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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

SC SUPREME COURT

Appeal from Sumter County

George C. James, Jr., Circuit Court Judge

LIONEL BRADLEY

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLANT CASE NO. 2015-002425

APPENDIX

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STATE OF SOUTH CAROLINA

CIRCUIT COURT

COUNTY OF SUMTER

2012-GS-43-00315, 00076

2013-GS-43-00015

STATE OF SOUTH CAROLINA,

-vs-

TRANSCRIPT OF RECORD

LIONEL STEFAN BRADLEY,
Defendant.

HEARD ON WEDNESDAY, FEBRUARY 20, 2013

IN SUMTER, SOUTH CAROLINA

BEFORE:

THE HONORABLE W. JEFFREY YOUNG

AND A JURY

APPEARANCES:

Counsel on Behalf of the State:
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Counsel on Behalf of the Defendant:
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1 ON WEDNESDAY, FEBRUARY 20, 2013 AT 9:36 A.M.:

2 MS. McELVEEN: We would call the State of South
3 Carolina versus Lionel Stefan Bradley, Indictment 12-GS-
4 43-76.

5 THE COURT: If you'd pass the indictment up.

6 MS. McELVEEN: Yes, sir. And I've got the witness
7 list and a certified copy of the bond for bail proceeding
8 form.

9 THE COURT: All right. Ladies and gentlemen, we're
10 about to begin the trial of the State versus Lionel Stefan
11 Bradley under Indictment 2012-GS-43-76. And the
12 indictment reads that in Sumter County, South Carolina, on
13 or about September 19th, 2011, the Defendant, Lionel
14 Stefan Bradley, knowingly did sell, manufacture, deliver,
15 purchase or bring into the state, or did otherwise provide
16 financial assistance, or otherwise aid, abet, attempt or
17 conspire to sell, manufacture, deliver, purchase or bring
18 into the state, or did possess or attempt to possess a
19 controlled substance or a controlled substance analogue,
20 to wit, cocaine base in excess of more than 10 grams in
21 violation of Section 44-53-375 of the South Carolina Code
22 of Laws as amended.

23 Count two reads that Lionel Stefan Bradley did in
24 Sumter County on or about September 19th, 2011, knowingly
25 and intentionally possess a quantity of marijuana of less

1 than one ounce, a controlled substance under the
2 provisions of Section 44-53-110 et sequential of the South
3 Carolina Code of Laws 1976 as amended, and such possession
4 not having been authorized by law and such being the
5 Defendant's second and subsequent -- oh, in violation of
6 Section 44-53-370(b) of the South Carolina Code.

7 Ladies and gentlemen, the fact that the Defendant was
8 charged and indicted in no way is indicative that he is
9 guilty of the charge in this indictment. The Defendant
10 has pled not guilty and therefore the State has the burden
11 of proving his guilt beyond a reasonable doubt.

12 Now, ladies and gentlemen, before we strike the jury
13 there are several questions that I'm going to need to ask
14 you in order that -- and again, because it's such a
15 crucial stage of the trial, I'm going to need for you to
16 be under oath.

17 So if you'd place them under oath, then I'll proceed.

18 THE CLERK: Yes, sir, Your Honor.

19 (Jury sworn.)

20 THE COURT: All right. The first question is, ladies
21 and gentlemen: Has anybody ever been related by blood or
22 marriage or had a close personal or business relationship
23 with the Defendant, Lionel Stefan Bradley? If so, please
24 stand.

25 All right. Thank you. No one is standing.

1 Ladies and gentlemen, this is a list of possible
2 witnesses in this case: Detective B. Wilson of the Sumter
3 Police Department; Sergeant C. Fulmore of the Sumter
4 Police Department; Corporal J. VanAllen of the Sumter
5 Police Department; James Allsbrook of the Sumter Police
6 Department; and Willie Smith of the South Carolina Law
7 Enforcement Division.

8 Is there any member of the jury panel who has ever
9 been related by blood or marriage or had a close personal
10 or business relationship with any of these people? If so,
11 please stand.

12 Thank you. No one is standing.

13 The attorneys who will be trying this case today are
14 Ms. Bronwyn McElveen for the State, and Ms. Tiffany Butler
15 for the Defendant. Has anyone in the jury panel ever been
16 represented by these attorneys or related by blood or
17 marriage or have a close personal or business relationship
18 with either of these attorneys? If so, please stand.

19 All right. Thank you.

20 Is there any member of the jury panel who's aware of
21 any bias or prejudice towards either the State or the
22 Defendant? If so, please stand.

23 No one is standing.

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

1 case? If so, please stand.

2 Thank you. No one is standing.

3 Is there any member of the jury panel who is a member
4 of or a contributor to any group which has as its primary
5 concern the promotion of law enforcement or victim's
6 rights? These groups would include but certainly would
7 not be limited to MADD, SADD, or Citizens Against Violent
8 Crime, or any other organizations such as this. If so,
9 please stand.

10 All right. Thank you.

11 Does any member of the jury panel know of any reason
12 whatsoever why he or she should not serve as a juror in
13 this case with particular emphasis being placed on your
14 ability to be fair and impartial to both the State and the
15 Defendant? If so, please stand.

16 All right. Thank you.

17 Does the State have any additional questions it would
18 like for me to ask?

19 MS. McELVEEN: No, sir.

20 THE COURT: Does the defense have any additional
21 questions?

22 MS. BUTLER: No, Your Honor.

23 THE COURT: All right. Thank you.

24 All right. Ladies and gentlemen, what's going to
25 happen now is the computer is going to generate a list of

1 names. And when your name is called, if you would please
2 come forward to the bench, turn around and look at General
3 Sumter. The State will have an opportunity to strike you
4 and then the Defendant will have an opportunity to strike
5 you.

6 Let me see the attorneys real quick.

7 (Off-the-record discussion.)

8 THE COURT: And, ladies and gentlemen, if they accept
9 you or don't accept you, please don't take it personally.
10 These attorneys have some idea of what -- the jury that
11 they want. So, they're not striking you for personal
12 reasons. They can strike you for no reason or any reason
13 except for race or for gender, but don't take it
14 personally. Thank you.

15 (Pause.)

16 THE CLERK: If it please the Court, Your Honor. Juror
17 Number Three, Lottie Anderson.

18 (White female approaches.)

19 THE CLERK: What say the State?

20 MS. McELVEEN: Please present the juror.

21 THE CLERK: What say the Defendant?

22 MS. BUTLER: Please seat the juror.

23 THE CLERK: Have a seat in the jury box, please,
24 ma'am.

25 Juror Number 168, Pamela Walker.

1 (Black female comes forward.)

2 THE CLERK: What say the State?

3 MS. McELVEEN: Please present the juror.

4 THE CLERK: What say the Defendant?

5 MS. BUTLER: Please seat the juror.

6 THE CLERK: Have a seat in the jury box, please,
7 ma'am.

8 Juror Number 149, Kristin Rycroft.

9 (White female comes forward.)

10 THE CLERK: What say the State?

11 MS. McELVEEN: Please present the juror.

12 THE CLERK: What say the Defendant?

13 MS. BUTLER: Please excuse the juror.

14 THE CLERK: Have a seat back in the panel. You've
15 been excused from this trial, ma'am.

16 Juror Number 135, Crystal Prescott.

17 (White female comes forward.)

18 THE CLERK: What say the State?

19 MS. McELVEEN: Please present the juror.

20 THE CLERK: What say the Defendant?

21 MS. BUTLER: Please seat the juror.

22 THE CLERK: Have a seat in the jury box, please,
23 ma'am.

24 Juror Number 93, Travis Kinley.

25 (Black male comes forward.)

1 THE CLERK: What say the State?

2 MS. McELVEEN: Please present the juror.

3 THE CLERK: What say the Defendant?

4 MS. BUTLER: Please seat the juror.

5 THE CLERK: Have a seat in the jury box, please, sir.

6 Juror Number 29, John Capers.

7 (Black male comes forward.)

8 THE CLERK: What say the State?

9 MS. McELVEEN: Please excuse the juror from the trial

10 of this case.

11 THE CLERK: Have a seat back in the panel. You've

12 been excused from this trial, sir.

13 Juror Number 82, Pamela Jennings.

14 (White female comes forward.)

15 THE CLERK: What say the State?

16 MS. McELVEEN: Please present the juror.

17 THE CLERK: What say the Defendant?

18 MS. BUTLER: Please excuse the juror.

19 THE CLERK: Have a seat back in the panel. You've

20 been excused from this trial, ma'am.

21 Juror Number 178, Marilyn Zinky.

22 (White female comes forward.)

23 THE CLERK: What say the State?

24 MS. McELVEEN: Please present the juror.

25 THE CLERK: What say the Defendant?

1 MS. BUTLER: Please seat the juror.

2 THE CLERK: Have a seat in the jury box, please,
3 ma'am.

4 Juror Number 73, Frederick Hodge.

5 (White male comes forward.)

6 THE CLERK: What say the State?

7 MS. McELVEEN: Please present the juror.

8 THE CLERK: What say the Defendant?

9 MS. BUTLER: Please seat the juror.

10 THE CLERK: Have a seat in the jury box, please, sir.

11 Juror Number 133, Ellen Phillips.

12 (Black female comes forward.)

13 THE CLERK: What say the State?

14 MS. McELVEEN: Please excuse the juror from the trial
15 of this case.

16 THE CLERK: Have a seat back in the panel. You've
17 been excused from this trial, ma'am.

18 Juror Number 118, Dorothy Mitchell.

19 (Black female comes forward.)

20 THE CLERK: What say the State?

21 MS. McELVEEN: Please excuse the juror from the trial
22 of this case.

23 THE CLERK: Have a seat back in the panel. You've
24 been excused from this trial, ma'am.

25 Juror Number 105, Sharon Massey.

1 (Black female comes forward.)
2 MS. McELVEEN: I'm sorry. What was the number?
3 THE CLERK: One-0-five. What say the State?
4 MS. McELVEEN: Please present the juror.
5 THE CLERK: What say the Defendant?
6 MS. BUTLER: Please seat the juror.
7 THE CLERK: Have a seat in the jury box, please,
8 ma'am.
9 Juror Number 55, Roxanna Garcia.
10 (White female comes forward.)
11 THE CLERK: What say the State?
12 MS. McELVEEN: Please present the juror.
13 THE CLERK: What say the Defendant?
14 MS. BUTLER: Please seat the juror.
15 THE CLERK: Have a seat in the jury box, please,
16 ma'am.
17 Juror Number 40, John Cotton.
18 (White male comes forward.)
19 THE CLERK: What say the State?
20 MS. McELVEEN: Please present the juror.
21 THE CLERK: What say the Defendant?
22 MS. BUTLER: Please excuse this juror.
23 THE CLERK: Have a seat back in the panel. You've
24 been excused from this trial, sir.
25 Juror Number 71, John Hetcel.

1 (White male comes forward.)

2 THE CLERK: What say the State?

3 MS. McELVEEN: Please present the juror.

4 THE CLERK: What say the Defendant?

5 MS. BUTLER: Please seat the juror.

6 THE CLERK: Have a seat in the jury box, please, sir.

7 Juror Number 89, Jennifer Keith.

8 (White female comes forward.)

9 THE CLERK: What say the State?

10 MS. McELVEEN: Please present the juror.

11 THE CLERK: What say the Defendant?

12 MS. BUTLER: Please seat the juror.

13 THE CLERK: Have a seat in the jury box, please,

14 ma'am.

15 Juror Number 20, Delores Brooks.

16 (Black female comes forward.)

17 THE CLERK: What say the State?

18 MS. McELVEEN: Please present the juror.

19 THE CLERK: What say the Defendant?

20 MS. BUTLER: Please excuse this juror.

21 THE CLERK: Have a seat back in the panel. You've
22 been excused from this trial, ma'am.

23 Juror Number 50, Eric Fortin.

24 (White male comes forward.)

25 THE CLERK: What say the State?

1 MS. McELVEEN: Please present the juror.
2 THE CLERK: What say the Defendant?
3 MS. BUTLER: Please present this juror.
4 THE CLERK: Have a seat in the jury box, please, sir.
5 Juror Number 14, Susan Bessette.
6 (White female comes forward.)
7 THE CLERK: What say the State?
8 MS. McELVEEN: Please present the juror.
9 THE CLERK: What say the Defendant?
10 MS. BUTLER: Please seat the juror.
11 THE CLERK: Have a seat in the jury box, please,
12 ma'am.
13 Alternate juror. Juror Number 119, Frank Montgomery.
14 (Black male comes forward.)
15 THE CLERK: What say the State?
16 MS. McELVEEN: Please excuse the juror from the trial
17 of this case.
18 THE CLERK: Have a seat back in the panel. You've
19 been excused from this trial, please, sir.
20 Juror Number 49, Ronald Floyd, Jr.
21 (White male comes forward.)
22 THE CLERK: Any reason for call from the State?
23 MS. McELVEEN: No, sir.
24 THE CLERK: What say the Defendant?
25 MS. BUTLER: Please seat the juror.

1 THE CLERK: Have a seat in the jury box, please, sir.

2 THE COURT: All right. Ladies and gentlemen, y'all
3 have been selected as the jury for this trial. I'm going
4 to send you back to the jury room for just a moment while
5 we take up a few matters of law.

6 While you're back there, if you all could select your
7 own foreperson of the jury. And that person will sit
8 where you're sitting right now, ma'am, unless you're
9 chosen. But whoever it is will sit there. It can't be
10 the alternate. Okay. Thank you.

11 (Jury exits courtroom at 10:12 a.m.)

12 THE COURT: Is there any objection to the jury that
13 has been selected and the manner in which they've been
14 selected, from the State?

15 MS. McELVEEN: No, sir.

16 THE COURT: From the defense?

17 MS. BUTLER: No, Your Honor.

18 THE COURT: All right. Thank you.

19 Those of you who were not selected, you will still
20 have another opportunity today to be selected so don't
21 feel bad. But if y'all could escort them down to the
22 small courtroom where Judge James will have an opportunity
23 to see you again possibly. Thank you, ladies and
24 gentlemen. Follow the bailiffs.

25 (Jury panel exits courtroom at 10:14 a.m.)

1 THE COURT: Ms. McElveen, are you ready to proceed
2 with what's necessary for a TIA?

3 MS. McELVEEN: Yes, sir. In fact, I passed up the
4 bail bond proceeding form to Your Honor. We would request
5 that his name be called three times on the courthouse
6 steps. I believe that's the standard procedure for a
7 trial in absence.

8 THE COURT: He was actually here this morning, wasn't
9 he?

10 MS. BUTLER: Yes, Your Honor. He was here.

11 THE COURT: It says that I understand and have been
12 informed that I have a right and an obligation to be
13 present at trial and should I fail to attend court, the
14 trial will proceed in my absence.

15 And just for the record, Ms. Butler, he was here this
16 morning and you spoke with him; is that correct?

17 MS. BUTLER: Yes, Your Honor.

18 THE COURT: And you told him the trial was going to
19 start this morning?

20 MS. BUTLER: Yes, Your Honor. I told him the jury was
21 here, we're picking the jury.

22 THE COURT: Okay. Would the bailiff please call the
23 name of Lionel Stefan Bradley three times on the
24 courthouse steps?

25 (Pause.)

1 MS. McELVEEN: Your Honor, just to talk about
2 scheduling, this should not take very long as far as the
3 State is concerned. We have two officers that were
4 present at the beginning and one officer that showed up
5 just for photographs and who analyzed the marijuana. The
6 evidence technician and our SLED agent is coming as to the
7 cocaine base analysis, but unfortunately he's testifying
8 in another county so he should be here, I told him 2:30.
9 I spoke with him again this morning. He told me he plans
10 on being here at 2:30.

11 THE COURT: Well, what I would anticipate because I've
12 got to be someplace today, that we would go ahead and
13 maybe get the testimony done today, break and then come
14 back about nine o'clock and argue and charge.

15 MS. McELVEEN: That's wonderful for us, Your Honor.
16 And our SLED agent would be the last witness we have.

17 THE COURT: Okay. Yes, sir. No answer?

18 THE BAILIFF: No answer.

19 THE COURT: And you called three times?

20 THE BAILIFF: Yes, sir.

21 THE COURT: Okay. Very well. We will proceed.

22 MS. BUTLER: Your Honor, I have been advised that my
23 client is on the phone.

24 THE COURT: Okay. If you'd like to talk with him.

25 MS. BUTLER: If I can take a second to go talk with

1 him? Thank you.

2 THE COURT: Sure.

3 (Pause.)

4 MS. BUTLER: May I approach, Your Honor?

5 THE COURT: You may.

6 (Off-the-record discussion.)

7 THE COURT: Ms. Butler, you had a conversation with
8 your client. Don't tell me anything confidential, but
9 what did he say concerning this?

10 MS. BUTLER: He called our office just a little while
11 ago and informed them that he was hiring another
12 attorney. He was informed by our office that his trial
13 had started and he needed to be here. And he said that he
14 would be here, he was on his way.

15 THE COURT: Okay. All right. Very well. And we will
16 start the trial.

17 MS. BUTLER: Yes, Your Honor.

18 THE COURT: Whether he makes it or not, that's going
19 to be up to him. Motions?

20 MS. BUTLER: Yes, Your Honor. I have a motion, or two
21 actually.

22 THE COURT: Yes.

23 MS. BUTLER: I just want to make a Brady motion just
24 to ensure that I have received all of the evidence that
25 will be presented at trial today.

