 exception to anything that the Court has said by way of
6 opening instruction.

7 Are there any exceptions from the State?

8 MS. MCCALIN: None, Your Honor

9 THE COURT: From the defense?

10 MS. FRAYER: None, Your Honor.

11 THE COURT: Ladies and gentlemen, we have made
12 some attempts to see what we can do about the
13 temperature. Normally it's a lot hotter, of course,
14 and the weather is now changing.

15 And we have found with these huge buildings,
16 because this building is about 180,000 square feet, as
17 you can imagine it's huge, it's either cold or hot.
18 For some reason we can't reach a medium.

19 But I'm hoping that they will be able to do
20 something with the temperature because I'm very
21 hot-natured because I have a lot of extra clothes and
22 I'm never cold and I'm cold. So I know that you all
23 must be a little uncomfortable. So we are trying to
24 adjust the temperature.

25 State may proceed when its ready.

1 MR. SIMPSON: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 MR. SIMPSON: Ladies and gentlemen, good
4 morning. I imagine very few people are excited when
5 they received that letter in the mail that they have
6 jury duty. But now that you're sitting on a jury, I
7 hope you will find it educational with a sense of how
8 important you are to this process.

9 And we certainly typically start by thanking you
10 for taking the time out of your personal and
11 professional schedules to be with us this week.

12 In our country every person charged with a crime
13 has a right to this process, has a right to have those
14 charges decided by a jury. So that means at times that
15 cases are heard by juries just like yours.

16 Sometimes they are very long. Sometimes they
17 are very complicated. Casey Anthony trial has been in
18 the news lately, lasted for months. And certainly in
19 those big, long trials people are entitled to a jury
20 trial.

21 But they're also entitled to this process when
22 it's not a long, complicated case. If I can give you
23 some good news late in the week, it would be that this
24 one isn't.

25 The facts of this case are very straightforward,

1 they are very to the point, and therefore our
2 presentation of those facts is going to be equally
3 straightforward and to the point.

4 Those facts are as follows. That on May 29,
5 2010 at about 4 o'clock, about 10 after 4:00, in the
6 area of Nassau Street, a CPD bike patrol officer named
7 Officer Gill was on patrol when he saw the defendant,
8 Timothy Young. And he immediately recognized Timothy
9 Young as a person who was on a trespass notice not to
10 be in this area.

11 Doing his job as an officer, he then approached
12 Mr. Young. Mr. Young's response to his approach at
13 this time was very telling, flight. When Mr. Young saw
14 Mr. Gill coming up on the bike, he took off.

15 You are going to hear that he took off across a
16 residential street and that both the defendant and the
17 officer in pursuit, a car had to slam on its brakes,
18 they were almost hit. Officer Gill did pursue because
19 Mr. Young fled.

20 Mr. Young went to a fence. Wanted to get away
21 so bad, and for a reason as you'll see, that he tried
22 to jump that fence. But in so doing, Officer Gill
23 caught up to him.

24 At that point it's just one on one, Officer Gill
25 and Mr. Young. So Mr. Young, as you will hear from the

1 testimony, continues to resist, getting leverage from
2 the fence and trying to shove the officer away. And in
3 doing so, endangering him.

4 Other officers were quick behind. As you know
5 officers typically work in teams for this very reason.
6 And other officers were rather quick to the scene to
7 detain Mr. Young at that point for the offences of the
8 trespass, disorderly conduct for causing the
9 disturbance, and at that point resisting arrest.

10 In detaining Mr. Young, Mr. Young made some
11 statements. And you are going to hear about those
12 statement. He threatened Officer Gill, whom he
13 recognized. He said for harassing him he was going to
14 shank him. And the Officer Gill better be happy that
15 his coworkers arrived so quick or he would have been
16 shanked. You'll hear it from more than one person who
17 heard it.

18 When a person is arrested, in this case we have
19 an arrest for the resisting, disorderly conduct and the
20 trespassing, a person is searched. We call that a
21 search incident to arrest. And in that search we see
22 that Mr. Young had a very logical and a very good
23 reason for taking off when he saw the police coming
24 down the street; that being that he had drugs on his
25 person. In this case crack cocaine, along with a small

1 crack pipe.

2 So the charges before you today are the charges
3 arising from those drugs. We don't just come before
4 you and say, you know, look this looks like drugs so
5 believe it's drugs, we send them to a lab. A little
6 thing unusual in this case, I just want to explain it
7 now so you are not confused when you hear the
8 testimony.

9 These drugs were sent to a lab and tested by a
10 lab technician who soon thereafter was lucky enough to
11 get a job in Europe and moved to Europe. Not wanting
12 to leave you sitting here guessing, we took the step of
13 re-sending the lab the drugs to a new lab technician to
14 retest those drugs.

15 The results were the same. Cocaine base,
16 commonly known as crack cocaine. You'll hear from that
17 lab technician. And those are the facts, pretty
18 straightforward. And our presentation of those facts
19 will be straightforward.

20 At the conclusion of this case you will hear us
21 argue the law from Ms. McClain. And you'll hear, as
22 the judge told you the ultimate source of the law, the
23 charge from Judge Jefferson.

24 But I usually find it helpful in this stage at
25 the opening just to briefly speak to you about the

1 charges and the elements of those offenses.

2 As to the drugs, the defendant is charged with
3 possession with intent to distribute crack cocaine, and
4 possession with intent to distribute in proximity to a
5 school. There is a phrase there that's going to be
6 important, that's with intent to distribute.

7 You cannot look in somebody's mind, you can't
8 know what they intended to do with those drugs, so the
9 law sets threshold amounts. In the case of crack
10 cocaine, that threshold amount is 1 gram. And the law
11 sets what we call permissive inference. And that means
12 that's up to you, you can take it, or you can refuse to
13 take it.

14 In this case the amount on the defendant was
15 over 3 times that permissive amount of 1 gram. And the
16 law says that based on that fact alone you as the jury
17 can, if you so choose, determine that because of that
18 amount he intended it to distribute to others. And
19 those amounts are set the average amount that maybe a
20 user would have as opposed to someone who intended to
21 distribute it.

22 You'll also have the option of what we call
23 lesser included's in this case, what we call simple
24 possession. If you believe that despite having 3 times
25 the presumptive amount he just meant to possess it, you

1 can find him guilty not of the possession with intent
2 to distribute, but of the simple possession charge.

3 In proximity to a school is a special statute
4 that makes the possession with intent to distribute
5 illegal if you are within a certain range of a school
6 or a public park. And you'll hear testimony that this
7 was a mere two blocks almost from a park called Mark
8 Clark, and we are going to establish that on the
9 record.

10 The other charge is threatening a public
11 official. And you'll hear that a municipal police
12 officer is a public official. And that certainly
13 threatening repeatedly to stab that police officer
14 would be threatening a public official.

15 And finally resisting arrest, which is the
16 physical resisting of an arrest from a police officer,
17 that one knows to be a police officer. In this case we
18 have the uniformed bike patrol officer. And there was
19 no reason for Mr. Young not to know that this was a
20 police officer.

21 At the conclusion when you hear the
22 straightforward, at least relatively brief presentation
23 of these facts, we are confident that you will find Mr.
24 Young guilty of those offenses, and that's what we are
25 going to ask you to do.

1 I thank you again for your time this week, and
2 for your attention over the next day of this trial.
3 Thank you.

4 THE COURT: You may proceed.

5 MS. FRAYER: Good afternoon, ladies and
6 gentlemen of the jury. I'm Cantrell Frayer. I met you
7 briefly yesterday. And sitting at the table with me is
8 Lori Proctor. And we are honored to be representing
9 Mr. Timothy Young in the trial of this case today.

10 Mr. Young is here today proclaiming his
11 innocence. The State has the burden of proof. They
12 have to prove that he is guilty of possessing drugs
13 with the intention to sell or distribute them.

14 Mr. Young doesn't have to prove anything. He
15 doesn't have to testify. All Mr. Young asks you to do
16 today is that you listen to all of the evidence that
17 will be given from the witness stand today.

18 Remember, the State must prove beyond a
19 reasonable doubt that Mr. Young is guilty of these
20 charges, and he has four of them. You are the triers
21 of the fact. The Judge will instruct you on the law at
22 the appropriate time. And Mr. Young and I thank you
23 for your attention to this matter today.

24 Thank you.

25 THE COURT: You may call your first witness.

1 MS. MCCALIN: Your Honor, may counsel approach?

2 THE COURT: You may.

3 (Whereupon, the following discussion was held at
4 the bench.)

5 MS. MCCLAIN: I wanted to inform Ms. Frayer and
6 Ms. Proctor that it has come to the State's attention
7 that my investigator, Keith Harris, recognized the jury
8 foreman. And they went to high school and played
9 football together

10 THE COURT: Okay. How long ago was that, 30
11 years?

12 MS. MCCLAIN: I'm not aware of Mr. Harris' age,
13 but I would imagine it has been some time ago.

14 THE COURT: I have been out of high school over
15 20 years, so it would have to be 30. Well, I don't
16 want to say how old he is. I don't want to make that
17 presumption.

18 MS. MCCLAIN: I just wanted to bring it to the
19 Court's attention.

20 THE COURT: Also, I was going to tell you all, I
21 am glad you approached, make sure your officer, you
22 don't go into any of the details we went into at length
23 in the in camera hearing about the trespassing.

24 MS. MCCLAIN: Yes, ma'am.

25 THE COURT: Do you all want me to voir dire the

1 foreperson?

2 MS. PROCTOR: Is he going to testify, Keith?

3 MS. MCCLAIN: No.

4 MS. PROCTOR: If he is not going to testify.

5 MS. MCCLAIN: I did mention his name.

6 MS. PROCTOR: Yeah. I just think he is not
7 testifying. I don't think it's a -- I'd rather not
8 make a big deal and draw attention.

9 THE COURT: Okay. Works for me.

10 (In open court.)

11 MS. MCCALIN: State would like to call officer
12 Patrick Gill.

13 MR. PATRICK GILL,
14 after having first been duly sworn to state the truth,
15 the whole truth and nothing but the truth, testified on
16 his oath as follows:

17 THE COURT: You may proceed.

18 MS. MCCALIN: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MS. MCCLAIN:

21 Q Good morning, Officer Gill. Could you please
22 state your occupation for the jury?

23 A City of Charleston police officer.

24 Q And where -- you are employed with?

25 A Downtown City of Charleston. I specifically

1 work in the Team One area.

2 Q How long have you been with the Charleston
3 Police Department?

4 A Almost three years now.

5 Q And during that time, what positions have you
6 held with CPD?

7 A I originally was trained in West Ashley, Team
8 Four. Then I came down to downtown, I was trained
9 downtown. I did normal patrol tactics on a squad. We
10 just patrolled the area, we answered calls for service.

11 Then I was selected by my lieutenant to work
12 King Street area, we just called it that. Mainly
13 worked basically King Street, a lot of the bar areas
14 where we dealt with a lot of underage drinking;
15 pedestrian stops where we just stop and talking to
16 people; stop people walking who broke the law whether
17 it be open container or public drunk, public urination,
18 stuff like that.

19 I did that for about six months, six to nine
20 months. Then I was selected to join the community
21 action team which is a grant possession. And its
22 central goal is to build a relationship with the
23 community of the east side.

24 Geographically it's from Calhoun Street to Huger
25 Street, to Meeting to East Bay. And our main goal is

1 to anything that arises in that area, we take care of.
2 We have a lot of projects and a lot of things with the
3 community. As in we go to lunch buddies at the
4 Sanders-Clyde Elementary.

5 We do a lot of -- we do trash pickup. We relate
6 to the community. We are there for the community.
7 Still pedestrian stops, still police duties, vehicle
8 stops, enforcing different laws, calls for service.
9 But we are just assigned to that area specifically. I
10 have been there for almost two years now.

11 Q Okay. Before you were with CPD, what type of
12 educational background did you have?

13 A Before I worked with CPD a graduated high
14 school, Council Rock High School up in Pennsylvania.
15 And I went to Valley Forge Military College in
16 Pennsylvania. I did that for two years.

17 Then I transferred to the Citadel. I did the
18 Citadel for three years. And I graduated the Citadel.

19 Q In regards to your position at CPD, do you have
20 any ongoing training that you are involved in, or any
21 ongoing education?

22 A I have numerous amounts of training. Would you
23 like me to --

24 Q Would you elaborate on some of the training?

25 A -- list them? Yes. I have been through bike

1 training, where you can be certified to ride the
2 bicycle and you bike patrol specifically. Patrol ride
3 full class, taser class, normal every day training that
4 every officer is involved with which is once a year.

5 I have been to a gang class, three gang classes.
6 Two specifically about gangs in communities and
7 stopping the problem as a community action officer. I
8 have been recently to a drug enforcement program that
9 is held by the federal law enforcement program in North
10 Carolina.

11 I've been to a PTO class. I have a human
12 trafficking class upcoming, and a gang graffiti
13 recognition class among others.

14 Q A lot of education and training. Since you have
15 been with CPD, can you estimate about how many cases
16 you have been involved in that involved drug arrests?

17 A Numerous. To put a number on it, anywhere from
18 I would probably say maybe 100. I don't want to put an
19 inaccurate number.

20 Q No, you can't just guess. Would you say you
21 have been involved in numerous drug arrests?

22 A Yes, ma'am.

23 Q On May 29, 2010 you were currently employed at
24 CPD?

25 A Yes, ma'am.

1 Q And on that date did you have an occasion to
2 become involved in a case regarding this defendant,
3 Timothy Young?

4 A Yes, ma'am.

5 Q Can you explain how that situation arose?

6 A Yes, ma'am. He was placed on a trespass
7 restriction. Do you need me to elaborate?

8 Q Let's start with what you were doing, where you
9 were.

10 A I was on routine bike patrol. That day we
11 decided to ride the bike. We have learned that riding
12 a bike actually gets you involved with the community a
13 lot more rather than being in a police car. You can
14 stop and talk to people.

15 Houses, a lot of people they will flag you down
16 a lot more. What I mean flag you down, they stop you,
17 they kind of wave just to talk to them, which happens
18 every day. They just talk to us, see how our day is
19 going or tell us some information.

20 That day myself and Officer Moody were riding
21 for about two hours, maybe a little more. It was
22 awfully hot so we stopped behind the Family Dollar to
23 get a drink of water and kind of cool off for a second.
24 And then that's when we saw Mr. Young walking down Line
25 Street.

1 Q And is that area of Line Street, that Family
2 Dollar, where in relation kind of is that to Meeting
3 Street or King Street downtown?

4 A It's approximately I would say 250 to 500 feet
5 from Meeting Street. It's right by Church's Chicken,
6 Ducs Court, right across the street from the KFC.

7 Q And you all typically patrol that area?

8 A Yes, ma'am.

9 Q Any reason why that area would be on your
10 regular patrol?

11 A It's just part of our specific area we have.
12 Specifically that area we get a lot of complaints of
13 that one apartment complex. The homeowner is getting
14 complaints about drug activity. So we try to
15 concentrate a lot in that area towards the --

16 MS. FRAYER: Objection, Your Honor.

17 THE COURT: Basis?

18 MS. FRAYER: Relevance.

19 THE COURT: Sustained.

20 Q (By Ms. McClain) So you were on routine patrol
21 that day. At what point did you become involved in the
22 situation regarding the defendant?

23 A Yes, ma'am. When I was on routine patrol I
24 stopped to get a drink of water. I saw Mr. Young
25 walking down the street.

1 I know that he was on a trespass restriction. I
2 saw him enter that trespass restriction zone and I made
3 contact. I attempted to make contact with him.

4 Q When you attempted to make contact with the
5 defendant, what happened?

6 A He fled from me. A brief struggle occurred. I
7 got off my bike. A foot pursuit happened.

8 We ran in the middle of the road where there was
9 a white Ford Explorer that had to slam on his brakes to
10 avoid hitting us. After the car avoided hitting Mr.
11 Young it drove past because I stopped running, I didn't
12 want to get hit.

13 I went around the car. I grabbed Mr. Young
14 again. He broke free because he was swinging, not
15 necessarily at me, but he was swinging to get away from
16 my grasp.

17 And he then proceeded to jump a fence, and
18 that's where I gained control of him again, but wasn't
19 able to do anything until another officer -- due to the
20 fence and him pushing off of me, I held him there until
21 another officer. And then they finally detained him
22 after a brief struggle on the ground.

23 Q At any point during that time, did you have an
24 intention to place the defendant under arrest for any
25 offenses?

1 A Yes, ma'am. There was two offenses prior to the
2 struggle that I was going to place him under arrest
3 for; one being trespassing, and one being public
4 disorderly conduct.

5 Q And what was the reason for the public
6 disorderly conduct?

7 A Public disorderly conduct due to the fact that
8 he ran in the middle of the street and caused the flow
9 of traffic to be halted and cause harm to himself and
10 me. That is one aspect.

11 And also due to the fact that a crowd started to
12 gather because the car slammed on its brakes and a
13 commotion happened. And that area is very close
14 quarters, a lot of people you can hear everything with
15 the houses so people started coming out of the houses
16 and caused a crowd to start to gather behind me which
17 put me in safety as I was trying to detain him or
18 arrest him.

19 Q And as you attempted to arrest him for those
20 charges, was the defendant cooperative?

21 A No, ma'am. Like I said, the first time I went
22 to grab him he struggled with me and pushed me away.
23 The second time he did the same thing and broke my
24 grasp. And then when he jumped the fence, he was still
25 fighting with me and pushing off the fence to get away.

1 And then once the other officer came and
2 escorted him to the ground, he was still struggling.
3 And at that time we didn't know if he had a weapon or
4 anything so we were just trying to attempt to get his
5 hands from out -- he had one hand stuck underneath his
6 body, and he was reaching around and we didn't know if
7 he had a weapon or not.

8 Q The fence, can you describe what the fence
9 looked like, like about how high?

10 A It was approximately I would say four to six
11 feet chain-link metal fence. He jumped the middle of
12 it. And approximately four feet to the right of it was
13 the gate that opened up the fence and led into I
14 believe it was [REDACTED] Nassau Street.

15 Q And when you were at the fence with him, did you
16 have any type of a hold on the defendant?

17 A Yes, ma'am. I guess I would describe it as kind
18 of a bear hug over the fence. I couldn't get over the
19 fence without letting him go, and if I let him go he
20 would continue to flee from us.

21 So I kind of just bear hugged him and kind of
22 held him to the fence so he could not break free until
23 Officer Brown arrived on the scene.

24 Q And what was he doing while you were holding him
25 on the fence?

1 A He was pushing off the fence and trying to break
2 free of my grasp. He was, I mean, anything is
3 possible. He was pushing with his hands, his feet,
4 just trying to get away from me and get off that fence.

5 Q And in your training, knowledge and experience,
6 are those types of maneuvers, the pushing away from
7 you, breaking free, running, continuing to push, are
8 those behaviors consistent with someone who is
9 attempting to resist arrest?

10 A Yes, ma'am.

11 Q When you were attempting to place the defendant
12 under arrest, did he say anything to you?

13 A After the struggle on the fence and Officer
14 Brown escorted him to the ground, we were attempting to
15 detain him. Like I said his hand was underneath him
16 and at that time we don't know if he had any weapons.

17 Q Was he still --

18 A He was still resisting. He was still trying to
19 get his hand -- we didn't know if it was to his
20 waistband or to his pocket. And we know that normal
21 people -- people sometimes carry weapons in the
22 waistband. And when he was ground we were struggling
23 with him. So we did have one hand.

24 I believe he said along the line is, you're
25 lucky he came and put me on the ground or I was going

1 to shank your ass. At that time we were -- we were
2 heightened, our sense was heightened because we still
3 didn't know if he had any weapons.

4 So officer Moody had to deploy his CPD issued
5 electronic control device and give him a verbal comand
6 to give us his hand to hopefully gain more control. At
7 that time he did comply and we were able to detain him
8 and search him for weapons.

9 Q When you say officer Moody deployed the device,
10 what did you call it again?

11 A It's called an electronic control device.

12 Q Is that also known as a taser? Is that like a
13 taser?

14 A Yes, ma'am.

15 Q Okay. When he deployed it, did that mean he
16 like just removed it from where you keep it on your
17 belt?

18 A Yes. He just removed it from his holster and
19 placed it on the defendant's -- I believe it was like
20 his upper shoulder area. I'm not sure exactly where he
21 placed it, but I know --

22 Q Did he use the taser?

23 A No, ma'am.

24 Q On the Defendant?

25 A No, ma'am.

1 Q After the struggle and the assistance of Officer
2 Brown and Officer Moody, were you able to get the
3 defendant under control and under arrest?

4 A Yes, ma'am, for the most part. He still was
5 kind of yelling at us with his mouth and cursing and
6 stuff like that. So we placed him in the car quickly
7 and escorted him out of the area due to the crowd that
8 was gathering behind us.

9 Q So you were able to successfully arrest him; is
10 that right?

11 A Yes, ma'am.

12 Q At that time did you or any other officers
13 conduct a search incident to that arrest?

14 A Yes, ma'am. We conducted a search incident to
15 arrest. And I believe it was his right pocket, and I'd
16 have to look at the report, but I believe it was his
17 right pocket we found an off-white color rocklike
18 substance. And due to my training and experience, I
19 believed it was cocaine base.

20 We secured that. We got him out of the area.
21 We called Sgt. Lights over at that time. I observed
22 him test it, and it was tested presumptive positive --
23 field tested presumptive positive for cocaine base.

24 MS. MCCALIN: Your Honor, permission to approach
25 the witness?

1 THE COURT: You may.

2 Q (By Ms. McClain) Here are copies, just to
3 refresh your memory, of your report.

4 You were present when the substance was field
5 tested?

6 A Yes, ma'am.

7 Q And you said that it was your understanding that
8 it did test presumptive positive for cocaine base?

9 A Yes, ma'am, it did test.

10 Q Do you happen to know what the field tested
11 weight was?

12 A The field tested weight was approximately 5.2
13 grams.

14 Q Okay.

15 MS. MCCALIN: Beg the Court's indulgence.

16 (Whereupon, State's Exhibit No. 2 is marked for
17 identification.)

18 Q (By Ms. McClain) Officer, I'm going to show you
19 what has been marked as State's Exhibit 2 for
20 identification purposes.

21 Do you recognize that exhibit?

22 A Yes, ma'am.

23 Q How are you able to recognize it?

24 A I recall the substance that it looked like and
25 the bag it was in. And I recall through our evidence

1 process that they're my initials on the evidence bag.

2 Q What is the evidence process, as you put it?

3 A At that time we secured the drugs, or whatever
4 our evidence is, as soon as we can get the defendant to
5 a transport van and transport him to the county jail.
6 We will take the evidence directly to Charleston
7 headquarters. We have an evidence room.

8 At that time I believe Officer Brown logged in
9 the computer. We were allowed to have one person log
10 in and one person do it.

11 Q Well what do your initials on the bag mean?

12 A That means that I took the evidence personally,
13 sealed -- went into the bag, put the evidence in the
14 bag, sealed the other end, and put my initial on the
15 thing. And then stored the item in a certain locker or
16 the mailbox that we have that is secured.

17 Q Can you describe for us about the mailbox or
18 locker?

19 A A mailbox is your normal postal service mailbox,
20 it has a drop slot. The front has a bolt with a lock.
21 Only evidence has a key to do it. When they leave for
22 the night, that's where you have to drop it.

23 Or there is a locker, depending on what your
24 evidence is, there are small lockers about yay big.

25 (Whereupon, the witness indicates.)

1 Then there are normal footlockers that you can
2 put larger items in. They are all locked, individually
3 locked. Only evidence has a key. So once it's locked,
4 nobody else can go in there.

5 Q So once you submit any evidence, are you able to
6 get it back?

7 A No, ma'am.

8 Q That's it, it's gone for you?

9 A It's gone for me until I sign it out properly
10 with the evidence.

11 Q Okay. And just to kind of go back to the area
12 where the incident took place. I'm going to show you
13 what has been marked as State's Exhibit 1. This is a
14 map of -- do you recognize this area?

15 A Yes, ma'am.

16 Q What area is this?

17 A That's an overview area of the arrest location
18 and the area that I work.

19 Q Is that an accurate representation of that area?

20 A Yes, ma'am.

21 Q Are you familiar with the location of Martin
22 Park in that area?

23 A Yes, ma'am. I have driven around it, to it on
24 numerous times.

25 Q Are you able to tell the Court how far Martin

1 Park is from the area where you arrested the defendant?

2 A Yes, ma'am. Like I said, I have driven that
3 numerous times. From the area where Martin Park starts
4 to ■ Nassau is approximately .2 to .3 miles.

5 I looked at it in my car to measure it out. My
6 odometer only goes so much. So I know it's roughly, I
7 would assume .26. But I know for a fact it's at least
8 .2 miles.

9 MS. MCCALIN: Beg the Court's indulgence.

10 THE COURT: Uh-hum.

11 Q (By Ms. McClain) Just a few more questions.
12 Going back to when you attempted to approach the
13 defendant and you said that he ran off. What exactly
14 did he do when he ran?

15 A Yes, ma'am. As soon as I approached him right
16 at the corner of Line and Nassau, he was more on the
17 Nassau side. I know the defendant. I used his name,
18 Mr. Young, stop. I was like, you are under arrest.
19 You know you are not supposed to be in the area.

20 He looked at me and said, leave me alone, and
21 took off running. When he took off running, like I
22 said, the car was there. I dismounted off my bike,
23 took chase.

24 He actually lost I believe his right shoe in the
25 middle of the road during the struggle. I then again

1 called his name and said, Mr. Young, stop, you are
2 under arrest. And that's when the struggle ensued
3 again. Then he tried to jump the fence and I caught
4 him on the fence.

5 Q And when you were attempting to arrest him and
6 he said he would shank you, do you know how many times
7 he said that?

8 A He said it when we got him on the ground and his
9 hand was underneath him, and we didn't know at that
10 time, he said it at that time.

11 Then we took him back out of the area he once
12 again said, I'm going to shank your ass for harassing
13 me, was his exact quote.

14 Q So he said -- he made those comments to you
15 twice?

16 A Yes, ma'am.

17 Q So the first time, what exactly did he say?

18 A Quote, he said, you are lucky they jumped on me
19 or I was going to shank your ass.

20 Q And then the time, exactly what did he say?

21 A He said, I'm going to shank your ass for
22 harassing me.

23 MS. MCCALIN: I have no further questions at
24 this time. Please answer anything Mr. Frayer has for
25 you. Thank you.

1 THE WITNESS: Yes, ma'am.

2 THE COURT: You may proceed.

3 MS. FRAYER: Your Honor, may I approach THE
4 witness?

5 THE COURT: Yes, ma'am.

6 (Whereupon, Defendant's Exhibit No. 1 is marked
7 for identification.)

8 CROSS-EXAMINATION

9 BY MS. FRAYER:

10 Q Good morning, officer. Good afternoon. I'm
11 showing you what has been marked as Defense Exhibit 1
12 for identification purposes.

13 Do you recognize that?

14 A Yes, ma'am.

15 Q What is that?

16 A It's the narrative of the incident report.

17 Q Okay. And this is the report that you wrote,
18 the narrative that you wrote, your narrative of the
19 events of May 29, correct?

20 A Yes, ma'am.

21 Q Okay. And in this narrative you wrote the
22 events about the events that occurred on May 29th
23 between you and Mr. Young, correct?

24 A Yes, ma'am, for the most part.

25 Q For the most part, okay. You indicated when Ms.

1 McClain was questioning you that you have been through
2 training, you went to the Citadel, went to Valley Forge
3 Military College, correct?

4 A Yes, ma'am.

5 Q Graduated from the Citadel, correct?

6 A Yes, ma'am.

7 Q You had ongoing training, education and
8 certification, correct?

9 A Yes, ma'am.

10 Q So you are very knowledgeable about the rules
11 and procedures and the importance of things like a
12 simple investigation report and narrative, right?

13 A Yes, ma'am.

14 Q Okay. So you believe that it's important to get
15 the facts and put them in your report?

16 A Yes, ma'am.

17 Q Okay. And you do your incident reports fairly
18 close to the incident, the arrest incident, correct?

19 A Yes, ma'am.

20 Q And you do that because your memory is fresher.
21 You have a better memory?

22 A Yes, ma'am.

23 Q Because this incident right here happened last
24 year. So you could have forgotten somethings by now if
25 you didn't have it in your report, right?

1 A I don't believe so, I remember the incident
2 pretty well.

3 Q All right. Let's look at the exhibit that you
4 have there in front of you. Have you had a minute to
5 look over it?

6 A Yes, ma'am.

7 Q You indicated to Ms. McClain on direct
8 examination that you saw Mr. Young on Line Street and
9 Nassau Street, correct?

10 A Yes, ma'am.

11 Q Did you see him before that time?

12 A Yes, ma'am.

13 Q Where would you have been when you first
14 observed him, according to your report?

15 A Where was I, ma'am?

16 Q Uh-hum.

17 A I was at the --

18 Q No, I'm sorry. Let me withdraw that question.
19 Where was he when you first observed him?

20 A He was at Line Street and Ducs Court.

21 Q How far is that from Nassau? Line and Nassau?

22 A Thirty, forty feet.

23 Q Thirty or forty feet. But Nassau is another
24 block. Ducs runs --

25 A Yes, ma'am, about half a block.

1 Q Okay. In your report you indicated that when
2 you attempted to stop him he ran?

3 A Yes, ma'am.

4 Q Okay. And as he is running in your report you
5 said that he runs northbound on Nassau Street, correct?
6 You see that sentence?

7 A Yes, ma'am.

8 Q Then he jumped the fence at [REDACTED] Nassau Street?

9 A Yes, ma'am.

10 Q In your report do you -- you said that you
11 almost got hit by a car while you were chasing him?

12 A Yes, ma'am, we both did.

13 Q And that is an important event that? Would be
14 important?

15 A Yes, ma'am.

16 Q And that detail is not in here?

17 A No, ma'am.

18 Q And you charged him with public disorderly
19 conduct because of that, running in the street, right,
20 and almost got hit by a car? You said that was one of
21 the things?

22 A Yes, ma'am. But he also ran down the street
23 which also including in the public disorderly conduct.

24 Q Okay. But you didn't mention anything about
25 getting hit by a car? Almost getting hit by a car?

1 A No, ma'am.

2 Q You didn't put anything in there. You mentioned
3 very vividly that he lost a shoe in the middle of the
4 street?

5 A Yes, ma'am.

6 Q Okay. Didn't put that in there, did you? That
7 he was running down the street. He wanted to flee from
8 you so badly he was running down the street with no
9 shoe?

10 A I did put down that he ran down the street.

11 Q But not without a shoe?

12 A No, ma'am, that's not important.

13 Q Okay. And the almost getting hit by the car
14 wasn't important either?

15 A It could be looked at as important, yes, ma'am.

16 Q Okay, thank you. You talked about officer, you
17 mentioned Officer Moody in your testimony that he
18 deployed a taser, just deployed it and placed it on the
19 shoulder of Mr. Young. Is that in your report?

20 A No, ma'am. I don't know where he placed it.
21 And use of force like that does not go in a report.

22 Q It doesn't go in your report?

23 A No, ma'am. We have a separate report.

24 Q Okay. Did you do a supplemental report or
25 anything like that?

1 A You would have to ask Officer Moody that
2 question. I'm not sure if Officer Moody did a
3 supplemental report for that.

4 Q Okay, but you didn't do a supplemental report.
5 The question is did you do one, a supplemental report
6 on that?

7 A No, ma'am.

8 Q You did mention Officer Brown came and assisted
9 you?

10 A Yes, ma'am.

11 Q And handcuffed him. When you were on the fence,
12 you mentioned that he had attempted to climb a fence,
13 right?

14 A He did climb the fence. He was on the other
15 side of the fence.

16 Q And you were able to bear hug the fence to him?

17 A For lack of a better term, I would use bear hug
18 him, yes. At least gain control, hold on to him.

19 Q Okay. The fence was about this tall? It was
20 shorter than this?

21 A Might be a little shorter than that, ma'am.
22 Four to six feet.

23 Q I'm trying to give a picture to the jury of
24 about how tall the fence was. It was a metal fence.

25 A Metal, standard yard fence. Metal bars on the

1 top, chain-link, little chains come off the top.

2 I wouldn't say any higher than six feet, maybe a
3 little shorter. I never measured it.

4 Q So he was actually able to get over the fence
5 and then you were able to detain him?

6 A Yes, ma'am.

7 Q Okay. And you stated that you did tell him to
8 stop, he was under arrest?

9 A Yes, ma'am.

10 Q And that was when you first made contact with
11 him?

12 A Yes, ma'am.

13 Q Okay. And at that time you would have been
14 trying to place him under arrest for?

15 A Yes, ma'am. If he complied he would have been
16 placed in handcuffs and placed under arrest.

17 Q For which offense?

18 A For the very first time he would just be
19 arrested for trespassing.

20 Q Okay. You mentioned that a large crowd started
21 to gather behind you and you were afraid for your
22 safety. Is that in your report?

23 A No, ma'am.

24 Q Okay. On your report, as you look at that
25 report, you see you have some officers listed there,

1 assisting officers it says?

2 A Yeah.

3 Q It's about seven other officers that were
4 assisting?

5 A Yes, ma'am.

6 Q And --

7 A Well there's a couple names duplicated on this.

8 Q Okay. Officer Moody's name is duplicated?

9 A Yes, ma'am. Officer Moody's name is duplicated.
10 My name duplicated.

11 Q Right. Okay. When you were able to search Mr.
12 Young, you didn't find any weapons on him?

13 A No, ma'am.

14 Q Okay. And you field tested the drugs?

15 A Sgt. Lights did. I observe him. I was right
16 next to him when he did that.

17 Q Okay. And the weight, according to your report,
18 was about 5.2 grams?

19 A Yes, ma'am. When we field tested it -- or when
20 we field weighed it, it was 5.2 grams.

21 Q Okay. And did you find anything else on him, on
22 Mr. Young? Any money?

23 A Not any significant amount of money, no ma'am.

24 Q Any you found --

25 MS. FRAYER: May I approach the witness, Your

1 Honor?

2 THE COURT: You may.

3 Q (By Defense) The evidence baggie. That was just
4 one bag of drugs?

5 A Yes, ma'am. It didn't look exactly like this.
6 It was more the drugs were actually more solid. It has
7 been a year and a half and I am sure it has been
8 through a couple testings.

9 So it was more solid. To put it in perspective,
10 it was kind of like a cookie, a chocolate chip cookie
11 you would bake in an oven. It was about yay big.

12 Q Okay. And you didn't find any -- excuse me. So
13 but there was one bag of drugs?

14 A Yes, ma'am.

15 Q And the one bag only had the one piece of
16 cookie. Like a cookie, one cookie was in there?

17 A Yes, ma'am.

18 Q And did you find any scales on him?

19 A No, ma'am.

20 Q Any empty baggies? Little baggies?

21 A No, ma'am.

22 Q And, Officer Gill, do you carry weapons on you
23 while you are on duty normally?

24 A Yes, ma'am.

25 Q What are some of those weapons you had?

1 A At that time or now, ma'am?

2 Q At that time.

3 A At that time I had my CPD issued Glock, which is
4 my handgun. My CPD issued OC spray, which would be
5 pepper spray. And my CPD issued baton, collapsable
6 baton.

7 Q At that time you didn't have an electronic
8 something device?

9 A No, ma'am. An electronic control device is the
10 proper term, taser is how it's more commonly used. But
11 no, ma'am, I wasn't certified, nor did I carry it at
12 that time.

13 Q Okay. Did you observe -- when you saw Mr. Young
14 he was walking, you didn't see him trying to sell drugs
15 to anybody that day?