1 I have received discovery. However, I have not
2 received a SLED analysis for the drugs involved, and I
3 don't know whether that evidence is going to be put up
4 today. But I have not seen it, so I'm requesting that.

5 THE COURT: Do you have the analysis?

6 MS. McELVEEN: Yes, sir. And it -- SLED analysis goes
7 out -- in fact, it says on the disclosure, the rule five
8 disclosure, SLED drug analysis with the SLED lab number.
9 And that rule five disclosure was signed for on December
10 20th, 2011, and specifically lists the SLED drug
11 analysis. Yes, sir.

12 MS. BUTLER: I don't have it, Your Honor, in my
13 discovery. And I printed everything that we have for this
14 indictment.

15 THE COURT: If you could make a copy available.

16 MS. McELVEEN: Sure.

17 MS. BUTLER: I have the SLED drug analysis. This is
18 what I'm missing.

19 THE COURT: Okay.

20 MS. McELVEEN: Also, there were -- inside the
21 narrative about the case there was -- it was stated that
22 officers photographed the evidence. The evidence, I did
23 not have printed-out copies. They were on the rule five.
24 We stated that any tangible items could -- available for
25 inspection by appointment upon your request.

1 Ourselves -- we ourselves did not have copies of the
2 pictures. They were on the hard drive at the Sumter
3 Police Department which she could make an appointment to
4 see at any time. I just got them on a hard -- on a thumb
5 drive yesterday.

6 So we just want to make clear that that was available
7 for inspection upon request. And we have provided them
8 with both drug analysis now even though they were listed
9 in the rule five.

10 THE COURT: Yes, ma'am.

11 MS. BUTLER: Yes, Your Honor. And I have a separate
12 motion. It is a motion to suppress the drugs that were
13 found on the scene. And I think we'll need testimony from
14 the officer.

15 THE COURT: Okay. She's made a suppression hearing.
16 Would you like to call your first witness?

17 MS. McELVEEN: Yes, sir. I'll call Sergeant Fulmore
18 to the stand, please.

19 MS. BUTLER: Oh, Your Honor, I have a copy of the
20 written motion as well as a memo.

21 THE COURT: Okay. If you could pass it up.

22 CALVIN FULMORE, having been duly sworn, was examined
23 and testified as follows:

24 THE CLERK: Thank you. Have a seat up here, please.
25 Watch your step.

CALVIN FULMORE - DIRECT BY McELVEEN (SUPPRESSION HEARING)

1 Please state your full name, spell your last name for
2 the record.

3 THE WITNESS: Calvin Fulmore, F-U-L-M-O-R-E.

4 DIRECT EXAMINATION

5 BY MS. McELVEEN:

6 Q. What is your -- can you tell us about your title and
7 what you do for a living?

8 A. I'm a staff sergeant at the Sumter Police Department.

9 Q. How long have you been at the police department?

10 A. About 11 years.

11 Q. I'm sorry?

12 A. Almost 11 years.

13 Q. Eleven years?

14 A. Yes.

15 Q. And were you working on September 19th?

16 A. What year?

17 Q. Were you working on September 19th of 2011? I'm
18 sorry.

19 A. Yes.

20 Q. Did you have the opportunity to come in contact with
21 the Defendant, Lionel Bradley?

22 A. I have.

23 Q. Can you tell us about what happened that day?

24 A. Myself and an officer were riding through Friendship
25 Apartment because of the crime rate in the area for

CALVIN FULMORE - DIRECT BY McELVEEN (SUPPRESSION HEARING)

1 breaking and entering motor vehicles, fighting,
2 murder-type stuff, more like a patrol. We observed a
3 black Charger in the road area of the apartments. All
4 four doors were open, two front, two back. Two subjects
5 were in the vehicle. The dashboard and the center console
6 were removed from the vehicle.

7 Q. You said the dashboard and the center console were
8 removed from the vehicle, you said?

9 A. Yes.

10 Q. And what did you -- what was your concern when you saw
11 that?

12 A. I thought it was a breaking into motor vehicle. We
13 call it B&E auto. That's what I thought that was at
14 first.

15 Q. Why did you think that?

16 A. We had several complaints of that type crime in the
17 area, and that activity that night met the description of
18 what was going on.

19 Q. Okay. So what happened next?

20 A. We approached. Me and the officer approached the
21 vehicle. Mr. Bradley, later identified as Mr. Bradley,
22 walked off between the patrol cars. He took off from the
23 Charger. He walked quickly toward at almost
24 like a slow jog.

25 Q. So he jogged towards

CALVIN FULMORE - DIRECT BY McELVEEN (SUPPRESSION HEARING)

1 A. Yes, ma'am. A fast walk.

2 Q. And what did you do next?

3 A. I observed Mr. Bradley enter The blinds
4 of the window of was open. I observed
5 Bradley through the window placing a plastic item --
6 remove such item from his person and place the plastic
7 item under a couch.

8 Q. And what did you think that plastic item was?

9 A. It was later identified to be crack cocaine.

10 Q. Could you tell it was a plastic bag?

11 A. I could.

12 Q. So you did not enter the apartment?

13 A. No, ma'am. Not at that time.

14 Q. And you did not ask him any questions?

15 A. No, ma'am.

16 Q. And the door was closed and you saw through the
17 blinds?

18 A. The residence screen was closed. It was -- hard door
19 was open.

20 Q. And you could see through the blinds?

21 A. I did.

22 Q. What did you do next?

23 A. Officer White was talking to the co-defendant at the
24 black Charger. Officer White smelled a strong odor of
25 marijuana coming from the car. She then told me about the

CALVIN FULMORE - DIRECT BY McELVEEN (SUPPRESSION HEARING)

1 marijuana scent. I approached the black Charger. I could
2 smell the marijuana also.

3 The co-defendant and Mr. Bradley who's back out at
4 that time again, using profane language, cursing and
5 carrying on, with that marijuana scent coming from the
6 car, we searched the car and observed a scale, a digital
7 scale with cocaine trace on it. Mr. Ned and Mr. Bradley
8 continued to curse, using profane language toward the
9 officers in public.

10 Q. After you found the scale?

11 A. After we found the scale. They were placed under
12 arrest for that PDC, what we call it PDC, and the cocaine.

13 Q. What is PDC?

14 A. Public disorderly conduct.

15 Q. Is there a city municipal code that does not allow
16 yelling, profane language?

17 A. There is. There's both state and city. We charged
18 him with the city version of it.

19 Q. And what happened after that? What did you do after
20 you put him under arrest? Were you ever able to search
21 the apartment?

22 A. I did later. I asked Mr. Ned who the apartment
23 belongs to. He said it belongs to his girlfriend,
24 Ms. Wilson. Mr. Ned gave me the phone number. I called
25 that phone number. It was disconnected but possibly

CALVIN FULMORE - CROSS BY BUTLER (SUPPRESSION HEARING)

1 eight, 10 minutes later Ms. Wilson showed back up on the
2 scene. I spoke to her, told her what we had. I got
3 consent both verbally and signed to enter the apartment.
4 She gave me verbal and signed consent to enter her
5 apartment.

6 Q. So you had a signed consent-to-search form from
7 Ms. Wilson?

8 A. I do.

9 Q. And she was the homeowner?

10 A. She is.

11 Q. What did you find?

12 A. After we got the signed consent, myself, I called
13 Detective Wilson. He arrived on the scene also. We
14 entered the apartment with Wilson at the same time. We
15 took a photo of -- Mr. Wilson, detective, took a photo of
16 the couch. We removed the pillow and there was the black
17 bag that I seen that Mr. Bradley had in his possession.
18 The same bag, the only bag in the couch.

19 Q. The same place you saw him put it?

20 A. Exactly same place.

21 Q. What did, did you suspect that to be?

22 A. One bag containing crack cocaine and the other one
23 containing marijuana.

24 Q. Thank you. I have no further questions for you at
25 this time. Please answer any questions defense counsel

CALVIN FULMORE - CROSS BY BUTLER (SUPPRESSION HEARING)

1 may have.

2 THE COURT: Ms. Butler.

3 MS. BUTLER: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. BUTLER:

6 Q. Is it detective or sergeant?

7 A. Staff sergeant.

8 Q. Staff Sergeant Fulmore. You said that you approached
9 the Charger because of several complaints that you
10 received about B&E autos; is that correct?

11 A. After I observed the dash removed in the car and the
12 center console of the car and missing the stereo, we
13 stopped to see if everything was okay.

14 Q. But before that, you didn't get any complaints about
15 that specific Charger? No one called law enforcement to
16 report about a specific Charger?

17 A. There're reports on file from several victims.

18 Q. But not about this specific Charger?

19 A. They had no description, just said a bunch of B&Es in
20 the area.

21 Q. Okay. When you initially stopped Mr. Bradley, he was
22 outside of the vehicle; is that correct?

23 A. I didn't stop him, ma'am. He walked quickly toward

24 I did not call him. I observed in the
25 window what he was doing.

CALVIN FULMORE - CROSS BY BUTLER (SUPPRESSION HEARING)

1 Q. But in your report you wrote that you stopped him when
2 he walked out of the -- you made contact with Bradley,
3 when he walked out of the apartment approximately 10 to 15
4 feet from the front door.

5 A. Right.

6 Q. So he was outside of the apartment and outside of the
7 vehicle when you made contact with him; isn't that
8 correct?

9 A. Yes, after I observed the suspicious movements inside.

10 Q. But he was outside the vehicle when you initially made
11 that contact?

12 A. Yes, ma'am. Yes, ma'am.

13 Q. That's your testimony?

14 A. Yes, ma'am.

15 Q. When you searched the vehicle for marijuana, at that
16 time Mr. Bradley was not under arrest; was he?

17 A. I did not search the vehicle, ma'am.

18 Q. But -- when the vehicle was searched by law
19 enforcement Mr. Bradley was not under arrest, was he?

20 A. No, ma'am. I was just talking to him. I asked him
21 who he was, what his name was.

22 Q. And you testified earlier that you approached the
23 vehicle and smelled marijuana. You didn't see any other
24 drug paraphernalia in the car, did you?

25 A. After the officer told me she smelled marijuana, I

CALVIN FULMORE - CROSS BY BUTLER (SUPPRESSION HEARING)

1 went to the driver's side myself.

2 Q. But you didn't see anything in --

3 MS. McELVEEN: Objection. Please ask him to answer
4 the question.

5 THE COURT: Let him answer the question.

6 THE WITNESS: After the officer told me she smelled
7 marijuana, I went to the driver's side of the black
8 Charger and smelled it myself, a bad smell of marijuana.

9 BY MS. BUTLER:

10 Q. When you observed Mr. Bradley walking to the apartment
11 with the plastic bag, the item, you could not tell from
12 that point what was in that bag; could you?

13 A. I observed the bag once he got inside the
he moved his person and put it behind a pillow.

15 Q. But you didn't know what was in the bag, did you?

16 A. No, ma'am, but I observed the same bag. It was moved.

17 Q. And law enforcement searched the apartment, I think
18 your testimony was, 18 minutes after the arrest?

19 A. We didn't search the apartment but the couch where
20 Mr. Bradley was, the only area --

21 Q. Well, you found the drugs 18 minutes after --

22 A. I'm not clear of the time, ma'am.

23 Q. -- the arrest? That was your testimony earlier.

24 MS. McELVEEN: His testimony --

25 THE WITNESS: That's fine. I didn't testify to the

CALVIN FULMORE - CROSS BY BUTLER (SUPPRESSION HEARING)

1 time.

2 BY MS. BUTLER:

3 Q. So you didn't testify approximately 18 minutes later?

4 A. No, ma'am.

5 MS. McELVEEN: Your Honor, he testified that 18
6 minutes the girlfriend arrived, not when they searched or
7 when the arrest was.

8 BY MS. BUTLER:

9 Q. You searched or you found -- went inside of the
10 apartment after getting consent from the girlfriend 18
11 minutes after she arrived?

12 A. No, ma'am.

13 Q. Or when she arrived 18 minutes later. I'm just
14 getting your testimony straight.

15 A. We met the owner outside of the apartment. We got the
16 verbal and signed consent. Once we got the signed
17 consent, we were free to enter the apartment with
18 Ms. Wilson.

19 Q. But you got signed consent when she arrived on scene?

20 A. That's right.

21 Q. Eighteen minutes later?

22 A. No, ma'am. Approximately -- I'm not sure.

23 Q. Approximately 18 minutes later.

24 A. It could have been about 10 minutes later, ma'am.

25 Q. And you didn't get consent to search until after you

CALVIN FULMORE - CROSS BY BUTLER (SUPPRESSION HEARING)

1 had already searched the Charger and found the marijuana?

2 A. No, ma'am. As soon as she arrived on the scene we got
3 consent from her. We checked the apartment after
4 everything was signed by Ms. Wilson, the owner.

5 Q. But this was after the initial search of the car and
6 after the arrest?

7 A. Another officer got, smelled marijuana outside the car
8 by the door. They did not search the car. They stand
9 outside the car, smelled the marijuana.

10 Q. Both individuals were standing outside of the car?

11 A. When they smelled marijuana?

12 Q. Yes.

13 A. Mr. Bradley was in the house at that time.

14 Q. Okay. And the other individual was --

15 A. He was outside.

16 Q. He was outside the entire time?

17 A. The other individual, not Mr. Bradley.

18 Q. Okay. But after that you got consent to search?

19 A. What is that?

20 Q. After the search of the car and after the arrest for
21 public disorderly conduct you then contacted Ms. Wilson
22 and eventually got her consent, after the earlier event --

23 A. No, ma'am.

24 Q. -- took place?

25 A. No, ma'am. We saw Mr. Bradley coming out the

CALVIN FULMORE - CROSS BY BUTLER (SUPPRESSION HEARING)

1 apartment after he hid the bag under the pillow on the
2 couch. I stopped, asked him who he was, what he was doing
3 with the car.

4 By that time Ms. Wilson was coming on the scene. When
5 I talked to Ms. Wilson on the scene Mr. Bradley was
6 outside the apartment. We got consent to sign (verbatim)
7 by Ms. Wilson. We entered the apartment then with
8 Ms. Wilson. During that time Officer White was -- smelled
9 marijuana coming from the Charger.

10 Mr. Ned, Mr. Bradley used profane language in public.
11 Residents standing outside as well. They were placed
12 under arrest for the PDC and the scale with the cocaine on
13 it.

14 Q. Well, in your report you wrote that you got consent
15 after the arrest for public disorderly conduct which was
16 after the search for the vehicle. My question to you is:
17 Did you get consent to search the apartment after the
18 initial search of the vehicle and after the arrest of the
19 two individuals for public disorderly conduct?

20 MS. McELVEEN: Objection. Asked and answered.

21 MS. BUTLER: That was my question.

22 THE COURT: I'm going to let him answer.

23 THE WITNESS: Repeat the question one more time,
24 ma'am.

25 BY MS. BUTLER:

CALVIN FULMORE - CROSS BY BUTLER (SUPPRESSION HEARING)

1 Q. Did you get consent from Ms. Wilson to search the
2 apartment after the initial search of the vehicle and
3 after the arrest of the individuals for public disorderly
4 conduct? My question is: You didn't get consent until
5 after all those things took place?

6 A. Almost about the same, ma'am.

7 Q. Did you write a report for this?

8 A. It's in your hand. We -- Officer White got the odor
9 of marijuana coming from the car as I was talking to
10 Mr. Bradley. About the same time.

11 Ms. Wilson arrived on the scene and we talked to her
12 and got the consent form signed. So it's all about the
13 same time. We got about four or five officers on the
14 scene.

15 Q. So it was about the same time --

16 A. Yes.

17 Q. -- that you testified that you had to initially get in
18 touch with Ms. Wilson?

19 A. Right. I did not --

20 Q. And then she arrived on the scene..

21 A. I did not make contact with her. She had arrived on
22 her own --

23 Q. She arrived on the scene later?

24 A. Her phone was disconnected. She arrived on the scene
25 approximately 10 minutes later.

CALVIN FULMORE - REDIRECT BY McELVEEN (SUPPRESSION HEARING)

1 Q. Later. So after all the events took place?

2 A. No, ma'am. I'm talking about when we first got
3 there. She arrived on the scene a few minutes later,
4 after I had got the number from Mr. Ned. I'm not saying
5 she arrived exactly 10 minutes. It could be anywhere from
6 five to 10 minutes later.

7 Q. But it was later?

8 A. Yes.

9 MS. BUTLER: Okay. I have no further questions.

10 THE COURT: Any redirect?

11 MS. McELVEEN: Yes, sir. Just a couple questions.

12 REDIRECT EXAMINATION

13 BY MS. McELVEEN:

14 Q. When you drove up, Mr. Bradley and Mr. Ned were around
15 the Dodge Charger?

16 A. They were inside the car, both of --

17 Q. They were inside the car?

18 A. Yes, ma'am.

19 Q. And were the doors open in the car?

20 A. All four doors were open.

21 Q. What was suspicious about the vehicle?

22 A. We had calls and reports taken about the burglaries,
23 breaking and entering autos, fighting, shooting, gang
24 activities. And that's --

25 Q. What did you expect when you pulled up to the car?

1 A. It was a B&E auto.

2 Q. And you personally saw Mr. Bradley place a plastic bag
3 under the couch cushion?

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

5 Q. Without making any contact with him?

6 A. That's right.

7 Q. And you personally smelled the marijuana coming from
8 the Dodge Charger after seeing the drug -- the plastic bag
9 under the couch?

10 A. Yes, ma'am.

11 Q. And did you have reasonable suspicion that criminal
12 activity was going on?

13 A. Yes, ma'am.

14 MS. McELVEEN: I have no further questions.

15 THE COURT: Any recross based on redirect?

16 MS. BUTLER: No, Your Honor.

17 THE COURT: Thank you. You may step down. Any other
18 witnesses?

19 MS. McELVEEN: No, sir.

20 MS. BUTLER: Yes, Your Honor.

21 Our argument is that law enforcement's initial search
22 of the vehicle was unlawful. It did not meet any of the
23 exceptions to the fourth amendment warrant requirement.

24 Because of the initial search where the scale and the
25 cocaine residue was discovered, because that search was

1 illegal any subsequent consent to search was tainted by
2 that unlawful search and therefore invalid.

3 And Mr. Bradley is allowed to challenge the admission
4 of the drugs because of his legitimate expectations of
5 privacy that he had and the items seized. And that's
6 basically the substance of our argument.

7 THE COURT: All right.

8 MS. BUTLER: And we move to dismiss.

9 THE COURT: Okay. Thank you. Yes, ma'am?

10 MS. McELVEEN: Yes, sir.

11 The officer testified that he had reasonable suspicion
12 that criminal activity was afoot. First he suspected a
13 B&E auto because the doors were open and the center
14 console was out.

15 He personally then observed Mr. Bradley place a
16 plastic bag under a couch after attempting to kind of
17 quickly exit the area after seeing law enforcement, then
18 smelled marijuana in the vehicle.

19 He testified that after that, after he entered the
20 apartment with the consent to search by the girlfriend of
21 Mr. Ned who, frankly I don't see why Mr. Bradley would
22 have any expectation of privacy in the apartment of a
23 co-defendant's girlfriend. The reasonable expectation of
24 privacy when she gives consent and she's the homeowner is
25 absolutely ludicrous.

1 And then after finding drugs in the couch, officers
2 then searched the Dodge Charger. No matter when they were
3 arrested for public disorderly conduct the search of the
4 Charger, he testified, occurred after locating the drugs
5 in the couch. So we would argue it was a lawful search
6 pursuant to a consent and a reasonable suspicion of
7 criminal activity.

8 MS. BUTLER: Your Honor, there's case law that says if
9 there's reasonable suspicion, law enforcement is allowed
10 to stop and question and investigate a person. And if the
11 officer feels in danger the officer is allowed to pat down
12 for weapons. If there is a reasonable suspicion, it still
13 doesn't give law enforcement the opportunity to fish for
14 evidence.

15 And, yes, Detective Fulmore said that they smelled
16 marijuana coming from the vehicle. But he also testified
17 he didn't see any paraphernalia or any other thing that
18 would indicate any drugs being used or sold.

19 So we will argue that the reasonable suspicion -- the
20 smell alone was not enough for reasonable suspicion to
21 search the vehicle.

22 THE COURT: But the smell came after he had seen him
23 place a bag under the couch in plain view; is that
24 correct?

25 MS. BUTLER: Yes, Your Honor. And he also testified

1 that he couldn't tell what was in the bag. He just saw a
2 vehicle -- I mean, excuse me, a bag being carried by
3 Mr. Bradley. He couldn't tell what was in the bag.

4 So we'll argue that the search does not meet the
5 reasonable suspicion exception.

6 And we will also argue that Mr. Bradley and the other
7 individual was not under arrest at that time. Doesn't
8 meet the search incident to arrest exception. And there
9 certainly wasn't probable cause to search the vehicle. So
10 the search does not meet that exception. And there's case
11 law that says even if there is, even if a third party has
12 authority to give consent, an unlawful search -- that
13 consent alone is not enough to be untainted by the initial
14 unlawful search.

15 And the State would have to prove that there was a
16 break in the causal connection between the search and, the
17 initial unlawful search and the discovery of evidence.
18 And we will argue that law enforcement didn't consent
19 to -- didn't get consent to search the apartment until
20 after law enforcement discovered the marijuana and the
21 drugs inside the vehicle. And because of that causal
22 connection, we'll argue that the consent for Ms. Wilson is
23 invalid and the drugs should be suppressed.

24 THE COURT: All right. Based upon what I've heard
25 from the testimony, I find there was probable cause. If

1 the testimony at trial is materially different then of
2 course you can make a motion for directed verdict at the
3 appropriate time. But right now in their case in chief it
4 will be preserved. So I'm going to deny your motion.

5 MS. BUTLER: Thank you, Your Honor.

6 THE COURT: All right. Anything further?

7 MS. McELVEEN: None from the State, Your Honor.

8 THE COURT: Y'all ready?

9 MS. McELVEEN: Yes, sir.

10 THE COURT: Why don't we take five minutes and then
11 we'll come back and start the trial?

12 MS. McELVEEN: Thank you.

13 MS. BUTLER: Thank you, Your Honor.

14 (Break taken at 10:48 a.m. At 10:53 a.m., the trial
15 resumed as the jury enters the courtroom:)

16 THE COURT: Mr. Kinley, they have elected you to be
17 the foreperson; is that correct?

18 THE FOREPERSON OF THE JURY: Yes, sir.

19 THE COURT: All right. Thank you. Please swear the
20 jury.

21 THE CLERK: All right, sir.

22 (Jury impaneled.)

23 THE BAILIFF: Thank you. You may be seated.

24 THE COURT: Thank you.

25 THE CLERK: Yes, sir.

1 THE COURT: And good morning again, ladies and
2 gentlemen. Before we begin this trial I want to tell you
3 that this trial will probably be different from what you
4 might expect. You know, many people never have the
5 opportunity to attend an actual trial as you are today and
6 may think from watching TV, movies or reading books that
7 trials are always full of high drama, intense action and
8 riveting circumstances.

9 Well, while all these things might be true at times,
10 this trial is not for entertainment. This is a real trial
11 which is a fundamental part of our democracy. It's a
12 search for the truth in an effort to make sure that
13 justice is done. And searching for the truth and making
14 sure that justice is done is often slow, deliberate,
15 repetitive. The exact opposite of what you've seen on TV,
16 movies, or read in books.

17 Now, ladies and gentlemen, this courtroom is a place
18 of honor that is dedicated to the protection and
19 preservation of our citizen's rights through what has been
20 called and what I truly believe to be the greatest justice
21 system ever created by man.

22 The attorneys who are appearing before you are
23 advocates for the parties that they represent. But first
24 and foremost, they are officers of this court who are
25 sworn to uphold the integrity and the fairness of our

1 judicial system and to help you as jurors in your search
2 for the truth. You should expect them to be professional,
3 competent, and ethical in the representation of their
4 client's interests.

5 And remember, ladies and gentlemen, you too just took
6 an oath to listen to the evidence in this case and reach a
7 fair and just verdict. And you're expected to be
8 professional, reasonable and ethical as well.

9 And again, thank you for accepting this very important
10 responsibility of jury service and your contribution to
11 our justice system.

12 Now, ladies and gentlemen, what I'm going to tell you
13 now is just intended to serve as an introduction of the
14 trial. These remarks are not a charge on the law in this
15 case. I'll charge you the law that is applicable to this
16 case at the end of the trial. This is merely an
17 explanation of the procedures that we will follow so you
18 may better understand what is happening.

19 Let me say up front, ladies and gentlemen, that you
20 will not be allowed to take notes during this trial.
21 Therefore, it's very important that you listen closely
22 throughout the trial.

23 Ladies and gentlemen, the Defendant is charged by
24 Indictment 2012-GS-43-76 filed in this court with
25 trafficking in cocaine base and possession of marijuana

1 less than one ounce. The elements specific are -- or more
2 than one ounce. The specific elements will be explained
3 to you later as the trial progresses.

4 But let me remind you as I told you when you were in
5 the main group, the indictment charging the Defendant is
6 simply the document that brings this case into court and
7 it is not in any sense evidence of any of the allegations
8 contained in it.

9 The Defendant has pled not guilty. And therefore the
10 charges in the indictment, the State therefore has the
11 burden of proving each and every element of the charges
12 beyond a reasonable doubt. It will be your duty, ladies
13 and gentlemen, as jurors, to decide whether or not the
14 State has met that burden.

15 And as I said, your duty as jurors is to determine the
16 facts in this case. You're to determine the facts from
17 the testimony from this witness stand and any other
18 evidence that is presented here in court. And it will be
19 up to you to determine the inference which you feel may be
20 properly drawn from the evidence. And, ladies and
21 gentlemen, it's especially important that you perform your
22 duty diligently and conscientiously because ordinarily
23 there is no way to correct an erroneous determination of
24 facts by a jury.

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

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

8 Your job is to take the law as I give it to you and
9 apply it to the facts as you find them from the testimony
10 and from other witnesses and any other exhibits that is
11 introduced. And after hearing the evidence you will
12 deliberate and render a true and just verdict under the
13 solemn oath that you just took as jurors.

14 Now, ladies and gentlemen, until I advise you to begin
15 your deliberations at the conclusion of the case, you must
16 not discuss the case with anyone including your fellow
17 jurors. You may not use a computer, a cellular phone or
18 other electronic device with communication capabilities
19 while here in attendance at trial or during the
20 deliberations.

21 You may use these devices when we break for lunch or
22 when you go home for the evening but even then you can't
23 use them to disclose any information about the case. And
24 of course information about the case would include but
25 certainly would not be limited to information about a

1 party, a witness, an attorney or a court official, any
2 news account about the case or any information collected
3 through juror research or any topic raised during the
4 testimony offered from any of the witnesses or any other
5 information collected through juror research on any other
6 topic that you might think would be helpful in deciding
7 the case.

8 After the case is submitted to you, you must discuss
9 it only in the jury room with your fellow jurors.

10 Now, ladies and gentlemen, the attorneys in this case
11 and the parties in this case are advised that they are not
12 to talk to you at all. So if you see someone involved in
13 this case in this small courthouse square and they don't
14 even speak to you, well, they're not being unfriendly,
15 they're just following my orders.

16 Now, ladies and gentlemen, it's very important that
17 you keep an open mind and not decide any issue in this
18 case until all of the evidence has been presented, the
19 attorneys have made their closing arguments and I have
20 charged you on the law that is applicable to this case.

21 It's your solemn responsibility, ladies and gentlemen,
22 to determine the guilt or the innocence of the Defendant
23 and your verdict must be based solely on the evidence as
24 it is presented during this trial and on the law as I give
25 it to you at the conclusion of the trial.

1 Now, ladies and gentlemen, in just a moment the
2 solicitor will make what is called an opening statement
3 where she will explain to you what she believes the issues
4 are in this case. The attorney for the Defendant may also
5 make an opening statement although she's not required to
6 do so. What the attorneys will tell you during their
7 opening statements is not evidence. It is only their
8 contention as to what the evidence will show, or what the
9 issues are in this case.

10 And from time to time during the trial you may hear
11 one of the attorneys say something like, Your Honor, I
12 believe we have a question or a matter of law to take up
13 with you; or, Your Honor, may we approach the bench; or
14 sometimes I may find it necessary to excuse you from the
15 courtroom for a short while while the attorneys and I
16 discuss a matter of law.

17 The reason for this is because, as I've said, you are
18 the judges of the facts and sometimes when I'm discussing
19 matters of law with the attorneys it may be necessary for
20 me to comment on the facts in connection with ruling or
21 making a ruling as to whether a particular law applies.
22 And as I've said, I'm not supposed to tell you what I
23 think the facts are, therefore I'll excuse you from the
24 courtroom or from these conversations so that you will in
25 no way be influenced by anything that I might say or do in

1 connection with the facts.

2 Also during the trial, ladies and gentlemen, you may
3 hear one of the attorneys make an objection to certain
4 evidence that is about to be presented. Whether I sustain
5 it, which would be to grant the objection, or overrule,
6 which would be to deny the objection, should not be
7 construed that I favor one side over the other. I do
8 not. Nor should you infer that the objecting party is
9 trying to hide something from you.

10 In this court as in all situations in life, there are
11 specific rules that must be followed. And the attorneys
12 as officers of this court are merely trying to follow the
13 rules of evidence in this court in making their
14 objections. And I am only ruling based upon what I
15 believe the law of the State of South Carolina to be
16 concerning the evidence that is about to be presented.

17 Ladies and gentlemen, in determining what the true
18 facts are in this case you must decide whether or not the
19 testimony of a witness is believable. It will be my
20 responsibility to rule as a matter of law as to whether
21 certain testimony is admissible but once the testimony is
22 admitted whether or not you decide to believe it is simply
23 for you to determine.

24 In deciding whether to believe a witness you have a
25 right to consider the interest of any witness, the bias of

1 any witness, the prejudice of any witness, the opportunity
2 for the witness to have actually observed the matters and
3 things about which the witness may testify and the way the
4 witness acts on this witness stand.

5 Ladies and gentlemen, you have a right to consider
6 anything that is in the record that will help you evaluate
7 the testimony of a witness. That means that it is your
8 responsibility and duty to pay close attention to the
9 witnesses, to observe the witnesses and to listen to the
10 witnesses and to pay close attention to the attorneys and
11 to the Court. Please don't let your thoughts wander but
12 give strict attention to the testimony in this case so at
13 the end of all the testimony, after the arguments of
14 counsel and the charge on the law by me, you will then be
15 in a position to determine what the true facts are, and
16 apply those to the law and thus render a true and just
17 verdict.

18 And, Mr. Foreman, it will also be your duty to preside
19 in the jury room and be the jury spokesperson here in
20 court. You will also have the responsibility of writing
21 the verdict on the verdict form which we will provide to
22 you, but I'll give you further instructions on that at the
23 appropriate time.

24 Now in order to preserve everyone's rights I'll give
25 the parties an opportunity to object to anything that I've

1 stated. Does the State have any objection?

2 MS. McELVEEN: No, sir.

3 THE COURT: Does the defense have any objection?

4 MS. BUTLER: No, Your Honor.

5 THE COURT: Thank you. We will now begin the trial of
6 this case. Yes, ma'am.

7 MS. McELVEEN: Good morning, ladies and gentlemen. My
8 name is Bronwyn McElveen and I represent the State, as the
9 Judge said.

10 You are going to hear testimony from police officers
11 regarding this incident. You'll hear testimony from the
12 evidence technician in the Sumter Police Department and
13 SLED, and a SLED analyst is coming to talk about how they
14 analyzed the drugs.

15 The testimony you will hear regards -- sets forth that
16 on September 19th, 2011, Sergeant Fulmore was doing patrol
17 in the Friendship Apartment area. He observed two
18 gentlemen sitting in a car with four doors open, the
19 console removed and part of the dash removed.

20 Because of the high rate of breaking and entering of
21 motor vehicles in the area, he was a little concerned
22 about the fact that there were pieces of the car that were
23 obviously removed. Therefore he pulled in and quickly one
24 of the passengers got out and walked very briskly to an
25 apartment. Sergeant Fulmore went behind him and

1 observed -- he was going to ask him about the vehicle.
2 Instead, before he could ask him a single question the
3 door, the screen door was open -- was closed, but the door
4 was open. He observed through the blinds in plain view
5 plastic bags being hidden underneath couch cushions.

6 The gentleman exited the apartment. Sergeant Fulmore
7 started asking him questions about the car. Another
8 officer who had arrived with Sergeant Fulmore at that
9 point alerted that had they smelled marijuana. Sergeant
10 Fulmore approached the vehicle where the two were
11 originally sitting. Sure enough, he could smell
12 marijuana.

13 At that point the subjects, Sergeant Fulmore will
14 testify, became rather boisterous and shouted profane
15 language. And they were placed under arrest for public
16 disorderly conduct.

17 Ladies and gentlemen, after that the homeowner, the
18 woman who resided in the apartment, showed up. She had
19 been attempted to be called but unfortunately her phone
20 was not working but she did appear. She signed a consent
21 to search form. Officers went in and found the drugs or
22 suspected drugs and plastic baggies right where the
23 officer had seen the gentleman place the drugs right under
24 that couch cushion.

25 After that officers then searched the Dodge Charger

1 and found a scale with cocaine, trace amounts of cocaine
2 on it. The drugs were tested and came back as 13.2 grams
3 of crack cocaine, and then four grams of marijuana and
4 trace amounts of cocaine.

5 Now, ladies and gentlemen, Mr. Bradley's charged with
6 trafficking. Trafficking requires a weight component.
7 He's charged with trafficking cocaine base because it was
8 over 10 grams of cocaine base which is another word for
9 crack cocaine. That's the scientific name for crack
10 cocaine, it's cocaine base. There's a difference between
11 powder cocaine and cocaine base which is what creates the
12 crack cocaine. And our SLED analyst I'm sure will tell us
13 more about that. But because there were 13.2 grams, the
14 weight alone makes Mr. Bradley charged with trafficking in
15 cocaine base and possession of marijuana.