16 A No, ma'am.

17 MS. FRAYER: Beg the Court's indulgence.

18 THE COURT: Yes, ma'am.

19 MS. FRAYER: Thank you. No further questions,
20 Your Honor.

21 THE COURT: Any redirect of the witness?

22 MS. MCCALIN: Yes, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. MCCLAIN:

25 Q Officer Gill, you said that the defendant fled

1 from you, right?

2 A Yes, ma'am.

3 Q Was that in your report?

4 A Yes, ma'am.

5 Q You said that the defendant ran down the road;
6 is that correct?

7 A Yes, ma'am.

8 Q Did you put that in your report?

9 A Yes, ma'am. In the report it says he started
10 running northbound down Nassau Street.

11 Q You testified the defendant attempted to jump
12 the fence?

13 A Yes, ma'am.

14 Q Did you put that in your report?

15 A Yes, ma'am.

16 Q You testified that the defendant pushed back?

17 A Yes, ma'am.

18 Q Did you put that in your report?

19 A I put in there that I was able to gain control
20 of him by pinning him against the fence.

21 I don't see exactly that I put in there that he
22 pushed or attempted to struggle with us, no.

23 Q But you notated that you had to regain some type
24 of control?

25 A Yes, ma'am.

1 Q You testified that he threatened you. Did you
2 put that in your report?

3 A Yes, ma'am.

4 Q You testified that you found crack cocaine on
5 his person. Did you put that in your report?

6 A Yes, ma'am.

7 Q Ms. Frayer mentioned that -- or asked rather if
8 there was a report regarding taser. You said there was
9 a different kind of report for that?

10 A Yes, ma'am.

11 Q What is that report?

12 A What it's called is a report to act of
13 aggression of an offender or a defendant. It's more or
14 less simply an internal report to make sure there is no
15 excessive use of force.

16 We type it up. It goes to our supervisor. They
17 ready it. They make a judgment call on it I guess you
18 would say. Then they forward it to the lieutenant, the
19 lieutenant forwards it to the captain. And it goes so
20 forth and so on all the way.

21 I believe it either stops at professional
22 standards or our internal affairs. Or I think
23 sometimes the chief reads over them personally.

24 Q So it goes through several channels of review,
25 is that what you are saying?

1 A Yes, ma'am.

2 Q And is that to safeguard the community against
3 officers, say if officers used too much force?

4 A Yes, ma'am. The majority of the reason is to
5 safeguard people; community members, offenders,
6 defendants to too much force of police officers.

7 But it also kind of covers the police officers
8 aspects so people do not say that we did stuff, used
9 too much force when we didn't use any, or we used a
10 baton when they said that we used a taser. It's to
11 document what we actually did.

12 Q When is it necessary for you to fill out those
13 types of reports?

14 A Our policy states that it has to be done by the
15 close -- or end of your shift.

16 Q I guess under what circumstances is it necessary
17 for you to fill out that kind of report?

18 A Anytime you use any of your CPD issued defense
19 weapons.

20 Q Does that mean anytime you merely, for example
21 in this case a taser, does that mean anytime you remove
22 the taser from your belt?

23 A Yes, ma'am. It different for each defense
24 weapon that we use. The OC spray, to be more specific,
25 the OC spray is only needed -- if we just pull it out

1 of our holster, we don't need to do a report, as in the
2 baton. Now if we strike or spay on a person, we have
3 to do a report.

4 If we remove our firearm or our taser from our
5 holster, we have to do a report. If we use any kind of
6 empty hand control, pressure point techniques that we
7 are taught, we have to do a report.

8 Q Okay. I'm going to ask you about the field
9 weight. When you weigh these substances out in the
10 field all the same, is that the final weight of the
11 substance?

12 A No, ma'am. It's a very quick weigh in the bag.
13 One, we don't want to touch it. Two, we don't want it
14 to blow away. Obviously this was kind of a cookie, but
15 you can see if it breaks up it is very brittle so it
16 does, it could blow away, you could lose some of your
17 evidence.

18 So if it's found in the bag, you leave it in the
19 bag and you just weigh it all, do a field weight. And
20 then when you submit it into evidence they send it out
21 to get the more accurate weight.

22 Q Okay. Is that an approximate weight?

23 A Yes, ma'am.

24 Q You said you've done a hundred or so drug cases.
25 Are you familiar with what a 20 rock is?

1 A Yes, ma'am.

2 Q What is that?

3 A A 20 rock, it's about .2 grams.

4 MS. FRAYER: Objection, Your Honor.

5 THE COURT: Basis?

6 MS. FRAYER: It's outside of my

7 cross-examination.

8 THE COURT: Overruled. I'm going to give you a

9 little latitude. But you need to connect the dots.

10 MS. McCLAIN: Yes, Your Honor.

11 Q (By Ms. McClain) In your training and knowledge
12 and experience, would you say what you recovered from
13 the defendant was equivalent to what you just described
14 as a 20 rock being?

15 A This would be a lot more than a 20 rock. A 20
16 rock is more for personal use. You deal with a lot of
17 these guys, 5, 10, 20 dollar rock, they are small
18 little pebbles.

19 I would say, you know, somebody to use this as
20 personal use would take you quite a long time. If you
21 smoked that all at once, you'd die.

22 Q Just for the record, I think you did this
23 earlier but just to be clear, the individual that you
24 stopped that day, is he present in the courtroom?

25 A Yes, ma'am.

1 Q Can you identify him?

2 A I can't see. He is right there sitting there
3 next to Ms. Cantrell.

4 Q What does he have on?

5 A Can I stand up?

6 Q Sure. Of course.

7 A He has a shirt and tie on. Blue-striped shirt
8 with a green tie and slacks, I can't see the color,
9 they are covered by the table.

10 MS. MCCLAIN: I just ask the record to reflect
11 the officer did identify the defendant.

12 No further questions.

13 THE COURT: Any objection to the witness being
14 excused from the State?

15 MS. MCCALIN: None, Your Honor.

16 THE COURT: From the defense?

17 MS. FRAYER: None, Your Honor.

18 THE COURT: Sir, you are excused.

19 Mr. Foreman, ladies and gentlemen, we are going
20 to take advantage of this break in testimony to take
21 our lunch recess. During the break, please do not
22 discuss the case among yourselves or with anyone else.
23 Please do not have any contact with anyone in or about
24 the courthouse.

25 You'll return directly to your jury room after

1 lunch and we will resume at 2:30. Do not allow
2 yourself to be exposed to any media coverage about this
3 case. That includes anything that could be on any
4 media outlet or on the Internet.

5 I hope that you all have a good lunch and we
6 will see you at 2:30. If you would go with the
7 bailiffs and leave your note pads in your seats.

8 (Whereupon, the jurors exit the courtroom.)

9 THE COURT: Is there anything before we adjourn
10 for lunch from the state?

11 MS. MCCALIN: Nothing from the State, Your
12 Honor.

13 THE COURT: From the defense?

14 MS. FRAYER: Nothing, Your Honor.

15 THE COURT: See you all after lunch.

16 (Whereupon, a recess was taken.)

17 THE COURT: Is the State ready to proceed?

18 MS. McCLAIN: State is ready.

19 THE COURT: Is the defense ready?

20 MS. FRAYER: Ready, Your Honor.

21 THE COURT: Please bring in the jury.

22 (Whereupon, the jurors enter the courtroom.)

23 THE COURT: You may be seated. Ladies and
24 gentlemen, you all have been very patient with us and I
25 appreciate it. As you all knew, I was trying two cases

1 sort of in tandem, and my other case came back with a
2 verdict. And it had some other issues to deal with and
3 matters of law that I needed to deal with. It took a
4 little time

5 So we appreciate your patience. Please know
6 that we do not take your time for granted. We will now
7 resume with trial testimony.

8 Ms. McClain or Mr. Simpson, you may proceed when
9 you are ready.

10 MS. MCCLAIN: Yes, Your Honor. The State would
11 now call Officer Michael Moody.

12 MR. MICHAEL MOODY,
13 after having first been duly sworn to state the truth,
14 the whole truth and nothing but the truth, testified on
15 his oath as follows:

16 THE COURT: You may proceed.

17 MS. MCCLAIN: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 DIRECT EXAMINATION

20 BY MS. MCCLAIN:

21 Q Good afternoon, Officer Moody?

22 A Good afternoon.

23 Q Would you please tell the jury what your
24 occupation is?

25 A I'm a police officer with the City of Charleston.

1 assigned to the traffic enforcement unit.

2 Q How long with the Charleston Police Department?

3 A I have been with the City for four years.

4 Q Can you explain some of the positions, and
5 responsibilities with each of those positions, that you
6 have had your four years at CPD?

7 A When I first came down I was assigned to patrol.
8 After that, due to my previous experience in Ohio, I
9 became a training officer.

10 I have been a training officer down here and an
11 instructor for three years while serving in a patrol
12 capacity. After that I was on the community action
13 team assigned to Team One. And then last December went
14 over to traffic to do DUI enforcement.

15 Q While you were on the community action team,
16 what were some of your duties and responsibilities?

17 A Of course with any police officer, to enforce
18 the laws in the area, but also network and build
19 relations with the community, get involved with
20 different projects to try to I guess change some of
21 those problems, you know, that had existed down there
22 and make the community better as a whole.

23 Q Could you also give us a little bit of your
24 educational background and training?

25 A Sure. I have a Bachelor's Degree from Kent

1 State University. A Master's Degree in Homeland
2 Security from Tiffany University in Ohio.

3 I attended the Ohio Criminal Justice Academy.
4 The South Carolina Criminal Justice Academy. I also
5 have been certified as a mental health officer through
6 the state of Ohio. A training officer down here. And
7 an instructor for numerous things that would be taught
8 through the Police Department.

9 Q And during your employment with CPD, do you have
10 any special training or continued education?

11 A Yes. The instructor education, a lot of my
12 certifications currently are in traffic because of my
13 current position.

14 The bike patrol class, the one-week bike patrol
15 class. And then gang awareness, drug classes, stuff
16 like that of that nature.

17 Q On May 29th, 2010, what was your capacity as an
18 employee for CPD?

19 A I was assigned under the patrol division to the
20 community action team. While in that position I
21 primarily was a mountain bike police officer.

22 Q During that time, specifically on that date, did
23 you have an opportunity to become involved in an
24 investigation regarding the defendant, Timothy Young?

25 A Yes, I did.

1 Q Can you explain how that started?

2 A Officer Gill and I primarily worked together
3 when we were both assigned to the community action
4 team. At that time our shift was noon until 8:00 p.m.

5 It being getting into June and summer, of
6 course, it was hot. At that time we had actually went
7 behind the Family Dollar where there was an old
8 drive-thru to get some shade and a little bit of water.

9 That's when Officer Gill had stated or saw Mr.
10 Young walking out of Ducs Court onto Line Street and
11 stated that he had had a previous encounter with him
12 and went over to talk to him.

13 When I observed Officer Gill -- or Mr. Young run
14 from Officer Gill, Officer Gill gave chase and I
15 followed Officer Gill with me and Officer Gill being on
16 the bikes.

17 Q When you say the defendant gave chase, exactly
18 what did he do?

19 A I thought I said Officer Gill gave chase.

20 Q Excuse me. I apologize, I misspoke.

21 When you say the defendant, how did you put it,
22 the defendant ran?

23 A When Officer Gill went to approach him he ran, I
24 guess, would be east down Line Street and then north up
25 Nassau Street trying to avoid Officer Gill.

1 Q Had he seen Officer Gill?

2 A Yes. Officer Gill had, you know, made eye
3 contact with him as well as verbally said, hey, come
4 here, or something along the lines of, you know you are
5 not supposed to be in this area.

6 Q Did you all happen to be in uniforms that day?

7 A We were in the bike patrol uniforms, which there
8 are markings that are unique to that uniform that
9 identify us as police officers with the City of
10 Charleston.

11 Q When Officer Gill gave chase after the
12 defendant, what happened?

13 A They initially, like I said, went I guess would
14 be east down Line Street and then north on Nassau,
15 Officer Gill pursuing him on his bicycle.

16 I followed Officer Gill. I was probably maybe
17 15 to 20 feet away from him at all times. Officer Gill
18 eventually, I guess, caught up with him in the area of
19 a residence there on Nassau Street at which point a
20 struggle ensued.

21 Q At any point before that had Officer Gill been
22 able to maintain physical contact with the defendant?

23 A To the best of my knowledge I don't recall any
24 physical contact with the defendant up until the point
25 we were in the yard.

1 Q And when they were at the fence, what was going
2 on?

3 A They were struggling. Mr. Young had actually
4 went over, it was approximately a three, maybe four
5 foot chain-link fence. So he was on one side, Officer
6 Gill was on the other kind of holding on to him.

7 You know, and that was the first physical
8 contact that I had observed when they were at the
9 fence.

10 Q At that time was the defendant being cooperative
11 with Officer Gill?

12 A No. I would say he was actively resisting
13 trying to get away.

14 Q What maneuvers or behavior were he exercising
15 that gave you cause to think he was actively resisting?

16 A I mean he was pulling in the opposite direction
17 of Officer Gill, trying to push him off. And then I
18 don't remember specifically what he was saying verbally
19 but I know that he was yelling, you know, to something
20 along the lines of, get away.

21 Q So -- it's your testimony he was pushing Officer
22 Gill?

23 A Correct. He was pushing Officer Gill to try,
24 while at the same time trying to pull away.

25 Q Was he shoving, struggling?

1 A where -- I was actually when I came up was more
2 towards Officer Gill's back and side. Therefore with
3 the chain-link fence and the closeness of their bodies
4 I couldn't see what he was doing specifically with his
5 hands.

6 But the motion of the bodies you could see that
7 he was actively trying to get away from Officer Gill.

8 Q In your training, knowledge and experience as an
9 officer with CPD, do you believe that he was, the
10 defendant was in fact resisting an arrest?

11 A Yes.

12 Q And during that time, as Officer Gill was
13 attempting to apprehend the defendant, did you hear him
14 say anything?

15 A I heard Officer Gill give the verbal commands to
16 stop resisting, you are under arrest.

17 Q Did you hear the defendant say anything?

18 A Again I remember him yelling, I don't remember
19 the specifics.

20 Q Okay. Where were -- at what point were you and
21 the other officers able to gain control of the
22 defendant?

23 A As I stated, I probably was never more than 20
24 feet away from Officer Gill when I observed them
25 struggling at the fence. I had dismounted from my

1 bicycle, and I had an electronic control device that
2 most people refer to as the taser.

3 It was at that point that myself and Officer
4 Brown were able to -- Officer Brown was able to gain
5 control of the suspect from the fence and take him to
6 the ground.

7 At that point he continued to struggle at which
8 point I had pulled out my electronic control device and
9 told him to stop resisting or I would tase him.

10 Q While on the ground, what was the defendant
11 doing to struggle?

12 A Just moving around. He had one hand that was
13 underneath his body that we couldn't see. We didn't
14 know if it was just the way he fell or if he was
15 actively trying to get to something.

16 But in the process of struggling he was just
17 continuing to try to get up, stuff of that nature, when
18 we were trying to get control of him and handcuff him.

19 Q You said that you pulled out your taser?

20 A Yes.

21 Q Did you actually use it?

22 A No, I did not. No. What I did was I had --
23 there is a switch that you flip that activates the red
24 dot. And I had activated that. Due to my close
25 proximity to him, I let him know that I had it.

1 However, once he realized that I had that,
2 that's when he started to comply with us as far as the
3 handcuffing and stuff of that nature. I did not
4 actually have to deploy it, I just took it out of the
5 taser holster.

6 Q Once you had the defendant under control, were
7 you all able to successfully place him under arrest?

8 A Yes. At that point it was myself, Officer Chris
9 Brown and then Officer Bulregard (phonetic), who was my
10 trainee at the time, actually was able to handcuff him.

11 Q Okay. Was the defendant -- at that time what
12 charges were the defendant arrested for?

13 A At that time I believe -- at that time Officer
14 Gill had arrested him for trespassing and resisting
15 arrest.

16 Q Okay. And did you all execute a search incident
17 to that arrest?

18 A Yes, we did. We performed a search incident to
19 arrest after we had placed the handcuffs on him and
20 gained control of the subject. During that time, you
21 know, the defendant had made numerous threats towards
22 Officer Gill.

23 Q What kind of threats exactly?

24 A He stated that Officer Gill was lucky that there
25 were other officers there or he was going to shank him.

1 Q Is that specifically what he said?

2 A To the best I can remember. I specific remember
3 the word shank. It's something that during my time up
4 in Ohio when I was assigned to the jail division you
5 heard a lot inside the correctional facility.

6 So I knew that that meant, you know, basically a
7 threat. Or I took it as a threat of, you know,
8 stabbing or something of that nature based on my
9 experience in a correctional facility.

10 Q And again you heard the defendant directed that
11 threat towards Officer Gill?

12 A Yes.

13 Q When you executed the search incident to arrest,
14 did you all recover anything from the defendant's
15 person?

16 A Yes. In the right front pocket there was an
17 off-white rocklike substance.

18 Q Okay. And in your training, knowledge and
19 experience, did you have any idea what the substance
20 could possibly be?

21 A Based on at that point eight years of being in
22 law enforcement with my training, you know, I suspected
23 that it was most likely crack cocaine.

24 Q Is that an illegal substance?

25 A Yes, it is.

1 Q Do you know if the substance was field tested at
2 the time?

3 A Yes. It was field tested I believe by Sgt.
4 Lights at that time was the only one in the unit that I
5 was aware that had a field test kit.

6 After we recovered it, we called him over as our
7 supervisor because of the use of force, and
8 additionally to get access to the field test kit.

9 Q Are you aware what the results of that field
10 test were?

11 A It was presumptive of crack cocaine.

12 MS. MCCLAIN: Beg the Court's indulgence.

13 I have no further questions at this time.

14 Please answer any from Ms. Frayer.

15 THE WITNESS: Sure.

16 THE COURT: Any questions for the witness?

17 CROSS-EXAMINATION

18 BY MS. FRAYER:

19 Q Officer Moody, when you initially saw Mr. Young,
20 where was he?

21 A He was coming out of the little alleyway that is
22 Ducs Court onto Line Street.

23 Q Okay. And you all -- you said you were under
24 the Family Court awning over there in the shade?

25 A Yeah. I'm not sure what exactly used to be

1 behind the Family Dollar. It almost looks like it was
2 a bank dive-thru on the backside that would have --
3 across from Churches Chicken there that would have
4 access to Line Street.

5 We were under there. I was actually drinking
6 some water and we were trying to get a little bit of
7 shade from the heat.

8 Q And you didn't know who Mr. Young was at that
9 time?

10 A No. Not on sight. No, I did not.

11 Q And initially when the -- you said that Officer
12 Gill at some point made contact with Mr. Young?

13 A As far as physical? Verbal?

14 Q You guys were drinking the water?

15 A Yes.

16 Q And at some point he left you and went to Mr.
17 Young?

18 A Yeah. We were standing beside each other. What
19 happened was that area, you know, is fairly open. He
20 saw Mr. Young come out and made eye contact with him at
21 which point he told him to stop and come back.

22 Q Okay. You all were standing bikes side by side?

23 A Probably within three feet of each other, yes.

24 Q All right. And when -- so he just called over
25 to Mr. Young, Mr. Young, come here?

1 A From what I can remember he said, Mr. Young,
2 come over here, you know you are not supposed to be
3 here.

4 Q Okay. And at that time he was still by Line and
5 Ducs or between --

6 A He would have come off of Ducs and would have
7 actually been on Line Street.

8 Q On Line Street?

9 A Yes, that's correct.

10 Q I didn't hear what you said, what happened next
11 after he?

12 A After that point when Office Gill had asked him
13 to come here and they made eye contact, that's when Mr.
14 Young started initially quickly walking away and then
15 took off on a full sprint east on Line Street.

16 Q At that point you indicated Officer Gill said,
17 you know you are no supposed to be here?

18 A Yes.

19 Q Did him tell him at that point did you hear him
20 say that he was under arrest?

21 A To the best of my knowledge I don't recall him
22 specifically saying that at this time.

23 Q Okay, let's go to the --

24 (Whereupon, Defendant's Exhibit No. 2 is marked
25 for identification.)

1 Q (By Ms. Frayer) Officer Moody, I'm showing you
2 what has been marked as Defendant's Exhibit 2 for
3 identification purposes. This is a map, right?

4 A Yes, ma'am.

5 Q Okay. And on this do you see Line Street?

6 A Yes.

7 Q And do you see Nassau Street?

8 A Yes.

9 Q And you see Ducs Court on there as well?

10 A Yes, ma'am.

11 Q And that would be the areas where you indicate
12 you had some contact with Mr. Young originally?

13 A That is correct.

14 Q When the incident began?

15 A We had actually been standing under that right
16 there in that area.

17 Q Okay.

18 MS. FRAYER: Beg the Court's indulgence.

19 THE COURT: Yes, ma'am.

20 Q (By Ms. Frayer) Officer Moody, does the map that
21 I just showed you pretty much depict the area of Line,
22 Ducs Court and Nassau streets where this incident
23 occurred on May 29th?

24 A Yes, as far as being I guess topographical.

25 Q It's a topographical representation?

1 A Yes.

2 MS. FRAYER: Move to admit this map into
3 evidence at this time.

4 THE COURT: Any objection?

5 MS. MCCLAIN: None from the State, Your Honor

6 THE COURT: Marked and admitted without
7 objection.

8 (Whereupon, Defendant's Exhibit No. 2 is
9 admitted into evidence.)

10 Q (By Ms. Frayer) Officer Moody, if you turn
11 around for me. Okay.

12 You indicate that you initially saw Mr. Young at
13 Line and Duces Court?

14 A That's correct.

15 Q And you would have been -- where were you guys
16 under the --

17 A May I stand up?

18 Q Yes, you may stand up.

19 A We would have been in this area over here.

20 Q Okay. And at that point you heard Officer Gill
21 yell out to him?

22 A Yes, ma'am.

23 Q Was he on your side of the street or was he on
24 the opposite side of the street?

25 A We were both here.

1 Q Where was Mr. Young? Was he on that side of the
2 street or on the opposite side?

3 A He came out from this area over here.

4 Q Okay. So he is across the street from you all?

5 A That's correct.

6 Q And when he saw Officer Gill and Officer Gill
7 called out to him, you said that he started walking.
8 Which way did he walk on Line Street?

9 A East down Line Street.

10 Q And at some point Officer Gill left you and went
11 to him on the bike?

12 A He was never more than 20 feet away from me. He
13 initiated it and then I, you know, was within like I
14 said 15, 20 feet from him.

15 Q Okay. And where was Mr. Young when Officer Gill
16 and you began to -- when you said he started walking
17 fast and then he took off running, where was that at?

18 A It was in this area here I would say. The
19 reason I would remember that is because when we ran
20 through the intersection of Line and Nassau he actually
21 almost got hit by a white Ford Explorer.

22 So it would have been before the intersection
23 when he was running.

24 Q All right, thank you.

25 A Sure.

1 Q And you guys were still on your bikes?

2 A That's correct.

3 Q And Mr. Young was -- Mr. Young was running at
4 this point?

5 A Also correct.

6 Q And he ran, you showed the corner of Line and
7 Nassau and he ran up Nassau?

8 A That's correct.

9 Q And you -- you and Officer Gill, you all
10 continued to ride your bikes? At some point did you
11 guys get off the bike?

12 A That's correct. Officer Gill had gotten off his
13 bike first and that's when the struggle ensued in the
14 front yard of the residence on Nassau Street. Me being
15 a little bit behind when I, I guess however long it
16 would have took for me to catch up to him is when I got
17 off mine and I observed the struggle.

18 Q And you indicated that Officer Gill was, you
19 could see him holding onto Mr. Young?

20 A Yes. Mr. Young, like I said, was on the other
21 side of the fence and had at least had one hand around
22 his shoulder area and he was trying to hold him against
23 the fence.

24 Q But he had gone over the fence, so where was his
25 shoulder? Was his shoulder on the upwards of the fence

1 or downwards at the bottom of the fence?

2 A No, they were both standing.

3 Q Both standing up?

4 A Yes. As they were both standing the fence was
5 actually between them at that point.

6 Q And this was just a regular metal chain-link
7 fence?

8 A Yeah, just like a chain-link dog fence.

9 Q So it's a short fence?

10 A Yes.

11 Q Were you -- you indicated that you and Officer
12 Brown and Officer Bulregard had him on the ground, had
13 Mr. Young on the ground and were arresting him?

14 A Initially it was myself and Officer Brown.
15 Officer Bulregard assisted with the handcuffing of him
16 after he was already on the ground.

17 Q Do you know where Officer Gill was at this
18 point?

19 A He was still on the other side of the fence and
20 then came around towards us to assist.

21 Q Okay. At the point where you -- let's go back
22 to the Family Dollar.

23 A Sure.

24 Q At that point when you called out, you stopped
25 drinking water and you started riding your bike again,

1 at that point did you hear Officer Gill tell Mr. Young
2 that he was under arrest?

3 A The first time I had heard him say that was in
4 the yard of the residence on Nassau Street.

5 Q Okay. Now once you came along, you assisted in
6 -- you came around the other side of the fence.
7 officer Gill was on this side?

8 A That is correct.

9 Q Holding on to the shoulder area, this side?

10 A Uh-hum.

11 Q And you came around this side of the fence?

12 A That's correct.

13 Q You would have been facing?

14 A I would have been more towards, it would have
15 been his left side.

16 Q Towards the left side of Mr. Young?

17 A Yes.

18 Q And did you, could you see his hands at that
19 point?

20 A Mr. Young's hand?

21 Q Uh-hum?

22 A No, I couldn't.

23 Q You couldn't see his hands? When you pulled
24 your taser out, he was already on the ground?

25 A Yeah. After as Officer Gill had him pinned, I

1 had come around and Officer Brown arrived on scene at
2 the same time. And I specifically remember Officer
3 Brown saying, you know, I got him, I got him. At which
4 point Officer Gill let go and that's when myself and
5 Officer Brown took him to the ground.

6 Q When you say took him to the ground, was he face
7 up or facedown?

8 A Facedown.

9 Q That's procedure?

10 A To put someone facedown?

11 Q Takedown maneuver is to?

12 A The takedown maneuver is to gain control of the
13 individual, yeah.

14 Q Okay. Now you were there when he was
15 handcuffed? You were there?

16 A Yeah. I actually at that point had taken the
17 taser out of the holster. And then Officer Bulregard,
18 who was my trainee, did the handcuffing.

19 Q Put the handcuffs on him?

20 A That's correct.

21 Q You were there when they searched him after he
22 was handcuffed?

23 A That's correct. When I train somebody I have
24 them do all the search incident to arrest to show them
25 how do it correctly. So Officer Bulregard had done the

1 search incident to arrest under my supervision.

2 Q Okay. So you observed her?

3 A That's correct.

4 Q And she found the drugs on him?

5 A Yes.

6 Q And you saw the drugs? You saw the bag?

7 A I saw what looked to be like a form of narcotics
8 that we didn't know what it was until --

9 Q At that time?

10 A Exactly.

11 Q Then you called the supervisor?

12 A Sgt. Lights.

13 Q Sgt. Lights to come and test it?

14 A Yes.

15 Q Did you see how many bags it was?

16 A From what I remember there was actually two
17 bags. One was empty, I believe, from his other pocket.
18 And then the one that actually contained the substance
19 that we located.

20 Q You didn't know if you all tested the other bag
21 that was empty? There is no indication of that?

22 A To the best of my knowledge, no, it was not.

23 Q Okay. So you saw one bag that contained drugs?

24 A That's correct.

25 Q Contained what was purported to be drugs?

1 A That's correct, yes.

2 Q And the whole time during the chase and all that
3 pursuit, you were no more than you said about 10 --

4 A No, I would say 15 to 20 feet.

5 Q 15 to 20 feet?

6 A That's correct.

7 Q Behind Officer Gill?

8 A That's correct.

9 Q In this courtroom, about how far would that be
10 if you would have to say something?

11 A If I had to estimate, I would say I was never
12 further than myself and between you and the table.

13 Q So where I am standing and the table, that's how
14 close you were?

15 A No. From where I am sitting to where you are to
16 maybe the range of the table.

17 Q Okay. You never lost sight of Officer Gill?

18 A That's correct.

19 Q And you could hear Officer Gill?

20 A That's correct.

21 Q When your trainee searched him she didn't find
22 any scales on him? Any scales?

23 A Not that I remember, no. I don't remember a
24 scale.

25 Q Do you remember any money? Her finding any

1 money?

2 A I don't.

3 Q Do you remember --

4 MS. FRAYER: Beg the Court's indulgence.

5 No further questions, Your Honor.

6 THE COURT: Any further questions of the
7 witness?

8 MS. McCLAIN: None from the State, Your Honor.

9 THE COURT: Any objection to the witness being
10 excused from the State?

11 MS. McCLAIN: No.

12 THE COURT: From the defense?

13 MS. FRAYER: None, Your Honor.

14 THE COURT: Sir, you are excused?

15 You may call your next witness.

16 MS. McCLAIN: Your Honor, the State calls
17 officer Christopher Brown.

18 MR. CHRISTOPHER BROWN,
19 after having first been duly sworn to state the truth,
20 the whole truth and nothing but the truth, testified on
21 his oath as follows.

22 THE COURT: You may proceed.

23 MS. McCLAIN: Thank you, Your Honor.

24 THE COURT: You're welcome.

25 DIRECT EXAMINATION

1 BY MS. MCCLAIN:

2 Q Good afternoon, Officer. Could you please state
3 for the Court where you are currently employed?

4 A I am currently employed as a police officer with
5 the City of Charleston.

6 Q On May 29th, 2010 were you working in that
7 capacity with CPD?

8 A I was.

9 Q Did you, on that date, have an opportunity to
10 become involved with the investigation of this case
11 versus the defendant, Timothy Young?

12 A Yes, I did.

13 Q Can you explain how you became involved in that
14 case?

15 A Yes, I can. I was, at that particular time I
16 was assigned to the community action team. I was in my
17 marked patrol vehicle traveling down Line Street in
18 between Meeting and Nassau streets.

19 I observed Officer Moody on a bicycle, he was on
20 bike patrol at that time, traveling east on Line
21 Street. And I observed another one of our bike
22 officers, Officer Gill, right at the intersection of
23 Nassau and Line.

24 Officer Gill appeared to be traveling
25 northbound. As I approached Officer Moody, my window

1 was down, I heard Officer Gill yell, stop, at which
2 time I proceeded in the intersection and looked to the
3 left, which is north on Nassau Street, and observed a
4 bicycle on the ground and Officer Gill in a foot
5 pursuit with the suspect.

6 At which time I traveled north on Nassau Street,
7 parked my vehicle, got out of my car, and observed that
8 Officer Gill was attempting to detain a party right --
9 the party was standing in the front yard right on
10 Nassau Street, and Officer Gill was actually standing
11 on the sidewalk and was attempting to detain him,
12 however there was a fence in between the two of them.

13 So I proceeded into the front yard, grabbed the
14 suspect around the waist. Due to his actively
15 resisting nature, I pulled him to the ground and helped
16 to detain him.

17 Q When you were still in your cruiser coming down
18 Line Street and saw Officer Gill in pursuit after the
19 defendant, what did you think was happening?

20 A At that particular time with hearing him yell
21 stop, I was under the assumption that he was attempting
22 to stop someone, which usually means a detention or at
23 least to talk to the suspect.

24 When I looked northbound I observed him running
25 through the street and still hearing him tell him to

1 stop, stop. I assumed that the party was fleeing from
2 officer Gill.

3 Q At that time were you on active patrol with
4 officers Gill and Moody, or were you on your own
5 independent patrol?

6 A We were all assigned to the community action
7 team, all three of us. The two of them were working
8 together on bicycles. However, I was alone in my
9 patrol car patrolling the area, but still a member of
10 the same unit.

11 Q When you're on patrol in your car and you see a
12 situation such as the one you witnessed between Officer
13 Gill and the defendant, is that standard procedure for
14 you to then pull over and assist Officer Gill?

15 A Yes, it is.

16 Q You said when you got to the fence that Officer
17 Gill had a hold of the defendant. What was the
18 defendant doing at that time?

19 A At that time the defendant was attempting to
20 physically push away from the officer, flailing his
21 arms and attempting to break Officer Gill's hold on
22 him.

23 Q You said he was flailing his arms around?

24 A Yes.

25 Q Was he pushing Officer Gill?

1 A Yes.

2 Q Was he trying to shove at Officer Gill?

3 A I believe so.

4 Q In your training, knowledge and experience, what
5 do those types of behaviors indicate to you?

6 A It indicates to me that the suspect is actively
7 resisting an officer's commands. Because at that time
8 I also heard loud, verbal commands for him to stop,
9 stop resisting. So in my experience led me to believe
10 that he was physically fighting Officer Gill.

11 Q And then you said that you assisted by coming
12 around and grabbing a hold of the defendant at his
13 waist and brought him to the ground?

14 A Yes.

15 Q And when you had the defendant on the ground,
16 what was he doing?

17 A When the defendant was on the ground he was
18 continuing to violently move his arms around. He was
19 continuing to fail to not follow our commands of, give
20 us your hands, stop resisting. His hands were forced
21 behind his back, unfortunately, to place handcuffs on
22 him.

23 MS. MCCLAIN: Beg the Court's indulgence.

24 Permission to approach the witness, Your Honor.

25 THE COURT: You may.

1 Q (By Ms. McClain) Officer Brown, I'm showing you
2 now what has been marked Defense Exhibit 2. Do you
3 recognize that area?

4 A I do.

5 Q And if I were to pull this down so that you can
6 see it within the map. Are you familiar with what this
7 is here?

8 A Yes, I am.

9 Q Can you tell the Court what that location is?

10 A This is actually the Jackson street pool. I
11 believe the address is [REDACTED] Jackson Street. There is a
12 large pool there and a park right next to it.

13 Q And just to get this back on the general screen.
14 Can you point out about where you and officers Gill and
15 Moody were at the time you apprehended the defendant?

16 A (Whereupon, the witness indicates.)

17 Q All right, thank you.

18 MS. MCCLAIN: Beg the Court's indulgence.

19 I have no further questions. Please answer any
20 Ms. Frayer may have for you.

21 THE COURT: Any questions for the witness?

22 MS. FRAYER: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 CROSS-EXAMINATION

25 BY MS. FRAYER:

1 Q Good afternoon, Officer Brown.

2 A Hello.

3 Q Did you write a report after this incident?

4 A I did, ma'am.

5 Q And Ms. McClain didn't ask you, but you have
6 been to the South Carolina Criminal Justice Academy?

7 A I have.

8 Q And you have been certified and all that and
9 trained properly on reports?

10 A Yes.

11 Q About how many years have you been on the force
12 now? How many years?

13 A As of now I have been on for two years.

14 Q Back in May of 2010, you would have been on
15 there one year?

16 A Yes, I believe so.

17 Q When you observed Officer Gill riding his bike
18 pursuing Mr. Young, you did not know who Mr. Young was
19 at that time?

20 A No, I did not.

21 Q You indicated that you heard Officer Gill yell,
22 stop?

23 A Yes.

24 Q And that was at Line and Nassau?

25 A Yes.

1 Q You were driving your car -- if you can turn
2 around and show me, which way were you coming down Line
3 Street?

4 A Eastbound.

5 Q Okay. So you were coming from the Meeting
6 Street side?

7 A Yes.

8 Q Then you got to Nassau Street and that's when
9 you observed Officer Gill -- you observed Officer
10 Moody?

11 A Yes.

12 Q Following behind Officer Gill?

13 A Yes.

14 Q And you could hear Officer Gill say, stop?

15 A Yes.

16 Q And you turned left onto Nassau Street?

17 A Yes.

18 Q Do you remember any traffic that day?

19 A To the best of my knowledge I do not.

20 Q You don't remember seeing a white SUV on Nassau?

21 A To the best of my knowledge all I remember
22 seeing was a bicycle in the middle of the road.

23 Q When you were at the academy you learned about
24 writing incident reports and how important they were?

25 A Yes.

1 Q And they're important -- it's important for you
2 to be clear, concise and accurate in your report; is
3 that correct?

4 A Yes.

5 Q And again you agree that you did write a report
6 of this incident?

7 A Yes, I did.

8 MS. FRAYER: Your Honor, may I approach?

9 THE COURT: You may.

10 (Whereupon, Defendant's Exhibit No. 3 is marked
11 for identification.)

12 Q (By Ms. Frayer) I'm going to show you what has
13 been marked as Defendant's Exhibit 3 for identification
14 purpose. Do you recognize that?

15 A I do.

16 Q It says supplemental report. Why is it labeled
17 supplemental?

18 A We write supplemental reports which are attached
19 to an incident report. There are many situations that
20 other officers become involved in a situation.

21 Q Okay. In your report you indicate that you saw
22 Mr. Young riding his bike; is that correct?

23 A That is correct, Your Honor.

24 Q And you saw him riding a bike? And you saw
25 officer Gill following him?

1 A Well actually at the time of this report, I
2 wrote this supplemental, I was under the belief he was
3 riding a bicycle. However, with my recollection of the
4 incident, I don't believe that he was.

5 Q Okay. So when you write your reports now, are
6 you putting in what you believe happened or what you
7 saw?

8 A I am putting in what I saw and my overall
9 interpretation of the event?

10 A Overall interpretation, got it. But in your
11 report you are very vivid about how he was pedaling,
12 and the rapid manner and all that stuff, and you saw
13 him fleeing the scene on his bicycle pedaling in a very
14 rapid manner. That's what you put in there, right?

15 A It is.

16 Q A brief bicycle pursuit occurred. You put that
17 in there?

18 A Yes.

19 Q You put in there that the defendant quickly
20 jumped off his bike and started running on foot?

21 A Yes.

22 Q That's what you put in your report that we
23 relying on for today?

24 A Yes.

25 Q It's your testimony today that this report is

1 not correct?

2 A That is. I believe I made a mistake on this
3 particular report.

4 Q Okay. And you can make mistakes because you're
5 human too, right?

6 A Yes.

7 Q All right. In your patrol car, you were in the
8 car and what kinds of things, equipment do you have in
9 your car?

10 A In our patrol vehicle we have a police issued
11 radio. There is also the standard stereo that comes in
12 a Ford Crown Vic.

13 Q You didn't have a laptop in your car?

14 A To the best my knowledge on this day I did.

15 Q Okay. And what kind of information can you get
16 on that laptop?

17 A Our mobiles, mainly used for dispatch to see
18 basically everyone ended up in the team where they're
19 dispatched at a particular time.

20 They're also used to when driver's licenses and
21 check people for warrants and things of that nature.

22 Q Okay. When you got to the fence, you parked
23 your car, you got out, went to assist because that's
24 what you are supposed to do?

25 A Yes.

1 Q And you went around the front of the fence?
2 Well really would be -- I would say the inside of the
3 fence?

4 A Yes.

5 Q Because Officer Gill was still standing on the
6 street side?

7 A Yes.

8 Q And in your report you indicated that you were
9 able to perform a straight-arm bar takedown on the
10 offender and detain him on the ground in the yard.

11 A Yes.

12 Q What is a straight-arm bar takedown?

13 A A straight-arm bar takedown, as we are trained
14 in the academy, is used to control an actively
15 resisting, or in some instances a passively resisting
16 subject. It's an attempt to where you have one hand
17 around the party's wrist, and another hand around their
18 triceps area.

19 Unfortunately on this date and time I was unable
20 to get my hand around his triceps, so it was actually
21 around his waist.

22 Q So you can do the straight-arm bar takedown
23 around the waist, or on just with the arm? Because it
24 says that you performed it. You just did it around his
25 waist?

1 A Well we are trained in the academy to use the
2 forearm, excuse me, the triceps and the wrist. However
3 in this particular situation I was unable to properly
4 perform the technique due to him holding on to the
5 other officer and flailing his arms. So in this
6 situation I did the best that I could.

7 Q Okay. In your report you say that it's about a
8 three-foot high fence, metal fence.

9 A I believe so. To the best of my knowledge it
10 was between a three, possibly four-foot high fence.

11 Q Uh-hum. It says in your report that he declined
12 EMS. Why would he have needed EMS after the takedown?

13 A It's standard procedure for us to ask any party
14 if they require EMS attention. Especially if they're
15 using force, excuse me, if they're physically
16 assaulting an officer in any way. And also if a level
17 of force is used upon them.

18 I believe pretty much anytime you use force, I
19 personally always ask if you would like EMS.

20 Q Were you there when they put the handcuffs on
21 him? Did you assist in putting the handcuffs on him?

22 A I don't recall exactly if I was placing
23 handcuffs on him, but I was helping to detain him.

24 Q Okay. Were you there when they searched him?

25 A I don't recall.

1 MS. FRAYER: Beg the Court's indulgence.

2 THE COURT: Uh-hum.

3 MS. FRAYER: No further questions of this
4 witness, Your Honor.

5 THE COURT: Any redirect of the witness?

6 MS. MCCLAIN: Yes, Your Honor, briefly.

7 THE COURT: You may proceed when you are ready.

8 MS. MCCLAIN: Thank you.

9 THE COURT: You're welcome.

10 REDIRECT EXAMINATION

11 BY MS. MCCLAIN:

12 Q Officer Brown, did you come on the scene after
13 Officer Gill's pursuit of the defendant began?

14 A I believe I was in the area during the pursuit.
15 However, I arrived after he was already attempting to
16 place him under arrest.

17 Q So did you see whatever may have happened at the
18 beginning to lead to the pursuit?

19 A No, I did not.

20 Q And that fence, would you say that fence is
21 about standard height of a residential property line
22 fence?

23 A I believe so.

24 Q And you said that the defendant declined EMS.
25 And that's standard to ask?

1 A For me it is.

2 Q Is that to make sure the subject is okay?

3 A Yes.

4 Q Make sure the subject wasn't harmed or injured
5 in any way?

6 A Yes, it is.

7 MS. MCCLAIN: Beg the Court's indulgence.

8 THE COURT: Uh-hum.

9 MS. MCCLAIN: No further questions.

10 THE COURT: Any objection to the witness being
11 excused, from the State?

12 MS. MCCLAIN: None from the State, Your Honor.

13 THE COURT: From the defense?

14 MS. FRAYER: None from the defense.

15 THE COURT: Officer, you are excused.

16 Mr. Foreman, ladies and gentlemen, we are going
17 to take advantage of this break in testimony to take a
18 brief restroom break. During the break please do not
19 discuss the case. Please leave your note pads in your
20 seats.

21 And for your planning purposes, I anticipate
22 that we will finish this case today, with closing
23 arguments and instruction in the morning. If you would
24 go with the bailiffs for me, please.

25 (Whereupon, the jurors exit the courtroom.)

1 THE COURT: Anything before we have our break,
2 from the State?

3 MS. MCCLAIN: None from the State.

4 THE COURT: From the defense?

5 MS. FRAYER: Nothing from the defense.

6 THE COURT: Okay, we will be at ease.

7 (Whereupon, a recess was taken.)

8 THE COURT: Please bring in the jury.

9 (Whereupon, the jurors enter the courtroom.)

10 THE COURT: You may be seated.

11 Thank you, ladies and gentlemen, I hope you
12 enjoyed your recess. We will now resume with the trial
13 testimony. You may proceed when you are ready.

14 MS. MCCLAIN: Thank you, Your Honor. The State
15 now calls Linda Wilson.

16 THE COURT: Ma'am, if you would come forward to
17 be sworn.

18 MS. LINDA WILSON,
19 after having first been duly sworn to state the truth,
20 the whole truth and nothing but the truth, testified on
21 her oath as follows:

22 THE COURT: You may proceed.

23 MS. MCCLAIN: Thank you, Your Honor.

24 THE COURT: You're welcome.

25 DIRECT EXAMINATION

1 BY MS. MCCLAIN:

2 Q Ms. Wilson, could you please tell us where you
3 are currently employed?

4 A I work for the City of Charleston Police
5 Department in the evidence division.

6 Q And in the evidence division, what are your
7 duties there?

8 A To take in evidence and to store it in our
9 evidence department.

10 Q Per your CPD procedure, do you assign any of the
11 evidence you receive a case number or any type of
12 identifying marker?

13 A I don't assign a case number, but we do assign a
14 PR number.

15 Q What does that number help you do?

16 A Just to identify that piece of evidence.

17 Q When evidence is logged in, could you explain
18 the process you go through for that?

19 A I come in the morning and I retrieve the
20 evidence out of the lockers that the officer puts in
21 and locks the evidence stuff in.

22 And I bring it in and I compare to the voucher
23 to what the evidence is. And I submit it in our
24 computer system. And the computer processes a PR
25 number for me. And it's printed out and I put it on

1 the evidence.

2 Q The mailbox or the lockers, who has access to
3 get inside the boxes of lockers?

4 A Myself and Brian Hinton and Lory Rope.

5 Q Do police officers have access to those once
6 they put something in, can they get something back?

7 A No, ma'am.

8 Q Does all the evidence go in the same place or
9 different places?

10 A They go in difficult places. Like drugs we have
11 a drug room.

12 Q And how is that drug room set up within the
13 evidence office?

14 A It's set up in the back where the rest of our
15 evidence is. But it's in a locked room all to itself.

16 Q So is it kind of like a room inside a room?

17 A Yes, ma'am.

18 Q Who has access to that room?

19 A Myself, my supervisor Lory Rope.

20 Q On May 29th, 2010 did you happen to receive any
21 evidence from Officer Patrick Gill regarding this case,
22 state versus Timothy Young?

23 A Yes, ma'am.

24 Q Do you recall what that item was?

25 A It was drugs. I think it was crack cocaine I

1 think it was.

2 Q Okay.

3 MS. MCCLAIN: Permission to approach, Your
4 Honor?

5 THE COURT: You may.

6 Q (By Ms. McClain) Ms. Wilson, I'm handing you
7 what has been marked as State's Exhibit 2 for
8 identification purposes. Can you identified this
9 exhibit?

10 A Yes, ma'am. This is what I took in I think it
11 was June 1st.

12 Q Okay.

13 MS. PROCTOR: Ma'am, could you speak up a little
14 louder and move that microphone? I can hardly hear
15 you.

16 THE COURT: Yes, ma'am, if you can speak
17 directly into the microphone. Thank you.

18 THE WITNESS: Okay. Yes, ma'am.

19 Q (By Ms. McClain) And where did you first see
20 this exhibit?

21 A When I received it out of the locker.

22 Q Can you tell who submitted it?

23 A It was recovered by Gill and Moody.

24 Q Are there any other indicators on that bag that
25 typically tell you who would have submitted it into

1 evidence?

2 A That would be on the voucher itself who
3 submitted it.

4 Q Are there any markings on the evidence bag like
5 initials?

6 A The initials would be PG which is Officer Gill.

7 Q Okay. Is it your testimony that you received
8 and logged in that evidence?

9 A Yes, ma'am.

10 Q And once you did that, where was the evidence
11 placed?

12 A It was placed in another envelope, and then it
13 was placed in the drug room until the lab girl came to
14 get it that morning.

15 Q Can you tell who handled the evidence after you
16 logged it and secured it in the evidence room?

17 A Yes, I could because we would have to sign it in
18 and out.

19 Q Okay.

20 MS. McCLAIN: Beg the Court's indulgence.

21 THE COURT: Uh-hum.

22 Q (By Ms. McClain) Can you explain who the lab
23 girls are and exactly what their job is?

24 A Susan comes every morning to pick up the drugs.
25 And I sign it out to her and she takes it to the lab.

1 MS. MCCLAIN: No further questions at this time.

2 THE COURT: Any questions for the witness?

3 MS. PROCTOR: I just have one question.

4 CROSS-EXAMINATION

5 BY MS. PROCTOR:

6 Q The bag that you are holding right now, is that
7 the bag that you placed it in?

8 A This bag right here?

9 Q Yes.

10 A No, ma'am.

11 Q Did you place it in a manila bag or what type?

12 A I placed it in a manila bag. When the officer
13 -- when I received it from the locker, it was in a
14 plastic bag sealed in this bag, sealed and initialed,
15 and I placed it in a manila bag.

16 Q So it was not in that bag that you are holding
17 now, correct?

18 A This bag, yes.

19 Q So that is the bag it was in, that sealed bag?

20 A Yes, ma'am.

21 Q The officers gave you, when you took that out of
22 the box?

23 A It was in this bag.

24 Q It was in the sealed bag?

25 A Yes, ma'am. It's in a sealed bag. They have to

1 seal it and initial it. And then I take it and I put
2 it in an envelope.

3 MS. PROCTOR: May I approach?

4 THE COURT: You may.

5 Q (By Ms. Proctor) So you are saying when you take
6 it out of the box in the morning, it was in this sealed
7 envelope?

8 A In that sealed enveloped, because that officer's
9 name and initials is on there.

10 Q And you never unsealed it?

11 A Oh no, ma'am.

12 Q Had the officers tested the drugs by then?

13 A You have to ask the officer that. I don't know.

14 Q What do you do with the bag after you take it
15 out of the evidence box?

16 A I take it and I compare what they say that's in
17 here to the voucher. The voucher is what they have,
18 what they say this is crack cocaine. If it's something
19 else or it look differently of if it's not sealed of
20 anything.

21 Q Where then do you put that bag?

22 A I put this bag in a manila envelope and then I
23 store it in the drug room until Susan comes and gets
24 it.

25 Q And is she the one that tests it?

1 A She takes it to the lab.

2 Q She takes it to the lab.

3 But you --

4 MS. PROCTOR: No further questions.

5 THE COURT: Any redirect?

6 MS. MCCLAIN: Yes, Your Honor, briefly just to
7 clarify.

8 REDIRECT EXAMINATION

9 BY MS. MCCLAIN:

10 Q Is it the procedure for -- is it proper
11 procedure for the officers when they submit the drugs
12 into the box with the locker, for them to put it inside
13 the bag and then seal the bag and initial it?

14 A With the particular sleeve, yes. We call this a
15 plastic sleeve, and they have to seal it and initial
16 it.

17 Q And that's proper procedure for officers to
18 submit the evidence?

19 A Yes, ma'am.

20 MS. MCCLAIN: Thank you. No further questions.

21 THE COURT: Any objection to the witness being
22 excused, from the State?

23 MS. MCCLAIN: None from the State, Your Honor.

24 THE COURT: From the defense?

25 MS. PROCTOR: No, Your Honor.

1 THE COURT: Ma'am, you are excused.

2 You may call your next witness.

3 MS. MCCLAIN: State calls Susan Moody.

4 MS. SUSAN MOODY,

5 after having first been duly sworn to state the truth,
6 the whole truth and nothing but the truth, testified on
7 her oath as follows:

8 THE COURT: You may proceed.

9 MS. MCCLAIN: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 DIRECT EXAMINATION

12 BY MS. MCCLAIN:

13 Q Good afternoon, Ms. Moody.

14 Can you please tell the Court where you are
15 currently employed?

16 A I work for the Charleston Police Department in
17 their forensic laboratory.

18 Q And what are your responsibilities in your
19 employment with CPD?

20 A I'm the laboratory technician. That means I'm
21 the evidence custodian for the lab. I enter cases into
22 the database data and place them in a safe, clerical
23 issues, answering the phone, those types of things.

24 Q When it comes to handling the evidence, what is
25 your procedure? What are your responsibilities?

1 A I pick the evidence up from the evidence room at
2 the station and make sure it's properly packaged and
3 sealed and entered into the system. And then I drive
4 it back to the lab where it's entered into the
5 database.

6 Q Is there a special procedure you have to follow
7 for logging out that evidence?

8 A Yes, ma'am, it's entered into the records
9 management system at the department.

10 Q On June 1st, 2010 did you happen to receive any
11 evidence regarding this case, State versus Timothy
12 Young?

13 A Yes, ma'am.

14 Q And --

15 MS. MCCLAIN: May I approach, Your Honor?

16 THE COURT: You may.

17 Q (By Ms. McClain) I'm handing you what has been
18 marked as State's Exhibit 2 for identification
19 purposes.

20 A Okay.

21 Q Are you able to recognize that exhibit?

22 A Yes, ma'am.

23 Q How -- when did you first see this exhibit?

24 A June 1st, 2010.

25 Q Where did you see it?

1 A In the evidence room.

2 Q Per procedure, what did you do when you checked
3 out this piece of evidence?

4 A I made sure it was properly sealed with the
5 initials half on/half off the seal. And I signed it
6 out from Linda Wilson in the evidence room.

7 Q Then did you take it somewhere after that?

8 A I took it to the lab.

9 Q And what procedure do you use when you take it
10 to the lab?

11 A It's entered into our database at which point
12 it's assigned a unique identifying number and it's
13 placed into our safe where the analyst will pick it up
14 to test.

15 Q And from examining the evidence, can you tell
16 who first tested this evidence after you logged it in
17 the lab?

18 A Yes, ma'am.

19 Q How can you tell?

20 A Her initials are on the back.

21 Q What are those initials? Who do they belong to?

22 A They belong to Sarah McCord.

23 Q Is Sarah McCord currently employed at CPD?

24 A No, ma'am.

25 Q Was she employed at the time?

1 A Yes, ma'am.

2 Q What was her position at CPD?

3 A She was an associate criminalist.

4 Q I assume obviously you two worked together at
5 CPD?

6 A Yes, ma'am.

7 Q How long did you work there while she was
8 employed?

9 A I have worked at CPD since July of 2005.. so I
10 worked with her over a year.

11 Q Okay. And in that time would you estimate how
12 many cases you had in which you transported the drugs
13 from evidence to the lab, and how many of those that
14 she tested?

15 A I'm not comfortable giving a guess on that
16 number.

17 Q A good many?

18 A A few hundred on the low end.

19 Q Okay. On the low end, that sounds like a lot.
20 During -- having worked with her for that length of
21 time and on so many cases, are confident in your
22 ability to identify her initials on a piece of
23 evidence?

24 A Yes, ma'am.

25 Q And are you confident that those initials on

1 that piece of evidence belong to Ms. McCord?

2 A Yes, ma'am.

3 Q After Ms. McCord analyzed that piece of
4 evidence, who took it from her, transported it back to
5 CPD evidence?

6 A I did.

7 Q How are you able to tell that?

8 A According to the chain of custody.

9 Q When did you do that?

10 A On June 2nd, 2010.

11 Q Okay.

12 After June 2nd, did you ever have an occasion to
13 log that piece of evidence out of CPD again?

14 A Yes, ma'am.

15 Q When was that?

16 A On August 23rd -- excuse me, August 17th.

17 Q Why was it that you were taking the evidence out
18 of CPD again?

19 A It had been requested that the evidence be
20 reanalyzed.

21 Q Who made that request?

22 A The solicitor's office.

23 Q When you logged it out at that time, what did
24 you -- what procedure did you follow logging it out of
25 CPD and taking it to the lab?

1 A I still made sure it was sealed with the
2 initials half on/half off. Signed it out of the
3 evidence room, brought it back to the lab and entered
4 it into the database.

5 Q And at that time when you logged it out, was it
6 still in substantially the same condition as it was
7 when you logged it back in the last time?

8 A Yes, ma'am.

9 Q Okay. Can you tell who received that evidence
10 at the lab?

11 A Vicky Mitchell.

12 Q And how are you able to say?

13 A Her initials are also on the package.

14 Q Just to clarify, fill in any gaps, are you aware
15 of why Ms. Sarah McCord is no longer a chemical analyst
16 at CPD?

17 A Yes, ma'am. She moved to Germany to be with her
18 husband.

19 MS. MCCLAIN: No further questions at this time.

20 THE COURT: Any question of the witness?

21 MS. PROCTOR: Thank you.

22 THE COURT: You're welcome.

23 CROSS-EXAMINATION

24 BY MS. PROCTOR:

25 Q Are you related to Deputy Moody who just

1 testified?

2 A No, ma'am.

3 Q You said that you received a sealed bag and took
4 it to, was it Ms. McCord? Did she then unseal that
5 bag?

6 A She would have to open it to test it.

7 Q So she gets the sealed bag. She unseals it.
8 She does the testing on it. Then she seals the exact
9 same bag up and gives it to you. And then you put the
10 bag back into evidence?

11 A Yes, ma'am.

12 MS. PROCTOR: Okay. I have no further
13 questions.

14 THE COURT: Any redirect?

15 MS. MCCLAIN: None from the State.

16 THE COURT: Any objection to the witness being
17 excused from the State?

18 MS. MCCLAIN: No, Your Honor.

19 THE COURT: From the defense?

20 MS. PROCTOR: No, Your Honor.

21 THE COURT: Ma'am, you are excused.

22 You may call your next witness.

23 MS. MCCLAIN: Thank you, Your Honor, the State
24 would like to call Elizabeth Mitchell.

25 MS. ELIZABETH MITCHELL,

1 after having first been duly sworn to state the truth,
2 the whole truth and nothing but the truth, testified on
3 her oath as follows:

4 THE COURT: You may proceed.

5 MS. MCCLAIN: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 DIRECT EXAMINATION

8 BY MS. MCCLAIN:

9 Q Good afternoon, Ms. Mitchell.

10 Could you please give the court your occupation
11 or profession?

12 A Yes. I am the laboratory manager for the
13 Charleston Police forensic laboratory. I am also a
14 criminalist which means I analyze physical evidence for
15 the courts.

16 Q What type of training or educational experience
17 do you have for that position?

18 A I have a Bachelor's degree in chemistry and
19 biochemistry. And a Master's degree in pharmaceutical
20 sciences. I'm certified as a fellow in general
21 criminalistics by the American Board of Criminalistics.

22 In term of trainings, I completed an in-house --
23 our in-house training program in controlled substance
24 analysis. I have attended the Drug Enforcement
25 Administration's forensic chemist seminar. And I have

1 been doing casework for approximately nine years.

2 Q And during the nine years and specifically at
3 CPD, have you had occasion to chemically analyze
4 substances to determine whether or not they are or
5 contain narcotic type drugs?

6 A Yes.

7 Q About how many times would you say you've done
8 those tests?

9 A I would say around 7,000 times.

10 Q Okay. And during those tests have you had the
11 occasion to chemically analyze substances to determine
12 if they are or contain cocaine base?

13 A Yes.

14 Q How many of those thousands would you say are
15 cocaine base involved?

16 A I can't really estimate a number on that. We
17 don't really keep statistics on that. I can say
18 qualitatively quite often.

19 Q Okay. And are these analyses and tests a part
20 of your regular duties?

21 A They are.

22 Q Okay. Can you please describe some of the
23 standards and procedures you follow to execute those
24 tests?

25 A In terms of how we test?

1 Q And specifically cocaine base, what do you --
2 procedures and standards do you follow?

3 A Okay. We start a case by entering that the
4 evidence is properly sealed and it has been submitted
5 properly to us. That's the first quality check we
6 undergo.

7 At a point that I determine that's sufficient, I
8 would open the evidence, write down my observations of
9 its packaging and description of it. And then take a
10 weight of the evidence without its package; the
11 suspected cocaine base, or whatever controlled
12 substance, without its packaging.

13 Then I would go forward with a color test, which
14 is a presumptive test. Meaning it doesn't tell me
15 definitely the identity of the substance, but it gives
16 me an idea of what direction I should go analytically
17 next.

18 After the presumptive test, I would move on to a
19 confirmatory test. The confirmatory test that I would
20 start with in a cocaine base is something called
21 Fourier Transform Infrared Spectroscopy. We call it
22 FTIR for short. And it gives us basically a chemical
23 fingerprint of a substance.

24 In a cocaine base, typically that is a
25 sufficient analysis. If not I would, you know, if I

1 needed to I have another analyses at my disposal.

2 At the end of the analyses I weigh the leftover
3 substance again and record that weight. Put a lab
4 number, a weight and my initials on all of the
5 packaging the substance was in. Repackage and seal the
6 substance.

7 Q You said that you will weigh the substance and
8 you talked about the presumptive test, and the --

9 A FTIR.

10 Q Yes, that one. The equipment you use to do all
11 those things, do they have to be set for any type of
12 quality standards?

13 A Yes. Yes, they do. Our lab is accredited by
14 the American Society of Crime Lab Directors Laboratory
15 Accreditation Board. They set forth quality standards
16 that we have to use to govern ourselves.

17 For instance, the wet chemical test that we use
18 are tested every month to make sure they're still
19 working. And our instruments that we use are set up on
20 a daily, weekly and monthly quality checks schedules.

21 And our balances that we weigh on are checked
22 weekly and then calibrated every quarter.

23 Q Now to your knowledge, is that the type of
24 equipment and the calibration you do different from
25 equipment the officers use when they test these

1 substances in the field?

2 A Yes. To my knowledge the officers' scales are
3 subjected to a lot more wear and tear than ours are.
4 Ours sit in a laboratory in a very controlled
5 situation. They don't move. We calibrate them, we
6 check them weekly.

7 The scales the officers used are not subject to
8 the same standards.

9 Q Does that sometimes result in a discrepancy in
10 weight in the field versus in your lab?

11 A Yes.

12 Q Have you previously been admitted as an expert
13 on drug analysis in court?

14 A Yes.

15 Q Have you -- how many times has that happened?

16 A 23 I believe.

17 Q And of those 23 times, how many times have you
18 actually testified?

19 A All of them. I have never been admitted and not
20 testified.

21 MS. MCCLAIN: Your Honor, the State would move
22 to admit Ms. Mitchell as an expert in the field of drug
23 analysis.

24 THE COURT: Any questions or objections?

25 MS. PROCTOR: No, Your Honor.

1 THE COURT: So admitted without objections.

2 You may proceed.

3 MS. McCLAIN: Thank you, Your Honor.

4 Q (By Ms. McClain) Ms. Mitchell, I'm going to show
5 you what has been marked as State's Exhibit 2 for
6 identification purposes. Do you recognize that
7 exhibit?

8 A I do.

9 Q And how are you able to recognize it?

10 A Every case that we get we put a little sticker
11 with the case number, an individuals lab number, my
12 initials and a date that I sealed it. I can also see
13 my lab number, the weight and the initials.

14 And they all match the report in the case number
15 that I was called here today to testify for.

16 Q And are you able to determine who submitted that
17 evidence to the lab?

18 A Yes.

19 Q Who was that?

20 A Linda Wilson submitted the evidence to the
21 laboratory. She submitted it to Susan Moody.

22 Q Then did Ms. Moody actually bring it to the lab?

23 A Yes. She brought it to the lab and put it into
24 our drug safe, our secure storage area where I
25 retrieved it.

1 Q Do you happen to notice any other markings on
2 the evidence, specifically any belonging to a Sarah
3 McCord?

4 A Not -- I'm familiar with the officers typically
5 put stickers on them and stuff, but I don't know their
6 procedures for that.

7 Q All right.

8 MS. MCCLAIN: Beg the Court's indulgence.
9 Your Honor, the State would like to submit
10 Exhibit 2 into evidence.

11 THE COURT: Any objection?

12 MS. PROCTOR: What is it? Is it the package of
13 drugs?

14 MS. MCCLAIN: Yes.

15 MS. PROCTOR: Without objection.

16 THE COURT: Marked and admitted without
17 objection.

18 (Whereupon, State's Exhibit No. 2 is admitted
19 into evidence.)

20 MS. MCCLAIN: Thank you.

21 Q (By Ms. McClain) Ms. Mitchell, did you perform
22 any type of analysis on that particular exhibit?

23 A I did.

24 Q What kind of analysis did you perform?

25 A I weighed it. I did the wet-color test, and an

1 FTIR on it.

2 Q And in your expert opinion, were you able to
3 conclude what the substance was?

4 A Yes. Yes. I would conclude that the evidence
5 contained cocaine base.

6 Q And in your expert opinion, how much did that
7 amount of cocaine base weigh?

8 A 3.13 grams.

9 Q Is that amount in excess of 1 gram?

10 A Yes.

11 MS. MCCLAIN: Beg the Court's indulgence.

12 Q (By Ms. McClain) You explained before the
13 process of the testing. When you go through that
14 process, does that I guess eat up some of the evidence
15 that was submitted?

16 A It does.

17 Q And had that evidence been tested before, would
18 it have also lost some of its overall mass in that
19 testing?

20 A Yes. It has been documented, particularly with
21 cocaine base, it can lose mass while stored. Because
22 almost every substance on the earth contains a certain
23 amount of water. And that water can evaporate even
24 though it's sealed in a plastic bag.

25 And if it was tested before, some of it would

1 have been consumed, then it's put in storage, and it
2 would continue to lose weight just through a natural
3 evaporative process.

4 Q Again just to clarify, the weight of that
5 cocaine base was 3.13 grams?

6 A Yes.

7 MS. MCCLAIN: No further questions at this time.

8 THE COURT: Any questions for the witness?

9 MS. PROCTOR: Yes, ma'am

10 THE COURT: You may proceed.

11 CROSS-EXAMINATION

12 BY MS. PROCTOR:

13 Q You said that when you received that from the --
14 this evidence bag, this is the bag that you opened this
15 bag and this is how you received it, correct?

16 A With the exception of the fact that I have
17 opened it re-sealed it and added the label.

18 Q And when you test it, you test, do you take the
19 cocaine base out of this bag and weigh it without the
20 bag?

21 A Yes, ma'am.

22 Q Or is the bag included?

23 A Without the bag.

24 Q And sometimes when you receive -- let me ask
25 you, strike that last question.

1 There is a difference between cocaine base and
2 cocaine powder, correct?

3 A Yes, ma'am.

4 Q And cocaine powder is powder cocaine, say like a
5 baby powder, or it is a powder?

6 A It is a powder, yes, ma'am.

7 Q And cocaine base is basically cooked cocaine
8 that makes it into the hard rocks that we see there,
9 correct?

10 A Yes, ma'am. It's cooked with baking soda or
11 some other basic substance and in water, yes.

12 Q And sometimes when you receive a packet like
13 that, and it will be in a, as it was in this case, it
14 was in another plastic bag, correct?

15 A Yes, ma'am.

16 Q And sometimes when you receive that into
17 evidence you'll have, not talking about the clear
18 evidence bag, but the bag that the drugs are in will
19 have other little baggies in it, correct?

20 A Other little baggies of drugs in them?

21 Q Of drugs in it?

22 A Yes, ma'am, that's possible.

23 Q So sometimes you'll see that there will be like
24 say 5, 6, 8, 10 or more of little baggies that are in
25 that one bag, correct?

1 A Yes, ma'am.

2 Q And in this case there was just the one bag with
3 the drugs in it?

4 A Yes.

5 Q Now you said that when you received -- when you
6 first receive it you weigh it. And what was that
7 weight when you first received -- when you received it
8 before you tested it?

9 A Taking it out of the bag it weighed 3.13 grams.

10 Q You said that you then tested it and it weighed
11 less. What was that weight?

12 A Give me a second. 3.09 grams.

13 Q So it was 3.13 grams when you received it. And
14 then it was only 3.09 after you did the testing?

15 A Yes.

16 Q So just a small amount -- just less a small
17 amount?

18 A A very small amount.

19 Q You said that sometimes because it's in storage
20 the weight lessens, correct?

21 A Yes, ma'am.

22 Q In a year's time, would it lessen, would crack
23 lessen two grams, over two grams in a year in a sealed
24 bag?

25 A I can't answer that. I can't testify to that.

1 I can just say there have been publications saying it
2 can lose weight.

3 Q But two grams is quite a bit, correct? In a
4 year, in less than a year?

5 A That's outside of the scope of my testimony to
6 testify to that.

7 MS. PROCTOR: Okay, thank you. No further
8 questions.

9 THE COURT: Any redirect?

10 MS. MCCLAIN: No.

11 THE COURT: Any objection to the witness being
12 excused from the State?

13 MS. MCCLAIN: No, ma'am.

14 THE COURT: From the defense?

15 MS. PROCTOR: No, Your Honor.

16 THE COURT: Ma'am, you are excused.
17 State may proceed.

18 MS. MCCLAIN: Your Honor, I believe at this time
19 the State rests.

20 THE COURT: Mr. Foreman, ladies and gentlemen,
21 the State has rested their case. I have some very
22 brief matters of law to take up, after which I will let
23 you know how we will be proceeding for the remainder of
24 the afternoon.

25 I suspect that we probably may or may not, but

1 if we aren't shortly thereafter be adjourning for the
2 afternoon and resuming with closing argument and
3 instruction in the morning.

4 Please do not discuss the case. Please leave
5 your note pads in your seats.

6 (Whereupon, the jurors exit the courtroom.)

7 THE COURT: State has rested, are there any
8 motions?

9 MS. FRAYER: Yes, Your Honor, at this time we'd
10 like to make a motion for direct verdict.

11 THE COURT: Is there anything further regarding
12 the motion?

13 MS. FRAYER: Yes, Your Honor. Your Honor, the
14 State we feel has failed to produce any evidence that
15 Mr. Young possessed cocaine base with an intention or
16 plan to distribute it, sell it, even share it.

17 There was no substantial circumstantial evidence
18 presented that reasonably proves that he was going to
19 distribute the drugs. Unlike the case of State v
20 Cherry, and I do have a copy of that case.

21 THE COURT: I am very familiar with it. You can
22 just give the citation for the record if you'd like.

23 MS. FRAYER: State v Cherry, 361 S.C. 588, 606
24 S.E.2d 475 where the court found that Mr. Cherry was
25 not entitled to a directed verdict because viewing the

1 evidence in the light most favorable to the State, you
2 had individual baggies and cash. That is not what we
3 have in this case.

4 Moreover, Your Honor, the State has failed to
5 prove that Officer Gill had any reason to arrest Mr.
6 Young. No order from Judge Steinard. Not even a
7 transcript of the hearing if there were oral orders
8 given, was provided here today to support the theory
9 that there was a trespass order in place.

10 Therefore, the stop of Mr. Young was unlawful.
11 The search of Mr. Young's person was unlawful. And any
12 contraband that was found on Mr. Young is the fruit of
13 an unlawful search and is therefore inadmissible. He
14 could have not resisted an unlawful arrest, Your Honor.

15 Your Honor, unlike the case of in re: Jeremiah
16 361 S.C. 620, 606 S.E.2d 766 where the court found that
17 Mr. Jeremiah was entitled to a directed verdict on one
18 of his charges but not everything because those were
19 separated incidents. Mr. Young's interactions with the
20 police on May 29th were all a part of one transaction.

21 Officer Gill attempted to stop Mr. Young. Mr.
22 Young did not stop. When they finally did stop him, he
23 was arrested and allegedly did not want the handcuffs
24 put on him, so he resisted in some way. And then he
25 allegedly threatened an officer in the process.

1 This is all one transaction, so therefore we
2 feel that because it's one transaction we are entitled
3 to a directed verdict on all of the charges. And we
4 also, Your Honor, renew our motion to suppress the
5 drugs at this time.

6 THE COURT: Would the State like to respond?

7 MR. SIMPSON: Yes, Your Honor, just briefly.
8 I'd like to take it slightly out of order of Ms.
9 Frayer.

10 As to the search I believe we have heard that
11 motion and Your Honor has ruled on that. There was
12 probable cause to arrest not only for the trespassing,
13 that is not the sole thing to the State's case, but
14 also for the disorderly conduct charge as you have
15 heard evidence of, and later facts gave rise to the
16 arrest for resisting arrest.

17 All three, and arguably the threat of an
18 official as well, taking place prior to the search that
19 Mr. Frayer is challenging.

20 As to the possession with intent to distribute
21 and the proximity charge. Francis versus Franklin 471
22 U.S. 307, that's a U.S. Supreme Court case from 1985,
23 addressing the same scheme that South Carolina has for
24 the intent to distribute.

25 A four state case citing Franklin favorably and

1 coming to essentially the same holding is State versus
2 Byrd, 267 S.C. 87.