16 We appreciate your time. We appreciate your attention
17 and your consideration of all of our officers' testimonies
18 and everybody who works hard in our lovely city. And we
19 appreciate your attention. And we just ask that you keep
20 -- regard -- make sure you think about who's telling the
21 truth, who has a reason to tell the truth and who has a
22 reason to lie, and just come back with a verdict that
23 speaks the truth.

24 I look forward to addressing you guys again at the end
25 of the case. Thank you.

1 THE COURT: Thank you. Ms. Butler.

2 MS. BUTLER: Yes, Your Honor.

3 Good afternoon, ladies and gentlemen. My name's
4 Tiffany Butler and I am an assistant public defender here
5 in Sumter County and I represent Lionel Bradley.

6 And today Lionel Bradley is innocent. He is an
7 innocent man. And he is innocent until the State proves
8 that he did this beyond a reasonable doubt.

9 And that's when you as jurors come in. It's your job
10 to listen to all of the evidence presented, all of the
11 testimony given by the officers. And it's your job to
12 listen to that evidence and determine whether Mr. Bradley
13 committed this crime.

14 It's the State's job to present evidence to prove that
15 Mr. Bradley did this beyond a reasonable doubt. Therefore
16 your job as jurors is a very, very crucial job in this
17 criminal process.

18 And so I ask you while you're listening to all the
19 evidence and observing all the witnesses that you do not
20 rush to a judgment. It's important that you listen to all
21 of the evidence. And what -- the question -- and the
22 evidence that's presented here today is just as important
23 as the evidence that's not presented. So it's important
24 that you pay attention, listen to all the evidence, don't
25 rush to a judgment and ask yourself questions about what's

CALVIN FULMORE - DIRECT BY McELVEEN

1 presented today.

2 And I'm sure once you do that, ladies and gentlemen,
3 you will find that Mr. Bradley is innocent of this crime
4 and you'll find him not guilty. Thank you.

5 THE COURT: Thank you, Ms. Butler.

6 The State may call its first witness.

7 MS. McELVEEN: The State would call Calvin Fulmore.

8 CALVIN FULMORE, having been duly sworn, was examined
9 and testified as follows:

10 THE CLERK: Have a seat up here, please, sir. State
11 your full name, spell your last name for the record.

12 THE WITNESS: Calvin Fulmore, F-U-L-M-O-R-E.

13 DIRECT EXAMINATION

14 BY MS. McELVEEN:

15 Q. Can you tell us your profession or your occupation?

16 A. I'm a staff sergeant with the Sumter Police
17 Department.

18 Q. How long have you been with the Sumter Police
19 Department?

20 A. I've been with Sumter for 11 years.

21 Q. What do your duties entail?

22 A. I'm supervisor over a specialized team. We go out in
23 high-crime areas, try to keep the peace, find suspects,
24 serve warrants, try to keep the area quiet.

25 Q. And do you ever have the occasion to drive through

CALVIN FULMORE - DIRECT BY McELVEEN

1

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

3 Q. And is that here in the City of Sumter?

4 A. It is.

5 Q. Were you working on September 19th, 2011?

6 A. Yes, I was.

7 Q. Can you tell us what you were doing and if you had the
8 opportunity to respond at

9 A. On that date and time my team arrived at the
10 Friendship Apartment because it's a high-crime area. We
11 got called about a B&E which is breaking into motor
12 vehicle, burglaries, gang activities and then a murder
13 there also.

14 We arrived at that apartment. I observed a black
15 Dodge Charger parked with all four doors open. The dash
16 of that car was removed along with the center console and
17 a stereo inside.

18 Q. And what did you think when you saw that or what made
19 you worried about that scene?

20 A. I thought it was a B&E which is breaking and entering
21 auto, there was a B&E in progress.

22 Q. Was there anyone in the car?

23 A. Yes, there was two subjects in the car.

24 Q. What happened then? What happened next?

25 A. We arrived, me and the other officer we arrived,

CALVIN FULMORE - DIRECT BY McELVEEN

1 checked the vehicle out, talked to the subjects, make sure
2 everything was okay. Before we got there the Defendant,
3 Mr. Bradley, he looked in my direction, got out of the car
4 and walked at a fast pace toward

5 Q. What happened next? And first of all, let me -- who
6 was your partner at that time?

7 A. That was City Corporal White. She's not here today.
8 There's a City Corporal VanAllen. He's here.

9 Q. Who was riding in the car with you?

10 A. We were riding in our own cars, about four cars.

11 Q. You referred to Corporal White. Why is she not here
12 today?

13 A. She's in Afghanistan, military police.

14 Q. She's in Afghanistan, you said?

15 A. Yes.

16 Q. And what happened when Mr. Bradley exited the vehicle
17 and went towards

18 A. He walked at a fast pace. I got out of my truck,
19 walked towards his direction, towards
20 Mr. Bradley went through the open hard door, the screen
21 door was shut. He went through the door. The window at
22 the apartment was, had blinds that was open. I observed
23 him through the blinds in plain view what he was doing.

24 Q. What did he do?

25 A. He reached into his jacket pocket, removed two plastic

CALVIN FULMORE - DIRECT BY McELVEEN

1 bags and placed them under the couch pillow, the only
2 couch in that area where he was standing.

3 Q. What -- so you observed him place two plastic bags
4 under a couch cushion; correct?

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

6 Q. Did he exit the apartment after that?

7 A. He did.

8 Q. What happened when he exited the apartment?

9 A. I talked to him, asked him what was his name, whose
10 vehicle it was. During that time I was talking to him,
11 Officer White advised me she smelled marijuana coming from
12 the car, a very strong odor.

13 Q. That's from the black Charger?

14 A. Yes, ma'am, the black Charger Mr. Bradley was seen
15 inside. I approached the black Charger at the driver's
16 side door, also smelled a strong odor of marijuana coming
17 from the car.

18 Q. What happened after you smelled marijuana, an odor of
19 marijuana coming from the car?

20 A. Both co-defendant and Mr. Bradley began using profane
21 language in public. Other people appearing outside also.
22 They both became cursing toward the officer in the public
23 where the residents were standing.

24 Q. What did you do in response to their profanity and
25 rather boisterous activity?

CALVIN FULMORE - DIRECT BY McELVEEN

1 A. Because of that I placed them under arrest for what we
2 call PDC, public disorderly conduct. They were placed
3 under arrest for that charge.

4 Q. What happened after they were placed under arrest?

5 A. Ms. Wilson arrived on the scene, the homeowner of
6 She got there.

7 Q. How did you know that that was the homeowner of the
8 Tell us a little bit about that.

9 A. Mr. Ned, the co-defendant in the car, I asked him who
10 the apartment belongs to. He said his girlfriend,
11 Ms. Wilson. I asked Mr. Ned for Ms. Wilson's phone
12 number. He gave me the number. I called that number and
13 it came back disconnected. Ms. Wilson finally arrived on
14 the scene, probably five to 10 minutes later. And asked
15 her if she was, if she lives at she's the

16 homeowner there. I got consent to sign (verbatim) by
17 Ms. Wilson of I saw Mr. Bradley. I saw him
18 through the open blinds and placed the two plastic bags.

19 Q. So Ms. Wilson is the girlfriend of other gentleman in
20 the car; correct?

21 A. Right, the co-defendant.

22 Q. May I please mark this? Is that --

23 (State's Exhibit No. 7, consent to search, marked for
24 identification.)

25 BY MS. McELVEEN:

CALVIN FULMORE - DIRECT BY McELVEEN

1 Q. I'm handing you what's been marked as State's Exhibit
2 Seven for identification purposes only. What is that?

3 A. This is our consent to sign form, Sumter Police
4 Department. This is what we use to get consent for
5 someone to voluntarily have law enforcement to check the
6 property, whether it's home, car, land, whatever we're
7 trying to search.

8 Q. That's a consent to search form?

9 A. It is.

10 Q. Is that the form that you presented to Ms. Wilson?

11 A. This is the form I presented to Ms. Wilson.

12 Q. Did you -- did she sign that form?

13 A. Yes, ma'am. She read it, then signed it.

14 Q. And that gives you consent to search her apartment?

15 A. Yes, ma'am. It does.

16 Q. Did you sign that form?

17 A. I did not sign that date. I did sign as a witness at
18 the bottom that I observed her sign.

19 Q. And that is your signature and you personally observed
20 her sign the form?

21 A. Yes, ma'am, I signed and had her date it.

22 MS. McELVEEN: We would like to enter State's Exhibit
23 Seven into evidence.

24 THE COURT: Any objection, Ms. Butler?

25 MS. BUTLER: I have no objection, Your Honor.

CALVIN FULMORE - DIRECT BY McELVEEN

1 THE COURT: Without objection State's Exhibit Number
2 Seven is admitted.

3 (State's Exhibit No. 7, consent to search form,
4 received into evidence.)

5 BY MS. McELVEEN:

6 Q. Okay. So after you got the consent to search form,
7 what happened next?

8 A. Myself, Officer White, who's not here, and Ms. Wilson
9 herself, we entered the apartment.

10 Q. And what did you find?

11 A. I found the same two items, plastic bags, I saw
12 Mr. Bradley place behind the pillow couch.

13 Q. I'm handing you State's Exhibits Three through Six.
14 Can you identify these items?

15 A. Yes, ma'am. I can.

16 Q. What is that?

17 A. These are pictures of the couch itself that we took.
18 This is before we moved the pillow where the bags were
19 placed.

20 The second photo shows the crack cocaine and the
21 marijuana. We have a larger picture of the item, closer
22 picture of the same two bags of crack cocaine and the
23 marijuana I saw Mr. Bradley have in his possession and
24 placed in the couch.

25 Q. And that is a true and accurate representation of how

CALVIN FULMORE - DIRECT BY McELVEEN

1 that couch looked that day and the drugs that were on it?

2 A. Exactly. Yes, ma'am.

3 MS. McELVEEN: Your Honor, we would like to enter into
4 evidence items Three through Six.

5 THE COURT: Any objection, Ms. Butler?

6 MS. BUTLER: No objection, Your Honor.

7 THE COURT: Without objection they're entered into
8 evidence.

9 MS. McELVEEN: Thank you.

10 (State's Exhibit Nos. 3, 4, 5 and 6, photographs, were
11 received into evidence.)

12 BY MS. McELVEEN:

13 Q. Sergeant Fulmore, did any other officers show up to
14 assist with the photography of these drugs or --

15 A. Yes, ma'am. Scene Detective Wilson did. He arrived
16 on the scene. He was the agent on call. He came straight
17 to us.

18 Q. And so he observed those drugs as well?

19 A. Yes, ma'am. He observed them before they were even
20 touched.

21 Q. And is he present in the courtroom today?

22 A. Yes, ma'am. He is.

23 Q. What happened after you guys discovered the drugs?

24 So, the two gentlemen are under arrest for public

25 disorderly conduct. You've got the drugs from the couch.

CALVIN FULMORE - DIRECT BY McELVEEN

1 And what happened next?

2 A. We, we went out, searched his Charger. Corporal White
3 and VanAllen searched the Charger and found a black
4 digital scale with drugs, with cocaine residue on top. So
5 we find in the Charger a black scale with cocaine.

6 Q. Did you see the scale with cocaine?

7 A. Once out of the car. I didn't search the car myself.

8 Q. What happened with all the evidence -- so they found
9 the scale in the black Charger, the two gentlemen at that
10 point are under arrest. What did you do with the
11 evidence?

12 A. I called our Detective Alec on call. She's our
13 evidence tech. She arrived on the scene with the evidence
14 bags. She collected the evidence right there on the
15 scene.

16 Q. And did you enter these items into evidence -- how do
17 you enter something into evidence?

18 A. We --

19 Q. Well, here. I'll just hand up State's Exhibit Eight
20 for identification purposes only. Can you tell us, what
21 is that?

22 A. This is our evidence. It shows a chain of custody.
23 Right here. This is our evidence that is seized to go to
24 evidence. We put the case number, the time, where it was
25 found, who it was found by. And also on the back a date

CALVIN FULMORE - DIRECT BY McELVEEN

1 and time, item number and evidence on the side where it's
2 going to.

3 Q. So did you -- you itemized the items that you find at
4 the scene?

5 A. Yes, ma'am. At the bottom, I print and sign.

6 Q. So you entered these items into evidence with the
7 evidence technician?

8 A. I did.

9 Q. And did you then fill out a request to have the -- did
10 you then fill out a request to have these drugs analyzed?

11 A. Yes, ma'am.

12 Q. Can you tell us about -- does marijuana, is it
13 analyzed by -- marijuana, is that analyzed by the Sumter
14 Police Department?

15 A. It is analyzed by the Sumter Police Department.

16 Q. What about the cocaine base and the cocaine?

17 A. The cocaine base goes to SLED, State Law Enforcement
18 Division. They take the items such as crack cocaine.

19 Q. I'm handing you, well, first of all, I'd like to have
20 State's Exhibit Eight entered into evidence at this time,
21 the chain of custody.

22 THE COURT: Any objection?

23 MS. BUTLER: No, Your Honor.

24 THE COURT: Without objection. State's Exhibit Eight
25 is admitted.

CALVIN FULMORE - DIRECT BY McELVEEN

1 (State's Exhibit No. 8, chain of custody, received
2 into evidence.)

3 BY MS. McELVEEN:

4 Q. I'm handing you what's been marked as State's Nine for
5 identification purposes. What is that?

6 A. This is SLED request form that we have the crack
7 cocaine and cocaine tested. It shows what it is. It was
8 tested by SLED.

9 Q. So you fill out the request form?

10 A. Yes, ma'am. Sign and date it at the bottom here.

11 Q. And you sent the request that the drugs be analyzed
12 and then sent off to SLED?

13 A. Yes, ma'am.

14 MS. McELVEEN: Your Honor, we'd like to submit
15 evidence Number Nine into -- well, we'd like to move to
16 submit State's Exhibit Nine into evidence at this time.

17 THE COURT: Any objection, Ms. Butler?

18 MS. BUTLER: No objection, Your Honor.

19 THE COURT: Without objection, State's Exhibit Nine is
20 admitted into evidence.

21 MS. McELVEEN: Thank you.

22 (State's Exhibit No. 9, SLED request form, received
23 into evidence.)

24 BY MS. McELVEEN:

25 Q. And I know this is packaged a little differently than

CALVIN FULMORE - DIRECT BY McELVEEN

1 maybe when you first saw it, but can you identify first of
2 all State's Exhibit 10?

3 A. This is one of the BEST pack bags. Not the bag -- the
4 bag inside the BEST bag, that's what I saw Mr. Bradley
5 have possession of.

6 Q. And that's the bag that you found inside the couch?

7 A. Yes, ma'am. Smaller bag inside the plastic bag.

8 Q. Your Honor, I don't -- I was hoping maybe we could cut
9 this to get to the BEST second bag or?

10 THE COURT: Do you have any objection?

11 MS. BUTLER: No objection, Your Honor.

12 MS. McELVEEN: Thank you, sir. I just wouldn't want
13 to open it until we're through.

14 (Bag opened.)

15 BY MS. McELVEEN:

16 Q. And does this package contain the second bag that you
17 found or the second amount of whatever it is, substance
18 that you found in the couch?

19 A. May I pull it out, ma'am?

20 Q. Yes, sir.

21 A. This bag contains what I saw that was another bag that
22 Mr. Bradley had in his possession, that bag was removed by
23 SLED to test the contents.

24 Q. So there was another plastic bag around that
25 substance?

CALVIN FULMORE - DIRECT BY McELVEEN

1 A. Yes, ma'am.

2 Q. And what were you suspect -- what did you suspect the
3 substances were?

4 A. I suspected this to be crack cocaine, cocaine base. I
5 suspected this to be marijuana, marijuana in the smaller
6 bag.

7 MS. McELVEEN: And, Your Honor, we would like to have
8 Exhibits 10 and 11 entered into evidence but not as a
9 descript item at this time.

10 THE COURT: Any objection?

11 MS. BUTLER: No, Your Honor.

12 THE COURT: Without objection they are entered without
13 description.

14 (State's Exhibit Nos. 10, marijuana from BEST bag, and
15 No. 11, crack cocaine from BEST bag, were received into
16 evidence.)

17 BY MS. McELVEEN:

18 Q. And the gentleman, the gentleman who you saw put the
19 items in the couch -- the gentleman that you saw put the
20 items in the couch, is he -- do you see -- is he on that
21 picture right there?

22 A. Yes, ma'am. Identified as Lionel Bradley, suspect.
23 Two bags, one containing marijuana, one containing crack
24 cocaine.

25 Q. Is that the gentleman who had the --

CALVIN FULMORE - DIRECT BY McELVEEN

1 A. Positive identification.

2 Q. -- bags?

3 A. Yes, ma'am.

4 Q. And he was charged in this case?

5 A. Yes, ma'am.

6 MS. McELVEEN: Please let the record reflect that
7 Sergeant Fulmore is holding up a picture of the Defendant,
8 Lionel Stefan Bradley --

9 THE COURT: The record will so reflect.

10 MS. McELVEEN: -- and identified him. Thank you,
11 sir. Beg the Court's indulgence. (Pause.)

12 Q. And these people were -- these gentlemen were taken to
13 the Law Enforcement Center or to the jail, Sumter-Lee
14 Regional Detention Center?

15 A. Mr. Bradley complained about chest pains. He -- we
16 did call EMS on my behalf to take care of the Defendant.

17 Q. Why did he complain of chest pains?

18 A. Yes, ma'am. We had suspicion he may have swallowed
19 some drugs --

20 MS. BUTLER: Objection, Your Honor.

21 THE COURT: Sustained.

22 MS. McELVEEN: I have no further -- he was eventually
23 taken to Sumter-Lee Correctional Detention Center?

24 THE WITNESS: He was taken to Sumter-Lee Detention
25 Center.

CALVIN FULMORE - CROSS BY BUTLER

1 MS. McELVEEN: Thank you, sir. Please answer any
2 questions defense counsel may have.

3 THE COURT: Thank you. Ms. Butler.

4 MS. BUTLER: I have a few, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. BUTLER:

7 Q. Staff Sergeant Fulmore, you testified earlier that you
8 were driving separately when you saw the Dodge Charger?

9 A. Yes, ma'am.

10 Q. So you were alone?

11 A. Yes, ma'am.

12 Q. Okay. And how far away were you from the apartment
13 when you saw Mr. Bradley walk inside?

14 A. About 15, 18 feet.

15 Q. Fifteen, 18 feet away?

16 A. Yes, ma'am. Can I get some water?

17 (Pause.)

18 Q. And there was also -- there was another individual in
19 the car with Mr. Bradley?

20 A. Yes, ma'am.

21 Q. Is that correct?

22 A. Yes, ma'am.

23 Q. And you later discovered that Ms. Wilson actually
24 lived in that apartment. She was renting that apartment;
25 is that correct?

CALVIN FULMORE - REDIRECT BY McELVEEN

1 A. That's correct.

2 Q. And there was no evidence that Mr. Bradley lived in
3 that apartment or resided there or was a renter in that
4 apartment, was there?

5 A. There's no evidence of that.

6 Q. No evidence. Okay. Mr. Bradley never gave a
7 statement admitting to trafficking any drugs, did he?

8 A. We didn't talk to him about that.

9 Q. You didn't question him?

10 A. No, ma'am.

11 Q. So you found what you thought were drugs and you just
12 arrested him, no questions, no statement?

13 A. We arrested him for public disorderly conduct. We
14 later got a consent signed by the homeowner, Ms. Wilson.
15 We then found out the items were crack cocaine and
16 marijuana.

17 Q. But before he was charged, you didn't question him or
18 get a statement from him admitting to trafficking the
19 cocaine?

20 A. I didn't talk to him at all about the drugs.

21 MS. BUTLER: I have no questions, no further
22 questions.

23 THE COURT: Any redirect?

24 MS. McELVEEN: Very quickly.

25

JEREMY VanALLEN - DIRECT BY McELVEEN

REDIRECT EXAMINATION

BY MS. McELVEEN:

Q. You testified earlier that the other gentleman in the car with Mr. Bradley, his girlfriend rented the apartment or owned the apartment?

A. Yes, ma'am.

Q. And you personally witnessed Mr. Bradley put the bags in the couch?

A. I did.

MS. McELVEEN: Thank you. I have no further questions.

THE COURT: Any recross based on her redirect?

MS. BUTLER: No, Your Honor.

THE COURT: Thank you. You may step down.

MS. McELVEEN: I want to review the evidence. (Pause.)

The State would call Corporal VanAllen.

THE COURT: Come forward, be sworn.

JEREMY VanALLEN, having been duly sworn, was examined and testified as follows:

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Jeremy VanAllen, V-A-N-A-L-L-E-N.

DIRECT EXAMINATION

BY MS. McELVEEN:

Q. What is your position?

JEREMY VanALLEN - DIRECT BY McELVEEN

1 A. Police officer.

2 Q. And what -- you already said it, but what rank are
3 you?

4 A. Senior corporal.

5 Q. How many years have you been with the police
6 department?

7 A. Ten years.

8 Q. And what do your job duties entail?

9 A. Currently I'm on patrol.

10 Q. And did you -- were you working with Staff Sergeant
11 Fulmore on September 19th, 2011?

12 A. I was.

13 Q. Did you have the opportunity to also respond to
14

15 A. Yes, ma'am.

16 Q. Can you tell us what your role was after knowing that
17 Sergeant Fulmore located everything in the apartment? Can
18 you tell us what happened and your role, what you did?

19 A. The entire incident, or?

20 Q. Whatever -- yes. We'd love to hear what you
21 witnessed, everything you saw.

22 A. A short time time after Sergeant Fulmore --

23 Q. Can you speak up?

24 A. I arrived a short time after Staff Sergeant Fulmore
25 did and while he was talking with Mr. Bradley in the

JEREMY VanALLEN - DIRECT BY McELVEEN

1 apartment. I was standing there with Mr. Ned and Sr.
2 Corporal White at the Charger. And we had observed (sic)
3 a odor of marijuana. Corporal White advised Sergeant
4 Fulmore of that, and he came over.

5 Q. So you smelled the marijuana coming from the Dodge
6 Charger yourself?

7 A. Yes, ma'am.

8 Q. And did you witness the two gentlemen being arrested
9 for public disorderly conduct?

10 A. Yes, ma'am.

11 Q. Did you go into the apartment when the drugs were
12 recovered?

13 A. No, ma'am.

14 Q. What did you do?

15 A. I stayed at the vehicle, Mr. Ned, the co-defendant,
16 and stood by the vehicle to make sure no one tampered with
17 it.

18 Q. And did anyone tamper with the vehicle?

19 A. No, ma'am.

20 Q. Did you have the opportunity after the apartment to
21 search the vehicle?

22 A. Yes, ma'am.

23 Q. I'm going to hand you what's been marked as State's
24 Exhibits One and Two. Can you identify those items?

25 A. Yes, ma'am. This is a black digital scale that was

JEREMY VanALLEN - DIRECT BY McELVEEN

1 located inside the vehicle. And in the picture, we
2 actually photographed it on the trunk of the vehicle so
3 you'd be able to see the powder cocaine residue that was
4 left on the scale.

5 Q. And you located that scale in the black Dodge Charger?

6 A. Yes, ma'am.

7 Q. And that's an accurate representation of how it
8 looked?

9 A. Yes, ma'am.

10 MS. McELVEEN: Your Honor, we would like to have
11 State's Exhibits One and Two entered into evidence.

12 THE COURT: Any objection, Ms. Butler?

13 MS. BUTLER: No objection, Your Honor.

14 THE COURT: Without objection, State's Exhibits One and
15 Two are admitted.

16 (State's Exhibit Nos. 1 and 2, photographs, received
17 into evidence.)

18 BY MS. McELVEEN:

19 Q. And Sergeant Fulmore collected the scale?

20 A. Yes, ma'am.

21 Q. Is this scale -- I'm handing you State's Exhibit 11.
22 Is this scale one that's inside the bag of State's Exhibit
23 11?

24 A. Yes, ma'am.

25 MS. McELVEEN: Your Honor, we'd like to have -- well,

JEREMY VanALLEN - DIRECT BY McELVEEN

1 Number 11 is already in.

2 And that is the scale that went off to SLED to be
3 tested?

4 A. Yes, ma'am.

5 Q. And, again, I'm going to ask you, handing you State's
6 Exhibit 12, is this the gentleman that was at the scene
7 that day?

8 A. Yes, ma'am.

9 Q. And that is the Defendant, Lionel Stefan Bradley?

10 A. Ma'am? Yes, ma'am.

11 Q. Is that Lionel Stefan Bradley?

12 A. Did you want --

13 Q. Oh. It's the scale?

14 A. Yes, ma'am.

15 Q. And that's the trace amount of cocaine on the scale?

16 A. Yes, ma'am.

17 Q. And that is Lionel Stefan Bradley on that picture?

18 A. Yes, ma'am.

19 MS. McELVEEN: Your Honor, we'd like to have State's
20 Exhibit 12 entered into evidence at this time.

21 THE COURT: Any objection?

22 MS. BUTLER: None, Your Honor.

23 THE COURT: Without objection, State's Exhibit 12 is
24 in evidence.

25 (State's Exhibit No. 12, photograph, received into

JEREMY VanALLEN - CROSS BY BUTLER

1 evidence.)

2 BY MS. McELVEEN:

3 Q. And just kind of in summary, you smelled the marijuana
4 from the car?

5 A. Yes, ma'am.

6 Q. And you found the cocaine scales?

7 A. Yes, ma'am.

8 Q. With trace amounts of powder on them?

9 A. Yes, ma'am.

10 MS. McELVEEN: I have no further questions at this
11 time.

12 THE COURT: Ms. Butler?

13 MS. BUTLER: Yes, briefly, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. BUTLER:

16 Q. Is it Detective VanAllen?

17 A. Senior corporal.

18 Q. Senior corporal.

19 A. Yes, ma'am.

20 Q. I'm sorry. You testified that when you arrived Staff
21 Sergeant Fulmore was already talking to Mr. Bradley?

22 A. He was going, going towards his apartment. Yes,
23 ma'am.

24 Q. Mr -- Sergeant Fulmore or Mr. Bradley?

25 A. Both.

BEAUFORT WILSON - DIRECT BY McELVEEN

1 Q. And the scale was found inside of the car?

2 A. Yes, ma'am.

3 Q. And there was also another individual besides
4 Mr. Bradley detained near the vehicle; is that correct?

5 A. Yes, ma'am.

6 Q. And you didn't see Mr. Bradley walk into the
7 apartment?

8 A. I was focusing in on Mr. Ned. I didn't see who went
9 in the apartment.

10 Q. So you didn't see?

11 A. No, ma'am.

12 MS. BUTLER: I have no further questions.

13 THE COURT: Any redirect?

14 MS. McELVEEN: No, sir.

15 THE COURT: Thank you. You may step down.

16 THE WITNESS: Thank you, Your Honor.

17 MS. McELVEEN: We would call Beaufort Wilson.

18 BEAUFORT WILSON, having been duly sworn, was examined
19 and testified as follows:

20 THE CLERK: Please state your full name, spell your
21 last name for the record.

22 THE WITNESS: Beaufort Wilson, W-I-L-S-O-N.

23 DIRECT EXAMINATION

24 BY MS. McELVEEN:

25 Q. Would you tell, tell us your occupation?

BEAUFORT WILSON - DIRECT BY McELVEEN

1 A. I'm employed with Sumter Police Department as a
2 narcotics detective. I'm actually a senior detective in
3 the narcotics division.

4 Q. How long have you been with the Sumter Police
5 Department?

6 A. I've been with narcotics for seven years. I've been
7 with the department right at 11.

8 Q. And what do your job duties entail as a senior
9 detective?

10 A. I investigate any criminal activity of narcotics, any
11 organized crime, gambling, prostitution, bootleg houses,
12 EBT fraud, et cetera.

13 Q. Did you have the opportunity to respond to the
14 on September 19th, 2011?

15 A. Yes, ma'am.

16 Q. Why?

17 A. As the narcotic detective on call, I was contacted by
18 Staff Sergeant Fulmore regarding narcotics on the scene.

19 Q. And what happened when you arrived?

20 A. When I arrived I was briefed by Staff Sergeant Fulmore
21 what I needed to respond. He then advised me that when he
22 walked into the apartment that he observed two bags
23 containing suspect marijuana and crack cocaine.

24 Q. And so he had not moved the drugs?

25 A. No, ma'am.

BEAUFORT WILSON - DIRECT BY MCELVEEN

1 Q. And you saw them right there on the couch?

2 A. Yes, ma'am.

3 Q. Are they correctly depicted here in these photographs
4 that Staff Sergeant Fulmore identified for us, items Three
5 through Six? Is that the couch and are those the drugs?

6 A. Yes, ma'am. This is the couch and the drugs; yes,
7 ma'am.

8 Q. Do you also analyze marijuana?

9 A. I do.

10 Q. Did you -- I'm going to hand you State's Exhibit 13.
11 Did you have the opportunity to analyze the marijuana that
12 was found on the couch in this case?

13 A. Yes, ma'am.

14 Q. Can you tell us about how you become certified to
15 analyze marijuana and what your training is for that?

16 A. I'm certified through State Law Enforcement Division,
17 through SLED. We undergo at least 72 hours, I went
18 through. We perform over a hundred tests that has to be
19 accurate during the training. And we also have to perform
20 microscopic tests and chemical tests on any specimen,
21 marijuana, that we're analyzing.

22 Q. Have you -- since that training, have you had the
23 opportunity to analyze other marijuana or suspected
24 marijuana cases?

25 A. Yes, ma'am.

BEAUFORT WILSON - DIRECT BY McELVEEN

1 Q. About how many times have you analyzed suspected
2 marijuana?

3 A. Well over a hundred. I've -- through seven years,
4 analyzing well over a hundred. Hundreds of times.

5 Q. And can you tell us how you analyze, what's kind of
6 the process?

7 A. The chemical process is combined of dopa -- it's hard
8 to explain the chemicals on that. However the specimen's
9 actually placed into a glass, like an insert. Three
10 chemicals, they're placed on the marijuana that's being
11 analyzed.

12 And it will -- when those chemicals are placed on the
13 marijuana chemically, it actually exhibits what appears to
14 be like an I. It's clear and it turns like a bright
15 purple. That's going to be the chemical test.

16 The microscopic test is when it's placed under a
17 microscope you see what appears to be a crystallized bear
18 claw on the exhibit, on the marijuana. And that would
19 conclude microscopic tests.

20 Those two tests actually would be, test positive for
21 marijuana.

22 Q. So in this case you performed both those tests on the
23 suspected marijuana?

24 A. Yes, ma'am.

25 Q. And they both came up positive?

BEAUFORT WILSON - CROSS BY BUTLER

1 A. Yes, ma'am.

2 Q. Which means that you --

3 A. That means that their specimen was marijuana.

4 Q. And how many grams? What was the weight?

5 A. It was four grams.

6 MS. McELVEEN: Your Honor, we would like to have
7 State's Exhibit 13, the marijuana analysis document,
8 entered into evidence at this time?

9 THE COURT: Any objection, Ms. Butler?

10 MS. BUTLER: No objection, Your Honor,

11 THE COURT: Without objection State's Exhibit Number
12 13 is admitted.

13 (State's Exhibit No. 13, marijuana analysis document,
14 received into evidence.)

15 BY MS. McELVEEN:

16 Q. And, Senior Detective Wilson, is that your signature
17 on that report?

18 A. Yes, ma'am.

19 Q. And it indicates a positive test result?

20 A. Yes, ma'am.

21 MS. McELVEEN: I have no further questions at this
22 time.

23 THE COURT: Ms. Butler?

24 MS. BUTLER: Just a couple questions.

25

JAMES ALLSBROOK - DIRECT BY McELVEEN

CROSS-EXAMINATION

BY MS. BUTLER:

Q. Detective Wilson?

A. Yes, ma'am.

Q. The extent of your involvement was testing the marijuana?

A. No, ma'am. The extent of my involvement was responding to the scene --

Q. Uh-huh.

A. -- and photographing the evidence at hand.

Q. So you were not there to see Mr. Bradley walk into the house?

A. No, ma'am.

Q. The items were already there in place when you took the photographs?

A. Yes, ma'am.

MS. BUTLER: I have no further questions.

THE COURT: All right. Thank you. Any redirect?

MS. McELVEEN: No, sir.

THE COURT: All right. Thank you. You may step down.

MS. McELVEEN: James Allsbrook.

JAMES ALLSBROOK, having been duly sworn, was examined and testified as follows:

THE CLERK: Thank you, sir. Have a seat up here

JAMES ALLSBROOK - DIRECT BY McELVEEN

1 please. Watch your step.

2 Please state your full name, spell your last name for
3 the record.

4 THE WITNESS: James Allsbrook. A-L-L-S-B-R-O-O-K.

5 DIRECT EXAMINATION

6 BY MS. McELVEEN:

7 Q. Thank you for being here. What is your role? What is
8 your occupation?

9 A. My current employment is with Sumter City Police
10 Department as the evidence technician.

11 Q. And what do you do as the evidence technician?

12 A. Every day the officers after they've completed their
13 shifts or throughout their shifts, the evidence that they
14 collect is placed in a specific location within the
15 department, each in a locker.

16 Each locker is individually locked or they can bring
17 it directly to me. If it's contained within the locker,
18 the officers are required to place a chain of custody, a
19 copy of the incident report, and the items with the -- all
20 associated. And then I verify the chain of custody for
21 accuracy, the report, and the items that all match, take
22 them back to my office, sign for the chain of custody,
23 showing that I accept responsibility for the items and
24 then place them in the next process for the court
25 purposes.

JAMES ALLSBROOK - DIRECT BY McELVEEN

1 Q. So you keep all evidence?

2 A. Everything.

3 Q. You must have a very busy job. Did you -- I'm handing
4 you State's Exhibit Eight. Can you identify -- well, he's
5 identified that as the chain of custody form in this
6 case.

7 Is that the chain of custody form that you received
8 standard?

9 A. This is a copy of the one that I received, yes, ma'am.

10 Q. In this case?

11 A. Yes, ma'am.

12 Q. And how do you know that you received all of that
13 evidence?

14 A. Well, like I said earlier, once I enter or I open the
15 locker, I verify that the items that are listed match what
16 I physically have. The officer's required to sign and
17 enumerate on the back portion of it to make sure that he
18 has signed, he or she has signed it. And then I sign for
19 it and I place a reason for the transfer, what's going to
20 happen to it next.