3 Both of those approve of the South Carolina's
4 narcotics system of this permissible inference having
5 to do with weight and the intent to distribute.

6 As I did in my opening, and Ms. McClain is going
7 to make very clear in her closing, this is just a
8 permissive inference. It's not mandated that the jury
9 decide the intent to distribute.

10 What the case law makes clear is that having
11 over those triggering weights for narcotics is in and
12 of itself evidence of the intent to distribute such
13 that it would survive a directed verdict motion.

14 You know, the facts really aren't contested
15 here. We are of course going forward with our main
16 argument being that the weight is indicia of the intent
17 to distribute. But case law has, on more than one
18 occasion, addressed that. That is at least evidence
19 surviving, in the light most favorable to the State,
20 surviving a directed motion on our PWID narcotics
21 scheme, Your Honor. And that has been upheld on more
22 than one occasion.

23 Addressing State v Cherry, I believe the issue
24 there was it was under the weight, but there was
25 further indicia of distribution and so that directed

1 verdict was denied in that case, Your Honor.

2 THE COURT: Considering the evidence in the
3 light most favorable to the State, the Court is
4 concerned with the existence or nonexistence of
5 evidence and not its weight.

6 Of course the evidence has to raise -- come
7 above and imply more than a mere suspicion or belief or
8 opinion of guilt, however the Court is not required to
9 find that the evidence of guilt infers -- the evidence
10 infers guilt to the exclusion of any other reasonable
11 hypothesis.

12 The Court finds that there is direct evidence as
13 well as substantial circumstantial evidence which
14 reasonably tends to prove the guilt of the accused, or
15 from which his guilt may be fairly and logically
16 deduced.

17 I have already ruled on the motion to suppress.
18 And I think I have articulated the Court's ruling on
19 that and I'm not going to go back over that again, and
20 the ruling stands for itself.

21 I have already found that there was probable
22 cause for the stop. The evidence argued by the defense
23 goes to whether in fact he was guilty of trespass. But
24 there is certainly sufficient evidence in the record
25 that the judge articulated his ruling from the bench,

1 that the defendant was present, he understood that
2 ruling, and he understood that in fact he was on
3 trespass notice.

4 The breadth of what he understood that to mean
5 is a matter of whether the State can meet its elements
6 to prove him guilty of that offence. But proof of
7 guilt is not what is required to prove the existence of
8 probable cause.

9 And there certainly was probable cause for him
10 to be stopped and detained. In his flight he committed
11 another offence in the presences of the officers which
12 gave rise to his arrest. And certainly the Court has
13 already ruled regarding that motion to suppress.

14 But as it regards the motion for directed
15 verdict, the weight and quantity of drugs is an
16 inference for the jury and they can determine from --
17 that is just a permissible inference. And the jury
18 will be instructed that they can give that evidence
19 whatever weight they determine it should have. It's
20 just another factual circumstance for them to consider.

21 And certainly you can always argue that it was
22 for his personal use and it did not rise to the level
23 of distribution because of the way it was packaged or
24 otherwise. All of those things are factual
25 circumstances. They are not for the Court to act as

1 the fact-finder and flesh them out.

2 So as the record stands, there is direct as well
3 as substantial circumstantial evidence reasonably
4 tending to prove his guilt and the motion for directed
5 verdict is denied.

6 Sir, if you would stand for me please and raise
7 your right hand to be sworn.

8 Sir, do you swear or affirm that the testimony
9 you give will be the truth?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: You can put your right hand down.
12 Please state your full name for the record.

13 THE DEFENDANT: Timothy Young.

14 THE COURT: And, sir, do you have a middle name?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: Okay. Sir, at this time we have
17 reached the stage of the trial where you can present
18 your defense.

19 I'm going to explain certain of your rights to
20 you. If you do not understand something that I say,
21 please let me know. If you need me to repeat
22 something, please let me know.

23 Now if he testifies, is there any record the
24 state would be seeking to introduce to impeach his
25 credibility that is within the 10 years?

1 MR. SIMPSON: Yes, Your Honor. A receiving
2 stolen goods conviction in 2001. I think that would go
3 to his --

4 THE COURT: I don't want argument, I just want
5 you to give me the list.

6 MR. SIMPSON: It appears that most are of a
7 narcotics nature, so.

8 THE COURT: I had on here receiving stolen goods
9 was the only other one I saw. He has a burglary
10 second, he has two breaking and entering motor
11 vehicles.

12 Are any those within the 10-year period, the
13 burglary second or the breaking and entering motor
14 vehicle?

15 MR. SIMPSON: No, Your Honor.

16 THE COURT: Okay. So only the receiving stolen
17 goods would be within the last 10 years?

18 MR. SIMPSON: For impeachment, yes, Your Honor.

19 THE COURT: The rest of these offenses, none of
20 them would be probative on truthfulness. But the
21 receiving stolen goods would come in irregardless of
22 punishment because it is a theft and it is not subject
23 to the balancing pursuant to the Al-Amin precedent.

24 Sir, I'm now going to explain to you certain of
25 your rights. If you do not understand anything that I

1 say, please let me know. If you need me to repeat
2 anything that I explain to you, please let me know.

3 Do you understand?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Sir, we have not reached the stage
6 of the trial where you may present your defense. You
7 have the right to claim the protections given to you by
8 the Fifth Amendment in the constitution of the United
9 States, and that says that no person shall be compelled
10 in any criminal case to be a witness against himself.

11 This means that you cannot be required to
12 testify. You have the right to testify, however it's a
13 personal right and no one can waive that right except
14 you.

15 If you decide to testify, you will be subject to
16 the same rules that govern other witnesses. You will
17 be examined and cross-examined by the State on any
18 relevant issue. If you have any convictions involving
19 dishonesty or false statement, or for crimes punishable
20 by imprisonment for more than one year and the Court
21 determines that the probative value of these offences
22 is outweighed by its prejudicial effect, the State will
23 be allowed to question you regarding these offences and
24 the solicitor will be able to introduce that record to
25 attack your credibility.

1 And I have already ruled that they would be able
2 to ask you about the receiving stolen goods in 2001
3 because that is a crime of dishonesty. And our rules
4 provide that you shall be questioned about that, that
5 the Court does not balance probative versus prejudicial
6 value, that that comes in irregardless of punishment
7 because that it is a theft and it involves dishonesty.

8 Do you understand?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: If you decide to testify, this
11 decision on our part must be made freely, voluntarily
12 and intelligently with knowledge of the protections
13 given to you by the Fifth Amendment, and the
14 consequences of your decision to testify.

15 If you decide not to testify, the jury will be
16 instructed that they cannot give that fact any
17 consideration whatsoever, and it is not to be discussed
18 during jury deliberations. And that there is no
19 prejudice to you because you did not testify.

20 That the burden remains on the State to prove
21 each and every element of the offence beyond a
22 reasonable doubt. And that you have no burden of proof
23 to prove your innocence.

24 Sir, it is left entirely up to you whether or
25 not you testify. You may talk with your family

1 members, your friends, your attorneys or anyone else
2 but the final decision is left up to you.

3 Do you understand your rights as I have
4 explained them to you?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Do you have any questions that you
7 need to ask of me regarding what I have explained to
8 you?

9 THE DEFENDANT: No, ma'am.

10 THE COURT: Have you spoken with your lawyers
11 about whether you should or should not testify?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Do you need to speak with them
14 anymore at this time?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: Sir, did you wish to testify?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: All right. Is the defendant ready
19 to proceed with testifying?

20 You look a little surprised.

21 MS. FRAYER: No, I'm not sur --

22 THE COURT: We are going to complete all the
23 testimony today because we have got to do closing
24 argument and instruction tomorrow.

25 Is he ready to go forward?

1 MS. FRAYER: Yes, Your Honor.

2 THE COURT: Do you have any other witnesses
3 other than your client?

4 MS. FRAYER: No, ma'am.

5 THE COURT: All right. Please bring in the
6 jury.

7 (Whereupon, the jurors enter the courtroom.)

8 THE COURT: You may be seated. Ladies and
9 gentlemen, if you would give the attorneys your
10 attention.

11 Ms. Frayer, you may proceed when you're ready.

12 MS. FRAYER: Thank you, Your Honor.

13 THE COURT: You're welcome. Call your witness.

14 MS. FRAYER: Defense calls Timothy Young.

15 THE COURT: Swear the witness.

16 MR. TIMOTHY YOUNG,
17 after having first been duly sworn to state the truth,
18 the whole truth and nothing but the truth, testified on
19 his oath as follows:

20 THE COURT: You may proceed.

21 MS. FRAYER: Thank you, Your Honor, may it
22 please the Court.

23 DIRECT EXAMINATION

24 BY MS. FRAYER:

25 Q Mr. Young, good evening. And how old are you?

1 A I'm 46.

2 Q Where did you grow up?

3 A On the east side.

4 Q When you say the east side, what street is that?
5 What area?

6 A Aiken Street on the east side.

7 Q That's where you grew up?

8 A Yeah, on Aiken Street, yeah.

9 Q And what are some of the schools you attended?

10 A Columbus Street, Cooney (phonetic) and Celia
11 Brown.

12 Q Okay. What type of work do you do?

13 A Do painting and I do brick mason helper.

14 Q Okay. Are you married?

15 A No. No, I'm not.

16 Q You are not married?

17 A No.

18 Q Do you have any kids?

19 A Yeah, I got three kids.

20 Q And what are their ages?

21 A 26, 22, and 10.

22 Q Okay. Mr. Young, you've had some legal issues
23 in the past, haven't you?

24 A Yes, ma'am.

25 Q You have been arrested before?

1 A Yes, ma'am.

2 Q You have been convicted?

3 A Yes, ma'am.

4 Q In 2001, were you arrested for receiving stolen
5 goods?

6 A Yes, ma'am.

7 Q Were convicted of that charge?

8 A No, ma'am. I think I did 30 days for that
9 charge.

10 Q Okay. It wasn't dismissed?

11 A No.

12 Q Okay, so you got some time, you got 30 days?

13 A 30 days.

14 MS. FRAYER: May I approach the witness, Your
15 Honor?

16 THE COURT: You may.

17 (Whereupon, Defendant's Exhibit No. 4 is marked
18 for identification.)

19 Q (By Ms. Frayer) I'm showing you Defendant's
20 Exhibit 4 for identification purposes only. This is a
21 copy of a criminal rap sheet. And 2001, you see that?

22 A I see that.

23 Q And it says you were arrested and you were
24 charged with receiving stolen good?

25 A Yes, ma'am.

1 Q You were convicted of that? It says convicted?

2 A Yes.

3 Q The sentence was 30 days time served?

4 A Yes, ma'am.

5 Q One year probation?

6 A Yes, ma'am.

7 Q Restitution?

8 A Right.

9 Q And that's on there and so that's a conviction.
10 It doesn't mean that you went to prison, it just means
11 that it wasn't dismissed?

12 A Yes, ma'am.

13 Q Okay. Let's get back to the reason we are here
14 today, May 29, 2011. You had an occasion to meet up
15 with officer Gill that day; is that correct?

16 A Yes, ma'am.

17 Q Where were you coming from when you saw Officer
18 Gill?

19 A I was walking out of Church's Chicken.

20 Q And where is Church's Chicken?

21 A On Line and Meeting Street.

22 Q And where do you live now?

23 A On Aiken Street. ■ Aiken Street.

24 Q And if you are coming from Church's Chicken --
25 if you are coming from Church's Chicken, how do you

1 travel?

2 A If I'm coming off of Meeting Street down Line
3 street, I would be walking straight down Line Street
4 all the way down to Aiken street.

5 I would be crossing Hannover and Nassau.

6 Q Can you turn around, please. I'm going to show
7 you what has been admitted as Defense Exhibit 2.

8 Can you locate Meeting Street on there?

9 A Yes. Meeting Street is up in here.

10 Q Okay. And is that where Church's Chicken is?

11 A Church's Chicken is sitting right up there.

12 Q Okay. So you were -- when you saw Officer Gill
13 that day, where were you?

14 A Probably between Line Street and Ducs Court.

15 Q Okay. And tell the jury what happened when you
16 were walking from Church's Chicken?

17 A When I was walking down Line Street, coming off
18 of Church's walking down Line Street, I see Officer
19 Gill and them sitting in the Family Dollar parking lot.
20 By that time when I see them, I knew point blank, you
21 know what I'm saying, even though he come at me because
22 I'm trespassing or loitering, man, that he stated that
23 the judge had an order on me.

24 But the judge ordered a loitering. Trespassing,
25 no. The judge said if I standing or sitting doing the

1 loitering, then I'm not trespassing.

2 But Officer Gill --

3 Q When you saw Officer Gill, what did you do?

4 A I was walking down the street.

5 Q Okay. And at some point Officer Gill came
6 towards you?

7 A He rode his bicycle on the side. The dude rode
8 his bicycle on the side. I knew he was going to come,
9 you know what I'm saying, and harass me.

10 Q You saw Officer Gill?

11 A Yeah.

12 Q Officer Gill at some point came towards you?

13 A Came towards me, yeah.

14 Q And he rode his bike towards you?

15 A Rode his bike towards me.

16 Q Okay. And when he rode his bike towards you,
17 you were walking this way down Line Street?

18 A Down Line Street.

19 Q Did he come directly towards you, or did he come
20 along side of you?

21 A Along side of me.

22 Q Okay. Officer Gill, you were sitting in the
23 courtroom during Officer Gill's testimony. He
24 testified that he tried to talk to you.

25 MR. SIMPSON: Objection, Your Honor.

1 THE COURT: Basis.

2 MR. SIMPSON: Pitting.

3 THE COURT: Sustained, pitting. He cannot
4 corroborate or vouch for the veracity of another
5 witness's testimony. Rephrase.

6 Q (By Ms. Frayer) Officer Gill tried to talk to
7 you?

8 A No, ma'am.

9 Q Officer Gill tried to stop you?

10 A No, ma'am.

11 Q On May 29th, last year, 2010. When you were
12 walking down Line Street, Officer Gill tried to
13 approach?

14 A He tried to approach me. But as he tried to
15 approach me, I knew he was going to come at me so I ran
16 from him.

17 Q Okay. But he did try to approach you?

18 A Yeah.

19 Q He tried to stop you?

20 A Yeah.

21 Q But you didn't stop?

22 A No.

23 Q Okay. Has Officer Gill approached you before on
24 different days?

25 A Yeah.

1 Q And had you stopped on those other days to talk
2 to him?

3 A Yeah.

4 Q And what was different about that day? Why
5 didn't you stop?

6 A Because I hid a little piece of crack and a
7 crack pipe on me.

8 Q Okay. And why did you have a crack pipe on you?

9 A Because I get high, I get high during that time.

10 Q Okay. Where did you have that crack pipe and
11 the crack?

12 A In my pocket.

13 Q In your pocket?

14 A Uh-hum.

15 Q What did you plan to do with the pipe?

16 A I was go -- I was going -- I was going home to
17 get high.

18 Q How long have you used crack?

19 A Probably for about 10, 13, 14 years.

20 Q You ever tried to get treatment for drug
21 addiction?

22 A Off and on.

23 Q Off and on. Sometimes you -- so you relapsed,
24 at that point you were still using?

25 A Yeah. At that time I had relapsed.

1 Q Were you using any other types of drugs at that
2 time?

3 A No.

4 Q And about how much crack did you think you had?

5 A Probably like a 30 cent piece of dope.

6 Q When you say a 30 cent piece for the jury, what
7 does a 30 cent piece mean? Street value?

8 A A little over -- a little over a gram, half a
9 gram.

10 Q A little over?

11 A Little over, yeah.

12 Q A little over a gram or half a gram?

13 A Half a gram.

14 Q That's Like.

15 A Like say for instance you might spend 40, 45
16 dollars for it.

17 Q 40, 45 dollars for it?

18 A Yeah.

19 Q Okay. And of that amount of cocaine base or
20 crack cocaine, would you be able to use all of that at
21 one time?

22 A Yes, I can.

23 Q Okay. When Officer Gill approached, you
24 admitted that you ran?

25 A Yes, ma'am.

1 Q And which street -- I'm going to, if you can
2 turn around again. If you can stand up.

3 Where were you on Line Street when he approached
4 you?

5 A Right up in here. Almost getting ready to head
6 down Nassau Street.

7 Q Okay. So he approaches you then, and then what
8 do you do?

9 A When he get almost to Hannover Street, when I
10 see him coming on the side of me I just -- I start
11 running towards this way right here.

12 Q Okay. You said Hannover Street, Hannover Street
13 is a block further up.

14 A Nassau Street I mean.

15 Q So you -- clear -- let's repeat what you just
16 said because I got confused.

17 A Okay. As I was walking down Line Street, when I
18 get by almost to the corner of Nassau Street. So when
19 I get right here to the corner of Nassau Street, I make
20 a run when I see him on the side of me.

21 Q Okay. So you ran down Nassau Street?

22 A I ran down Nassau Street.

23 Q Okay. And where do you live? Aiken Street?

24 A Down this way right here.

25 Q Okay. And Officer Gill was running behind you?

1 A Yes, ma'am.

2 Q He was running behind you?

3 A Well he had been on the bicycle, you know what
4 I'm saying, by him on his bicycle I guess he take
5 pursuit behind me.

6 Q Okay. And did you run out into the street?

7 A I run across the street.

8 Q Across the street?

9 A Yeah.

10 Q When you say across the street, across?

11 A From Line and Hannover Street when I ran, I ran
12 right across the street. And there is a fence like say
13 probably a step away from where I run from him at. So
14 I tried to jump across the fence. And by me trying to
15 jump across the fence, my pants get hooked on the
16 fence.

17 Q Okay. You answered several questions at once.
18 I need you to answer one question at a time.

19 You keep saying Hannover Street. You need to be
20 clear about what street you are on. You get to the
21 corner of Line and Nassau and you turn left?

22 A Right, on Line and Nassau Street.

23 Q Okay. And you cross the street and start
24 running?

25 A Yes, ma'am.

1 Q Okay. So you are running on the -- are you in
2 the street or on the sidewalk?

3 A I'm on the sidewalk.

4 Q So you are running. How far down Nassau do you
5 run?

6 A Probably about two houses down.

7 Q Okay. And then what do you do?

8 A I see a little short fence so I try to jump
9 across the fence.

10 Q And then what happened when you tried to jump
11 across the fence?

12 A My pants -- my short pants, my pants get hooked
13 in the fence.

14 Q Your pants got hooked on the fence?

15 A Hooked on the fence, yeah.

16 Q And then what happened?

17 A They got hooked on the fence he tried -- he had
18 my -- he had my -- he had the top part of my shoulder
19 and like the back part of my foot. So I'm trying to
20 kick off, you know what I'm saying, trying to get away.

21 Q When you say he, who is he?

22 A Officer Gill.

23 Q Okay. And so you were still trying to get over?

24 A Get over the fence, yeah.

25 Q Okay. And then what happened?

1 A Then another officer come in the yard, come in
2 the yard and he grabbed me. And when he grabbed me he
3 threw me down to the ground.

4 Q When he threw you down to the ground, did he
5 throw you on your back or your stomach?

6 A On my stomach.

7 Q Then when did you do?

8 A I was trying to reach in my pocket to try to get
9 the stem and the little piece of dope out of my pocket.
10 But by then, you know what I'm saying, three or four of
11 them jump on top of me.

12 Q Then what did you do?

13 A So, you know what I'm saying, maybe move like,
14 you know what I'm saying, get off me, you know what I'm
15 saying. Because I am really trying to get the dope and
16 the pipe off of me, you know what I'm saying, because I
17 know I will get charged with it.

18 Q So you said you were yelling?

19 A Yeah, I was yelling, you know what I'm saying.
20 Everytime you see me you always messing with me.

21 Q And who were you saying that to?

22 A Gill.

23 Q Okay. So you are saying that to Officer Gill?

24 A Uh-hum.

25 Q Did you have any weapons on you that day?

1 A No, ma'am.

2 Q And you said a stem and a crack pipe. What is
3 that made out of?

4 A Crack pipe, a piece of glass. They sell it in
5 the store. They sell it in the stores, has a rose on
6 the stem.

7 Q They sell the crack pipe at the store?

8 A Yeah. They sell it in the store they call it a
9 rose.

10 Q Okay. What store?

11 A All the stores.

12 Q Family dollar? Walmart?

13 A Any clothing store. Like any corner stores.

14 Q Corner store?

15 A Yeah.

16 Q Okay. So the officers -- Officer Gill catches
17 you, you are on the fence, and they put you on the
18 ground. Do you get handcuffed at that point?

19 A Yes, ma'am.

20 Q When you are handcuffed, do you make any
21 statements?

22 A No. As far as, you know what I'm saying, as far
23 as saying that you always messing with me, you feel me,
24 that's the only statement that I probably outburst
25 him about.

1 Q Were you using profanity?

2 A Yes, ma'am.

3 Q When you got handcuffed you were on the ground?

4 A Yes, ma'am.

5 Q They pulled you up at some point?

6 A Yeah.

7 Q And they put you in the car?

8 A Yeah.

9 Q Mr. Young, let's look at the map again.

10 Did you -- one of your charges is that you were
11 going to be placed under arrest for being on -- for
12 trespassing.

13 MR. SIMPSON: Objection.

14 THE COURT: Basis.

15 MR. SIMPSON: Not one of the charges before the
16 jury.

17 THE COURT: Is that an objection? You need to
18 stand when addressing the Court.

19 MR. SIMPSON: I apologize, Your Honor.

20 THE COURT: Uh-hum. What is the basis of the
21 objection?

22 MR. SIMPSON: Not a correct statement of the
23 proceedings.

24 THE COURT: Please rephrase.

25 Q (By Ms. Frayer) Mr. Young, were you aware that

1 you could not be on Nassau Street?

2 A No, ma'am.

3 Q Were you aware that you could not be on Line
4 Street?

5 A No, ma'am.

6 THE COURT: Be very carefully, Ms. Frayer.
7 Approach.

8 (Whereupon, the following discussion was held at
9 the bench.)

10 THE COURT: You are opening a door I don't think
11 you want to open because now they're going to call the
12 officer in rebuttal and then we are going to have to
13 get into all this stuff about why he was arrested and
14 whether he knew.

15 The issue whether he -- you know, the problem is
16 your client has a fundamental principle issue that he
17 is stuck on that's going to probably cost him greatly,
18 unfortunately.

19 whether he was guilty of trespassing has no
20 bearing on any of this. Probable cause is not for the
21 jury to determine. So you need to be very careful
22 because now you are putting me in a position that I'm
23 not going to hamper the State from calling this officer
24 to say he was present when he was put on trespass
25 notice.

1 So it is all really a superfluous issue. It has
2 nothing to do with the case. So you might want to, you
3 know.

4 MS. FRAYER: Okay.

5 (In open court.)

6 THE COURT: Proceed.

7 Q (By Ms. Frayer) Mr. Young, when the cops stopped
8 you, you had some cocaine on you, cocaine base on you
9 or crack?

10 A Yes, ma'am.

11 Q And were you planning to -- what were you
12 planning to do with the crack?

13 A Just get high.

14 Q Were you going to sell it?

15 A No, ma'am.

16 Q Were you going to give it to somebody?

17 A No, ma'am.

18 MS. FRAYER: Court's indulgence, please.

19 THE COURT: Uh-hum.

20 MS. FRAYER: No further questions, Your Honor.

21 THE COURT: Any questions for the witness?

22 MR. SIMPSON: Your Honor, I have a brief matter
23 of law. May we approach?

24 THE COURT: Yes.

25 (Whereupon, the following discussion was held at

1 the bench.)

2 MR. SIMPSON: Your Honor, not relevant to
3 general impeachment, I believe that the testimony of
4 the defendant has opened the door to the distribution
5 of heroin charge. I think it's --

6 THE COURT: Distribution of heroin charge?

7 MR. SIMPSON: Within 10 years he has a
8 distribution of heroin charge. He has repeatedly said
9 I'm just a user, I don't --

10 THE COURT: It's not probative. Well that's
11 just not probative on truthfulness. I don't know the
12 facts and circumstances of that charge, and whether he
13 was using that personally. I have no idea.

14 MR. SIMPSON: Okay. Thank you, Your Honor.

15 THE COURT: You're welcome.

16 (In open court.)

17 THE COURT: You may proceed.

18 CROSS-EXAMINATION

19 BY MR. SIMPSON:

20 Q Mr. Young, good afternoon?

21 A Good afternoon, sir.

22 Q On your direct testimony you testified that you
23 weren't aware of any restrictions on Nassau or Line or
24 of that nature?

25 A Yes, sir.

1 Q Do you recall testifying at a previous hearing
2 on this matter?

3 A I might have, you know, if you were talking a
4 little too fast.

5 Q Do you recall talking in your previous testimony
6 about the fact that while there may be some discrepancy
7 in the exact conditions, but there were in fact
8 restrictions on your being on Nassau and Line that you
9 were aware of?

10 A Not that I recall, no. It wasn't -- it wasn't
11 there.

12 Q You didn't testify to that effect today?

13 A I might have been talking too fast, sir.

14 Q So is it your testimony that I just
15 misunderstood you because you were talking too fast?

16 A Yes, sir.

17 Q If I could refresh your recollection. Do you
18 recall saying that your understanding was that you
19 couldn't loiter on those streets but that you could
20 walk down them?

21 A Excuse me. Like I say, I misunderstand your
22 question.

23 Q Okay. So you did understand that there were
24 some restrictions applying to you in that area?

25 A No loitering there, yeah.

1 Q Now you understand that?

2 A Yeah, I understand now.

3 Q Okay. Mr. Young, I'm not going to belabor this
4 point because it seems to me that you've conceded it.
5 You had crack on your person that day?

6 A Yes, sir.

7 Q You knew it was crack?

8 A Yes, sir.

9 Q You knowingly and willingly possessed it?

10 A Yes, sir.

11 Q And you realize that that is in violation of the
12 law?

13 A Yes, sir.

14 Q Now you stated in your direct that you saw
15 officer Gill approaching, and I'm going to quote you
16 and tell me if I get this wrong, I knew he was going to
17 come and arrest me?

18 A Yeah.

19 Q So you took off before he even got up to you?

20 A Right, got up to me.

21 Q And you fled?

22 A Yes, sir.

23 Q Knowing that he was going to arrest you in your
24 words?

25 A Yes, sir.

1 Q Is that flight, in other words, resisting that
2 inevitable arrest by flight?

3 A I mean I just run. I mean I wasn't thinking
4 about no resisting because I just knew I had a crack
5 pipe and a piece of crack on me. So I wasn't thinking
6 about resisting, I was just thinking about trying to
7 get away.

8 Q You were thinking about trying to get away
9 because of the crack?

10 A Right.

11 Q You just didn't want to get arrested though.

12 A Right.

13 Q And you didn't want to get arrest so bad that
14 you took off running, you crossed the street?

15 A Yes, sir.

16 Q Went into a yard, correct?

17 A Yes, sir.

18 Q Saw a fence?

19 A Yes, sir.

20 Q Jumped that fence. But at that point Officer
21 Gill was close to you, right?

22 A Yes, sir.

23 Q And at that point on opposite sides of the fence
24 he gets a hold on you, correct?

25 A Yeah, he had a hold on my shoulder and my back

1 leg.

2 Q He got a grab on your shoulder?

3 A Right.

4 Q And you want the jury to believe that at that
5 point you said, despite running, despite jumping the
6 fence you said, okay, you got me?

7 A No, I didn't say that.

8 Q No, in fact you said quite the opposite. You
9 said, I wanted to try to get him off me, I tried to get
10 the drugs off me?

11 A I said try to get the drug off me, I didn't say
12 him.

13 Q Okay. But you want this jury to believe that
14 this resisting just all of the sudden ceased once
15 officer Gill got that hand. You knew there was a fence
16 between you?

17 A Another officer grabbed me.

18 Q And the other officers came and grabbed you?

19 A Yeah.

20 Q Isn't it true they did that because you were
21 resisting Officer Gill?

22 A No, it was right -- they was right behind Gill.

23 Q Okay.

24 A When I was on the fence -- when I was on the
25 fence Gill hold me, another officer came and grabbed

1 me. So it wasn't like I was resisting Gill.

2 Q So once he just touched you all this resisting
3 and flight and jumping over fences just ended right
4 then. That's what you want the jury to believe?

5 A Yeah, I mean --

6 Q You had a fence in between you. You were still
7 trying to get -- still probably could have gotten away?

8 A Yeah. On the other side of the fence, yeah.

9 Q And you continued to resist that arrest once
10 they caught up to you, right?

11 A I was hung on the fence, I couldn't move.

12 Q You admitted on your direct, you were saying
13 you're always meting with me, right?

14 A Yeah.

15 Q And you said, I was cursing at him. You said
16 that?

17 A Yeah.

18 Q And you want the jury to believe that you were
19 cursing at him and you were mad for messing with him,
20 but you never said, I'm going to shank your ass?

21 A No, sir. No, sir.

22 Q That was just made up?

23 A Yes, sir.

24 Q Even though they had the drugs on you and
25 everything, they just decided to make that up?

1 A Yes, sir.

2 Q Just to pile on?

3 A Yes, sir.

4 Q You said that you just bought one rock, and it
5 was about a half gram to a gram?

6 A Excuse me, I didn't purchase it, that was just
7 given to me.

8 Q Just given to you?

9 A Yeah.

10 Q Why was it given to me?

11 A Because I just do little favors around the area
12 for them little dudes who do sell it. So by me going
13 to the store, or going to pay something for them or
14 something, they just give me a little whatever they
15 have left in the bag.

16 Q Just a little something that they have left in
17 the bag?

18 A Right.

19 Q And half gram?

20 A Probably like, I'd say probably come up to
21 probably about half a gram. I really don't know how
22 much because I didn't have no scale to weigh it.

23 Q And you were just going to go smoke all of it?

24 A Uh-hum. Nothing but a little piece of dope.

25 Q You were going to smoke that whole thing?

1 A Yeah.

2 Q Nothing about that struck you as being a little
3 much just to smoke?

4 A No, sir.

5 Q Okay.

6 MR. SIMPSON: Court's indulgence.

7 THE COURT: Uh-hum.

8 Q (By Mr. Simpson) Mr. Young, is it not a quote
9 from your direct testimony that I tried to kick off and
10 get away once Gill caught up with you?

11 A No. No.

12 Q This was just moments ago this testimony took
13 place?

14 A Say that again?

15 Q Just moments ago in your direct, was it not a
16 direct line that I tried to kick off and get away,
17 speaking about when you were at the fence?

18 A I was on the fence. I was on the fence. He had
19 my leg. He had my leg, I was hooked on the fence.

20 Q And you tried to kick off to get away?

21 A I tried to get away from off the fence, yeah.

22 Q Okay. You said you had been using crack for
23 about ten years?

24 A Probably longer, yeah.

25 Q And it's an addiction, right, it's tough?

1 A Yeah.

2 Q Do you think that any stretch of the imagination
3 that that might alter somehow your perception of those
4 events of this day?

5 A No. No. No. I never tried to hurt nobody.

6 Q Were you using that day?

7 A Yeah.

8 Q You had used previously in that day?

9 A Approximately, yeah. All day, yeah.

10 Q And you won't acknowledge to the jury that
11 perhaps your memory of saying threats and resisting
12 arrest is --

13 A No.

14 Q -- could --

15 A He's an officer of the law. I wouldn't threaten
16 no officer of the law.

17 Q You cursed at him?

18 A Yeah, I cursed at him because --

19 Q You had run from him?

20 A Right.

21 Q You kicked at him?

22 A Yeah, but I mean I wouldn't threaten him.

23 Q But you wouldn't threaten him?

24 A No, I wouldn't threaten him. I wouldn't
25 threaten his life, no.

1 Q Because you have so much respect for them --

2 MS. FRAYER: Objection, Your Honor.

3 THE COURT: Basis.

4 MS. FRAYER: Being argumentive.

5 THE COURT: Overruled. You may complete the
6 question.

7 Q (By Mr. Simpson) I believe you said you had so
8 much respect that you'd run from, kick at, curse at,
9 but you would never threaten?

10 A Yes, sir.

11 Q And you admitted to me you were using some
12 pretty serious narcotics that day?

13 A Yes, sir.

14 Q And you don't think it's within the realm of
15 possibility that perhaps --

16 A No.

17 Q -- that perhaps your perception of the events of
18 that day might have been altered somewhat from some
19 pretty serious narcotic use?

20 A No, sir.

21 MR. SIMPSON: The State has nothing further.

22 THE COURT: Any redirect of the witness?

23 MS. FRAYER: None, Your Honor.

24 THE COURT: Sir, you may step down.

25 THE DEFENDANT: Thank you, ma'am.

1 THE COURT: You're welcome.

2 The defense may proceed.

3 MS. FRAYER: Defense rests, Your Honor.

4 THE COURT: Preserving motions, is there any
5 rebuttal testimony?

6 MS. MCCLAIN: No, Your Honor.

7 THE COURT: Mr. Foreman, ladies and gentlemen,
8 both the State and the defense have rested their cases,
9 we have now reached the stage of the trial where we
10 will have closing argument and instruction. But we
11 will not do that this evening because I have some
12 additional matters that I need to take up with the
13 attorneys that will probably take us another 30 minutes
14 or so.

15 And then the closing argument and instruction
16 process will take over an hour, and I'm not going to
17 keep you here this evening for that.

18 I'm going to excuse you for the evening. During
19 the break, please do not discuss the case among
20 yourselves or with anyone else. Please do not allow
21 yourselves to be exposed to any media coverage about
22 the case.

23 Please do not watch, read or listen to anything,
24 that includes newspapers, radio, television or
25 Internet. And please don't do any independent research

1 on the Internet, as tempting as it may be. And also
2 please do not discuss your jury service on any social
3 networking sites, that includes My Space, Facebook
4 LinkedIn. I've lost track of how many of them there
5 are.

6 But even an innocent conversation can be easily
7 misinterpreted. I don't know how many of you have
8 watched the movie with Will Smith that's called Six
9 Degrees of Separation which emphasized how very closely
10 each person is connected in the world. In other words
11 there are only six people that separate us from one
12 another.

13 I say that by way of illustration. I had a very
14 interesting experience earlier today in another case
15 where it was alleged that another juror made a comment
16 on Facebook, even though I told them not to. And
17 somebody they didn't even know read it and called the
18 Clerk's office.

19 So it is very important that you follow those
20 instructions. I think most people don't realize when I
21 give those instructions they fall within the contempt
22 powers of the Court, which means you can go to jail for
23 six months.

24 I don't relish having to do that with anyone.
25 So I would ask that you all strictly abide by those

1 instructions. Not to imply that you haven't, but I am
2 finding that I may need to give a stronger instruction
3 because I don't want to have to deal with that with any
4 juror.

5 I hope that you all have a wonderful evening.
6 You have been incredibly patient with us today and I
7 appreciate it. We'll see you all in the morning at
8 9:30 for closing argument and instruction.

9 If you would come directly to your jury room and
10 leave your note pads in the seats we will secure them
11 during the recess. Have a wonderful evening. If you
12 need to be walked down to the garage, please let us
13 know and we will have a deputy escort you.

14 (Whereupon, the jurors exit the courtroom.)

15 THE COURT: Are there any motions now that the
16 defense has rested?

17 MS. MCCLAIN: None from the State, Your Honor.

18 THE COURT: Any from the defense?

19 MS. FRAYER: Your Honor, the defense just renews
20 our directed verdict at this time.

21 THE COURT: Okay. The Court would deny that
22 motion based on its previous ruling.

23 I would assume you all are requesting a lesser
24 included of simple possession?

25 MS. FRAYER: Yes, Your Honor.

1 THE COURT: Bear with me just one moment..

2 I will give the jury a general instruction
3 regarding their responsibility and my responsibility.
4 How they are to judge witness credibility and
5 believability. I will also give them a general
6 instruction regarding expert witness testimony, as well
7 as the prior record of the defendant being limited to
8 impeachment.

9 I will give a general instruction from State
10 versus Grippon on direct and circumstantial evidence.
11 And also a general instruction that the charge, the
12 arrest and the indictment are not evidence. As well as
13 on the presumption of innocence.

14 I will instruct Victor versus Nebraska on
15 reasonable doubt. I will then instruct the elements of
16 the offenses in the order that they were charged,
17 which will be from 16-310-40. I'm going to instruct
18 subsection B on threatening a public official.

19 I will then instruct on possession with the
20 intent to distribute cocaine base, and the lesser
21 included offense of simple possession. And the
22 elements of possession within proximity of a school,
23 and resisting arrest.

24 I will then give a general instruction regarding
25 multiple offenses. In other words that each offense is

1 to be considered separately. And that the defendant
2 can be convicted or acquitted on any or all of the
3 offenses. But that each offense must be met beyond a
4 reasonable doubt.

5 And then I will instruct on the forms of the
6 verdict, which are simple with the exception of the
7 lesser included on PWID cocaine. It will include the
8 lesser offense of possession of cocaine.

9 Is there any exception from the state?

10 MS. MCCLAIN: Your Honor, there is no exception,
11 however the State --

12 THE COURT: I got your request. The statute
13 itself defines a public official, so I don't think I
14 need that instruction. The definitional section of the
15 statute says any one employed in a public capacity.

16 I think it's probably might be better just to
17 say that you all stipulate that a police officer is a
18 public official, that might cut to the chase, or public
19 employee actually is what he is.

20 Is there any exception to that from the defense?

21 MS. PROCTOR: I'm sorry, Your Honor, I wasn't
22 listening.

23 THE COURT: That we need to stipulate that the
24 police officer is a public employee.

25 MS. MCCLAIN: Your Honor, the State does have an

1 objection to qualification of an officer as a public
2 employee. Because under the statute that sentence only
3 carries up to 30 days. A public official carries up to
4 10 years.

5 THE COURT: Let me look at the statute.

6 MS. MCCLAIN: And, Your Honor, State v Carter
7 addresses this very issue --

8 THE COURT: Let me read right quick. I can't
9 read and hear you at the same time.

10 MS. MCCLAIN: I apologize, Your Honor.

11 THE COURT: That's okay.

12 Is he appointed?

13 MS. MCCLAIN: Yes, Your Honor. According to
14 State v Carter --

15 THE COURT: No, my question is is he appointed?
16 officers are done differently. For example --

17 MS. MCCLAIN: Your Honor, under the state
18 constitution it considers all police officers of
19 municipalities as appointed officials.

20 THE COURT: Then you all could stipulate that he
21 is a public official instead of me having to read the
22 definition?

23 MS. PROCTOR: Your Honor, I don't think we will
24 stipulate to it.

25 THE COURT: You are saying he is not a public

1 official?

2 MS. PROCTOR: Well when we were looking at
3 researching it yesterday, I had the same question about
4 how do we know which police officers are appointed or
5 not. That's one thing, because when I pulled up city
6 police it just said they --

7 THE COURT: The ones that are generally
8 appointed are the ones that require my signature.

9 MS. PROCTOR: Exactly.

10 THE COURT: And the ones who are employed are
11 the ones who don't.

12 Charleston County, for example, when they hire a
13 deputy, I have to sign something saying they have been
14 appointed. I have to read that case and see what it
15 says but I have to see what their procedure is.
16 Because every municipality's procedure is not the same.

17 MS. MCCLAIN: Yes. We have a hard copy.

18 THE COURT: You all can stop killing trees.

19 MS. PROCTOR: That was my question when we were
20 looking at it last night because I went under city
21 police hiring, and it basically seems like you apply
22 and they accept you or don't. And there was nothing
23 about appointments.

24 MS. MCCLAIN: However, Your Honor, the case does
25 extend the definition of public officials to police

1 officer specifically under the meaning of threatening a
2 public official under the statute.

3 And although it is obviously not persuasive
4 authority, the State Attorney General's opinion also
5 advises extending the definition to police officers.

6 THE COURT: That's not binding precedent,
7 though.

8 Pursuant to this case they are public officials,
9 and the distinction is the statute that has not yet
10 been referred to. The constitution provides that
11 sheriffs, corners, and otherwise are elected officials.

12 But -- and that the general assembly then
13 prescribes by law that the selection, duties and
14 compensation of other appropriate law enforcement
15 officials. And then that is delegated to 5-7-110 which
16 says then that they are in fact appointed or elected as
17 individual officers.

18 MS. PROCTOR: Individual officers may be
19 appointed or elected. How do we know if he has been
20 appointed or elected? You're exactly right. It says,
21 they may appoint selected officers.

22 THE COURT: Yeah, but that's the procedure. The
23 only difference is that statute very clearly says that
24 they're appointed.

25 Appointment under this analysis is employment.

1 And the general assembly has delegated that authority
2 to the sheriff, or whomever other municipality, to make
3 that employment decision.

4 Any municipality may appoint or elect as many
5 police officers, regular or special, as may be
6 necessary for the proper law enforcement in such
7 municipality, and affix their salaries and prescribed
8 their duties.

9 MS. PROCTOR: Okay. Just note our exception.

10 THE COURT: It's noted.

11 MS. PROCTOR: And we will stipulate.

12 THE COURT: I think there is clear precedent for
13 it.

14 MS. MCCLAIN: Thank you, Your Honor.

15 THE COURT: But I'm not going to read all of
16 this. I'm going to change that. I'm just going to say
17 that they're public officials within the meaning of the
18 statute.

19 okay. Are there any exceptions to the charge
20 from the State?

21 MS. MCCLAIN: None from the State, Your Honor.

22 THE COURT: From the defense?

23 MS. PROCTOR: No, Your Honor.

24 THE COURT: Okay. If you all will look at the
25 verdict forms for me, please.

1 MS. PROCTOR: Your Honor, now I confused myself.
2 When you -- we have now that the jury can decide simple
3 possession. So in the charge does it tell the jury
4 that if you are found guilty of simple possession, you
5 cannot be found guilty of the distribution of a school?

6 THE COURT: That's what the multiple charge
7 says. It's different, and each has different elements
8 and you have to consider each of them separately.

9 MS. PROCTOR: I know you have to deal with them
10 separately.

11 THE COURT: That's common sense.

12 MS. PROCTOR: Well, no, because you can still
13 have -- you can be not guilty -- still be found guilty
14 of simple possession, but by law cannot be guilty of
15 proximity of a school.

16 THE COURT: When you listen to the elements it's
17 not confusing because it's the same elements of PWID
18 and you just add in proximity of a school. You all can
19 make that distinction in your argument. If it were to
20 become inconsistent, I would vacate it.

21 MS. PROCTOR: That's fine.

22 THE COURT: That's a matter of law for the
23 Court. I have done it many times before and never had
24 that problem.

25 Any there are exceptions to the forms of the

1 verdict?

2 MS. MCCLAIN: None from the State, Your Honor.

3 THE COURT: Any from the defense?

4 MS. PROCTOR: No, ma'am.

5 THE COURT: All right. Please make sure that
6 all the evidence is in place before you all leave.

7 And I will see you all in the morning at 9:30.

8 (Whereupon, the proceedings in the matter before
9 the court were adjourned for the evening.)

10 * * * * *

11 COURT REPORTER NOTE: The following day's
12 proceedings were reported by Ms. Mia Perron.

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C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record, and of all the proceedings had and evidence introduced in the above captioned case, relative to appeal, in the Circuit Court for South Carolina, on the indicated date.

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

-----*Anne Bouley Meyer*-----

Anne Bouley Meyer, RPR
Circuit Court Reporter

THE STATE OF SOUTH CAROLINA
VS.
TIMOTHY YOUNG;
DEFENDANT.

held before the Honorable Deadra L. Jefferson
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on Friday, September 2, 2011, Commencing at 9:40 a.m.

SUSAN "MIA" PERRON, CVR-CM
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PROCEEDINGS

1
2 THE COURT: Is the State ready to proceed with
3 closing argument?

4 MS. MCCLAIN: The State is ready, Your Honor.

5 THE COURT: Is the defense ready to proceed with
6 closing argument?

7 MS. FRAYER: Yes, Your Honor.

8 THE COURT: Does the State wish to open and
9 close?

10 MS. MCCLAIN: No, Your Honor. Just close.

11 THE COURT: Okay. Please bring in the jury, Mr.
12 Robinson.

13 [Whereupon, the jury enters the courtroom at
14 9:46 a.m.]

15 THE BAILIFF: Jurors are all present, Your
16 Honor.

17 THE COURT: You may be seated.

18 Good morning, ladies and gentlemen. I hope that
19 you-all had a pleasant evening.

20 As I told you on yesterday, we have now reached
21 the stage of the trial where we will hear closing
22 arguments and the Court's instruction.

23 I would ask that you give the attorneys your
24 undivided attention.

25 Ms. Frayer, you may proceed.

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1 MS. FRAYER: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 - - - - -

4 CLOSING ARGUMENT

5 MS. FRAYER: Good morning.

6 It was Saturday, May 29th, 2010, around 4:10 in
7 the afternoon. Mr. Young turned onto Lyons [phonetic]
8 Street in downtown Charleston. He saw Officer Gill.
9 Officer Gill called his name. And he ran, ran to stay
10 free.

11 You see, he had his crack pipe with some dope,
12 as he calls it, in his pocket and he knew that if he
13 stopped he would be searched by Officer Gill and he
14 would be arrested. So he ran. He ran down Lyons
15 Street. He ran down Nassau Street. He even tried to
16 jump a fence. But all his running was in vain. He was
17 caught, he was arrested and handcuffed, and he was
18 charged with four crimes instead of the two he was
19 originally trying to avoid when he started his running.

20 Ladies and gentlemen, there are some things,
21 some issues, in this case that there just simply is no
22 doubt about. You heard Mr. Young and Officer Gill
23 testify that there was a trespass notice. Mr. Gill --
24 Mr. Young left Church's Chicken on Meeting Street,
25 turned left on Lyons Street. He saw Officer Gill.

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1 Officer Gill called his name. Mr. Young, Officer Gill,
2 and Officer Moody testified today.

3 He didn't stop for Officer Gill. You heard that
4 testimony from Officer Gill, Officer Moody, and Mr.
5 Young. He ran. Again, Mr. Young, Officer Moody,
6 Officer Gill, no doubt about it, Mr. Young resisted
7 arrest.

8 He ran. He was on Lyons Street when this
9 incident began. No doubt about it. He ran north upon
10 Nassau Street. He tried to jump a fence at 110 Nassau
11 Street. He had some cocaine base in his pocket. No
12 weapon found on him, no baggies found on him for
13 packaging and sale of cocaine base, no money in his
14 pocket. You heard Officer Gill, Officer Moody, Officer
15 Brown and Mr. Young testify to that.

16 He didn't want to be arrested. He yelled and
17 screamed at the officers. Officer Gill, Officer Moody,
18 Officer Brown and Mr. Young testified to that. No
19 doubt about it.

20 The officers, Gill and Moody, Officer Brown, and
21 the criminologist, can't agree on the weight of the
22 drugs that Mr. Young had in his possession. Officers
23 said it's 5.2. Criminologist said it was 3.13 when she
24 started testing the drugs, 3.03 when she got through.

25 They can't agree on what he said when he was

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1 finally caught. Officer Gill and Moody heard him say
2 something about shanking. Officer Brown and Mr. Young
3 said he was yelling and cursing at the officers. You
4 heard them testify to that.

5 Remember, ladies and gentlemen, the State had
6 the burden of proving that Mr. Young was in possession
7 of cocaine base with intent to distribute, that he was
8 in possession of cocaine base with intent to distribute
9 in the proximity of a park, that he was threatening a
10 public official, and that he was resisting arrest.
11 There is no reasonable doubt that Mr. Young ran from
12 Officer Gill, and so he is guilty of resisting arrest.
13 There is no reasonable doubt that Mr. Gill [sic] had a
14 quantity of cocaine base in his pocket.

15 You see, Mr. Young doesn't have to prove
16 anything. He asks that today you return a verdict that
17 holds him accountable for what he did on May 29th,
18 2010. Mr. Young, Ms. Proctor and I thank you for your
19 time and attention.

20 THE COURT: The State may proceed when it's
21 ready.

22 MS. MCCLAIN: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 [Off the record momentarily]
25

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CLOSING ARGUMENT

1
2 MS. MCCLAIN: Well, I think Ms. Frayer said it
3 perfectly: no doubt about it. There is no doubt the
4 defendant did resist arrest on May 29th, 2010, when
5 Officers Gill, Brown and Moody attempted to lawfully
6 arrest him. He admitted it. Ms. Frayer just said he's
7 guilty of it. No doubt about it.

8 No doubt about the fact the defendant was in
9 possession of crack cocaine that day. He admitted it.
10 Officers lawfully searched him, located it in his
11 pocket. Ms. Frayer just told you he was guilty of that
12 offense. No doubt about it.

13 Now, Ms. Frayer mentioned to you that there is a
14 difference in the weight of the drugs when officers
15 found it, weighed it in the field, and when our expert
16 tested it in the lab. Again, as Ms. Frayer said, no
17 doubt about it. We don't want you to have a doubt
18 about what that weight was. We want you to know for
19 certain exactly what that weight was. That's why
20 officers, when they test it in the field, that's not
21 the final weight. You heard Officer Gill testify that
22 that's an approximate weight. That's about what they
23 think it might weigh. That's why they take it to a
24 lab. And as our expert testified to you, that he used
25 regulated, calibrated equipment, chemicals, scientific

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1 tests, so you know exactly what it is, exactly what it
2 weighs, no doubt about it. And this substance in this
3 case on Mr. Young that day weighed 3.13 grams. No
4 doubt about it.

5 Now, the law says that there is a threshold that
6 allows you to make a permissive inference for a
7 subject's intent to distribute. Mr. Young possessed
8 three times that threshold weight. Three times that
9 threshold weight. Officer Gill testified to you that,
10 you know, a twenty rock is a little pebble, just a
11 pebble, doesn't weigh much. Mr. Young testified that
12 he thought he had about a half a gram. He had three
13 times that threshold weight, allowing you to make the
14 presumptive inference that he did intend to distribute,
15 to share it, to not use all that for personal use.

16 Now, you don't have to find him -- you don't
17 have to find that inference. You don't have to make
18 that inference. That's okay. You can also find him
19 guilty for the lesser included charge of possession,
20 which, again, the defendant has admitted. No doubt
21 about it, he's guilty of at least possession.

22 But if you do make that inference that he
23 possessed it with the intent to distribute, then you
24 also find him guilty for possession with intent to
25 distribute within proximity of a school, park, or

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1 playground. You saw Officers Gill, Officer Brown,
2 point out to you the location of Martin Park at

3 Jackson Street. You heard Officer Gill testify
4 that that is roughly .2 to .26 miles from the location
5 where Mr. Young was arrested. That's well within half
6 a mile of that park.

7 So, again, I submit to you, no doubt about it.
8 No doubt about it, was the defendant guilty of
9 resisting arrest? No doubt about it, was he guilty of
10 possessing crack cocaine? And to me, no doubt about it
11 -- I submit to you, no doubt about it, was he guilty of
12 threatening the life of Officer Gill that day? Officer
13 Gill heard the defendant tell him not once, but twice,
14 I will shank your ass; I will shank your ass for
15 harassing me. Officer Moody heard the defendant say to
16 Officer Gill, I'll shank your ass. If you'll remember,
17 Officer Moody caught that word, shank, because he
18 remembered hearing it from a prior job he had in an
19 Ohio prison. It was a typical slang term for stab
20 somebody. That stuck with him, that word shank. He
21 heard it. Officer Moody heard it.

22 Well, the reasonable doubt they want you to rely
23 on is the defendant's own testimony. That's where
24 their reasonable doubt is. Well, of course. Of course
25 it's in his own testimony. But he wants you to believe

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1 that he admittedly was upset at the police, yelled at
2 the police, cursed at the police, accused the police of
3 always messing with me. But, no, he wants you to
4 believe that, no, he didn't cross that line of
5 threatening them to shank them. No, he wouldn't do
6 that. He's got too much respect for law enforcement,
7 so much respect that he ran, that he pushed, he shoved,
8 he struggled, tried to jump a fence, tried to get away,
9 didn't want to be arrested, yelled at them, cursed at
10 them, accused them of messing with him. But, no, he
11 wouldn't go that far; he wouldn't threaten to hurt
12 them; he would not threaten that public official.

13 Well, I submit to you that is not reasonable
14 doubt. It is reasonable to believe that that is self-
15 beneficial for him to just sit there and say, no, I
16 wouldn't go that far. Again, no doubt about it.

17 I submit to you that the defendant is guilty on
18 all four charges: resisting arrest, threatening the
19 life of a public official, possession with intent to
20 distribute crack cocaine, and possession with intent to
21 distribute within half a mile of a school, park,
22 playground.

23 Thank you very much for your time during this
24 trial. Appreciate your patience and your
25 participation.

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CHARGE OF THE COURT

1
2 THE COURT: During this trial, ladies and
3 gentlemen, you and I have certain duties to perform.
4 As the trial judge, it is my responsibility to preside
5 over the trial of this case and I also have the duty to
6 pass upon or rule upon the admissibility of evidence
7 which has been offered during the trial. You are to
8 consider only the competent evidence that is before you
9 which has been offered through the lips of the sworn
10 witnesses and the other evidence that has been
11 introduced by way of exhibit into the record. I have
12 the additional duty, ladies and gentlemen, to charge or
13 instruct you on the law of this case. As the presiding
14 judge, I am the sole judge of the law and it is your
15 duty as jurors to accept and apply the law as I now
16 state it to you. If you have a preconceived idea as
17 to what the law is or what the law ought to be in a
18 case -- or in this case, and it should not agree with
19 what I now tell you the law is, you are obligated under
20 the oath which you have taken to abandon this
21 preconception on your part because you are sworn to
22 accept the law and apply the law precisely as I now
23 state it to you.

24 In every case tried in this court before a jury,
25 the jury becomes the sole and exclusive judges of the

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1 facts. You, the jury, are the judges of the facts in
2 this case. This Court is the judge of the law. The
3 constitution of our state has declared that a trial
4 judge shall not intimate, state, comment upon, or make
5 any statement to a trial jury about the facts in a
6 case. Since you, the jury, are the sole judges of the
7 facts in this case, you are not to infer anything from
8 what I have said during the progress of this trial, in
9 ruling upon the admissibility of evidence or otherwise,
10 or anything that I say now to you during the course of
11 this instruction, that I have any opinion about the
12 facts. The law does not allow me to have an opinion
13 about the facts. This is a matter solely for you, the
14 jury, to determine. As jurors, then, it is your duty,
15 as I have instructed you, to determine the effect, the
16 value, the weight, and the truth of the evidence
17 presented during this trial.

18 Necessarily, you must assess the credibility of
19 witnesses who have testified. Credibility is simply a
20 legalistic term meaning the believability of each
21 witness. It becomes your duty as jurors to analyze and
22 to evaluate the evidence and determine that evidence
23 which convinces you of its truth.

24 I instruct you that in determining the question
25 of the credibility or believability of witnesses who

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1 have testified, you may believe one witness as against
2 several witnesses or several witnesses as against one
3 witness. You may believe a part of the testimony of a
4 witness and reject the remaining part of the testimony
5 of that same witness. If you have a good and sound
6 reason, you may believe the testimony of a witness in
7 its entirety or reject the testimony of a witness in
8 its entirety. You may consider whether any witness has
9 exhibited to you any interest, any bias, any prejudice,
10 or other motive. You may also consider the demeanor of
11 the witness; that is, the manner and appearance of the
12 witness from the witness stand. Ladies and gentlemen,
13 throughout this process you have but one objective: to
14 seek the truth, regardless of its source.

15 The rules of evidence do not ordinarily permit a
16 witness to testify to opinions or conclusions. An
17 exception exists to this rule for what we call expert
18 witnesses. A witness who by their education, training
19 and experience has become an expert in some art,
20 science, profession or calling, may state an opinion as
21 to relevant and material matters in which the witness
22 claims to be an expert and may also state the reasons
23 for that opinion. You should consider any expert
24 opinion received in this case like any other evidence.
25 Give it the weight that you think it deserves. If you

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1 decide that the opinion of an expert witness is not
2 based on sufficient education and experience, or if you
3 conclude that the reasons given in support of the
4 opinion are not sound, or that the opinion is
5 outweighed by other evidence, you may disregard the
6 opinion entirely. And expert witness' testimony is to
7 be given no greater weight than that of other
8 witnesses, simply because the witness is an expert, and
9 you are not required to accept an expert's opinion,
10 even though it may not be contradicted.

11 Ladies and gentlemen, you have heard evidence
12 that the defendant was convicted of a crime other than
13 the one for which he is now on trial. This evidence
14 may be considered by you, if you conclude it is true,
15 only in deciding whether the defendant's testimony is
16 believable and for no other purpose. You must not
17 consider the defendant's prior record as any evidence
18 of the defendant's guilt of the charge we are trying
19 today.

20 There are two types of evidence, ladies and
21 gentlemen, that are presented during a trial: direct
22 and circumstantial evidence. Direct evidence is the
23 testimony of a person who claims or asserts to have
24 actual knowledge of a fact, such as an eyewitness.
25 Circumstantial evidence is proof of a chain of facts

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1 and circumstances indicating the existence of a fact.
2 The law makes absolutely no distinction between the
3 weight or value to be given to either direct or
4 circumstantial evidence, nor is a greater degree of
5 certainty required of circumstantial evidence than of
6 direct evidence. You should weigh all of the evidence
7 in the case. After weighing all of the evidence, if
8 you are not convinced of the guilt of the defendant
9 beyond a reasonable doubt, you must find the defendant
10 not guilty. Conversely, if you are convinced of the
11 guilt of the defendant beyond a reasonable doubt, then
12 you must find him guilty.

13 I instruct you, ladies and gentlemen, the fact
14 that the defendant was arrested, charged, and indicted
15 is not evidence in this case and cannot be considered
16 by you as evidence of guilt in this case, nor does it
17 create any presumption or inference of guilt in this
18 case. This documentation, ladies and gentlemen, is
19 simply the formal instrument or document by which the
20 case -- which contains the charge or charges made
21 against the defendant and they serve as the formal
22 documents by which the case is processed or brought
23 into court. The defendant has pled not guilty to the
24 indictments and that plea casts the burden on the State
25 to prove the defendant guilty.

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1 A person charged with committing a criminal
2 offense in South Carolina is never required to prove
3 himself innocent. I instruct you, ladies and
4 gentlemen, that it is a cardinal, an important, rule of
5 the law of evidence that the defendant in a criminal
6 trial, no matter what the seriousness of the charge or
7 charges made against him may be, will always be
8 presumed to be innocent of the crime for which he is
9 indicted unless his guilt has been proven by evidence
10 satisfying you of that guilt beyond a reasonable doubt.
11 The presumption of innocence does not cease when you
12 retire to deliberate but it accompanies the defendant
13 from the time of his appearance, throughout the trial,
14 until you reach a verdict in this case. Our Supreme
15 Court has said that the presumption of innocence is
16 like a robe of righteousness placed about the shoulders
17 of the defendant and it remains with him and assigns
18 him to that class, the innocent, until that presumptive
19 robe of righteousness has been striped from his person
20 by evidence satisfying you of that guilt beyond a
21 reasonable doubt.

22 Ladies and gentlemen, the presumption of
23 innocence is not mere legal theory, it is not just a
24 legal phrase. It is a substantial right to which every
25 defendant is entitled unless you, the jury, are

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1 satisfied, from the evidence, of his guilt beyond a
2 reasonable doubt.

3 The State has the burden of proving the
4 defendant guilty beyond a reasonable doubt. Some of
5 you may have served as jurors in civil cases where you
6 were told that it is only necessary to prove that a
7 fact is more likely than not true, such as by the
8 greater weight or the preponderance of the evidence.
9 In criminal cases, the State's proof must be more
10 powerful than that. It must be beyond a reasonable
11 doubt. Proof beyond a reasonable doubt is proof that
12 leaves you firmly convinced of the defendant's guilt.
13 There are very few things in this world that we know
14 with absolute certainty and in criminal cases the law
15 does not require proof that overcomes every possible
16 doubt. If based on your consideration of the evidence
17 you are firmly convinced that the defendant is guilty
18 of the crime charged, you must find the defendant
19 guilty. If on the other hand you think there's a real
20 possibility that the defendant is not guilty, you must
21 give him the benefit of that doubt and find him not
22 guilty.

23 The defendant is charged by Code Section 16-3-
24 1040 with the offense of threatening a public official.
25 The State must prove beyond a reasonable doubt that the

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1 defendant knowingly and willfully delivered or conveyed
2 to a public official any letter or paper, writing,
3 print, missive document or electronic communication, or
4 verbal or electronic communication which contained a
5 threat to take the life of or to inflict bodily harm
6 upon the public official or members of his immediate
7 family if the threat is directly related to the public
8 official's professional responsibilities.

9 I instruct you, ladies and gentlemen, that
10 municipal police officers are public officials within
11 the meaning of the threatening of public official
12 statute.

13 The defendant is charged with possession with
14 intent to distribute cocaine base. The State must
15 prove beyond a reasonable doubt that the defendant
16 possessed cocaine base with the intent to distribute
17 it. To prove possession, the State must prove beyond a
18 reasonable doubt that the defendant had both the power
19 and the intent to control the disposition or use of the
20 cocaine base. Possession may be either actual or
21 constructive. Actual possession means that the cocaine
22 base was in the actual physical custody of the
23 defendant. Constructive possession means that the
24 defendant had dominion and control, or the right to
25 exercise dominion or control, over either the cocaine

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1 base itself or the property on which the cocaine base
2 was found.

3 Mere presence at the scene where the drugs were
4 found is not enough to prove possession. Actual
5 knowledge of the presence of the cocaine base is strong
6 evidence of the defendant's intent to control its
7 disposition or use.

8 The defendant's knowledge and possession may be
9 inferred when a substance is found on the property
10 under the defendant's control. However, this inference
11 is simply an evidentiary fact to be taken into
12 consideration by you, along with the other evidence in
13 the case, and to be given the weight you decide it
14 should have. Two or more persons may have joint
15 possession of a drug. The State must also prove beyond
16 a reasonable doubt that the defendant intended to
17 distribute the cocaine base. Distribute means to
18 deliver other than by administering or dispensing a
19 drug. Intent may be shown by acts and conduct of the
20 defendant and other circumstances from which you may
21 naturally and reasonably infer intent. In determining
22 whether the defendant had the intent to distribute the
23 cocaine base, you may consider the circumstances
24 surrounding the defendant's alleged possession. You
25 may consider the amount of the substance alleged to

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1 have been possessed, the manner in which it was
2 allegedly possessed, the place where it was allegedly
3 possessed, and other factors which you consider to be
4 important. You must find that the defendant did not
5 intent -- did not intend to have the cocaine base
6 solely for his own use.

7 Possession of more than one or more grams of
8 crack cocaine, which is the common name for cocaine
9 base, creates an inference that the defendant possessed
10 the cocaine base with the intent to distribute it.
11 This inference does not relieve the State from proving
12 beyond a reasonable doubt that the defendant had the
13 intent to distribute it. It is simply an evidentiary
14 fact to be considered and taken into consideration by
15 you, along with the other evidence in the case, and to
16 be given the weight you decide it should have.

17 Included within the offense of possession with
18 intent to distribute is the lesser offense of simple
19 possession. Simple possession does not require an
20 intent to distribute the cocaine base. The State must
21 prove beyond a reasonable doubt that the defendant
22 knowingly or intentionally possessed cocaine base.
23 Again, as I've instructed, knowingly means with
24 knowledge, conscientiously, not accidentally.
25 Intentionally means wilfully, intending the result

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1 which actually occurs, not accidentally or
2 involuntarily. Intent may be shown by acts and conduct
3 of the defendant and other circumstances from which you
4 may naturally and reasonably infer intent. To prove
5 possession, the State must prove beyond a reasonable
6 doubt that the defendant had both the power and intent
7 to control the disposition or use of the cocaine base.

8 And as I have instructed, possession may be
9 either actual or constructive. Actual possession means
10 that the cocaine base was in the actual physical
11 custody of the defendant. Constructive possession
12 means that the defendant had dominion and control, or
13 the right to exercise dominion or control, over either
14 the cocaine base itself or the property on which the
15 cocaine base was found. Mere presence at the scene
16 where the drugs were found is not enough to prove
17 possession. Actual knowledge of the presence of the
18 cocaine base is strong evidence of the defendant's
19 intent to control its disposition or use. The
20 defendant's knowledge and possession may be inferred
21 when a substance is found on the property under the
22 defendant's control. However, this inference is simply
23 an evidentiary fact to be taken into consideration by
24 you, along with the other evidence in the case, and to
25 be given the weight you decide it should have. Two or

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1 more persons may have joint possession of a drug.

2 The defendant is also charged with distribution
3 of cocaine base within the -- possession with the
4 intent to distribute cocaine base within proximity of a
5 school or park. The State must prove beyond a
6 reasonable doubt that the defendant possessed,
7 distributed, sold, purchased, manufactured, or
8 unlawfully possessed, with the intent to distribute,
9 cocaine base while in or within a one-half mile of the
10 grounds of a public or private elementary, middle, or
11 secondary school, a public playground or park, a public
12 vocational or trade school or technical education
13 center, or a public or private college or university.

14 The defendant is charged with resisting arrest.
15 The State must prove beyond a reasonable doubt that the
16 defendant resisted a lawful arrest being made by a
17 person the defendant knew or reasonably should have
18 known was a law enforcement officer.

19 Knowingly means with knowledge, conscientiously
20 done. Willfully means done intentionally and not done
21 by accident. Resist means to oppose, strive against,
22 or obstruct. Obstruct means to impede, hinder, or
23 interfere with. Even peaceful, nonviolent, indirect
24 obstruction of an arrest or the service or execution of
25 process is considered arresting arrest. If the means

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1 used are sufficient to prevent the officer from making
2 an arrest, the defendant is guilty of resisting arrest.

3 The indictments in this case allege several
4 different offenses against the defendant and they are
5 as follows: threatening a public official, possession
6 with the intent to distribute cocaine base, possession
7 with intent to distribute cocaine base within proximity
8 of a park, and resisting arrest.

9 Ladies and gentlemen, each indictment charges a
10 separate and distinct offense. You must decide each
11 indictment separately on the evidence and the law
12 applicable to it, uninfluenced by your decision as to
13 any other indictment. The defendant may be convicted
14 or acquitted on any or all of the offenses charged.
15 You will be asked to write a separate verdict of guilty
16 or not guilty for each indictment.

17 There are several possible verdicts for each
18 indictment and I will go through these with you. You
19 don't have to try to write this down, because these go
20 into the jury room with you. There is no significance
21 whatsoever to the order in which I state these possible
22 verdicts. And they are as follows: we, the jury, by
23 unanimous consent, find the defendant guilty of
24 threatening a public official; or not guilty. We, the
25 jury, by unanimous consent find the defendant guilty of

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1 possession with intent to distribute cocaine base or as
2 to the lesser-included offense, guilty of simple
3 possession of cocaine base; or not guilty. We, the
4 jury, by unanimous consent find the defendant guilty of
5 possession with intent to distribute cocaine base
6 within proximity of a park; or not guilty. And we, the
7 jury, by unanimous consent, find the defendant guilty
8 of resisting arrest; or not guilty. Again, there is no
9 significance whatsoever to the order in which these
10 potential verdicts are stated.

11 Ladies and gentlemen, your verdict must be a
12 unanimous one, which means that all twelve of you must
13 agree in order to reach a verdict.

14 Mr. Foreman, once the jury has reached a
15 verdict, it is your responsibility to fill out each
16 verdict form, to sign and date the forms, and advise
17 the bailiffs when the jury has reached its verdict. If
18 the jury has any questions, it is also your
19 responsibility to write out those questions and to
20 follow the same procedure by knocking on the door and
21 advising the bailiffs that you have a question.

22 Ladies and gentlemen, if you have any questions
23 during deliberations, please know that there will be a
24 delay in our response because there's a procedure that
25 we have to follow in answering your questions. So if

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1 you have a question, there will be a delay but please
2 know that we're not ignoring you, we're simply
3 following that procedure.

4 Again, ladies and gentlemen, your verdict must
5 be a unanimous one, which means that all twelve of you
6 must agree.

7 I'm going to ask that you return to your jury
8 room but do not yet begin your deliberations. I have
9 some matters of law I need to take up with the
10 attorneys that may require further instruction or
11 clarification of an instruction. However, if there is
12 no further instruction, we will send in the evidence
13 and your notepads and at that time you will be allowed
14 to begin your deliberations.

15 If you would go with the bailiffs for me. And
16 please leave your notepads in your seats.

17 [Whereupon, the jury exits the courtroom at
18 10:19 a.m.]

19 THE COURT: You may be seated.

20 Any exceptions from the State?

21 MS. MCCLAIN: No, Your Honor.

22 THE COURT: From the defense?

23 MS. FRAYER: No, Your Honor.

24 THE COURT: Okay. We will await further
25 instructions from the jury.

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1 If you would take the verdict forms for me,
2 Mr. Robinson, and the evidence.

3 We don't have an alternate to excuse so we'll
4 just await their verdict.

5 [Whereupon, the evidence goes to the jury at
6 10:23 a.m.]

7 [Whereupon, a recess is taken from 10:23 a.m. to
8 1:24 p.m.]

9 [Whereupon, Court's Exhibit Number 1 is marked
10 by the court reporter]

11 [Whereupon, Court's Exhibit Number 2 is marked
12 by the court reporter]

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VERDICT

1
2 THE COURT: The jury has reached a verdict. Is
3 the State ready to proceed?

4 MS. MCCLAIN: Yes, Your Honor.

5 THE COURT: Is the defense ready to proceed?

6 MS. FRAYER: Once he gets here, Your Honor.

7 THE COURT: Oh, of course. That goes without
8 saying.

9 [Whereupon, the defendant enters the courtroom]

10 MS. FRAYER: The defense is ready to proceed,
11 Your Honor.

12 THE COURT: Thank you.

13 [Whereupon, the jury enters the courtroom at
14 1:23 p.m.]

15 THE BAILIFF: All present, Your Honor.

16 THE COURT: You may be seated.

17 Mr. Foreman, is it correct that the jury has
18 reached a verdict?

19 THE FOREPERSON: Yes, ma'am.

20 THE COURT: If you would give the verdict forms
21 to the bailiff for me, please.

22 [Whereupon, the bailiff proffers documents to
23 the Court]

24 THE COURT: Thank you so much. I need all of
25 the verdict forms. Are they with the --

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1 [Whereupon, the bailiff proffers documents to
2 the Court]

3 THE COURT: Thank you. There are four of them.

4 THE BAILIFF: Four of them, Your Honor.

5 THE COURT: Thank you. Thank you, sir.

6 [Whereupon, the Court reviews documents]

7 THE COURT: Mr. Clerk, if you would --

8 If the defendant would stand for publication of
9 the verdicts.

10 [Whereupon, Mr. Young complies]

11 [Whereupon, the Court proffers documents to the
12 clerk of court]

13 THE CLERK OF COURT: Case number 2010-GS-10-
14 5621, State of South Carolina versus Timothy Young,
15 indictment for threatening a public official, we, the
16 jury, by unanimous consent, find the defendant not
17 guilty.

18 As to indictment number 2010-GS-10-5622,
19 indictment for possession with intent to distribute
20 cocaine base, we, the jury, unanimously find the
21 defendant guilty of possession with intent to
22 distribute cocaine base.

23 As to indictment number 2010-GS-10-5623, we, the
24 jury, by unanimous consent, find the defendant guilty
25 of possession with intent to distribute cocaine base

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1 within the proximity of a park.