21 Q. And did you sign the back of this form?

22 A. Yes, ma'am.

23 Q. And you received it that same day?

24 A. I received it on 9-19 of 11.

25 Q. And, what happened with the evidence after that? Is

1 it checked in and out essentially?

2 A. Depending upon the items. Items one, two, and three,
3 the drug items, were processed for court purposes. The
4 money that was taken at the scene was placed into the
5 vault within the evidence room and held until I
6 transferred it to city hall.

7 Q. And so you would also -- do you transport the drugs to
8 SLED, to South Carolina Law Enforcement Division, for
9 analysis?

10 A. For this case, I did.

11 Q. So you did transport the drugs in this case to SLED?

12 A. Yes, ma'am.

13 Q. And you then receive the drugs again when they are
14 done being tested?

15 A. I do.

16 Q. And these are the drugs that are present here today,
17 you handed them to me in the courtroom?

18 A. Yes, ma'am.

19 Q. And personally observed me open that SLED bag
20 yourself; correct?

21 A. Yes, ma'am.

22 MS. McELVEEN: Thank you. I have no further
23 questions.

24 THE COURT: Any questions, Ms. Butler?

25 MS. BUTLER: No questions of this witness.

1 THE COURT: All right. Thank you. You may step down.

2 THE WITNESS: Thank you, sir.

3 MS. McELVEEN: Thank you.

4 And, Your Honor, the South Carolina Law Enforcement
5 Division analyst is supposed to be here this afternoon,
6 so...

7 THE COURT: All right. Well, ladies and gentlemen,
8 this is a perfect time to break for lunch. So I'm going
9 to dismiss you with instructions that you not speak to
10 anyone or amongst yourselves concerning the testimony that
11 you have heard. And you get a fairly long lunch. If
12 y'all could be back here at about --

13 MS. McELVEEN: I told him to be here at 2:30, sir.

14 THE COURT: Can you get him here a little earlier?

15 MS. McELVEEN: I might be able to, yes, sir.

16 THE COURT: Why don't you all be back here right about
17 two o'clock. And, again, don't use your cell phones to do
18 any research or anything like that. The idea is that all
19 the information that you're going to need to make your
20 decision will come from within the four corners of this
21 courthouse.

22 So, ladies and gentlemen, thank you. Have a nice
23 lunch and we'll see you all right at two.

24 (Jury exits courtroom at 11:49 a.m.)

25 THE COURT: All right. Court is in recess until two

1 o'clock.

2 MS. McELVEEN: Yes, sir. And I just sent word to ask
3 him to be here at 1:45.

4 THE COURT: Thank you.

5 (Luncheon break was taken. The trial resumed at
6 2:08 p.m.:)

7 THE COURT: Is there anything we need to take up
8 before we bring the jury back in? Have you heard from
9 your --

10 MS. BUTLER: Apparently he is back in the holding
11 cell, Your Honor. I haven't had a chance to speak to him
12 yet because they were searching him, but he is here. I
13 don't know if you want me to take a minute and go back to
14 speak to him or --

15 THE COURT: He is -- a bench warrant was orally issued
16 yesterday. That bench warrant is in effect. He will not
17 be leaving the courthouse at this point in time. So, if
18 you want to go ahead and put the belt on him, bring him
19 out here because he is incarcerated.

20 MS. BUTLER: Okay.

21 MS. McELVEEN: Yes, sir.

22 THE COURT: He tends to walk and I don't want him
23 doing that.

24 MS. McELVEEN: And just while they're bringing him
25 out, for the sake of the record in the proposed judicial

1 charge, we are requesting under the section trafficking in
2 cocaine base it says cocaine, we'd request that be changed
3 to cocaine base throughout since he's not charged only --

4 THE COURT: That has been done.

5 MS. McELVEEN: Thank you.

6 THE COURT: Anything else from you, Ms. Butler?

7 MS. BUTLER: No, Your Honor.

8 THE COURT: Okay.

9 MS. McELVEEN: And marijuana is not referenced except
10 possession is. So I think that's the normal standard
11 charge.

12 THE COURT: Okay. If you need a minute to speak with
13 your client.

14 MS. BUTLER: He was asking to speak to me, Your
15 Honor. So, if I'm allowed.

16 THE COURT: Why don't you take a few minutes and speak
17 to him.

18 MS. BUTLER: Okay.

19 THE COURT: I'll leave the bench.

20 (Pause in trial from 2:14 p.m., until 2:39 p.m.):

21 MS. McELVEEN: We're on the record with the State of
22 South Carolina verses Lionel Stefan Bradley.

23 Mr. Bradley was located during lunch and was put into
24 a holding cell due to the outstanding bench warrant from
25 yesterday. He has indicated he wishes to plead to all

1 three of his pending indictments and we're coming without
2 a negotiation or without any recommendations.

3 THE COURT: All right. Ms. Butler, you represent
4 Mr. Lionel Stefan Bradley?

5 MS. BUTLER: Yes, Your Honor. I do.

6 (Defendant placed under oath.)

7 THE CLERK: State your name for the record.

8 THE DEFENDANT: Lionel Stefan Bradley.

9 THE COURT: It's my understanding that even though
10 we're in the middle of the trial, he now wants to plead
11 guilty?

12 MS. BUTLER: Yes, Your Honor. He does.

13 THE COURT: He understands there's no recommendations
14 whatsoever on this?

15 MS. BUTLER: Yes, Your Honor, he does.

16 THE COURT: Now and it's my understanding that they're
17 adding a couple more charges rather than just the ones he
18 was on trial. So he's going to plead guilty to 2013-GS-
19 43-15 which is a violation of a sex offender registry
20 second offense.

21 MS. BUTLER: Yes, Your Honor.

22 THE COURT: 2012-GS-43-76 which is trafficking in
23 cocaine base. And possession of marijuana second or
24 subsequent which is the one he was being tried on.

25 MS. BUTLER: Yes, Your Honor.

1 THE COURT: And 2012-GS-43-315 which is possession
2 with intent to distribute cocaine base within proximity of
3 a park or a school, and possession with intent to
4 distribute cocaine base second and subsequent offense; is
5 that correct?

6 MS. BUTLER: Yes, Your Honor.

7 THE COURT: Now, have you had an opportunity to
8 explain to him the charges contained in the indictment,
9 the possible punishment that he faces and his
10 constitutional rights?

11 MS. BUTLER: Yes, Your Honor. I have.

12 THE COURT: In your opinion, has he understood what
13 you've told him?

14 MS. BUTLER: Yes, sir. He does.

15 THE COURT: And do you agree with his decision to
16 plead guilty?

17 MS. BUTLER: Yes, Your Honor. I do.

18 THE COURT: And based upon the information that you've
19 seen so far at least on the one he's being tried on, do
20 you think there's a reasonable likelihood that he would be
21 found guilty beyond a reasonable doubt?

22 MS. BUTLER: Yes, Your Honor. I do.

23 THE COURT: Mr. Bradley, I need to ask you a few
24 questions to make sure you're entering into this plea
25 freely and voluntarily, knowingly and intelligently. And

1 on -- under the Indictment 2012-GS-43-76, you understand
2 that your trial has already begun?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And the State -- the jury has not made a
5 decision on that case yet. And on that one the jury still
6 presumes you to be innocent. And you understand that the
7 jury could still come back with a verdict of not guilty?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. And do you understand that if you
10 go forward with your plea on these cases, this trial is
11 over with and any defenses you might have had -- she made
12 a defense concerning the search and seizure of your
13 vehicle and of the house, but you understand that all of
14 that's waived at this point in time?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Now, you understand that you would
17 have an opportunity to testify if you wanted to in that
18 trial?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And you give up that right.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now, let me go through these with you very
23 carefully to make sure you understand.

24 The one that you're being tried on the indictment says
25 in Sumter County, South Carolina -- and this would be

1 under 2012-GS-43-76. In Sumter County, South Carolina on
2 or about September 19th, 2011, the Defendant, Lionel
3 Stefan Bradley, did knowingly sell, manufacture, deliver,
4 purchase or bring into the state, or did provide financial
5 assistance or otherwise aid, abet, attempt to conspire to
6 sell, manufacture, deliver, purchase or bring into the
7 state, or did possess or attempt to possess a controlled
8 or a controlled substance analogue, to wit, cocaine base
9 in excess of more than 10 grams in violation of Section
10 44-53-375 of the South Carolina Code.

11 Is what's stated in count one of this indictment the
12 truth?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Under count two it says that Lionel Stefan
15 Bradley, did in Sumter County on or about September 19th,
16 2011, knowingly and intentionally possess a quantity of
17 marijuana less than one ounce, a controlled substance
18 under the provision of Section 44-53-110 et sequential
19 when such possession not having been authorized by law and
20 such being the Defendant's second or subsequent offense in
21 violation of Section 44-53-370(b)(4) of the South Carolina
22 Code.

23 Is what's stated in this indictment the truth?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Madam Solicitor, I think I understand the

1 facts --

2 MS. McELVEEN: Yes, sir.

3 THE COURT: -- on that one. Do you need to put
4 anything on the record concerning that?

5 MS. McELVEEN: Just for, merely the sake of what the
6 SLED agent was going to testify to. The drugs were
7 tested. He's not on trial for the cocaine but it came
8 back positive of trace amounts. And as to the crack
9 cocaine it came back as 13.2 grams, over the 10-gram
10 threshold for the cocaine base. The marijuana was
11 testified to.

12 And that's the facts, Your Honor.

13 THE COURT: Do you agree with the facts as stated by
14 the solicitor?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now, under Indictment 2012-GS-43-315, the
17 indictment -- this charges you with you possession with
18 intent to distribute cocaine base within the proximity of
19 a public school or park and possession with intent to
20 distribute cocaine base second or subsequent offense.

21 This indictment reads that in Sumter County, South
22 Carolina on or about October 10th, 2011, the Defendant,
23 Lionel Stefan Bradley, did manufacture, distribute,
24 dispense, deliver, purchase, or did aid, abet, intent to
25 conspire to manufacture, dispense, deliver or purchase, or

1 did possess with the intent to distribute, dispense,
2 deliver a controlled substance or a controlled substance
3 analogue, to wit, cocaine base in violation of Section
4 44-53-375 of the South Carolina Code.

5 Is what's stated in count one the truth?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Count two says that Lionel Stefan Bradley
8 did in Sumter County on or about October 10th, 2011,
9 unlawfully possess with intent to distribute a quantity of
10 cocaine base, a controlled substance under the provision
11 of Section 44-53-110 et sequential of the South Carolina
12 Code as amended while in or within a one-half mile radius
13 of the grounds of a public or private school, college or
14 university, public playground or park or a public
15 vocational or trade school or technical center, to wit,
16 Morris College in violation of Section 44-53-445(b)(2) of
17 the South Carolina Code of Laws as amended.

18 Is what's stated in count two true?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: What are the facts?

21 MS. McELVEEN: Yes, sir.

22 On October 10th, 2011, at approximately 9:13 in the
23 morning, Corporal Desoni (phonetically) with the Sumter
24 County Sheriff's Office observed a gray 2011 Dodge Charger
25 traveling north on North Main very close to a vehicle in

1 front of it, less than a car length. The officer
2 attempted to initiate a traffic stop and the vehicle
3 pulled over and the driver later identified as the
4 Defendant, Mr. Bradley, ran on foot refusing to stop.

5 The officer deployed his K-9 Ewok and told the
6 gentleman that he was going to be bit if he continued
7 running. However, the gentleman continued running.

8 As the gentleman entered the woods he tripped and
9 fell, arose to his knees and threw something in the
10 bushes. The gentleman was handcuffed and he was
11 identified as Mr. Lionel Stefan Bradley.

12 Found to be suspended seventh offense. He was
13 arrested and the officer advised him that he observed
14 Mr. Bradley throw something and he stated it was only a
15 couple of rocks. While searching Mr. Bradley, the officer
16 recovered a small baggy of suspect marijuana in his front
17 pants pockets and a silver digital scale with residue on
18 it.

19 The cocaine was -- the crack cocaine was located by
20 K-9 Ewok approximately five to 10 feet from where the
21 Defendant was arrested. And these charges followed, sir.
22 The drugs were tested, came back 3.55 grams of cocaine
23 base.

24 THE COURT: Mr. Bradley, is what's stated by the
25 solicitor correct?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Are you in fact guilty of those charges?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: The final indictment is 2013-GS-43-15
5 which is a violation of sex offender registry second
6 offense. It says that Lionel Stefan Bradley did in Sumter
7 County fail to properly register as a sex offender
8 pursuant to Section 23-3-460 of the South Carolina Code of
9 Laws 1976 as amended, to wit, the Defendant did provide a
10 false address where he was residing. It ended up being a
11 vacant wooded lot and prior to registering with the
12 sheriff's department annually in the county where he
13 resides providing written notice of any change of address
14 within 10 days of the change, and the Defendant has
15 provided a false address, such being more than the first
16 sex offender registry violation in violation of Section
17 23-3-47(b)(1) of the South Carolina Code of Laws 1976 as
18 amended.

19 Is what's stated in this indictment the truth?

20 THE DEFENDANT: Yes, sir, but it was just a
21 misunderstanding with the address.

22 THE COURT: But you didn't register; is that correct?

23 THE DEFENDANT: I did register but, but it was just --

24 THE COURT: But you -- you did not provide them the
25 right address.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: What are the facts, ma'am?

3 MS. McELVEEN: On May 9th, 2012, Lionel Bradley
4 claimed his registered address to be
5 Road in Rembert. On October 26 the, Officer Pinkney
6 attempted to complete a visit, a required home visit. It
7 was discovered that that address is in fact a vacant lot
8 on wooded property.

9 On November 13th, Mr. Bradley missed his appointment
10 to register and an incident report was completed and a
11 warrant signed. November 30th, Mr. Bradley was arrested
12 at the Law Enforcement Center when he was there for
13 another offense. And he gave his actual address as
14 in Sumter at that time.

15 THE COURT: Do you agree with the facts as stated by
16 the solicitor?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Are you in fact guilty?

19 THE DEFENDANT: Yes, Sir.

20 THE COURT: Now, you understand that on the first
21 indictment, 2012-GS-43-76, on the charge of trafficking in
22 cocaine base 10 to 28 grams second or subsequent that I
23 have to sentence you to at least five years and can
24 sentence you up to 30 years and a \$50,000 fine. Do you
25 understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. And you understand that is a
3 violent, serious charge that basically means that you'll
4 have to serve at least 85 percent of that time -- I mean,
5 time that I give you. Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you understand that counts towards
8 your strikes and therefore if you were to get another
9 charge on this you could possibly get life without the
10 possibility of parole. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Under the possession of
13 marijuana second or subsequent, you understand that I
14 could sentence you up to one year and up to a \$1,000
15 fine? Do you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: On the other possession with intent to
18 distribute cocaine base within proximity of a school or a
19 park, do you understand that -- this is under Indictment
20 2012-GS-43-315, that I can sentence you up to 10 years on
21 this? Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And do you understand that on possession
24 with intent to distribute cocaine base second or
25 subsequent that I can sentence you a minimum of five years

1 and up to 30 years and up to a \$50,000 fine. Do you
2 understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And on the violation of sex offender
5 registry second offense, do you understand that the
6 penalty is 366 days? Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you also understand that these drug
9 offenses if you should get another drug offense that the
10 enhanced penalty provisions of our law could kick in and
11 there would be a higher minimum and a possible higher
12 maximum. Do you understand that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Now let me make sure that, because we were
15 already in trial, you're not under the influence of
16 alcohol or drugs today; are you?

17 THE DEFENDANT: No, sir.

18 THE COURT: Are you taking any medication that would
19 cloud your judgment in any way?

20 THE DEFENDANT: No, sir.

21 THE COURT: Are you aware of any physical, emotional
22 or nervous condition that would keep you from
23 understanding what's happening today?

24 THE DEFENDANT: No, sir.

25 THE COURT: Now you understand that if I chose to do

1 so, I could sentence you to roughly almost 72 years if I
2 were to run these consecutive. Do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, and you understand that on the
7 charges as far as the -- let me just make sure.

8 Do you have any questions about the possible sentence
9 and what the penalties could be?

10 THE DEFENDANT: No, sir.

11 THE COURT: And you understand that you're going to
12 lose your driver's license for a period of time?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Inconsequential to this. Now, do you
15 understand that when you plead guilty you waive certain
16 constitutional rights. The first right you waive is your
17 right against self-incrimination. You would never be
18 required to testify against yourself.

19 Even if the trial continued on, you would have a right
20 not to testify. But when you plead guilty you have to
21 tell me that you have committed the crime which you have
22 already done. So I just want to make sure that you
23 understand that you're waiving that right.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now you also, again, waiving your right on

1 the one trial, on Indictment 76 that we were already
2 undertaking, but you're also waiving your right to have a
3 trial on the other charges under Indictment 2013-GS-43-15,
4 which is the violation of sex offender registry and on
5 2012-GS-43-315 which is the possession with intent to
6 distribute cocaine base second, and possession with intent
7 to distribute crack cocaine within the proximity of a park
8 or school.

9 Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And during that trial Ms. Butler would
12 have the opportunity to cross-examine the witnesses. And
13 in this trial, she's already done that. She would also
14 have the right to call witnesses in your behalf. And if
15 she felt it was in your best interests, you could
16 testify.