2 As to indictment number 2010-GS-10-5625, we, the
3 jury, by unanimous consent, find the defendant guilty
4 of resisting arrest.

5 Mr. Foreperson, ladies and gentlemen of the
6 jury, if this is your verdict, please raise your right
7 hand.

8 THE CLERK OF COURT: Let the record reflect that
9 all jurors raised their hand.

10 THE COURT: Is there any request to poll the
11 jury? From the State?

12 MS. MCCLAIN: No, Your Honor.

13 THE COURT: From the defense?

14 MS. FRAYER: Yes, Your Honor.

15 THE COURT: Please poll the jury, Mr. Clerk.

16 Ladies and gentlemen, please give the clerk your
17 attention.

18 THE CLERK OF COURT: Ladies and gentlemen, I'm
19 going to ask you each two questions: is this your
20 verdict; and is this still your verdict. Please answer
21 each question appropriately and also please stand
22 whenever I call your name.

23 [Whereupon, the clerk of court polls the jury]

24 THE CLERK OF COURT: Your Honor, the jury has
25 been polled and the verdict stands.

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1 THE COURT: Mr. Foreman, ladies and gentlemen,
2 let me thank you on behalf on the State, as well as the
3 defendant and defense counsel, for your time and your
4 attention to this case. I know that jury service may
5 seem completely thankless, but I hope you know how very
6 valuable your service is to us. I hope that it has
7 been educational for you. I hope that you've learned
8 that it's nothing like what you see on television, and
9 I think, most importantly, that you've realized how
10 very essential you are to verdicts. We could not have
11 jury trials without you-all being willing to sit as
12 fact-finders and apply a complicated set of laws to
13 those facts and render a verdict.

14 You are excused for the remainder of the week.
15 If you need --

16 [Off the record momentarily]

17 THE COURT: If you need a work excuse, you can
18 get that on the circuit court side of the courthouse
19 from any of the deputy clerks at any of the windows.
20 They will be glad to provide that to you. Otherwise,
21 they will be mailed to you along with your checks.

22 If you would like to discuss your verdict, you
23 are welcome to. If someone should persist in trying to
24 speak with you and it goes beyond your comfort level,
25 please let us know so that we can take the appropriate

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1 action to protect your privacy.

2 You are excused with the Court's thanks, and you
3 may resume enjoying your lunch.

4 I'll be right back for post-trial motions and
5 sentencing.

6 If I could have the sentence sheets, please.

7 [Whereupon, the jury exits the courtroom at
8 1:30 p.m.]

9 THE COURT: Are there any post-trial motions
10 from the State?

11 MS. MCCLAIN: No, Your Honor.

12 THE COURT: From the defense?

13 MS. PROCTOR: Your Honor, we would just renew
14 all the motions made at trial. We had a suppression
15 hearing at the beginning and all our other motions were
16 made, and objections, and a motion for new trial at
17 this time.

18 THE COURT: And the motions are marked as heard,
19 and denied.

20 There is no basis for the Court to reconsider
21 its previous rulings. It stands on previous basis for
22 those rulings articulated for the record.

23 In addition to that, I can glean nothing that
24 would rise to the level of a grant of new trial, in
25 light of the fact that this was a credibility case. It

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1 came down to who the jury believed regarding the facts
2 and incidents as they were alleged to have occurred on
3 that day, and it came down to the jury believing that
4 based on the weight of the drugs, which is an inference
5 that they are allowed to take into consideration along
6 with all the other facts that they felt he possessed
7 the drugs with the intent to distribute them versus
8 him, as he testified, for his own personal use.

9 MS. FRAYER: Thank you, Your Honor.

10 THE COURT: The motion is denied.
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SENTENCING

1
2 THE COURT: Is there anything from the State
3 regarding sentencing?

4 MS. MCCLAIN: Your Honor, only a recitation of
5 his criminal history for the record.

6 THE COURT: I think you-all gave that to me at
7 the beginning, which is extensive as I recall.

8 MS. MCCLAIN: It is, Your Honor.

9 THE COURT: I asked for it earlier and you gave
10 it to me: the receiving stolen goods, resisting
11 arrest. He had several --

12 MS. MCCLAIN: Your Honor, I believe what we gave
13 earlier was a brief summary of some of the more --

14 THE COURT: Y'all didn't give me his whole
15 record?

16 MS. MCCLAIN: It was not a complete record, Your
17 Honor.

18 THE COURT: Okay. You may proceed.

19 MS. MCCLAIN: Your Honor, 1982 resisting arrest,
20 interference with police, and simple possession of
21 marijuana; '83, simple assault, disturbing schools;
22 '86, resisting arrest; '88, aggravated assault; '90,
23 simple assault; '92, burglary second; '93, probation
24 revocation; '98, breaking and entering motor vehicle;
25 2000, breaking and entering motor vehicle; 2001,

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1 receiving stolen goods; 2002, paraphernalia; 2002,
2 distribution of heroin; 2003, threatening; 2005,
3 disorderly conduct; 2007, possession of cocaine; 2008,
4 paraphernalia; and 2010, paraphernalia.

5 THE COURT: Anything further from the State
6 regarding sentence?

7 MS. MCCLAIN: No, Your Honor.

8 THE COURT: Anything further from the defense?

9 MS. FRAYER: Yes, Your Honor, if I may.

10 For the record, Mr. Young is here today. He's
11 forty-five years old, he's single, he has three
12 children. He attended C.A. Brown High School up to the
13 ninth grade. He's a painter by trade. He's been doing
14 work with Trojan Labor Temp Services.

15 Your Honor, I just need to be clear for the
16 record. There was an offer in the case of a plea to
17 possession of cocaine base third, resisting arrest, and
18 threatening a public official. The State would dismiss
19 the possession of cocaine proximity of a school in
20 exchange for a guilty plea with a recommended cap of
21 three years.

22 Due to some miscommunication between myself and
23 the solicitor's office, which we talked about earlier
24 this week, that offer was -- my client was not able to
25 take a -- was not able to take -- make available of

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1 that offer.

2 There was a second offer that was extended to my
3 client, which was a guilty plea to possession of --
4 possession with intent to distribute cocaine base
5 second offense, resisting arrest, and threatening a
6 public official. That offer was rejected by my client
7 and we proceed to trial.

8 He has been in jail 460 days, Your Honor.

9 THE COURT: This is a true second for him;
10 correct?

11 MS. MCCLAIN: Your Honor, it's a true third.

12 THE COURT: It's a true third.

13 What's the -- the sentence range for a second
14 and third are the same, are they not?

15 MS. MCCLAIN: No, Your Honor.

16 The sentence range for a third under the old
17 law, which this would fall under, is a fifteen to
18 thirty range.

19 THE COURT: Yes. It's the same as a second and
20 subsequent, according to what my clerk just --

21 MS. PROCTOR: Second is five to --

22 MS. MCCLAIN: That was my understanding, is --

23 MS. PROCTOR: Second is five to --

24 THE COURT: Oh, you know what? You know what
25 she did? She wrote second twice. So she has second

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1 five to thirty and/or a 50,000. And then she has a
2 different CDR code which she wrote second, but I think
3 she meant to write third, which is fifteen to thirty
4 and/or 50,000.

5 MS. FRAYER: Yes, Your Honor.

6 THE COURT: That's what -- okay.

7 And just for the record, and I apologize, we had
8 a note from the jury. We had a phone conference
9 regarding it and the note that we attached was without
10 objection; correct? And it's been marked as a Court's
11 Exhibit and is in the record.

12 Is that correct from the State?

13 MS. MCCLAIN: That is correct, Your Honor.

14 THE COURT: And from the defense?

15 MS. FRAYER: That is correct, Your Honor.

16 THE COURT: Okay. Sir, is there anything you
17 would like to state for the record on your own behalf?

18 MR. YOUNG: No, ma'am.

19 THE COURT: On the resisting arrest, sir, you
20 are sentenced to the State Department of Corrections
21 for a period of one year. On possession with intent to
22 distribute cocaine within proximity of a school, you
23 are sentenced to ten years. And the possession with
24 intent to distribute cocaine base, third offense,
25 you're sentenced to fifteen years. These sentences are

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1 to run concurrent with one another. You'll get credit
2 for any time that you've served, pursuant to 24-13-40,
3 to be calculated and applied by the department of
4 corrections, and I have ordered the ATU if it is
5 available to you.

6 Thank you-all very much.

7 MS. MCCLAIN: Thank you, Your Honor.

8 MS. FRAYER: Thank you.

9 [JURY TRIAL ADJOURNS AT 1:35 P.M.]

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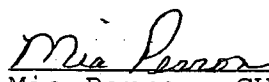
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the jury trial held before the Honorable Deadra L. Jefferson, on Friday, September 2, 2011.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 17th day of November, 2011.


Mia Perron, CVR-CM
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM

-40-

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY YOUNG,

APPELLANT

APPELLATE CASE NO. 2011-194348

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to suppress drugs found on the defendant pursuant to an unlawful arrest because the State failed to prove that the defendant was in violation of a condition of bond, the reason given by the officer for the initial stop of the defendant and the State failed to establish that the defendant's act of fleeing the officer constituted disorderly conduct?

STATEMENT OF THE CASE

In August of 2010, the Charleston County Grand Jury indicted Young for threatening a public official, possession with intent to distribute cocaine base, possession with intent to distribute within the proximity of a school or park, and resisting arrest, indictments #2010- GS-10-5621, 5622, 5623, 5624. On August 31, 2011, Young proceeded to jury trial before the Honorable Deadra L. Jefferson. Attorneys Cantrell Frayer and Lorelle Proctor represented Young at trial. The jury found Young not guilty of threatening a public official but guilty of the other three counts. Judge Jefferson sentenced Young to 15 years for possession with intent to distribute cocaine base, third offense, 10 years concurrent for the proximity charge and 1 year for resisting arrest. A timely notice of intent to appeal was filed on September 8, 2011. This appeal follows.

ARGUMENT

The trial judge erred in refusing to suppress drugs found on the defendant pursuant to an unlawful arrest because the State failed to prove that the defendant was in violation of a condition of bond, the reason given by the officer for the initial stop of the defendant and the State failed to establish that the defendant's act of fleeing the officer constituted disorderly conduct.

Prior to trial Young moved to suppress drugs found on the defendant and a hearing was held. (Tr. pp. 33-76). Officer Gill of the Charleston Police Department testified that on May 29, 2010, he observed Young walking on Line Street, an alleged no trespass area, and went to talk with Young. (Tr. p. 36, lines 3-6; p. 37, lines 10-12). Young fled but was caught and arrested for trespassing and disorderly conduct. (Tr. p. 40, lines 8-14). During the search incident to arrest the officers found crack in Young's pocket. (Tr. p. 40, lines 21-24).

According to the officer, Young was on trespass notice from Line, Aiken, Sheppard and Nassau Streets. (Tr. p. 39, lines 1-3). The officer testified that the trespass notice was a condition of bond imposed by Judge Steinard after Officer Gill arrested Young four days earlier for loitering at 25 Line Street¹. (Tr. p. 37, lines 16-21; p. 46, lines 3-5; p. 51, lines 22- p. 52, lines 1-3). The officer admitted that there was no written bond order outlining the restrictions of bond or the restricted boundaries. (Tr. p. 42, lines 3-15; p. 46, lines 10-22). The officer also admitted that Young lived on Aiken Street, one of the streets included in the restricted area, but the judge made an exception allowing Young to go to and from his house. (Tr. p. 38, lines 3-20).

Young testified that when he was arrested on May 29, 2010, he was walking down Line Street from Church's Fried Chicken to his house at 54 Aiken Street. (Tr. p.

56; lines 6-25). Young testified that when he was arrested for loitering on May 25, 2010, the judge told him that if he was caught loitering on Line, Nassau or Sheppard Streets, he would be arrested. (Tr. p. 57, lines 5-19). Young denied loitering and the testimony from the officer confirms that Young was walking down Line Street, not loitering on Line Street. (Tr. p. 37, lines 7-15).

At the conclusion of the hearing, the State argued that the officer had probable cause to arrest Young for the trespass violation and alternatively argued that the officer had reasonable suspicion to stop Young in regard to the potential trespass. (Tr. p. 70, lines 14 – p. 71, lines 1-3). The State then argued that Young's action of fleeing constituted public disorderly conduct justifying the arrest by the officer. The State also argued that Young was lawfully arrested for resisting arrest rendering the subsequent search lawful. (Tr. p. 71, lines 4-24).

Counsel for Young argued that the Officer lacked probable cause to arrest Young. (Tr. p. 72, lines 12-15). Counsel argued that the trespass violation was actually an alleged violation of a condition of bond requiring a hearing. (Tr. p. 72, lines 16-22). Counsel further argued that the State failed to prove that in fact the judge issued a no trespass condition of bond rather than a no loitering condition of bond. (Tr. p. 74, lines 22 – p. 75, lines 1-25).

The judge denied the motion to suppress and stated:

The motion is denied. The officer's testimony is credible. I do not find the testimony of the defendant to be credible. There are particular inconsistencies in his testimony that lead me to that conclusion.

¹ As discussed, the State was unable to prove what conditions of bond were imposed by the judge. Presumably, such a broad condition of bond, involving four city streets including the street where the defendant lived, would have been objectionable.

There does not have to be probable cause for the original - - in other words, where there is an appropriate stop, an arrest may be supported by probable cause even though the offense for which the arrest was made is not closely related to the offense stated by the officer as the reason for the arrest.

Clearly there was probable cause for him to be stopped. There was a reasonable and articulable suspicion that criminal activity was afoot. And there did not have to be probable cause - - it did not have to rise to the level of an arrest.

There was certainly probable cause initially, but certainly once he ran across the street and fled and committed the act of disorderly conduct in the presence of the officer, it then rose to the level of probable cause for him to have been arrested.

The judge erred. The State failed to prove that the officer had reasonable suspicion to stop Young. The State failed to prove that Young's action of walking on Line Street to his house on Aiken Street constituted a violation of a condition of bond that would have entitled the officer to arrest. Further, the State failed to prove that Young's actions in fleeing the officer constituted disorderly conduct. Lastly, because the State failed to prove that Young was in violation of his bond and failed to prove disorderly conduct, the arrest was unlawful and Young had the right to resist the unlawful arrest. The unlawful arrest rendered the search unlawful. The drugs should have been suppressed as fruit of the poisonous tree.

The State can not prove that the officer had probable cause to arrest or reasonable suspicion to stop for the alleged violation of a condition of bond without establishing what conditions were imposed by the Judge. The State failed to prove what restrictions the judge imposed in the oral bond order. The officer's recollection of what he believed the restrictions to be is simply not sufficient. Even accepting the officer's recollection, it is unclear that Young violated the order by walking to his house when the officer

admitted that the judge made an exception to allow Young to get to his house that was in part of the alleged restricted zone. There is no evidence that the officer, before unlawfully stopping Young, had reasonable suspicion of criminal activity to justify the stop outside of the alleged violation of a condition of bond.

In State v. Frazier, 394 S.C. 213, 220, 715 S.E.2d 650, 653 (Ct.App. 2011) the South Carolina Court of Appeals wrote:

The fundamental question in determining the lawfulness of an arrest is whether probable cause existed to make the arrest.” State v. Baccus, 367 S.C. 41, 49, 625 S.E.2d 216, 220 (2006). “Probable cause for a warrantless arrest exists when the circumstances within the arresting officer’s knowledge are sufficient to lead a reasonable person to believe that a crime has been committed by the person being arrested.” *Id.* “Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officer’s disposal.” *Id.*

The State’s failure to establish what conditions of bond were imposed by the judge prevented the trial judge from making a determination of whether the officer had probable cause to arrest the defendant.

“[R]easonable suspicion requires a particularized and objective basis that would lead one to suspect another of criminal activity.” State v. Woodruff, 344 S.C. 537, 546, 544 S.E.2d 290, 295 (Ct.App.2001). “In determining whether reasonable suspicion exists, the [circuit] court must consider the totality of the circumstances.” State v. Willard, 374 S.C. 129, 134, 647 S.E.2d 252, 255 (Ct.App.2007). Generally stated, reasonable suspicion is a standard that requires more than a “hunch” but less than probable cause. *Id.* The State’s failure to establish what conditions of bond were imposed by the judge prevented the trial judge from making a determination of whether the officer had reasonable suspicion to stop the defendant.

In an attempt to justify the arrest and search, the State argues that the officer had probable cause to arrest the defendant for disorderly conduct. (Tr. p. 71, lines 4-14). S.C. Code §16-17-530 provides:

Any person who shall (a) be found on any highway or at any public place or public gathering in a grossly intoxicated condition or otherwise conducting himself in a disorderly or boisterous manner, (b) use obscene or profane language on any highway or at any public place or gathering or in hearing distance of any schoolhouse or church or (c) while under the influence or feigning to be under the influence of intoxicating liquor, without just cause or excuse, discharge any gun, pistol or other firearm while upon or within fifty yards of any public road or highway, except upon his own premises, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or be imprisoned for not more than thirty days.

The officer testified in regard to the disorderly conduct charge, "At that point we were arresting him for trespassing, for the geographical trespass restrictions that he was on; and disorderly conduct due to the fact that he ran in front of a car and was making me struck,[sic] and making the flow of traffic stop. And people actually started coming out of their house to hear, to see what was going on." (Tr. p. 40, lines 8-14). The judge erred in finding that the actions of Young in fleeing constituted disorderly conduct.

The State failed to prove that the officer had probable cause to arrest or reasonable suspicion to stop Young for an alleged violation of a condition of bond when the State failed to prove what conditions of bond the judge imposed. Young's actions in fleeing do not constitute public disorderly conduct. The arrest was unlawful and Young had the right to resist the unlawful arrest. "A citizen is not, of course, required to submit to an illegal arrest and may use as much force as is reasonably necessary to prevent an unlawful arrest." State v. DeBerry, 250 S.C. 314, 320, 157 S.E.2d 637, 640 (1967). See Also State v. McGowan, 347 S.C. 618, 557 S.E.2d 657 (2001); State v. Bethune, 112

S.C. 100, 99 S.E. 753 (1919); State v. Robertson, 191 S.C. 509, 5 S.E.2d 285 (1939); State v. Poinsett, 250 S.C. 293, 157 S.E.2d 570 (1967).

The Fourth Amendment provides, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated....” U.S. Const. amend. IV. Any evidence seized in violation of the Fourth Amendment must be excluded. Mapp v. Ohio, 367 U.S. 643, 655, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961).

Warrantless searches and seizures by the police are per se unreasonable, unless they fall within one of several recognized exceptions. State v. Weaver, 361 S.C. 73, 80–81, 602 S.E.2d 786, 790 (Ct.App.2004). These exceptions include: (1) search incident to a lawful arrest; (2) hot pursuit; (3) stop and frisk; (4) automobile exception; (5) plain view doctrine; (6) consent; and (7) abandonment. *Id.* The warrantless search of Young was incident to an unlawful arrest. The search does not meet an exception.

The exclusionary rule prohibits the admission of evidence that is the fruit of an unlawful search. Specifically, it prohibits the admission of evidence (1) directly acquired during an unlawful search and (2) later discovered and derivative of the unlawful search. Murray v. United States, 487 U.S. 533, 536–37, 108 S.Ct. 2529, 101 L.Ed.2d 472 (1988); *see also* Wong Sun v. United States, 371 U.S. 471, 488, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). However, under our case law the exclusionary rule does not apply to evidence obtained during a search or seizure conducted pursuant to an “intervening illegal act.” State v. Nelson, 336 S.C. 186, 194, 519 S.E.2d 786, 790 (1999); *see also* In re Jeremiah W., 361 S.C. 620, 624–25, 606 S.E.2d 766, 768 (2004). Young’s act of fleeing from the officer does not constitute an intervening illegal act.

CONCLUSION

Based on the above argument, the conviction and sentence should be reversed.

Respectfully submitted,

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of November, 2012.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County
Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY YOUNG,

APPELLANT

APPELLATE CASE NO. 2011-194348

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Timothy Young states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Deadra L. Jefferson, which was held on September 2, 2011, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Timothy Young.

Respectfully submitted,

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of November, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders 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."

November 8th, 2012

Kathrine H. Hudgins
Appellate Defender

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

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY YOUNG,

APPELLANT

APPELLATE CASE NO. 2011-194348

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Record on appeal have been served on Timothy Young, #296628 at Perry Correctional Institution, this 8th day of November, 2012.

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 8th day of November, 2012.

(L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Timothy Young, Appellant.

Appellate Case No. 2011-199547

Appeal From Charleston County
Deadra L. Jefferson, Circuit Court Judge

Unpublished Opinion No. 2013-UP-438
Submitted September 1, 2013 – Filed November 27, 2013

APPEAL DISMISSED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

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

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

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF CharlestonTimothy YOUNG,

Full name and prison number (if any) of Applicant.

296628,

v.

State of South Carolina

2014-CP-10-437

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
 2014 JAN 22 AM 11:28
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY

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 verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 McDougall Correctional Inst., 1516 Old Gilliard Rd, Ridgeville, SC
2. Name and location of Court which imposed sentence Chas. Co. Court of Gen. Sess.
3. Name(s) of co-defendant(s) (if any) None.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-10-05622 -
 - (b) 05624, PWID 3rd 15 years,
 - (c) Resisting Arrest - One Year, School Zone - 10 years.
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) September 2, 2011.
 - (b) ALL Concurrent.

6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty of Not Guilty.
- (c) after a plea of nolo contendere N/A
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. S.C. Court of Appeals -
- ii. See Attached sheets.
- iii. Appellate Case Number: 2011-194348
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. Dismissal -
- iii. _____
- (c) the date of each such result:
- i. See Attachments.
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Dismissal.
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) _____
 (b) _____
 (c) _____

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

- (a) _____
 (b) Unlawful Search and Seizure
 (c) False Arrest (Lack of Sufficient Probable

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

- (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: N/A

- (a) the specific nature thereof: N/A
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed: N/A
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof: N/A
 i. _____
 ii. _____
 iii. _____

- iv. N/A
- (d) the date of each such disposition: N/A
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition: N/A
- 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?
Not to Applicant's Recollection.
15. If you answered "yes" to (14) identify: N/A
- (a) which grounds have been presented: N/A
- i. _____
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised: N/A
- i. _____
- ii. see Attachments.
- 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) Please see Attachments -
- (b) refer to Appellate # 2011-194348
- (c) South Carolina Court of Appeals
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? N/A
- (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? See Attachments.

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. Trial Attorney: Ms. Cantrell Frayer,
 - ii. Chas. Co. Pub. Defenders office.
 - iii. Ms. Kathrine H. Hudgins - Appellate Counsel.
- (b) the proceedings at which each such attorney represented you:
- i. Jury Trial, Sentencing.
 - ii. _____
 - iii. Appeal.

19. State clearly the relief you seek in filing this application: New Trial:
Vacating of Drug offense, Reversal and Remand.
20. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA)

County of

Charleston

VERIFICATION

Timothy Young # 296628

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.

✓ Timothy Young

SWORN to and subscribed before me this 15th
day of January, 2014.

[Signature] (L.S.)
Notary Public
SOUTH CAROLINA
My Commission Expires 12/9, 2014

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

Timothy Young, # 296628

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.

Timothy Young
Applicant

SWORN or affirmed to and subscribed before me this
15th day of February, 2014

Tammy C. [Signature]
Notary Public
SOUTH CAROLINA
My Commission Expires 9, 2014

Attached Sheet

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Timothy Young, Appellant.

Appellate Case No. 2011-199547

Appeal From Charleston County
Deadra L. Jefferson, Circuit Court Judge

Unpublished Opinion No. 2013-UP-438
Submitted September 1, 2013 – Filed November 27, 2013

APPEAL DISMISSED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Salley W. Elliott,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

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

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



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Attached Sheet

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

December 11, 2013

Timothy Young, #296628
Perry Correctional Institution
430 Oaklawn Road
Pelzer, SC 29669

Re: Your case

Dear Mr. Young:

Enclosed is a copy of the opinion of the Court of Appeals affirming your conviction and dismissing your appeal. Please be advised that our office will be closing your case.

Please be aware that there is a one year statute of limitations for filing an application for post-conviction (PCR) relief. This is one year from the date of the enclosed opinion. This statute of limitations is very strictly enforced, so please be sure that you comply with it. Please understand *it is your responsibility alone to be sure this PCR application is timely filed.* This application must be filed with the clerk of court in the county of your conviction. There is also now a one year statute of limitations for filing for federal habeas. However, you must exhaust your PCR claims in state court, before raising them in federal court.

Please be aware that the time between your direct appeal becoming final, and the date your PCR application is filed will count against your federal habeas statute of limitations in the future. I do wish you the best. Feel free to contact me if you have any questions.

Sincerely,

Kathrine H. Hudgins
Appellate Defender

KHH/khh

Enclosure: Post-Conviction Relief Application

Attached Sheets

2014-0-10-437

{Statement of FACTS}

FILED
2014 JUN 22 AM 11:28
CLERK OF COURT
DISTRICT OF COLUMBIA

The Applicant, Timothy Young, in Filing this Application for Post Conviction Relief (PCR) would respectfully state that He was denied Effective Assistance of Trial Counsel, when his Trial Attorney: * Ms. Contrell Frayer prejudiced his Case by informing the Jury during Closing Arguments that he was Guilty of the Crimes he was Fighting and attempting to get Acquitted of, which was the very reason for Mr. Young going to Trial, which was to prove his Innocence of the Crimes alleged and have the alleged drug seized from an unlawful Stop and Search Suppressed or thrown out under The *Fruit of the Poisonous Tree Doctrine, which specifically States that any item obtained

unlawfully by police during a stop and search cannot be used as Evidence to Convict a Defendant, and Suppressed. See, Small v. U.S., 586 F.Supp.2d 417.

See Jihad v. State (J.C.) -
(Appeals, are cases outling Suppression.

Mr. Young did not violate any Bond Restriction.

On the day in question, it was established that Police did not have probable Cause to arrest the Applicant Mr. Young, since he could not be Trespassing or violating a Tresspass Order on the very block in which he lives or Resides. The Police officer, Mr. Gill knew that when Mr. Young was "walking from Churches Fried Chicken on his way home down the Street that he was not in violation of any Law or Court Order?

The officer took it upon himself to make a knowingly unlawful arrest, allegedly based upon drugs found.

The alleged fact that the Applicant was said to have ran at the sight

does in itself mean that the alleged drugs seized cannot be suppressed.

Before fully expounding on the Probable Cause issue at some length as a pro se litigant, the Applicant Young wishes to point to or direct the Honorable Courts attention to the Ineffective Assistance of Counsel issues and the relevant case and Law governing such, that would support a New Trial for Defendants, such as Defendant - Applicant, Young who was wrongfully convicted.

The 6th Amendment of the United States Constitution, amongst other things guarantees a criminal Defendant, the Right to Effective Assistance of Counsel and that the Attorney must effectively represent him so that he'd get the Best possible outcome and represent him Diligently.

From the very Beginning, Applicant

Youngs, Attorney Cantell Frayer, failed to ~~Effectively~~ Suppress the alleged Drugs found or Challenge the Chain of Custody and Show it was Breached or Broken due to the discrepancies as to the exact weight or amount, which should have not been the actual Real focus, since under South Carolina Law anything above one gram of Cocaine or Cocaine Base is a PWID offense. (Poss. with Intent To Distribute).

Instead of moving to Suppress the Drug itself as Fruit of an Unlawful Seizure; Ms. Frayer, allowed the Charge to stand, including the School Zone offense under title 44-53-445

S.C. Code of Laws as Amended - on page 72, Lines 12-15 she made a Vague Suppression Argument. In her Closing Arguments, she X Supported the prosecutors and thus: the States Contentions or Argument that Mr. Young was Guilty as Charged not just for Resisting Arrest, but

(4)

any and all of the other Charges that stemmed from it. See Trial Transcript on page 256, Lines 11 - 14 she states;

"There is NO DOUBT
(No Reasonable Doubt) ran from
Officer Gill and so he is Guilty of
Resisting Arrest.

There is no reasonable Doubt that
Mr. Gill (sic) had a quantity of
Cocaine base in his pocket ... "

It was her duty to have the Jury see
that Reasonable Doubt existed in the
Case and that the Prosecution or
Solicitors office did not have sufficient
Evidence to support a conviction for
the alleged Drugs found, based on that
doubt.

The fact that she made the Above
Statement would demonstrate or prove
she removed all Reasonable Doubt
that he was Innocent and that police
lacked probable Cause for the arrest
and that the Arrest in itself was

(5)

a Legitimate one even if it was Arbitrarily
 centered on Harassment, and Abuse of Power,
 [or] Authority. Officer Gill even if Mr. Young
 had not fled: would have stopped,
 detained and searched him, as was
 something the officer enjoyed doing
 even when there was no probable cause
 or need for the search and when
 the Constitution mandates or States
 under *Terry v. Ohio, (Supra)

that police may not stop
 and search citizens simply to harass
 them without having "prior knowledge"
 the person has committed a crime or is/-
 was in the process of doing so.

Officer Gill did not know
 that Mr. Young was involved in or
 engaged in any criminal activity and
 especially that he was in possession
 of alleged drugs and drug paraphernalia.

He had encountered Mr. Young on
 other occasions and simply seemingly
 made it his duty to create a problem and
 all in clear violation of Law.

Ms. Frayer failed to present Case Laws to
 support her Motion to Suppress, and

Without it, her argument was Non-Effective since her focus was somewhere else on Page 257, Lines 1-7 of the Trial Transcript the solicitor, during Closing argument didn't have to Nail in a Guilty Verdict by himself, He clearly says and fully Agreed what ~~the~~ Applicant, Young's Trial Counsel said before the Jury that Nailed Mrs. Young in the Coffin or to be precise; help her client get a Jury verdict of Guilty.

7 Asst. Solicitor Ms. McClain stated:

"Well, I think Ms. Frayer said IT PERFECTLY: No doubt about it. There is NO DOUBT the Defendant did RESIST ARREST on May 29, 2010, when officers Gill, Brown and Moody attempted to Lawfully arrest him. He admitted it. MR. FRAYER JUST SAID HE'S GUILTY OF IT. No Doubt About it."

Ms. Frayer should have "Objected" to the Solicitor's Closing Argument

But didn't.

Legal Arguments and Case Analysis (To Support Ineffective Assistance of Trial Counsel)

The U.S. Supreme Court stated that the Burden is on the Applicant in a PCR to prove his allegations that his Attorney was Ineffective in his or her representation and that if those errors had not been made the outcome would have been Different. see case of *** Goins v. State (S.C.), 726 S.E.2d 1 (2012)
Please see; Strickland v. Washington, - 466 U.S. 668, Cherry v. State (S.C.), - 300 SC 115, 386 S.E.2d 624, also see, Johnson v. State (S.C.), 480 S.E.2d, - 733 (1997). [2010];
United States v. Tucker, 603 F.3d 260.

* A Defendant was entitled to PCR Claim that Trial Counsel Failed to Object to comment by the Solicitor during Closing Arguments.
Please see; Fossick v. State (S.C.) 453 S.E.2d, 899. See, Elmore v. Ortiz, 661 F.3d 783 (2011).



The Law clearly states Mr. Young
can be Granted a New Trial based
on his attorneys Deficient performance.
see the case of:

Bennett v. State, 680 S.E.2d 273, (S.C. 2009).

Chubb v. State (S.C.), 401 S.E.2d 159

also see, Bailey v. State, 709 S.E.2d 671 (SC 2011)

In order to Show or prove Counsel was
Ineffective, a PCR Applicant, MUST
Show:

- (1) The performance was Deficient.
- (2) That there was a reasonable
probability that had it not been for
the Attorneys Errors, the outcome
of the Trial would have been different.

see, Harris v. State (S.C.), 659 S.E.2d 140, -
(2008) and Lorenzen v. State, (S.C.), 657, -
S.E.2d 771 (2008).

The Applicant must show that his
Attorneys performance fell below
an objective standard of Reasonableness.

see, Foye v. State (S.C.), 518 S.E.2d 265.

With regards to an Unlawful Search and Seizure, the Law is Clearly Established when it states that the Fourth Amendment of the United States Constitution prohibits Police from Unreasonable Searches and Seizures of a person or his property without "Sufficient" Probable Cause.

Please see, Graham v. Connor, 490 U.S., - 386, 396-97.

An Arrest violates the 4th Amendment when a police officer Lacks Sufficient Factual knowledge to Arrest.

Mere "Suspicion" the Court ruled will Not Support an Arrest, or Conviction of a Defendant...

see the case of:

Porterfield v. Loft, 156 F.3d 563.

* * In Brooks v. City of Winston-Salem, - (N.C.) 85 F.3d 178 (Fourth Circuit, - 1998), police officers were sued for Making a False Arrest Not

supported by sufficient probable
Cause involving prior knowledge
based upon Evidence a Defendant has
committed a crime or is in the
actual Act of committing one.

In the Brooks case it was
determined Police violated his
rights and that the alleged
incriminating Evidence they found
had to be thrown out and any
Conviction relating to it overturned.

The Brooks case for the most
part: Outlines the Legal Standard to
of what a police officer can and
simply cannot legally do and that
if they violate the Law and a
Law suit is filed, the police officer
can be punished since they too are
subjected to the Law and can
even be Imprisoned for violating
the very Rights of Citizens they
are sworn to protect and serve.

Respectfully Submitted,
Applicant-Prose / Timothy Young

(11)

Additional Attachment

With the filing of this Application for post-Conviction relief, submitted as a pro se Litigant, it is Mr. Youngs Humble prayer before the Honorable Court that the Attorney assigned to represent him in this action would contact him and Effectively argue his case during PCR Evidentiary Hearing and Legally fight to get him at least acquitted of the Drug Charge and Resisting Arrest Charge since he was never actually Under Arrest when he Fled from Police to get a Charge of Resisting Arrest. He would further ask that his PCR Attorney would AMEND his pro se PCR Application to add other Case Laws to Support his Legal Arguments of Ineffective Assistance of Counsel, False Imprisonment based on a Lack of Sufficient probable cause as to the Drug Charge and Resisting Arrest offense..

Respectfully,

- Best Submitted,
Applicant, pro se Timothy Young -

12

To.

Hon. Julie J. Armstrong
Clerk - Court of Common Pleas
100 Broad Street
Charleston, S.C. 29401

Date. Jan. 15, 2014.

RE: Timothy Young v. State of South Carolina
Indictment Numbers: 2010 GS10-05622 - thru
05624.

Dear Ms. Armstrong:

How are you mam. please if you
 would so kindly, find my Completed
 Application for Post-Conviction
Relief in the above Entitled or
 Referenced matter.

Please provide me with a Filed
 Copy of the Same and the name of
 the private Attorney, Address and
 Telephone Number That will be Duly
 assigned to my case on PCR.

Thank you, mam.

Respectfully Submitted,

✓ Timothy Young

Mr. Timothy Young, #296628

McDougal C. E., B2, 1516 Old Gilliard Rd.
 Ridgerville, S.C. 29472 - Applicant.

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
TIMOTHY YOUNG

AKA:

Race: BLACK Sex: M Age: 46DOB: [REDACTED] SS#: [REDACTED]

Address:

Zip: CHARLESTON, SC 294030000DL#: [REDACTED] SID#: SC00379997*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: PWID/Dist/Mfg Cocaine Base or Meth, 3rd Offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS1005622A/W#: K639772Date of Offense: 5/29/2010S.C. Code § : 44-53-0375 (B) (3)CDR Code #: 3039

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 44-53-0375 (B) (3) of the S.C. Code of Laws, bearing CDR Code # 3039
☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

McClain, Lindsey

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 15 days/months/years ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 10-GS-10-5623; 5624
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>4.40</u>
TOTAL		\$ <u>294.40</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA217 (03/2011)

PTUP days/hours Public Service Employment
 Obtain GED ☐
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning
 Substance Abuse Counseling ☐
 Random Drug/Alcohol testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning
 \$ paid to Public Defender Fund
 Other: ATV if available

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code:

Sentence Date:

2128
9/2/2011

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

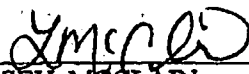
INDICTMENT

At a Court of General Sessions, convened on August 2, 2010 the Grand Jurors of Charleston County present upon their oath:

Possession with Intent to Distribute Cocaine Base

That in Charleston County, South Carolina, on or about May 29, 2010, the Defendant, TIMOTHY YOUNG, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to distribute, dispense or deliver a controlled substance or a controlled substance analogue, to wit: Cocaine Base; in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

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



LINDSEY MCCLAIN
ASSISTANT SOLICITOR

LMC20100602975

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1008893

ARREST WARRANT NUMBER

K639772

DATE OF ARREST

May 29, 2010

ACTION OF GRAND JURY

TRUE BILL

Benjamin Richardson
Foreperson of Grand Jury

Date: AUG 02 2010

VERDICT

Guilty

Benjamin Richardson 9/2/2011

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2010GS1005622

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2010

THE STATE

vs.

TIMOTHY YOUNG

DOB: [REDACTED]

B/M

Indictment for

Possession with Intent to Distribute Cocaine
Base

Charleston Police Department

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

AFFIDAVIT

Personally appear before me, a magistrate of this county one, SGT. ROGER OWEN3, who first being duly sworn deposed and says that, Timothy Young, did within this county and state on the 29th of May 2010 violate the criminal laws of the State of South Carolina in the following particular:

DESCRIPTION OF OFFENSE

Possession With Intent to Distribute Cocaine Base
44-53-375

The affiant states there is probable cause to believe that the defendant named did commit the crime set forth and that such probable cause is based on the following facts:

That on the 29th of May 2010 at approximately 1610 hours, in the area of [REDACTED] Nassau Street, which is located in the City and County of Charleston, the defendant, Timothy Young, did knowingly, willingly and unlawfully commit the above named offense of Possession With Intent to Distribute Cocaine Base (44-53-375) to wit:

That the defendant was under lawful arrest for Trespassing (35399 ET) due to the restrictions that had been placed on him by Judge Steinert banning him from the area border by Nassau Street to Line Street to Aiken Street to Sheppard Street as well as Opposing or Resisting Law Enforcement Officer Serving Process (16-9-320). During a search incident to arrest of the defendant, a clear plastic baggy containing approximately 5.2 grams of a white rock-like substance which field tested presumptive for cocaine base was located in the defendant's front right pocket of his shorts. The defendant was charged with Possession With Intent to Distribute Cocaine Base.

The above is true and believable based on the observations and investigations of PTO M. Moody and PO Gill of the City of Charleston Police Department.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 30 DAY OF MAY, 2010

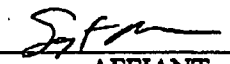

SIGNATURE OF JUDGE

(L.S.)

COMPLAINT # 10-08893

WARRANT #

CPD Form OT3


AFFIANT
180 Lockwood Blvd.
Charleston, SC 29403
843-577-7434

ARREST WARRANT
K-639772 ✓
STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
CHARLESTON
THE STATE
against

TIMOTHY YOUNG ✓
Address: 54 AIKEN STREET ✓
CHARLESTON, SC 29403 ✓
Pho: [REDACTED] SSN: [REDACTED] ✓
Sex: M Race: B Height: 59 Weight: 160 ✓
DL State: SC DL#: [REDACTED]
DOB: [REDACTED] Agency ORI#: [REDACTED]
Prosecuting Agency: CPD
Prosecuting Officer: MOODY ✓
Offense: PWID COCAINE BASE ✓
Offense Code: [REDACTED]
Code/Ordinance Sec: 44-53-375 ✓

This Warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality of . The accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date: _____

RETURN
A copy of this arrest warrant was delivered to
defendant _____
on _____

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
CHARLESTON)

Personally appeared before me the affiant SGT ROGER OWEN who
being duly sworn deposes and says that defendant TIMOTHY YOUNG
did within this county and state on 05-29-10 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of CHARLESTON)
in the following particulars:
DESCRIPTION OF OFFENSE: **PWID COCAINE BASE**
44-53-375

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant
STATE OF SOUTH CAROLINA)
☒ County/ ☐ Municipality of)
CHARLESTON)

Affiant's Address 180 LOCKWOOD DRIVE
CHARLESTON, SC 29403
Affiant's Telephone 843-577-7434

ARREST WARRANT
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on 05-29-10 defendant TIMOTHY YOUNG
did violate the criminal laws of the State of South Carolina (or ordinance of
☒ County/ ☐ Municipality of CHARLESTON) as set forth below:
DESCRIPTION OF OFFENSE: **PWID COCAINE BASE**
44-53-375

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)
on May 30, 2010)

Signature of Issuing Judge (L.S.))
Judge Code: 5749/LLS

Judge's Address 3870 LEEDS AVENUE, SUITE 106
N. CHARLESTON, SC 29405
Judge's Telephone 843-746-9872
Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

BAIL set by

Judge **Priscilla B. Baldwin**

on **MAY 30 2010**

Type and Amount: **40,000**

Name of Surety: **WMD COCAINE BASE**

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

Judge _____

on _____

by _____
(Indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: **TIMOTHY YOUNG**

Sentence: _____

JURORS

CHUCKLIST

474672
2010 JUN 1 PM 4:00
CLERK OF COURT
DISPOSITION before
REPORT GROUP
DISP. CODE

WITNESSES

Name: _____ X

Address: **CHARLESTON**

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____ X

Address: **CHARLESTON**

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: **44-23-312**

Telephone: _____

0105-20-10

2106172

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2014-CP-10-0437
Timothy Young, #296628,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed January 22, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the August 2010 term of the Charleston County Grand Jury for possession with intent to distribute (PWID) cocaine base- third offense (2010-GS-10-5622), possession with intent to distribute cocaine base within proximity of a school/park (2010-GS-10-5623), and resisting arrest (2010-GS-10-5624). The Applicant was represented by Cantrell Frayer, Esquire.

On August 31-September 2, 2011, the Applicant proceeded to trial and was found guilty. The Applicant was sentenced by the Honorable Deadra L. Jefferson to confinement for a period of fifteen years for PWID cocaine base, ten years for PWID cocaine base within the proximity of a school/park, and one year for resisting arrest. The Applicant's convictions are to be served concurrently.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Katherine Hudgins, Esquire, of the Office of Appellate Defense. The Applicant's appeal was dismissed by the Court of Appeals pursuant to Anders on November 27, 2013. The Remittitur was issued on December 13, 2013.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
 - a. Counsel prejudiced his case by informing jury during closing that he was guilty.
 - b. Counsel failed to suppress the alleged drugs found or challenge the chain of custody.
2. Unlawful search and seizure.
3. False arrest and lack of sufficient probable cause.

III.

The Applicant alleges he received ineffective assistance of counsel. 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, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "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." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the 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, the 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.

The Respondent submits the Applicant's remaining alleges appear to raise direct appeal issues which are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant

could have raised these issues at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

V.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

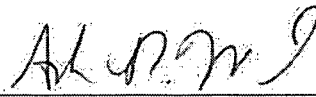
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 20, 2015.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2014-CP-10-0437

Timothy Young, #296628

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

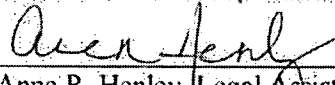
STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Rodney D. Davis
4000 Faber Place Drive, Ste 300
Charleston, SC 29405

DATED this 23rd day of March, 2015


Anne R. Henley, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Timothy Young,	)	CASE NO. 2014-CP-10-0437
	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	
State of South Carolina,	)	PCR HEARING
	)	
DEFENDANT.	)	
	)	

July 21, 2015

Charleston, South Carolina

B E F O R E:

The Honorable Roger E. Henderson

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

Rodney D. Davis, Esquire
For the Applicant

J. Rutledge Johnson, Esquire
For the Defense

Phyllis Norton, CVR *Nationally Certified Verbatim Court Reporter*
636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464
PNorton@sccourts.org

I N D E X

(AW) - DENOTES APPLICANT'S WITNESS

(RW) - RESPONDENT WITNESS

PCR Hearing -- 04

WITNESSES(AW) Timothy Young:

Direct Examination by Mr. Davis -- 09

Cross-Examination by Mr. Johnson -- 17

(RW): Cantrell M. Frayer

Direct Examination by Mr. Thompson -- 20

Cross-Examination by Mr. Davis -- 28

CERTIFICATION OF TRANSCRIPT -- 43

Look for an original signature in blue ink on the certification sheet to verify that the court reporter has certified the transcript you are viewing.

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

A P P L I C A N T ' S E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>MARKED</u>	<u>ADMIT</u>
1	Email - McClain to Cantrell	30	35
2	E-mail - Frayer to McClain 6/9/11 and Reply	32	35
3	6/29 Lettter from McClain	32	35
4	August 2011 Terms of Court	33	--
5	Verdict Form	34	35

Timothy Young vs. State - PCR

1 MS. JOHNSON: This is Timothy Young versus the State of
2 South Carolina. It is Case Number 2014-CP-10-0437.

3 Mr. Young was indicted at the August 2010 term of the
4 Charleston County Grand Jury for possession with intent to
5 distribute cocaine base third offense, possession with
6 intent to distribute cocaine base within proximity of a
7 school or park, and resisting arrest.

8 On August 31st through September the 2nd, 2011, he
9 proceeded to trial and was found guilty. He was sentenced
10 by the Honorable Deadra L. Jefferson and sentenced to
11 confinement for a period of fifteen years for the PWID
12 cocaine base, ten years for the PWID cocaine base within
13 proximity, and one year for resisting arrest..

14 He filed an appeal, and his appeal was dismissed by the
15 Court of Appeals pursuant to Anders versus California. The
16 remittitur was thereafter issued on December 13th, 2013.
17 And he filed a timely PCR on January 22nd, 2014. And the
18 State filed its return March 20th, 2015.

19 He is represented here today by Mr. Rodney Davis.

20 THE COURT: Mr. Johnson, that proximity carries up to
21 how many years?

22 MR. JOHNSON: That is zero to ---

23 THE COURT: Ten?

24 MR. JOHNSON: --- ten I believe.

25 THE COURT: Ten. Okay.

1 MR. DAVIS: Your Honor, I was just looking at that.
2 The State will correct me if I do this wrong. But the
3 proximity zero to ten the offense code on the sentence sheet
4 for the other charge was 3039 which I have as possession
5 with intent to distribute cocaine base third which is 10 to
6 30.

7 THE COURT: Ten to thirty ---

8 MR. DAVIS: Correct.

9 THE COURT: --- is what I had. And the resisting
10 was ---

11 MR. DAVIS: I will double check the code. I think
12 there was -- is that the zero to one -- I will double check
13 that, Your Honor.

14 MR. JOHNSON: I believe it is zero to one, Your Honor.

15 THE COURT: One year. Okay.

16 Okay, Mr. Young, will you stand to be sworn, please,
17 sir.

18 (WHEREUPON, the applicant was duly sworn.)

19 THE COURT: All right. You are Timothy Young?

20 MR. YOUNG: Yes, sir.

21 THE COURT: How old are you, Mr. Young?

22 MR. YOUNG: Forty-nine.

23 THE COURT: Can you hear, Madam Court Reporter?

24 THE COURT REPORTER: Speak up a little bit.

25 THE COURT: Speak up now so we can all hear. You are

1 forty-nine years old?

2 MR. YOUNG: Yes, sir.

3 THE COURT: How far did you go in school?

4 MR. YOUNG: Ninth grade.

5 THE COURT: Ninth grade?

6 MR. YOUNG: Yes, sir.

7 THE COURT: You completed the ninth grade?

8 MR. YOUNG: No, sir.

9 THE COURT: So you completed the eighth grade?

10 MR. YOUNG: Yes, sir.

11 THE COURT: Have you gotten your GED?

12 MR. YOUNG: No, sir.

13 THE COURT: Okay. Any other kind of training?

14 MR. YOUNG: No, sir.

15 THE COURT: Okay. Now, Mr. Young, you have filed this
16 application for post-conviction relief. What are you
17 seeking by filing that?

18 MR. YOUNG: Because of an ineffective.

19 THE COURT: No, but what you are looking for? What are
20 you looking for in the end result; what are you hoping to
21 gain from filing this?

22 MR. YOUNG: Oh, a time reconsideration. Time
23 reconsideration.

24 THE COURT: Okay. Do you understand I can't reduce
25 any of the time that you have received; do you understand

1 that ---

2 MR. YOUNG: Yes, sir.

3 THE COURT: --- as a result of this hearing. The only
4 thing I can do is if you win at this hearing and you prevail
5 is I can send you back to stand trial and give you a new
6 trial on all three charges. Do you understand that?

7 MR. YOUNG: Yes, sir.

8 THE COURT: So at that point in time you would be
9 facing 41 years in prison; do you understand that?

10 MR. YOUNG: Yes, sir.

11 THE COURT: If you went to trial on all those charges,
12 up to 10 years on the proximity charge, 10 to 30 on the
13 possession with intent to distribute, and a year on the
14 resisting arrest; do you understand that?

15 MR. YOUNG: Yes, sir.

16 THE COURT: Okay. And I understand that you received a
17 15-year sentence.

18 MR. YOUNG: Yes, sir.

19 THE COURT: That is what you are serving now?

20 MR. YOUNG: Yes, sir.

21 THE COURT: Okay. Do you understand the risk in going
22 forward with this?

23 MR. YOUNG: Yes, sir.

24 THE COURT: Okay. So you are willing to risk trading
25 off 15 years for 41 years?

1 MR. YOUNG: Yes, sir.

2 THE COURT: Do you understand that clearly now?

3 MR. YOUNG: Yes, sir.

4 THE COURT: Okay. Now I understand this is some
5 benefit, if you were given a new trial and you went back and
6 won your trial you would be a free man; but there is still
7 substantial risks that may outweigh that benefit. Do you
8 understand that?

9 MR. YOUNG: Yes, sir.

10 THE COURT: Knowing that, you still want to go forward?

11 MR. YOUNG: Yes, sir.

12 THE COURT: Anybody making you do this?

13 MR. YOUNG: No, sir.

14 THE COURT: You are doing so freely and voluntarily?

15 MR. YOUNG: Yes, sir.

16 THE COURT: Not under the influence of any alcohol or
17 drugs?

18 MR. YOUNG: No, sir.

19 THE COURT: Had enough time to talk with Mr. Davis
20 about it?

21 MR. YOUNG: Yes, sir.

22 THE COURT: Okay.

23 Mr. Davis, do you have any questions or concerns before
24 we proceed?

25 MR. DAVIS: No, the only thing I would add, Judge, is I

1 do a question and answer with my clients when I first meet
2 with them about their educational levels and all that.

3 I will tell you he has confided in me that he does --
4 and we can put this on the record at the appropriate time.
5 But he does have some issues -- some literacy issues. So I
6 have taken special time to go over these with him.

7 But I think he understands what is going on. It is
8 just he does have some literacy issues.

9 THE COURT: Okay. All right. You may call your first
10 witness.

11 MR. DAVIS: Your Honor, we would call Timothy Young to
12 the stand.

13 THE COURT: Mr. Young, come around please, sir.
14 (WHEREUPON, the applicant was duly sworn.)

15 THE CLERK: Once seated please state your first name,
16 last name, and spell your last name loudly and clearly into
17 the microphone.

18 MR. YOUNG: Timothy Young, Y-O-U-N-G.

19 **DIRECT EXAMINATION BY MR. DAVIS OF TIMOTHY YOUNG:**

20 Q. Mr. Young, you were convicted in Charleston County on
21 the charges the judge just talked to you about; is that
22 right?

23 A. Yes, sir.

24 Q. Okay. And your attorney up through the guil- -- the
25 trial in your case -- I apologize, the trial in your case

1 was Ms. Cantrell Frayer?

2 A. Yes, sir.

3 Q. She is in the courtroom with us today?

4 A. Yes, sir.

5 Q. Okay. And you filed this application indicating that
6 there were -- that she was ineffective during that trial; is
7 that correct?

8 A. Yes, sir.

9 Q. Okay. So there's complaints you have about her
10 performance actually during the trial; is that right?

11 A. I think after the trial -- yeah, right during the
12 trial.

13 Q. Okay.

14 A. Yeah.

15 Q. There's also some issues about some negotiations on a
16 plea before the trial; is that right?

17 A. Yes, sir.

18 Q. Okay. Before we get into those two issues -- I stated
19 it a moment ago; but can you tell the judge just briefly
20 about your ability to read, write or any difficulties you
21 have with that.

22 A. I have a problem reading and writing. You know what
23 I'm saying, I don't read that well.

24 Q. Do you have any idea what grade level you are at on the
25 reading?

1 A. I am right at a fifth grade I think.

2 THE COURT: Fifth grade, is that what you said?

3 A. Fifth.

4 Q. Now you went -- how far did you go in school up at CA
5 Brown?

6 A. Ninth grade.

7 Q. Okay. And you did not finish?

8 A. No, sir.

9 Q. And you do not have your GED?

10 A. No, sir.

11 Q. Let's deal with at trial briefly the issues you had
12 with Ms. Frayer's performance at trial, okay.

13 Was there -- prior to going to trial -- forgive me.
14 Prior to going to trial was there discussions about the
15 search and seizure of the drugs?

16 A. Yeah.

17 Q. And do you recall what those discussions were?

18 A. That they dropped them from -- from the policeman's
19 statement he said he dropped them from that five point
20 something gram.

21 Q. Okay. And there is another place in the discovery that
22 you received that had a different amount; is that right?

23 A. Yes, sir.

24 Q. What was that amount?

25 A. They say that one right at three point I think thirteen

1 grams.

2 Q. And did you ---

3 A. Three point thirteen.

4 Q. I'm sorry?

5 A. I think he said 3.13.

6 Q. Okay. Did you and Ms. Frayer discuss dealing with the
7 seizure of those drugs or the weight of those drugs?

8 A. No, sir.

9 Q. You did have discussions about an underlying trespass
10 charge; is that right, with Ms. Frayer?

11 A. Yes, sir.

12 Q. And trespass is important because that -- was that the
13 basis for the stop?

14 A. That's what he said, yes, sir.

15 Q. Do you know what if any investigation Ms. Frayer did
16 about that charge, the trespassing charge?

17 A. Yes, sir, she had -- she had tell me at one point in
18 time that they didn't have -- they didn't have no claim on
19 that, that she couldn't find nothing from the city police
20 department that is saying that they put out a trespassing
21 notice on me.

22 So I mean as far as she was telling me that they really
23 didn't have no trespassing warrant on me or nothing so all
24 that been -- that it was relevant to him locking me up.

25 Q. You also -- was there a complaint about the handling or

1 the custody of the drugs?

2 A. Yes, sir.

3 Q. What is that?

4 A. That they had an analysis from the Police Department
5 saying that the drugs was weighing at two different -- two
6 different levels I think she said.

7 Q. At any time did you and Ms. Frayer discuss having an
8 independent analysis of those drugs?

9 A. No, she -- she ain't -- the only thing she ever -- she
10 ain't never get no analysis on her behalf..

11 Q. And finally was -- is there a complaint about Ms.
12 Frayer dealing with the closing argument?

13 A. Yes, sir.

14 Q. And what is that complaint?

15 A. She instructed the jury that I was guilty of all of
16 these charges.

17 Q. Had you discussed strategy with Ms. Frayer about what
18 the argument at trial would be?

19 A. No, sir.

20 Q. You didn't discuss with her a lesser charges rather
21 than possession with intent to distribute; did you talk
22 about that?

23 A. No, sir.

24 Q. Did you know what she was going to argue in closing?

25 A. No, sir.

1 Q. I want to turn your attention to prior to the trial,
2 okay?

3 A. Yes, sir.

4 Q. Were there discussions with Ms. Frayer about entering a
5 guilty plea in this case?

6 A. Yes, sir.

7 Q. What do you recall the initial offer from the State
8 being?

9 A. She tell me that they had had an offer for three years.

10 Q. To plead guilty to what; do you recall what that was?

11 A. I think -- I think it was just possession.

12 Q. Okay. Do you know when that initial offer was made?

13 A. I think she -- I think she bring me that around the
14 first three or four months that I had been locked up in the
15 county jail.

16 Q. Were you out on bond or did you remain in jail up to
17 your trial?

18 A. I been up -- I had been in the county jail until trial.

19 Q. Did you -- did you reject that plea or were there
20 continued discussions about the plea?

21 A. Continued discussions about the plea.

22 Q. Was there then specific discussions at a later date
23 about another plea?

24 A. The same - the same three, but they -- they -- in the
25 time being in the time in jail like been the same plea deal.

1 Q. Say that again, sir. I'm sorry.

2 A. Later on since I had been in the county jail she bring
3 the same plea deal.

4 Q. And on that plea offer did you reject it or were there
5 continued discussions about it?

6 A. No, I tell her we might as well go ahead and take that
7 three year's deal because -- I had been -- I had been going
8 back and forth in the city jail based on the probable cause,
9 and I thought that probable cause matter would have been
10 first and then I could have come back to the remaining three
11 years.

12 Q. And when you are talking about going to the city court
13 for probably cause you are talking about that underlying
14 trespass ---

15 A. Right, ---

16 Q. --- accusation; is that right?

17 A. Yes, sir.

18 Q. You were charged with trespass from this incident ---

19 A. From this incident, yeah.

20 Q. --- in city court; is that right?

21 A. Yes, sir.

22 Q. After -- and I believe your words that well we might as
23 well go ahead and take it. After you told Mr. Frayer that
24 as far as that second offer was there a court date scheduled
25 for that to happen?

1 A. Not on -- not on the misdemeanor charge. But when she
2 bring that three years back I said well I might as well take
3 it.

4 Q. And as to the three-year charge on the general
5 sessions ---

6 A. No.

7 Q. Or the three-year offer on the general sessions charges
8 was a court date scheduled?

9 A. Yes, she had -- yes, she tell me around I think
10 around in -- around somewhere around in August we were
11 supposed to go into court but the court ended up being
12 adjourned or something so we ain't never make that court
13 date.

14 Q. Then what happened as far as your case and that
15 offer?

16 A. Then when I -- once you come -- and see, when I come
17 down again we come down to the courthouse and then see tell
18 me that they are going off with the offer, they have got
19 another plea. And the plea was I think at a five-year
20 sentence then.

21 Q. And did you reject that offer or did discussions
22 continue?

23 A. No, I rejected that five years -- that five year --
24 that five year offer I rejected that.

25 Q. And then what happened to your case and your charges?

1 A. Then we were going to trial.

2 Q. Were your -- were you in August -- and this would have
3 been August of 2011; is that right?

4 A. Yes, sir.

5 Q. Were you ready, willing, and able to accept the offer
6 of the three-year?

7 A. Yes, sir.

8 Q. Did you understand that a court date was available?

9 A. Yeah, I mean we had one. But like I say, ended up they
10 either dismissed court that week or something but why
11 wouldn't get -- we didn't get in there.

12 Q. Had you been brought to court that week would you have
13 entered that -- the plea to that offer?

14 A. Yes, sir.

15 Q. Thank you, Mr. Young. That's all the questions I have.
16 The attorney general may also have some questions for you.

17 **CROSS-EXAMINATION BY MR. JOHNSON OF TIMOTHY YOUNG:**

18 Q. Mr. Young, you stated that Ms. Frayer never got an
19 independent analysis of the drugs; correct?

20 A. Yes, sir.

21 Q. Okay. But you admitted at trial that you had crack on
22 you, right?

23 A. Yes, sir.

24 Q. Okay. And the big dispute was whether or not it was a
25 certain weight, correct?

1 A. Yes, sir.

2 Q. Okay. And the expert testified that the first one was
3 a 3.13, but the officer testified as to 5 grams; correct?

4 A. Yes, sir.

5 Q. Okay. And that was a field test, right?

6 A. Yes, sir.

7 Q. And then the expert comes by and says there is a 3.13
8 on the first testing, right?

9 A. It was -- yes, sir.

10 Q. And then there is a solicitor that changes over and
11 they get a retest and it comes back at 3.09 grams, correct?

12 A. Yes, sir.

13 Q. Okay. But that all was presented at the trial?

14 A. Yes, sir.

15 Q. Okay. And you also said that Ms. Frayer did not
16 discuss her closing argument with you, correct?

17 A. Yes, sir.

18 Q. And that she basically admitted that you were guilty of
19 all of these charges, right?

20 A. Yes, sir.

21 Q. But didn't you in your testimony admit that you were
22 guilty of possession of crack cocaine?

23 A. Not possession.

24 Q. You said that you had possession of crack cocaine,
25 correct?

1 A. Yes, sir.

2 Q. And that is what you said you were guilty of, ---

3 A. Yes, sir.

4 Q. --- right? Okay. And did she not argue that you were
5 not guilty of possession with intent to distribute crack
6 cocaine?

7 A. I can't -- like I say I couldn't read, read, her words
8 you know, word for word. But somewhere down the line she
9 said I was guilty of dealing with the crack.

10 Q. Would you agree with me if I said in this transcript
11 that Ms. Frayer argued on your behalf that you were guilty
12 of possession but not guilty of intent to distribute
13 possession?

14 MR. JOHNSON: Your Honor, I am going to object
15 especially given my client's literacy issues. I think the
16 transcript will speak for itself.

17 THE COURT: Okay.

18 MR. JOHNSON: Then, Your Honor, I will point you to
19 Page 254 where Ms. Frayer begins her closing argument. And
20 she argues to the jury that while he may be guilty of
21 possession, based on some testimony, that he is not guilty
22 of possession with intent to distribute.

23 THE COURT: All right, sir. I will take notice of
24 that.

25 MR. JOHNSON: All right. Thank you, Your Honor.

1 No further questions, Mr. Young. Thank you.

2 THE COURT: Mr. Davis, anything else?

3 MR. DAVIS: No, Your Honor, no other questions for Mr.
4 Young.

5 THE COURT: All right. You may step down, sir.

6 MR. YOUNG: Thank you, sir.

7 MR. DAVIS: Thank you, Your Honor. No other
8 presentation by the plaintiff.

9 THE COURT: Okay.

10 MR. JOHNSON: The State calls Ms. Frayer.

11 (WHEREUPON, the witness was duly sworn.)

12 THE CLERK: Please state your first and last name and
13 spell your last name loudly and clearly into the microphone.

14 MR. YOUNG: Cantrell Marie Frayer, F and in Frank,
15 R-A-Y-E-R.

16 **DIRECT EXAMINATION BY MR. JOHNSON OF CANTRELL FRAYER:**

17 Q. Good afternoon, Ms. Frayer. Let's jump right into his
18 allegations. The first allegation he has is that you did
19 not discuss the weight of the drugs with him prior to trial.

20 Do you remember having any discussions with him about
21 the discrepancy in the weight?

22 A. We did discuss that, because we went over the
23 discovery. I read the discovery to Mr. Young. I sent a
24 copy of that over to the jail. And my investigator Ms.
25 Burdell and I went to the jail.

1 When he pointed that out to me we showed -- I showed
2 him the part in the written discovery and as far as the
3 testing from the lab and explained to him that the field
4 weight and the actually lab weight all is different.

5 And we went over that and we discussed it. We
6 discussed that with him as far as how the weight can be
7 different.

8 Q. And did you discuss your -- what if any strategy did
9 you have in this case?

10 A. Well, initially we -- when I met with Mr. Young he told
11 me that he wasn't guilty, that Mr. -- one of the officers,
12 Officer Gill, was constantly picking on him on the east
13 side, that he felt that he was being targeted.

14 And so I told him I said well we are going to get to
15 the bottom of it, we are not going to just let them pick on
16 you like that.

17 You know, he said he was sick and tired of Officer
18 Gill. So we focused on Officer Gill and Officer Gill's
19 behavior in a case initially.

20 Talking to Mr. Young he said that he was willing to
21 sit. He wanted to get to the bottom of it. We would go for
22 a bond reduction at a later time in the case.

23 My investigator and I we met with Mr. Young several
24 times at the detention center trying to make sure that he
25 was understanding everything that was going on with his

1 case.

2 We -- they said that the initial thing was a trespass.
3 We got the transcript from the magistrate court to see.
4 Because oftentimes the judges won't put the trespass orders
5 in writing, they will just say it from the bench. And so
6 that is what we were told initially.

7 We had to pay \$45 to get a -- \$45 for -- and that
8 included the cost of the transcript and for them to do the
9 research to find out whether or not that had been ordered
10 for him.

11 Mr. Young and I discussed that. Mr. Young admitted to
12 us that he did feel like maybe he was on trespass notice for
13 Line Street area. So we said okay fine we will still deal
14 with it at that time.

15 But we just were going to try to make sure that we
16 depict Officer Gill as the bad guy. It just seemed liked he
17 was picking on Mr. Young as a target.

18 Q. And at the beginning of the -- prior to trial was there
19 a suppression hearing based on this information?

20 A. Yes, we -- we did attempt a suppression, and we lost.

21 Q. And that was based on whether or not there was probable
22 cause to make the arrest based on the bond restriction?

23 A. Yes.

24 Q. Okay. And ultimately you said it was denied?

25 A. Yes.

1 Q. But reserved for appeal, correct?

2 A. Correct.

3 Q. Did you discuss any lesser charges with Mr. Young?

4 A. Yes, we did. The original offer from the solicitor was
5 a cap of three years. Not three years but a cap of three
6 years. And so we had talked about that.

7 Q. Would that be just for simple possession or was
8 that ---

9 A. Correct.

10 Q. Okay.

11 A. Let me check that e-mail. Right, because initially I
12 was asking the solicitor for time served because when I
13 talked to Mr. Young he said that he would plea for time
14 served.

15 And so that was the communication that I sent her: Hey
16 he had been in jail for over a year, he is willing to plea
17 to time served.

18 Of course Ms. McClain was the solicitor. And she would
19 not go for that.

20 Q. But you relayed the three-year offer, the cap of three,
21 to Mr. Young?

22 A. Yes, I did.

23 Q. Did he ever reject that offer?

24 A. At first he -- he wouldn't think about it because he
25 wanted to get the magistrate charge taken care of because he

1 felt like if that charge went away then he would -- then the
2 general sessions charge would go away also.

3 Q. The trespass?

4 A. Correct.

5 Q. Okay. So he did in fact reject that three-year offer?

6 A. Yes, initially.

7 Q. And did you go back to Ms. McClain -- Ms. Burton now,
8 right?

9 A. It is Ms. Burton now, right.

10 Q. And ask for another plea offer?

11 A. I just kept telling her -- I kept saying you have got
12 to give me something better, you know, what can you do
13 better.

14 My whole thing that he had been sitting there for a
15 year and he had not been complaining and -- like most of the
16 people in the jail do, like get me out of here, get me -- he
17 had just been sort of -- because he really felt that that
18 magistrate -- magistrate's charge would go away and then he
19 could get the general sessions dismissed. So he had been
20 being pretty cooperative.

21 And so felt that if that would go away that he could --
22 we could make some headway on the general sessions charge.

23 Q. Now let me take you back on that original cap. When
24 was that plea offer -- plea bargaining offer? Excuse me.

25 A. Originally -- it may have been -- I think we initially

1 started talking about an offer maybe March or April of 2011.
2 So March or April maybe..

3 I am looking trying to find the exact -- that first
4 e-mail when she initially sent the actual cap of three.
5 Court's indulgence.

6 But I think I had the e-mail when I was sitting at the
7 table, but I can't find it right now.

8 Q. But you think maybe March or April?

9 A. Yes. I'm sorry, I'm not ---.

10 Q. No, that is just fine. The point of the question I am
11 trying to get to is he alleges that there was a term in
12 August before Judge Hughston. And can you explain the
13 circumstances surrounding that term.

14 A. Okay. So there was a term in August when Judge
15 Hughston was going to be holding court. And that was the
16 term where I had asked the solicitor to put him on the
17 docket one more time with the offer. And she agreed.

18 She put him on the docket. But Judge Hughston got sick
19 and so the term got -- the court started that week and then
20 Judge Hughston got sick so the term -- the rest of the week
21 got canceled. And so he wasn't -- they didn't bring him
22 back for court.

23 And I sent her an e-mail like the 24th. And I said,
24 you know, that it seems like he is getting penalized because
25 he is not going to get back on the plea docket before the

1 term of trial.

2 It was either like he would plea that week or he would
3 be on the next trial document. And so Judge Hughston got
4 sick that week of the court and he ended up -- the next term
5 of court would be a plea -- would be the trial court.

6 And so that's what happened. And he ended up being on
7 the trial docket.

8 Q. And so she I guess not reneged, but she took back the
9 three-year offer and then offered him five years?

10 A. Correct. If he didn't plea that term ---

11 Q. Okay.

12 A. --- then it would be five. And so I said I feel like
13 he is getting penalized for Judge Hughston getting sick,
14 he -- he didn't get a chance to go to court.

15 Not of his own rejecting the offer that time, you know.
16 He -- he didn't get brought into the courtroom to reject --
17 say that I didn't want to take to the three -- cap of three.

18 Judge Hughston got sick, court got canceled, and then
19 he was -- the next time he came to court it was time for a
20 trial.

21 Q. And so he never was able to accept that three-year
22 offer?

23 A. Correct, ---

24 Q. Okay.

25 A. --- he was never -- right, correct.

1 Q. Would you agree with me, Ms. Frayer, that a solicitor
2 may retract an offer whenever they want before the defendant
3 accepts the offer?

4 A. I would agree that they can do that. And I don't
5 think that that is a good practice, but they can do that.

6 Q. Correct. But then I guess Ms. McClain at that
7 time - Ms. Burton now - offered him five years?

8 A. She did -- when she came back she said -- she said well
9 that offer is gone because he didn't get to go to court and
10 it is now a cap of five -- is five years.

11 And I -- so I said well that is certainly not fair.
12 And I told Mr. -- I went to the jail -- he did not get
13 surprised that Monday when it was court time. He knew in
14 advance that okay now we are going to have to go to trial,
15 you are not going to get a chance to plea unless you take
16 the five.

17 So it is not like oh I think I am coming down for the
18 three when it is going to be five. No, that is not what
19 happened.

20 He knew prior to coming into court that it was either
21 going to plea to the five or go to trial.

22 Q. Okay.

23 A. And so when he said no, I can't do -- I am not going to
24 take that five, you know, it was supposed to be the cap of
25 three, we are just going to go to -- excuse me, just going

1 to go to trial.

2 Because that is the only way I would have been ready
3 for trial is when he said they he was -- hey, I am not
4 taking the five, let's get ready for trial. And so we were
5 ready for trial.

6 Q. Is that the five-year offer that is referenced first
7 thing in the transcript which against your advice he
8 rejects?

9 A. Correct.

10 Q. Okay. I think that is all the questions I have for
11 you, Ms. Frayer. Thank you.

12 THE COURT: Mr. Davis.

13 MR. DAVIS: Thank you, very much, Your Honor.

14 **CROSS-EXAMINATION BY MR. DAVIS OF CANTRELL FRAYER:**

15 Q. And the reference of that five-year offer that is on
16 the first day of the trial, correct?

17 A. Correct.

18 Q. And that would have been August 31st, 2011; do you
19 recall?

20 A. Correct. That is when it started. I left my notebook
21 over there.

22 Q. When you were responding to issues for this trial did
23 you see a problem with the probable cause for this stop?

24 A. That was why we did the suppression.

25 THE COURT: Did the what?

1 MR. DAVIS: The suppression hearing.

2 Q. And their -- the law enforcement's argument for the
3 basis of the stop type was that he was trespassing; is that
4 correct?