17 But from this point forward, the State does not have
18 to prove anything and you don't get to ask any questions
19 about the evidence. Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you understand that any defenses that
22 you might have had on any of these charges are now
23 waived? Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, has anybody threatened you in any way

1 to get you to plead guilty?

2 THE DEFENDANT: No, sir.

3 THE COURT: Has anybody promised you anything to get
4 you to plead guilty?

5 THE DEFENDANT: No, sir.

6 THE COURT: Is the only reason that you're pleading
7 guilty to all of these charges is because you are in fact
8 guilty?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now, are you satisfied with the services
11 of Ms. Butler?

12 THE DEFENDANT: Well, actually, Your Honor, I met
13 Ms. Butler on a few occasions but, you know, I mean she's,
14 she's done her part.

15 THE COURT: Okay.

16 THE DEFENDANT: You know, but it's really more of that
17 I wasn't doing what I was supposed to do, you know, like
18 following up with everything and, you know, and getting
19 her affiliated with the case of what was going on.

20 But, I was, I was in -- well, I understand it was in
21 process but I was in touch with Mr. Merle Smith about
22 hiring him as my attorney.

23 THE COURT: But, you know --

24 THE DEFENDANT: Yes, sir.

25 THE COURT: -- the Court contacted Mr. Smith --

1 THE DEFENDANT: Yes, sir.

2 THE COURT: -- to find out if you were in fact going
3 to be represented. And he is not representing you.

4 THE DEFENDANT: Yes, sir. Yes, sir.

5 THE COURT: You never paid him anything.

6 THE DEFENDANT: I didn't. I didn't.

7 THE COURT: But for what Ms. Butler has done, are you
8 satisfied with what she's been able to do?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And you've talked with her before
11 concerning this? How long have you been on the case,
12 Ms. Butler?

13 MS. BUTLER: Right over a year.

14 THE COURT: Okay.

15 MS. BUTLER: As soon as he applied and was approved I
16 was assigned the case.

17 THE COURT: And she was trying your case this
18 morning. But you -- so, but -- so you're satisfied with
19 her services?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Now, have you understood all of my
22 questions today?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And do you have any other questions for
25 the Court? I'm going to give you an opportunity to speak

1 in just a moment.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you have any questions at this point in
4 time regarding the charges or anything like that?

5 THE DEFENDANT: No, sir.

6 THE COURT: And you understand that if you change your
7 mind about your decision to plead guilty or the sentence
8 that I give you, that you will only have 10 days in which
9 to file an appeal?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Under Indictment 2012-GS-43-76, count one
12 of trafficking in cocaine base, 10 to 28 grams, second or
13 subsequent offense how do you plead, guilty or not guilty?

14 THE DEFENDANT: Guilty.

15 THE COURT: Under 2012-GS-43-76, count two, possession
16 of marijuana second or subsequent offense how do you
17 plead, guilty or not guilty?

18 THE DEFENDANT: Guilty.

19 THE COURT: Under Indictment 2012-GS-43-315 charging
20 you with count one, possession with intent to distribute
21 cocaine base, second or subsequent offense how do you
22 plead, guilty or not guilty?

23 THE DEFENDANT: Guilty.

24 THE COURT: Under count two, possession with intent to
25 distribute crack cocaine within proximity of a school or

1 park how do you plead, guilty or not guilty?

2 THE DEFENDANT: Guilty.

3 THE COURT: And under the violation of sex offender
4 registry second offense under Indictment 2013-GS-43-15 how
5 do you plead, guilty or not guilty?

6 THE DEFENDANT: Guilty.

7 THE COURT: I find there's a substantial factual basis
8 for the plea. I find the Defendant has entered into it
9 freely and voluntarily. He has had the advice of counsel
10 who he says he is well pleased. I will accept the plea.

11 What is his criminal history?

12 MS. McELVEEN: Yes, sir. First of all, I'd like to
13 pass up a juvenile conviction to Your Honor. It was in
14 1995.

15 THE COURT: Okay.

16 MS. McELVEEN: After that May 1999, assault and
17 battery.

18 March 2000, false information to police, interference
19 with police, malicious injury to personal property,
20 assault and battery, one possession of marijuana.

21 December 2001, possession of paraphernalia.

22 December 2002, driving under suspension, too fast for
23 conditions, a resisting arrest.

24 March 2004, driving under suspension third offense.

25 April 2004, driving under suspension third offense.

1 May 2005, public disorderly conduct. And then, Your
2 Honor, there are some federal charges, conspiracy to
3 distribute cocaine from July 2005 from, again, from North
4 Charleston from the DEA. And July 2005, possession with
5 intent to distribute five grams or more of cocaine base
6 three.

7 After that a February 2011 possession of marijuana
8 from, I believe, Lee County, sir, and a September 2011,
9 public disorderly conduct. It was associated with this
10 case that you're hearing now.

11 And a May 2012 sex offender, false information
12 violation, first offense.

13 THE COURT: Which is why this is a second.

14 MS. McELVEEN: Yes, sir.

15 THE COURT: Mr. Bradley, do you agree with the
16 criminal history that was just read by the solicitor?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: That is your history; is that correct?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Ms. Butler?

21 MS. BUTLER: Yes, Your Honor.

22 As I've stated before, I have represented Mr. Bradley
23 for right over a year. And during that time he has always
24 made his appointments. You know, we talked about his --

25 THE COURT: I mean, he was in communication with you

1 this morning.

2 MS. BUTLER: Yes. Exactly. And then the issue came
3 up that he was -- that he was -- that he would hire, you
4 know, private counsel. That never came to be.

5 But while I've had the case he's been, you know, at
6 all of his appointments. And every time he's been on the
7 trial list he's been here and he stayed here until I sent
8 him home. Up until yesterday. And, you know, and I knew
9 it was strange. I didn't know what happened yesterday and
10 so I asked him about it. He said he didn't get our
11 letter. I'm not sure, you know, the story behind that but
12 he said he didn't know, he didn't get our letter. But as
13 soon as his bondsman got in touch with him he was here
14 this morning. We met. We talked about his options, and
15 he left.

16 And so I asked him, you know, why did you leave. He
17 wanted, he felt as though he was going to go to jail, do
18 some prison time. And he wanted the opportunity to get
19 his family here, and that's his family out there, for
20 support.

21 And he also wanted the opportunity to go and get some
22 letters just to show the Court the good things that he has
23 been doing since getting these charges. I have letters
24 from voc rehab and he's been a student at Central Carolina
25 Tech for a while now. And I can pass these up --

1 THE COURT: Yes.

2 MS. BUTLER: -- for Your Honor so that you can read
3 them.

4 But from my end he has been doing everything he's
5 supposed to do, unlike a lot of our clients. So this was
6 never -- I don't think this was a situation where he was
7 avoiding taking responsibility or trying to run away from
8 the charges.

9 With that being said, he is here today accepting
10 responsibility. We would ask that Your Honor consider
11 that. And he wishes to speak and I told him he'll have
12 his chance to address the Court.

13 We would ask that -- we ask that whatever sentence you
14 give that it run concurrent. He's pleading to everything
15 so we would ask that he be given the opportunity to serve
16 time for all of the charges together and we'll also ask
17 you to consider the fact that he's been here and doing
18 what he was supposed to do up until yesterday.

19 THE COURT: All right. That's why we started without
20 him.

21 All right. Mr. Bradley? Yes, sir.

22 THE DEFENDANT: How are you doing, Your Honor?

23 THE COURT: Good.

24 THE DEFENDANT: First of all, I want to apologize to
25 Mr. Butler and -- to Ms. Butler and the Court and Your

1 Honor for leaving this morning because she gave me the
2 news that I was going up. I mean, I was scared and I
3 wanted to try, you know, to go get my oldest son and my
4 family for, you know, just so they could come up here and
5 just come be with me. But I just want to let you know
6 that I apologize for that.

7 I'm a father of four, Your Honor. I made some, a lot
8 of bad choices in my life and a lot of bad decisions that
9 led me down the wrong path.

10 THE COURT: You've been going down that path since two
11 thousand -- since about 1995. You've been on this path
12 for about 17, 18 years. Do you realize that?

13 THE DEFENDANT: Yes, sir.

14 But, you know, and I realize at one time in my life I
15 have to grow up because I have four children biologically
16 and I have four children that live in the household with
17 me that I'm a father to, and that I have to be a role
18 model and show them right from wrong. And I can't do that
19 by steady doing things that I have no business.

20 But times are hard and that's no excuse for the
21 decisions and choices that I've made because there's other
22 people have found ways to do what they had to do the right
23 way.

24 I'm currently a student at Central Carolina. I've
25 been a full-time student there since January of last

1 year. I went, I went on to summer school and I worked a
2 lot of odds and ends jobs, I mean, for the last two
3 years. I'm currently, I'm in voc rehab right now in the
4 training center and I go there -- I go to them from 8:30
5 in the morning to three in the afternoons and then I go
6 straight to school from 3:15 to my last class, like at
7 8:20.

8 I just applied for a job at Eaton, a temp service
9 job. But I'm trying, Your Honor. I mean, I made the
10 necessary steps to go in for the rest of my life. And I'm
11 here today to accept responsibility for my actions and to
12 try to get this over with and put it behind me, Your
13 Honor, and (loses composure)...

14 THE COURT: Would any of his family members like to
15 speak?

16 MS. BUTLER: Would any of you like to speak?

17 THE MAN: My name's (inaudible) Flowers. I'm -- this
18 is my brother. He been changing. He's been really trying
19 to change his life, really. I can say that. But other
20 than that, I just ask that you have mercy on him.

21 THE COURT: Thank you, Mr. Flowers.

22 THE DEFENDANT: I have beautiful children, Your Honor.

23 THE COURT: Do you want to speak, ma'am?

24 THE WOMAN: Yes. Good afternoon, Your Honor. I am
25 the one that was --

1 THE COURT: What was your name again?

2 THE WOMAN: My name is Dewaun (phonetically) Brown.

3 THE COURT: Okay.

4 MS. BROWN: I'm the one that was helping him trying to
5 get him, you know, to turn his life around. We sit down,
6 we pray together. We did everything together. And we got
7 him in school. I helped him get jobs. His background
8 really kind of like mess him up on some jobs, but it
9 didn't stop him. He still went out there to do what he
10 needed to do, filling out applications. I had him online
11 filling out applications so that he could correct his life
12 and start a foundation. He had to start somewhere. I
13 mean, everybody makes bad choices when they're young. I'm
14 not no, you know, good person. I mean, I'm a good person
15 but I have a past as well.

16 But you have to grow up and you learn from your
17 mistakes. I learned from mine and I'm quite sure when he
18 started to turn his life around he learned from his. And
19 that's why he started going to school. He started doing
20 just everything that he needed to do as far as, you know,
21 providing for his family.

22 And I look -- and I know his history. I don't know
23 everything but I know some of the things. And some of the
24 things that I have seen and from the time when he was
25 doing what he was doing up until now, he has made a

1 tremendously turn around. So, I mean, he was doing good.

2 THE COURT: Thank you.

3 MS. BROWN: He was doing good, and I was backing him.
4 And I know everybody here have heard this, where there is
5 a good woman it will make a good man. So, I know I'm a
6 good woman. And I know I'm a strong woman. And it takes
7 strength to get from where you've been to where you're
8 going.

9 So, if you can consider, you know, him being, going to
10 school, trying to change his life and turning around, I
11 would gladly appreciate it.

12 THE COURT: Thank you.

13 THE DEFENDANT: Your Honor.

14 THE COURT: Yes, sir.

15 THE DEFENDANT: For the last two years this has been
16 the hardest time of my life. I mean, to go from doing the
17 life that I was living to try to do something totally
18 honest, that's the hardest -- the last two years have been
19 the hardest times of my life, Your Honor.

20 THE COURT: You're telling me it's been hard going
21 straight.

22 THE DEFENDANT: No, I'm talking about making sure that
23 I stay with the positive. I'm trying to work. I'm trying
24 to go to school. I've been doing something out of the
25 norm, you know.

1 THE COURT: Without breaking the law.

2 THE DEFENDANT: Yes, sir. Doing something out of the
3 norm, and but it feels so much better. You can rest at
4 night, you know. I mean, but I know one day that I have
5 to face this. I had to face this.

6 But I just hope that you can just, just take it into
7 consideration this -- I mean, I'm trying, Your Honor, I
8 mean, I've taken the steps in a positive direction. I met
9 with Mr. Murphy who was coordinator of the Minnie Moses
10 program so he can go withdraw me from all of my classes so
11 it won't affect me too much when I do decide to come back
12 home.

13 Please, Your Honor, I just ask the mercy of the Court,
14 Your Honor.

15 THE COURT: Okay. Yes, sir.

16 UNIDENTIFIED SPEAKER: Yes, sir, Your Honor.

17 THE COURT: What's your name, please, sir?

18 MR. K BRADLEY: My name is Kevin Bradley. This is my
19 baby brother. And all I got to say, this Court has,
20 really know my face. I was in this court. Everybody, I
21 feel like they know me.

22 I was going down a real wrong path for a long time. I
23 contribute to my baby brother by showing him the wrong
24 lifestyle, by doing the wrong things. And I've, when I
25 came home in 2005, I've done 10 years. I've done a lot of

1 time. I made false -- I made trials and tribulations, but
2 I know I had to change so he could see that the drug life,
3 the drug game wasn't the way to go. I made a little
4 stumbles still, but I know I had to step up and show my
5 baby brother and my family that I had to be a role model.
6 I'm the oddest grandchild. I'm the oldest of my family so
7 I had to say I had to make a change.

8 I started doing right, started going to church,
9 started helping my community, started showing my brother,
10 drugs, there's no need for that. It's going to be hard
11 times. It's going to be rough times. It's going to be
12 times that you're going to feel like drugs is the only way
13 to go. No. You ask the Lord to show you. You ask the
14 Lord to guide you. It's going to be sometimes He going to
15 put you in situations that you want to say, Lord, why me,
16 but it's also going to make you stronger once you go
17 through.

18 I've been through things that I don't want nobody else
19 to go through. And my brother, the heart he's got, the
20 heart that -- I know he's got the heart that I got, is the
21 same. We both went down a lot of wrong roads, but if you
22 can get off that road and always learn from it, grow from
23 it, and see it's time to make a change. You might
24 stumble. You might fall, but can you get back up. Can
25 you say, I can't go that way no more.

1 Just like he say, he got four kids. I got four
2 nephews, nieces that love me, that love him. All I'm
3 saying he's trying. He's reaching out to the church.
4 He's reaching out to me. He's reaching out to the family
5 like he really never reached out for.

6 We were distant. We was not really talking. He'll
7 come by and he'll talk a little bit, this and that. But
8 it's bonding. When you can start bonding with your
9 family, when you can start connecting with loved ones
10 instead of you need this, you need that, money, this
11 that. Money don't buy true love. Money don't buy true
12 happiness. It's that quality time --

13 THE COURT: I understand.

14 MR. K BRADLEY: -- that you can spend. And he's just
15 starting to do that. He's starting to see that his big
16 brother don't need all of that money, don't need that
17 fancy -- don't need that \$1,000. Don't need that fancy
18 car with those rims.

19 The quality time you spend with family and letting
20 them see that you're there for them is the best thing you
21 can give.

22 Just give him a chance, Lord, and he can prove he can
23 be the man he need to be.

24 THE COURT: Thank you. Sir, he's lucky to have you as
25 a brother. Yes, ma'am?

1 MS. McELVEEN: Yes, sir. The officers after speaking
2 with them, they just really wanted to communicate to the
3 Court the fact that Mr. Bradley has been a problem to the
4 City Police Department, the Sumter County Sheriff's Office
5 and the Highway Patrol for a very long time now.

6 I know his brother just said he got out in 2005 but
7 that's the year that Mr. Bradley did federal time for
8 drugs and he's back out on the streets in 2011 selling
9 drugs. And, sir, the officers just wanted to make you
10 aware of that fact.

11 THE COURT: Ms. Butler, anything further?

12 MS. BUTLER: No, Your Honor.

13 THE COURT: You know, the pattern I see with
14 Mr. Bradley is he always wants to do things his way.

15 Even today. He decided when he was going to come into
16 court. He was told to come into court yesterday and to be
17 here for trial, but he decided that he was going to come
18 in here at two o'clock today. So he's still telling me
19 that he's going to do it on his time. And that bothers
20 me, because that doesn't show that he has learned
21 anything.

22 And he said he's going to talk with Mr. Smith and then
23 he's going to come in here when he felt like it.

24 I'm not going to max him out because I think 70-some
25 years is probably too excessive. But he's going to have

1 some time to think about this. And hopefully when he gets
2 out he's going to bond with his family because he's been
3 dealing drugs and doing every other thing for the last 17
4 years. He's been creating mayhem in this town.

5 But at least you did come here. And your sentence is
6 going to be -- I'm going to take that into consideration
7 that you did come in.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: This is probably the first time in a while
10 you've actually owned up to do something. And I'm not
11 going to give you any probation time because I think it
12 would only burden the probation-parole people on this.

13 ON THE SEX OFFENDER REGISTRY -- make sure I got all of
14 these -- THE SENTENCE IS THAT YOU BE COMMITTED TO THE
15 STATE DEPARTMENT OF CORRECTIONS FOR 366 DAYS.