5 A. Correct.

6 Q. And they also charged him with resisting arrest; is
7 that correct?

8 A. Right, correct.

9 Q. Resisting arrest for what?

10 A. Because he ran and fought the officer. Is that what
11 you are talking about?

12 Q. Well, the running obviously would not be an arrestable
13 offense. So what was -- what other arrest was he resisting?

14 A. When they were arresting him for the drugs, is that
15 what you are talking ---

16 Q. They hadn't found them yet, had they -- they hadn't
17 found the drugs yet, correct?

18 A. Well, the trespass I guess.

19 Q. And isn't it true when you confronted the officer about
20 that issue the officer indicated that they would just give
21 another reason for why they were initially stopping him?

22 And I will be honest with you, I don't have a -- do you
23 recall that; do you recall the officer giving basically two
24 reasons for the stop? I will ask it that way.

25 A. Do you have a page that ---

1 Q. I apologize. I don't. I don't know that it was -- do
2 you recall having discussions of that -- but I don't know
3 that it was during the trial or in the transcript.

4 Do you recall having discussions with the officer where
5 the officer gave two reasons for the stop?

6 A. I don't. Not off of the top of my head, Mr. Davis; ---

7 Q. Okay.

8 A. --- I'm sorry.

9 Q. That's all right.

10 MR. DAVIS: May I approach the witness, Your Honor?

11 THE COURT: Yes, sir.

12 (WHEREUPON, Applicant's Exhibit 1, 8/12/10 email to
13 Cantrell, was marked for identification.)

14 Q. I am going to show you what has been marked as
15 Exhibit 1. I guess it is Applicant's 1 for identification
16 purposes. Do you recognize that?

17 A. Yes.

18 Q. Okay. Is that laying out the offer for a cap of three
19 years from the State on August 12th, 2010?

20 A. Yes.

21 Q. And on that what was -- what charges would he have had
22 to have pled to on that offer?

23 A. Threatening a public official? Possession of crack
24 second and resisting arrest.

25 Q. Okay. And then do you recall having further

1 discussions on or about June 9th, 2011, concerning a cap of
2 three years?

3 A. Uh-huh.

4 Q. You do?

5 THE COURT: Is that yes or no?

6 A. No -- I'm sorry. I believe that was the e-mail I
7 referenced ---

8 Q. Okay.

9 A. --- about June 11th.

10 Q. Okay. And ---

11 A. Because I have it circled on here possession of crack
12 second was zero to five.

13 Q. Okay. Said -- on or about June 9th you are having a
14 discussion with Ms. McClain; you are hoping for a sentence
15 with equal time served; is that correct?

16 A. Correct.

17 Q. And she is talking about -- but your understanding
18 is the State was only willing to offer three years for
19 possession third; is that correct? Do you recall that?

20 A. The e-mail from June 11th? You said the e-mail was
21 from June ---

22 Q. Said on or about June 9th. So that is

23 A. And they are willing to say -- no, you said they are
24 offering what?

25 Q. Cap of three years on a possession third.

1 MR. DAVIS: May I approach again, Your Honor, with
2 several documents?

3 THE COURT: Yes, sir.

4 (WHEREUPON, documents provided to the witness.)

5 A. I have it. Page 2 of that e-mail. Uh-huh, I have it.

6 (WHEREUPON, Applicant's 2, e-mail dated 6/9/11 from Frayer
7 to McClain and Reply, was marked for identification.)

8 (WHEREUPON, Applicant's 3, 6/29 letter from McClain, marked
9 for identification.)

10 BY MR. DAVIS:

11 Q. And I'm sorry, Ms. Frayer; I was having something
12 marked. Do you ---

13 A. Yes, I have it.

14 Q. Okay. Following that ---

15 MR. DAVIS: If I may approach, Your Honor.

16 THE COURT: Yes, sir.

17 Q. I am going to show you what has been marked as
18 Applicant's Exhibit 3. Can you recognize what that is?

19 A. The guilty plea docket for August the 1st.

20 Q. It is a letter from the Solicitor's Office?

21 A. Yes.

22 Q. And what is the date of the letter?

23 A. June the 29th.

24 Q. And indicating it is going to be placed on the plea
25 docket for August the 1st of 2011; is that correct?

1 A. Correct.

2 Q. Okay. Is the August 1st week the week you testified
3 about earlier about Judge Hughston beginning the week but
4 then becoming ill?

5 And while you are looking I will ask you this: Are you
6 familiar with using the Judicial, the South Carolina
7 Judicial Department's web site to check terms of court?

8 A. I am familiar with using that at this time, but I am
9 not sure if that was available in 2011. I am not sure.

10 Q. Would -- if seeing that, would that refresh your memory
11 as to what week Judge Hughston was on the bench?

12 A. Sure.

13 (WHEREUPON, Applicant's Exhibit Number 4, August 2011 terms
14 of court, was marked for identification.)

15 MR. DAVIS: May I approach the witness, Your Honor.

16 THE COURT: Yes, sir.

17 Q. I am going to show you what has been marked as
18 Applicant's Number 4. And let me know if that document
19 refreshes your memory as to when Judge Hughston was on the
20 bench.

21 (WHEREUPON, pause for witness to review.)

22 Q. I apologize. Ms. Frayer, I apologize. Does that
23 refresh your memory as to when Judge Hughston was on the
24 bench?

25 A. No. I see that this says that he was on there August

1 the 1st, and so I could think that that was the same term.

2 But then I see an e-mail from -- we are still discussing the
3 case August the 3rd. So I'm not sure what happened -- what
4 would have

5 Q. That is the middle of that week, correct? The first
6 was on Monday.

7 A. I'm not -- yeah, that would have been a Monday.

8 Q. Okay. And then ---

9 A. I'm sorry, and I see where I am asking her to put him
10 on the plea docket the 22nd. And that would have been with
11 Judge Nicholson. And Judge Young was on there for general
12 sessions. So I'm not sure.

13 Q. Because there was a term of court the week prior to his
14 trial week in August, and that was the week of the 22nd you
15 just mentioned; right?

16 A. Yes..

17 MR. DAVIS: Finally, Your Honor, may I approach the
18 witness on one other item.

19 THE COURT: Yes, sir.

20 (WHEREUPON, Applicant's Number 5, verdict form, was marked
21 for identification.)

22 Q. I am going to show you what is Applicant's Number 5 for
23 identification purposes. Do you recognize that document?

24 A. It looks like a verdict form.

25 Q. And it deals with what charge?

1 A. The charge of possession with intent to distribute
2 cocaine.

3 Q. And would that apply to this client's trial?

4 A. Correct.

5 Q. Okay.

6 MR. DAVIS: Your Honor, I would ask that Exhibits 1, 3
7 and 5 be admitted it.

8 MR. JOHNSON: No, objection, Your Honor.

9 THE COURT: Applicant's 1, 3, and 5 admitted without
10 objection.

11 (WHEREUPON, Applicant's 1 admitted into evidence.)

12 (WHEREUPON, Applicant's 3 admitted into evidence.)

13 (WHEREUPON, Applicant's 5 admitted into evidence.)

14 MR. JOHNSON: And, Your Honor, that is all the
15 questions I have for Ms. Frayer. Thank you.

16 THE COURT: Mr. Johnson, anything else?

17 MR. JOHNSON: No redirect, Your Honor.

18 THE COURT: Okay. You can step down. Thank you,
19 ma'am.

20 MR. JOHNSON: And the State has no more witnesses.

21 MR. DAVIS: One moment, Your Honor.

22 THE COURT: Yes, sir.

23 MR. DAVIS: Your Honor, we are prepared for our
24 arguments if Your Honor is.

25 THE COURT: All right, sir. Go ahead

1 MR. DAVIS: Judge, if I may approach. I am going to
2 hand you the admitted documents. Let me start with the top
3 one which is Number 5 first following the relevance of it.

4 That is the verdict form to the most serious charge
5 which was the possession with intent to distribute. You can
6 see on that document that the foreman had originally marked
7 guilty of simple possession, scratched it out, and then
8 guilty of possession with intent to distribute. That was
9 the crux of this case.

10 Mr. Young even during his testimony, I may have
11 possessed but I wasn't in possession with intent to
12 distribute and therefore it wasn't in the proximity. That
13 was the crux of this case.

14 We would argue that that notation on that verdict form
15 goes directly to one of our arguments. And it is two lines
16 in the closings. Ms. Frayer said: There is no reasonable
17 doubt that Mr. Young ran from Officer Gill and so he is
18 guilty of resisting arrest. There is no reasonable doubt
19 that Mr. -- that Mr. Gill - and she meant Mr. Young - had a
20 quantity of cocaine base in his pocket. You see, Mr. Young
21 doesn't have to prove anything. He asks today that you
22 return a verdict that holds him accountable for what he did
23 on May 29th 2010.

24 I know Mr. Frayer's intentions. I worked with Ms.
25 Frayer both when she was a solicitor and in the Public

1 Defender's Office. I know her intentions.

2 But what she didn't say is find him guilty of a lesser
3 included. Walked right up to the preface but did not go
4 across it. She just said find him guilty because he had
5 cocaine, we admit he had it; we admit it.

6 The solicitor in her closing used those words and
7 reiterated there is no doubt; there is no doubt; there is no
8 doubt. She took the words right from Mr. Young's mouth and
9 used them against him.

10 We would argue that the transcript speaks for itself.
11 And on top of that the verdict form has credence too that
12 had that been presented more clearly, not just generally
13 referenced but presented more clearly, find him guilty of
14 the lesser included of simple possession which prevents you
15 from finding him guilty of a proximity, had that been
16 definitely stated that the outcome would have been
17 different.

18 So on that we would ask you to grant relief which would
19 be reversing the conviction for the PWID and the proximity
20 and allowing him to fight that charge at a later -- those
21 charges at a later date.

22 Then, Your Honor, we deal with -- if you are not
23 inclined to do that, we deal with the issue that there was
24 an offer made.

25 There was -- there was a plea scheduled. There was an

1 offer made, and there was a plea scheduled for August the
2 1st -- the week of August the 1st, 2011.

3 And you can review that letter, that letter the week of
4 August the 1st. So whether it was a Monday or Wednesday or
5 Friday it was some time that week. We don't have that
6 actual docket but we had that it was that week.

7 Clearly on Wednesday there's discussion that it hadn't
8 happened and it's not going to happen. And that is of
9 concern to Ms. Frayer.

10 However, as she testified, there is an intervening week
11 of court which was August 22nd, 2011, she testified. Judge
12 Nicholson, Judge Young conducting court that week.

13 That is the week before he went to trial - and he would
14 admit now, wrongfully refused the offer that Judge Jefferson
15 talked to him about. Let me make sure I get that right.
16 Yes, Judge Jefferson talked to him about.

17 We would argue that was scheduled; it did not go
18 forward, through no fault of solicitor, defense attorney,
19 Mr. Young, but to miss the opportunity to seize upon a cap
20 of three when there was a court date available prior to
21 trial having to accept or reject the now higher offer of
22 five is -- the blame is at his attorney's feet on that.

23 There was a week of court available. It was not back
24 on the docket. Everyone knew that if it was not accepted
25 the offer would go away.

1 Every -- didn't know what would -- the offer would
2 bounce up to or whether just simply would be placed on the
3 trial docket. But clearly if you don't accept it timely it
4 is going to go away.

5 There was a time to take it. There was a time to get
6 it on the docket. The only testimony we heard is that there
7 were continued discussions about why it couldn't be better
8 but no discussions about scheduling the week of the 22nd
9 before Judge Nicholson or Judge Young.

10 Had that been done he could have had the benefit of
11 that offer.

12 Earlier today I mentioned the Rowland case. I will
13 compliment that with Davie, D-A-V-I-E, versus State which is
14 675 S.E. 2nd - I apologize I don't have the South Carolina
15 one - 416. Facts not exactly on point but close enough I
16 will argue the theory of that case.

17 So we would ask you to either give relief putting him
18 back in place to where that offer was available but not
19 accepted through no fault of his own; or find that the jury
20 had the conduct at trial; and most importantly, had closing
21 been handled differently the jury would have returned it a
22 lesser verdict as we would argue is indicated by the verdict
23 form; and allow him to go back and fight these charges.

24 Thank you, Your Honor.

25 THE COURT: All right. Mr. Johnson.

1 MR. JOHNSON: Just briefly, Your Honor. The regarding
2 the first one, would have taken the offer. First, I
3 actually disputed what counsel has argued because Ms. Frayer
4 actually testified that Ms. Burton offered the three-year
5 cap, that she relayed that information to Mr. Young; he
6 rejected that offer, and then she tried to go in front of
7 Judge Hughston. That didn't occur. And then by that time
8 according to Ms. Frayer Ms. Burton said no, no more three
9 years, I will offer five. Which you will see in the record
10 that Mr. Young rejects before trial.

11 So Ms. Frayer's testimony and the record directly
12 refute that claim that he was never able to get the
13 three-year offer. As Ms. Frayer testified, he actually
14 rejected that offer in the affirmative, Your Honor. So we
15 would ask you to dismiss that allegation.

16 As far as the possession versus the possession with
17 intent to distribute, on the verdict form the jury had the
18 facts in front of them.

19 Mr. Young's testimony was that he did possess crack
20 cocaine and he did resist arrest. Now he disputes the
21 weight, but that was an issue for the jury to decide.

22 There was a 3.13 first test weight versus 3.09. That
23 is -- the jury had the purview and the right to decide that
24 he was in possession with intent to distribute based on the
25 inferential weight which is above a gram in this case.

1 They decided that he was guilty of possession with
2 intent to distribute. I submit that that verdict form is a
3 Scribner's error. The jury foreman clearly -- or foreperson
4 clearly marked it out about possession, signed her initials
5 and then checked possess --- guilty and possession with
6 intent to distribute. So that is just a Scribner's error.
7 It is not a big deal.

8 Furthermore, there are a number of cases; Ford versus
9 State, Humbert (ph) versus State, and Gena (ph) verses
10 State, that state that when there is overwhelming evidence
11 of somebody's guilty any alleged deficiencies from counsel
12 that they can prove no prejudice by those deficiencies
13 because of the overwhelming evidence of guilt.

14 When you read the transcript you will see that he
15 admits to possessing, you know, the crack cocaine, the
16 resisting arrest. He just disputes the amount.

17 Counsel took what he testified to and relayed that into
18 her closing argument. Whether she said, you know, may be
19 guilty of possession but not a possession with intent to
20 distribute is semantic, Your Honor. That is just -- that is
21 very petty.

22 And I know that he is trying to hand his hat on that,
23 but we would ask that you dismiss and dismiss this
24 application because he can prove no prejudice in this case.

25 THE COURT: Okay. All right, counsel; as I have done

1 earlier I am going to take this matter under advisement and
2 I will give you a decision sometime this week.

3 That was the short one.

4 MR. DAVIS: Thank you, Your Honor.

5 MR. YOUNG: Thank you, sir.

6 (Whereupon the hearing concluded.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth 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 captioned case, relative to appeal, in the Court for Charleston County, South Carolina, on July 21, 2015.

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


PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: December 31, 2015

Certified Transcript Provided For: SCCD
Certification Reference # 123115 0215

Cantrell M. Frayer

From: Lindsey McClain
Sent: Thursday, August 12, 2010 12:02 PM
To: Cantrell M. Frayer
Subject: Timothy Young

Good morning!

You should have received discovery on June 29, 2010.

Here is my offer:

DOA: 05/29/10

Threatening Public Official ----- AS IS

PWID: Crack 3rd ----- Poss Crack 2nd

Prox Crack ----- NP

RA ----- AS IS

*Recommend a cap of 3 years

0-5 years

Please let me know if he is inclined to accept. I intend to place him on a plea docket for Sept. 6.

Thank you!

Lindsey N. McClain

Assistant Solicitor
Ninth Circuit Solicitor's Office
O.T. Wallace Building
101 Meeting Street
Charleston, SC 29401
Office: 843.958.2143
Fax: 843.958.1905



8/17/2010

My offer of Poss 3rd with a recommended cap of 3 years is extremely generous. I will put him on one more plea docket for June 27. If he does not plead that week, I can put him on a trial docket for July 18.

L. McClain

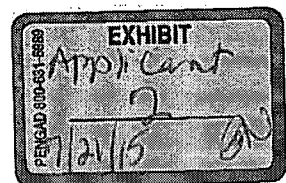
Assistant Solicitor
Ninth Circuit Solicitor's Office
O.T. Wallace Building
101 Meeting Street
Charleston, SC 29401
Office: 843.958.2143
Fax: 843.958.1905

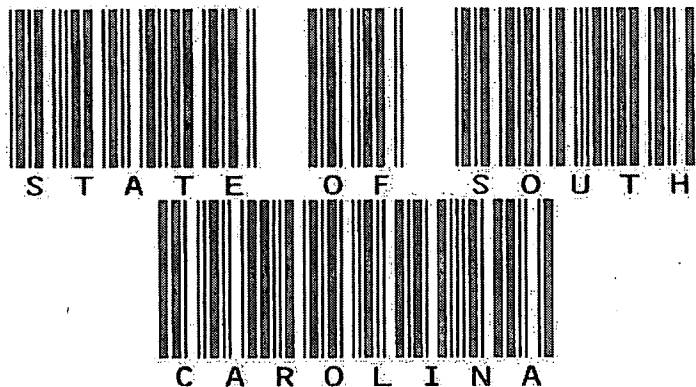
From: Cantrell M. Frayer
Sent: Thursday, June 09, 2011 1:01 PM
To: Lindsey McClain
Subject: Timothy Young

Did you get a chance to talk to Chad about this guy? He's been in for 1 year now... You offered 3 years, but with the no order issue -- what about TS

Cantrell M. Frayer

Assistant Public Defender
Ninth Circuit Public Defender
O.T. Wallace Office Building
101 Meeting Street, 5th Floor
Charleston, SC 29401-2214
843-958-1884



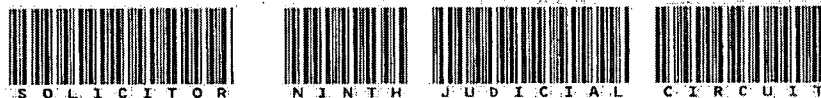


Charleston County
101 Meeting Street, Suite 400
Charleston, SC 29401
Phone (843) 958-1900
Fax (843) 958-1905



Berkeley County
300-B California Avenue
Moncks Corner, SC 29461
Phone (843) 723-3800 ext 4529
Fax (843) 719-4588

SCARLETT A. WILSON



June 29, 2011

Cantrell Frayer, Esquire
Attorney At Law

Re: **The State of South Carolina vs. TIMOTHY YOUNG**
Charges:

Dear Cantrell,

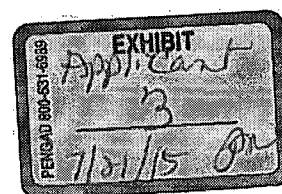
The above-referenced matter involving your client is on the Guilty Plea Docket for the week of August 1, 2011. Please call this office on the Friday before the plea week in order to determine the exact date and time your client is scheduled to appear.

Your client's failure to attend court at the appointed time, whether or not he wishes to plead guilty, will result in the issuance of a Bench Warrant for his arrest. Furthermore, if your client does not appear at the appointed time his case may be placed on the **next Trial Docket** and may be tried in his absence if he fails to appear for trial.

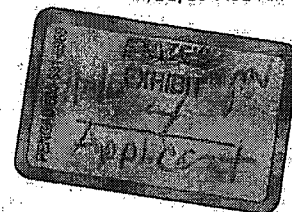
Sincerely,

Lindsey McClain
Lindsey McClain/amk
Assistant Solicitor

PLEALR



August 2011 Go To Date



Terms of Circuit and Family Court August 2011

Circuit Number	8/1/2011	8/8/2011	8/15/2011	8/22/2011	8/29/2011
9	Common Pleas Non-Jury Dennis, R. GARRISON Common Pleas Charleston Harrington, Kristi PERRON 1, 2 NO CR NEEDED 3, 4, 5 General Sessions Charleston Hughston, Thomas CROSS 1 NO CR NEEDED 2 CROSS 3, 4, 5 General Sessions Charleston Jefferson, Deadra MEYER 1, 2, 3 NO CR NEEDED 4, 5 Common Pleas Charleston Young, Roger HAFFENDEN 1, 2, 3, 4 NO CR NEEDED 5	Common Pleas Berkeley Dennis, R. NO CR NEEDED 8 GARRISON 9 NO CR NEEDED 10, 11, 12 Common Pleas Charleston Hughston, Thomas CROSS 8 NO CR NEEDED 9, 10, 11, 12 General Sessions Berkeley Jefferson, Deadra PERRON Common Pleas Charleston Young, Roger HAFFENDEN 8 NO CR NEEDED 9 MEYER 10 NO CR NEEDED 11 MEYER 12	Common Pleas Non-Jury 15, 16, 17 Young, Roger HAFFENDEN 15, 16, 17 Common Pleas Non-Jury 16 Harrington, Kristi CROSS 16	Common Pleas Charleston Dennis, R. GARRISON 22, 23, 24, 25 NO CR NEEDED 26 Common Pleas Charleston Harrington, Kristi PERRON 22, 23, 24, 25 NO CR NEEDED 26 Common Pleas Non-Jury Jefferson, Deadra MEYER 22, 23, 24, 25 NO CR NEEDED 26 General Sessions Charleston Nicholson, J. THUEME 22, 23, 24, 25 NO CR NEEDED 26 General Sessions Charleston Young, Roger HAFFENDEN 22, 23, 24, 25	General Sessions Berkeley Dennis, R. GARRISON Common Pleas Charleston Harrington, Kristi PERRON 29, 30, 31 NO CR NEEDED 1, 2 General Sessions Charleston Jefferson, Deadra MEYER 29, 30, 31, 1 PERRON 2 Common Pleas Non-Jury Nicholson, J. VARNADOE 29 CROSS 30 pm, 31 pm CROSS 1 NO CR NEEDED 2 Common Pleas Charleston Young, Roger HAFFENDEN 29,

Common Pleas Berkeley Harrington, Kristi PERRON 1, 2 NO CR NEEDED 3, 4, 5			NO CR NEEDED 26 30, 31 Common Pleas Non-Jury McDonald, Stephanie CROSS 22, 23, 24 YOUNG 25 NO CR NEEDED 26 General Sessions 25 Berkeley Watson, Robert CROSS 25	NO CR NEEDED 1 HAFENDEN 2 General Sessions Charleston McDonald, Stephanie VIZER
Family Court Berkeley McMahon, Judy L. BRITT 1, 2, 3 NO CR NEEDED 4, 5 Family Court Berkeley Creech, Wayne M. BROWN 1 DUPREE 2, 3, 4, 5 Family Court Charleston Garfinkel, Paul W. RUEGER 1, 2, 3 NO CR NEEDED 4, 5 Family Court Charleston Landis, Jack A.	Family Court Charleston McMahon, Judy L. NORTON Family Court Charleston Morehead, A. E. BROWN 8, 9, 10 am NO CR NEEDED 10 pm BROWN 11 am BROWN 12 Family Court Charleston Garfinkel, Paul W. RUEGER Family Court Berkeley Landis, Jack A.	Family Court 15 Berkeley Landis, Jack A. BRITT 15 Family Court 15 Charleston Cate, Jocelyn B. DANNER 15 Family Court 16 Berkeley Creech, Wayne M. DUPREE 16 Family Court 16 Charleston Garfinkel, Paul W. NORTON 16	Family Court Charleston McMahon, Judy L. NORTON 22, 23, 24, 25 NO CR NEEDED 26 Family Court Berkeley Creech, Wayne M. DUPREE Family Court Charleston Garfinkel, Paul W. RUEGER 22, 23, 24, 25 NO CR NEEDED 26 Family Court Berkeley Woods, Henry T. BRITT	Family Court Charleston McMahon, Judy L. NORTON 29, 30, 31 NO CR NEEDED 1 NORTON 2 Family Court Charleston Creech, Wayne M. JONES 29, 30, 31 NO CR NEEDED 1 JONES 2 Family Court Charleston Garfinkel, Paul W. RUEGER 29, 30 am DANNER 30 pm RUEGER 31 NO CR NEEDED 1 RUEGER 2

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF GENERAL SESSIONS
OF THE NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
Plaintiff,)

vs.)

VERDICT FORM

TIMOTHY YOUNG,)
Defendant.)
_____)

AS TO INDICTMENT NO.: 2010-GS-10-5622

We, the jury, by unanimous consent find the Defendant:

X Guilty of Possession With the Intent to Distribute Cocaine Base.

OR AS TO THE LESSER INCLUDED OFFENSE:

BN
X Guilty of Simple Possession of Cocaine Base.

OR

____ Not Guilty.

Please sign and date.

Benjamin Richards
Foreperson

September 2, 2011

Please let the bailiffs know when you have finished your deliberations.



CC
AG
AT
GS
SOL

389

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Timothy Young, #296628,

2014-CP-10-0437

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

FILED
2015 SEP 23 PM 4:22
JULIE J. ARISTON
CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 22, 2014. The Respondent made its Return on March 20, 2015. An evidentiary hearing into the matter was convened on July 21, 2015, at the Charleston County Courthouse. Rodney Davis, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant testified on his own behalf. Melissa Gay, Esquire also testified. This Court had before it a copy of the records of the Charleston County Clerk of Court, records from the South Carolina Department of Corrections, the trial transcript and the appellate records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the August 2010 term of the Charleston County Grand Jury for possession with intent to distribute (PWID) cocaine base- third offense (2010-GS-10-5622), possession with intent to

distribute cocaine base within proximity of a school/park (2010-GS-10-5623), and resisting arrest (2010-GS-10-5624). The Applicant was represented by Cantrell Frayer, Esquire.

On August 31-September 2, 2011, the Applicant proceeded to trial and was found guilty. The Applicant was sentenced by the Honorable Deadra L. Jefferson to confinement for a period of fifteen (15) years for PWID cocaine base, ten (10) years for PWID cocaine base within the proximity of a school/park, and one (1) year for resisting arrest. The Applicant's convictions are to be served concurrently.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Katherine Hudgins, Esquire, of the Office of Appellate Defense. The Applicant's appeal was dismissed by the Court of Appeals pursuant to Anders on November 27, 2013. The Remittitur was issued on December 13, 2013.

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

1. Ineffective assistance of counsel.
 - a. Counsel prejudiced his case by informing jury during closing that he was guilty.
 - b. Counsel failed to suppress the alleged drugs found or challenge the chain of custody.
2. Unlawful search and seizure.
3. False arrest and lack of sufficient probable cause.

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified that prior to trial, the weight of the crack cocaine from the initial search and seizure differed from that of the drugs listed in the discovery. Apparently, the drug weight on scene by law enforcement was 5.7 grams and then was 3.13 grams.

after the chemist tested the crack cocaine. Applicant claimed Counsel never discussed this with him. Counsel admitted that law enforcement attempted to enforce an underlying trespass charge. As to the custody of the drugs, Applicant testified Counsel never got an independent evaluation of the crack cocaine. Applicant also stated Counsel was ineffective for saying that Applicant was guilty of possession of crack in her closing argument. Applicant testified Counsel never discussed her trial strategy with him and did not discuss the lesser included charges either.

Applicant then testified there was an initial offer of three (3) years for possession of crack cocaine which he rejected and then continued discussions about a possible guilty plea. Applicant then claimed he said he wanted to accept the plea offer. Applicant admitted he was charged with trespass in city court, thus acknowledging that he was on trespass notice at the time of the incident. Applicant stated he had until the court date to accept the offer and then court was adjourned that week. Then he received a five (5) year offer, which he rejected. Thereafter, Applicant proceeded to trial and was convicted. Applicant claimed in August of 2011 that he was ready, willing, and able to accept the three (3) year offer and would have accepted the plea offer, given the opportunity.

On cross-examination, Applicant admitted that he was in possession of crack during the incident, and that, in fact, the substance was crack cocaine. Applicant also admitted that the weights varied because the first test was a field test on scene and the second was from the chemist's testing of the crack cocaine. Applicant further admitted that Counsel argued this issue on his behalf in her closing argument.

Counsel testified she discussed the weight of the drugs and all of the discovery with Applicant and that the difference in the weight was the difference from the field test to the lab weight. Counsel stated she got Applicant a bond reduction, received a transcript from the bond

hearing and that Applicant admitted he was on a trespass notice. Counsel testified she requested and received a suppression hearing, but it was denied; yet, preserved for appeal. Counsel stated she discussed the lesser included offenses with Applicant.

As for the plea offers, Counsel testified the original offer was for a cap of three (3) years for possession of crack cocaine. Counsel stated she asked the solicitor for a sentence of time served, but the solicitor rejected this idea. Counsel also stated she relayed this offer to Applicant, but Applicant rejected it. Counsel testified Applicant wanted the city case dismissed and then a dismissal of these charges. Counsel testified the original offer for a cap of three (3) years was in March or April of 2011, and that Applicant had until August to accept it. Counsel requested that Applicant's case be put on the docket one more time, but then Judge Hughston, who was presiding over the August term of General Sessions, became ill and had to cancel the court term. Counsel sent an email asking that the solicitor not penalize Applicant and that if Applicant did not plead guilty in August, for a five (5) year offer. The solicitor offered Applicant five (5) years and the Applicant rejected the five (5) year offer on the record prior to trial.

On cross-examination, Counsel testified she researched and discussed with Applicant the issue of the probable cause of the stop. Counsel stated law enforcement had probable cause because they knew he was on a trespass notice. Applicant also resisted arrest when law enforcement officers attempted to stop him. Counsel testified that in emails between her and the solicitor, she asked for a sentence of time served, but the solicitor would only offer a cap of three (3) years. Counsel also stated this case was on the docket for August 1, 2011 and asked to put it on the docket again for the week of August 22, 2011. Counsel lastly testified that on the guilty verdict form, the jury marked



Applicant guilty of Possession with Intent to Distribute after possession of crack cocaine had been marked out.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. The Court also has read the trial transcript and the appellate records, all of which assists the Court in judging their credibility.

Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "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." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong,

attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, 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." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Suppression of the crack cocaine

Applicant alleges Counsel never discussed the discrepancy in the weight of the drugs with him. Conversely, Counsel testified she fully discussed the difference in the weight of the crack cocaine with Applicant. Specifically, Counsel advised Applicant that the 5.7 gram measurement was the field test weight and the 3.13 gram measurement was the lab test weight. Counsel further testified she requested and received a suppression hearing on the crack cocaine, but this motion was denied. As to the claim that Counsel never had the crack cocaine independently tested, this Court finds that independent testing would be fruitless as Applicant admitted at trial and at the PCR hearing that the substance was, in fact, crack cocaine. This Court finds Counsel's testimony concerning her discussions about the crack cocaine with Applicant credible while finding Applicant's testimony not credible. Therefore, this allegation is denied.

Plea offer

Applicant also alleges Counsel was ineffective in relation to the plea offers from the State. This Court disagrees. Counsel testified she received the first offer of a cap of three (3) years from the State in March or April of 2011 and relayed that offer to Applicant. Counsel attempted to get the solicitor to agree to a sentence of time served, but the solicitor refused. Thereafter, Applicant

rejected this offer. Counsel also testified she asked the solicitor to hold the offer open until the August 1, 2011 term of court before Judge Hughston. By no fault of Counsel, Judge Hughston fell ill and the term of General Sessions was cancelled. Counsel then contacted the solicitor and asked that this cancellation not be held against Applicant and to re-offer the three (3) year cap. The solicitor, who may rescind an offer at any time before a defendant accepts it, decided not to re-offer the three (3) year cap. Instead, the solicitor offered Applicant a plea for five (5) years, which Applicant rejected on the record before his trial. While Applicant claims he was willing, able and ready to accept the three (3) year offer, this Court finds his testimony not credible, while finding Counsel's testimony credible.

This Court also finds Counsel acted diligently in regards to the plea offers from the State. Applicant had over three (3) months to accept the plea offer, but failed to do so. As stated above, Counsel testified she relayed this offer to Applicant, but he rejected it. He then openly rejected the five (5) year offer on the record. This Court finds Applicant had ample opportunity to accept either offer, but rejected both of them. When he did not accept the offers, but rejected them, the solicitor was under no obligation to re-offer the plea bargains. Therefore, this Court finds Applicant failed to meet his burden of proving Counsel performed deficiently in this case and also finds no resulting prejudice due to Applicant's own actions. Thus, this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the 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.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!



Roger E. Henderson
Presiding Circuit Court Judge
Ninth Judicial Circuit

September 18, 2015

Charleston, South Carolina

2014-CP-10-0437

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1008893

ARREST WARRANT NUMBER

K639772

DATE OF ARREST

May 29, 2010

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: AUG 02 2010

VERDICT

Guilty

Benjamin Richardson 2/2/2011
Foreperson of Petit Jury Date:

INDICT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2010

THE STATE

vs.

TIMOTHY YOUNG

DOB: 1965-08-15

B/M

Indictment for

Possession with Intent to Distribute Cocaine
Base

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK OF COURT
[Signature]
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

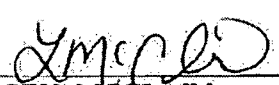
INDICTMENT

At a Court of General Sessions, convened on August 2, 2010 the Grand Jurors of Charleston County present upon their oath:

Possession with Intent to Distribute Cocaine Base

That in Charleston County, South Carolina, on or about May 29, 2010, the Defendant, TIMOTHY YOUNG, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to distribute, dispense or deliver a controlled substance or a controlled substance analogue, to wit: Cocaine Base, in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

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


 LINDSEY MCCLAIN
 ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.R. 63, C.F.

 DEPUTY CLERK

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1008893

ARREST WARRANT NUMBER

K639773

DATE OF ARREST

May 29, 2010

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

AUG 02 2010

VERDICT

Foreperson of Petit Jury

Date:

INDICT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2010

THE STATE

vs.

10-2917 (03)

TIMOTHY YOUNG

DOB:

B/M

Indictment for

Possession with Intent to Distribute Cocaine
Base within Proximity of a Park

FILED

8/18/2010 8:58:32 AM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

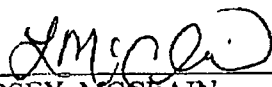
INDICTMENT

At a Court of General Sessions, convened on August 2, 2010 the Grand Jurors of Charleston County present upon their oath:

Possession with Intent to Distribute Cocaine Base within Proximity of a Park

That in Charleston County, South Carolina, on or about May 29, 2010, the Defendant, TIMOTHY YOUNG, unlawfully did possess with intent to distribute, distribute, dispense, sell, purchase, or manufacture, a quantity of Cocaine Base within a one-half mile radius of the grounds of Martin Park located at Jackson Street, all in violation of Section 44-53-445 of the South Carolina Code of Laws (1976) as amended.

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


LINDSEY MCCLAIN
ASSISTANT SOLICITOR

LMC20100602975

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1008893

ARREST WARRANT NUMBER

K639774

DATE OF ARREST

May 29, 2010

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: AUG 02 2010

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2010GS1005624

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 201

THE STATE

vs.

TIMOTHY YOUNG

DOB:

B/M

Indictment for

Resisting Arrest

FILED

8/18/2010 8:58:32 AM

JULIE J. ARMSTRONG

CLERK OF COURT

10-2917 (04)

401

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

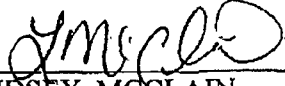
INDICTMENT

At a Court of General Sessions, convened on August 2, 2010 the Grand Jurors of Charleston County present upon their oath:

Resisting Arrest

That in Charleston County, South Carolina, on or about May 29, 2010, the Defendant, TIMOTHY YOUNG, knowingly and willfully did oppose or resist, the efforts of Officer MOODY, a law enforcement officer of this State, to make lawful arrest of the Defendant when he knew or reasonably should have known that Officer MOODY was a law enforcement officer, in violation of Section 16-9-320(a), the South Carolina Code of Laws (1976) as amended

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


LINDSEY MCCLAIN
ASSISTANT SOLICITOR