16 UNDER INDICTMENT 2012-GS-43-315 ON THE CHARGE OF
17 POSSESSION WITH INTENT TO DISTRIBUTE COCAINE WITHIN
18 PROXIMITY OF A SCHOOL OR PARK, THE SENTENCE IS THAT YOU BE
19 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A
20 PERIOD OF 10 YEARS.

21 UNDER THAT INDICTMENT ON THE CHARGE OF POSSESSION WITH
22 INTENT TO DISTRIBUTE COCAINE BASE SECOND OR SUBSEQUENT
23 OFFENSE, THE SENTENCE IS THAT YOU BE COMMITTED TO THE
24 STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 15 YEARS.

25 ON THE CASE THAT YOU WERE BEING TRIED UNDER, THE

1 SENTENCE OF THE COURT IS THAT YOU BE -- ON THE TRAFFICKING
2 COCAINE BASE, 10 TO 28 GRAMS, THE SENTENCE IS THAT YOU BE
3 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A
4 PERIOD OF 15 YEARS.

5 ON THE CHARGE OF POSSESSION OF MARIJUANA SECOND OR
6 SUBSEQUENT, THE SENTENCE IS THAT YOU BE COMMITTED TO THE
7 STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF ONE YEAR.

8 I'm not going to fine you because I think that would
9 just be -- I don't think it's ever going to be collected
10 but I AM GOING TO RUN THE SENTENCES CONCURRENT.

11 So, good luck to you, sir.

12 THE DEFENDANT: Your Honor,

13 MS. McELVEEN: Thank you, Your Honor.

14 MS. BUTLER: Thank you, Your Honor.

15 THE DEFENDANT: Your Honor, can I give my son a hug
16 before I go?

17 THE COURT: No, sir. You're under the control of the
18 Department of Corrections right now. I have no control
19 over that.

20 (Defendant exits courtroom.)

21 THE COURT: Let's bring our jury back in.

22 (Jury enters courtroom at 3:22 p.m.)

23 THE BAILIFF: Your Honor, I have all the jurors
24 present in the courtroom.

25 THE COURT: Thank you. Mr. Bradley -- ladies and

1 gentlemen, I want to apologize for keeping you back in
2 that jury room. I told you to be here at two o'clock.
3 Y'all were here five minutes before two.

4 But it wasn't wasted time. During the time that you
5 were sitting back there, the Defendant came to Court and
6 pled guilty. And that's what we've been doing during this
7 time period. He pled guilty to trafficking in cocaine,
8 possession of marijuana, another trafficking in cocaine
9 case, another proximity -- or distribution in proximity of
10 a school and another sex offender charge. Those are
11 things he was not being tried on today but the charges,
12 and I sentenced him to 15 years in jail and he is already
13 gone.

14 What that means for you is that you don't have
15 anything more to do. You're done with this case. But
16 don't think that you're being cheated by not being able to
17 make a decision about this. The fact that you were here
18 is what caused the Defendant to plead guilty. Because you
19 were sitting here listening to the evidence, it moved this
20 case. And it actually moved more than just the two cases
21 that you were hearing. It moved a total of five cases.

22 So from that standpoint you have certainly done your
23 duty. And I want to tell you, don't feel again like
24 you've been cheated in not making a decision. It's never
25 easy to hold the life of a fellow citizen in your hands as

1 you had -- would have had to determine his guilt or
2 innocence. That burden has been lifted off of you.

3 And, ladies and gentlemen, let me do remind you that
4 this counts as your service on the jury. So you don't
5 have to be on a jury for the next three years if you don't
6 want to be, and you can't be on one for the next year.

7 Now, ladies and gentlemen, again, the small amount --
8 how much do they pay you here in Sumter County?

9 THE CLERK: \$15 a day.

10 THE COURT: \$15 a day that you were here this week.
11 It's a small amount of money for the great service that
12 you have done. And you don't have to come back after
13 today. You're done. And I hope you had a good experience
14 being here. You've certainly been prompt and attentive
15 jurors. I've watched you this morning. And I just want
16 to tell you I appreciate it.

17 Some people, they always ask me what makes America
18 great. Well, let me tell you what makes America great.
19 It's people like y'all who take time out of your busy
20 week, go from your jobs and families and come here and
21 decide cases or be available to decide cases so that we
22 can have a justice system that is fair to the Defendant
23 and to the citizens. So, ladies and gentlemen, as you
24 leave from here, I'd like to have the honor of shaking
25 your hand. And thank you again for your service as

1 jurors.

2 (Pause.)

3 THE COURT: I hate to tell you this, but they may need
4 you. I still want to shake your hand. They may need you
5 tomorrow morning on another case. And so, right now --
6 are they coming back at 9:30 or calling back?

7 THE CLERK: 9:30, Judge.

8 THE COURT: You need to be back here at 9:30 tomorrow
9 morning. Sorry to lead you on.

10 MS. McELVEEN: Your Honor, that's another \$15.

11 THE COURT: That's another \$15. And maybe if you're
12 lucky they'll pay you somewhere along the way, but thank
13 you again, ladies and gentlemen, for your service as
14 jurors. You're dismissed.

15 END OF CASE: 3:26 P.M.

16 * * *

17 CERTIFICATE OF REPORTER

18 STATE OF SOUTH CAROLINA)

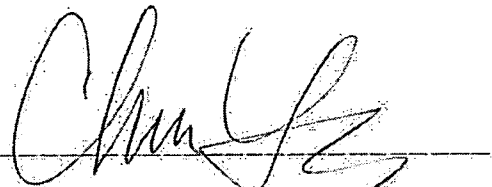
19 COUNTY OF AIKEN)

20 I, Cheri L. Young, Registered Professional Reporter
21 and Official Court Reporter for the State of South
22 Carolina, Second Circuit-At Large, do hereby certify that
23 the foregoing proceedings were written stenographically by
24 me using computer-aided translation; further, that the
25 foregoing is a true, accurate and complete record, to the

1 best of my skill and ability, of all the proceedings had
2 and evidence introduced in the hearing of the captioned
3 case, relative to appeal, in the Court of General Sessions
4 for Sumter County, on the 20th day of February, 2013.

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

7 I have hereunder set my hand this 4th day of August,
8 2014.

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12 Cheri L. Young, RPR
13 Official Court Reporter
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Original

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RECORDED

2014 MAR 19 AM 9:00

JAMES B. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)
LIONEL BRADLEY)
Inmate #266225)
Applicant,)
vs.)
STATE OF SOUTH CAROLINA,)
Respondent.)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CASE NO.:

2014-CP-43-S37

APPLICATION FOR
POST-CONVICTION RELIEF

CERTIFIED TRUE COPY
OF ORIGINAL FILE

Barbara Shaper
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

1. Place of detention.
Perry Correctional Institute
430 Oaklawn Road
Pelzer, SC 29669
2. Name and location of Court, which imposed sentence.

Sumter, S.C.
General Sessions Court
Third Judicial Circuit
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed.
2012GS43-315 Trafficking Crack; Poss. Marijuana w/intent
4. The date upon which sentence was imposed and the terms of the sentence.
February 20, 2013
5. Check whether a finding of guilty was made:
(a) After a plea of guilty X
(b) After a plea of not guilty _____
(c) After a plea of novo contender _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? Yes

RECEIVED

MAR 20 2014

Referred to

PCR ds

Answered

Appeal was filed.

7. If you answered "yes" to (6), list:

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

Court of Appeals, State of South Carolina

(b) The result of each Court to which you appealed:

Unable to proceed due to attorney of record's failure to submit a memorandum under Rule 203(d)(1)(B) setting forth issues for appeal

(c) The date of each such result:

March 12, 2013

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

8. If you answered "no" to (6), state your reasons for not appealing:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Petitioner's counsel provided ineffective assistance of counsel because she failed to investigate all possible defenses for Petitioner. Counsel failed to inform Petitioner of the evidence that could have been presented against him with regard to the chain of custody of the drugs alleged in his case and the weight of the drugs alleged in his case. Counsel failed to procure the chain of custody documentation and the drug weight evidence for Petitioner to consider in defending his case.

- (b) Petitioner's counsel provided ineffective assistance of counsel because she failed to request and/or review with petitioner all evidence that was available in Petitioner's case. Counsel failed to either request chain of custody and drug weight evidence under the United States Constitution Confrontation Clause, Criminal Rule of Procedure 5 and 6 and Edwards v. Arizona or never filed a Motion to Compel the evidence to review with Petitioner.
- (c) Petitioner's counsel provided ineffective assistance of counsel because she failed to file a Motion to Continue Petitioner's trial that started in his absence thus placing Petitioner in a vulnerable position and causing him to be pressured into entering a guilty plea.
- (d) Petitioner's counsel provided ineffective assistance of counsel because she failed to object to the introduction of evidence of chain of custody and drug weight when counsel had not procured the evidence from the State before the date of the trial, thus placing the petitioner in a vulnerable position such that he felt pressured to enter a guilty plea in violation of the US Constitution Confrontation Clause, Criminal Rule of Procedure 5 and 6 and Edwards v Arizona.
- (e) Petitioner's counsel provided ineffective assistance of counsel because she never provided Petitioner with any evidence or discovery material; that indicated the chain of custody evidence or the actual Chemist tested drug weight. Petitioner believes that the drug weight that was alleged in his case of over 10 grams to substantiate a Trafficking charge could not be proven due to the actual chemist weight. Petitioner's counsel never provided him with chain of custody or drug weight.
- (f) Petitioner's counsel provided ineffective

assistance of counsel because her failures to obtain and review chain of custody evidence and drug weights with Petitioner cause him to be uninformed and disadvantaged such that he was prejudiced in his ability to make an informed and knowing decision about his options in his case.

- (g) Petitioner is now aware through a request to his attorney of record that she did not have the chain of custody or drug weight evidence in her file because she mailed him what was in her file after he arrived at SCDC. Petitioner was prejudiced in a way that he could not make an informed decision about his defense.
- (h) Petitioner's counsel was ineffective for failing to perfect an Appeal from his conviction. Counsel chose not to file a memorandum of issues under Rule 203(d)(1)(B) that was required to go forward with his appeal despite the fact that Petitioner did have valid Appellate Issues. He was never provided the chain of custody evidence or the drug analysis therefore objections should have been made that would have been the basis of an Appeal.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) There was no chain of custody or drug analysis provided to Petitioner in his file that he obtained from his attorney in violation of US Confrontation Clause and Criminal Rule 5 and 6 and Edwards v. Arizona
- (b) The fact that the Petitioner pled on February 20, 2013 after picking a jury is evidence that the defendant's attorney did not ask for a continuance because if the attorney had moved for a continuance there would have

been grounds for appeal due to the denial of the motion for continuance

- (c) The fact that Petitioner was forced to enter a guilty plea when he had never been fully informed by his counsel of the evidence against him in violation of the US Confrontation Clause and Criminal Rule 5 and 6 and Edwards v. Arizona

11. Prior to this application have you filed with respect to this conviction

(a) Any petition in a State Court under South Carolina Law? Yes

(b) Any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No

(c) Any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No

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

12. If you answered "yes" to any part of (11), list with respect to each petition, motion, or application:

(a) The specific nature thereof: Initial notice of intent to appeal attorney withdrew for defendant and cited rule 203(d)(1)(B)

Commented [a61]:

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

South Carolina Court of Appeals

(c) The disposition thereof:

Negation

(d) The date of each such disposition:

March 20, 2013

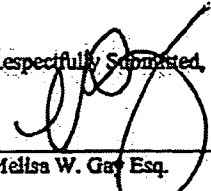
(e) If known, citations of any written opinions or orders entered pursuant to each such disposition: rule 203(d)(1)(B)

13. Has any ground set forth in (9) been previously presented to this or any other Court, State, or Federal, in any petition, motion or application which you have filed? NO.

14. If you answered "yes" to (13), identify:

- (a) Which grounds have been presented?
- (b) The proceedings in which each ground was raised:
15. If any ground set forth in (9) 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) A Post Conviction Relief Petition affords the applicant the first opportunity to allege ineffective assistance of trial counsel, as applicant is prohibited from alleging ineffective assistance of counsel on direct appeal.
16. Were you represented by an attorney at any time during the course of:
- (a) Your arraignment and plea? Yes
- (b) Your trial, if any? Yes
- (c) Your sentencing? Yes
- (d) Your appeal, if any, from the judgment of conviction or the imposition of sentence?
- (e) Your preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
17. If you answered "yes" to one or more parts of (16) list:
- (a) The name and address of each attorney who represented you:
Tiffany Butler
Ridgeway, SC 29130 SC
- (b) The proceedings at which each such attorney represented you:
18. State clearly the relief you seek in filing this application.
Reversal of guilty plea and remand back to court for a new trial
19. Are you now under sentence from any other court that you have not challenged?
No

Respectfully Submitted,



 Melissa W. Gay Esq.

Signed by:



 Lionel Bradley,

Signature witnessed by Notary



 My Commission Expires
 September 25, 2023

Commission expires on :

 Dated: February 20, 2014
Palzer, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Lionel Bradley, #266225,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2014-CP-43-537

RETURN

The Respondent, making its Amended Return to the application for post conviction relief (PCR) filed March 19, 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 Sumter County Clerk of Court. The Applicant was true bill indicted at the February 2012 term of the Sumter County Grand Jury for Possession with Intent to Distribute Cocaine Base and Possession With Intent to Distribute Crack Cocaine Within Proximity of School or Park (2012-GS-43-0215). Tiffany Butler, Esquire represented Applicant. On February 20, 2013 Applicant pled guilty before the Honorable W. Jeffrey Young. Judge Young sentenced Applicant to fifteen year term of imprisonment for Possession With Intent to Distribute Cocaine Base- 2nd or subsequent offense and ten year term of imprisonment for Possession With Intent to Distribute Cocaine Base Within Proximity of School or Park; with all sentences to run concurrent. The Applicant did not appeal his guilty plea or sentence.

A timely Notice of Appeal was filed on February 20, 2013. After receipt of Counsel's letter explaining there were no reviewable issues on appeal, the South Carolina Court of Appeals

issued an order dismissing Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv). The Remittitur was issued on May 15, 2013.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject conviction and the Applicant's records from the South Carolina Department of Corrections; the plea transcript will be sent upon receipt. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1) Ineffective Assistance of Counsel

- a. "Petitioner's counsel provided ineffective assistance of counsel because she failed to investigate all possible defenses for Petitioner. Counsel failed to inform Petitioner of the evidence that could have been presented against him with regard to the chain of custody of the drugs alleged in his case and the weight of the drugs alleged in his case. Counsel failed to procure the chain of custody documentation and the drug weight evidence for Petitioner to consider in defending his case."
- b. "...She failed to request and or review with Petitioner all evidence that was available in Petitioner's case. Counsel failed to either request chain of custody and or drug weight evidence...or never filed a Motion to Compel the evidence to review with Petitioner."
- c. "...she failed to file a Motion to Continue Petitioner's trial that started in his absence thus placing Petitioner in a vulnerable position and causing him to be pressured into entering a guilty plea."
- d. "...she failed to object to the introduction of chain of custody and drug weight when counsel had not procured the evidence from the State before the date of the trial, thus placing Petitioner in a vulnerable position and causing him to be pressured into entering a guilty plea..."
- e. "...she never provided Petitioner with any evidence or discovery material; that indicated the chain of custody evidence of the actual chemist tested drug weight. Petitioner believes

that the drug weight that was alleged in this case of over 10 grams to substantiate a Trafficking charge could not be proven to the actual chemist weight..."

- f. "...her failures to obtain and review chain of custody evidence and drug weights with Petitioner cause him to be uniformed and disadvantaged such that he was prejudiced in his ability to make an informed and knowing decision about his options in his case."
- g. "Petitioner is now aware through a request to his attorney of record that she did not have the chain of custody or drug weight evidence in her file because she mailed him what was in her file after he arrived at SCDC. Petitioner was prejudice in a way that he could not make an informed decision about his defense."
- h. "Petitioner's counsel was ineffective for failing to perfect an Appeal from his conviction. Counsel chose not to file a memorandum of issues under Rule 203(d)(1)(B) that was required to go forward with his appeal despite the fact that Petitioner did have valid appellate issues. He was never provided the chain of custody evidence or the drug analysis therefore objections should have been made that would have been the basis of an appeal."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result." Strickland v.

Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an

evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

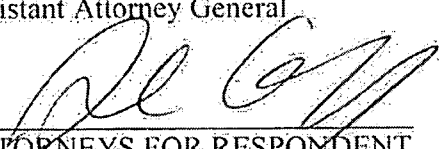
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

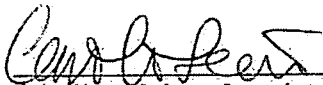
June 2, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2014-CP-43-537
	)	
LIONEL BRADLEY, #266225,	)	
	)	
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** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Melisa White Gay, Esquire
Melissa W. Gay, LLC
PO Box 2144
Mt. Pleasant, SC 29465-2144

DATED this 2nd day of June, 2014.


 Caroline Kaiser, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Lionel Bradley, #266225,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2014-CP-43-537

AMENDED RETURN

The Respondent, making its Amended Return to the application for post conviction relief (PCR) filed March 19, 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 Sumter County Clerk of Court. The Applicant was true bill indicted at the February 2012 term of the Sumter County Grand Jury for possession with intent to distribute cocaine base—2nd or subsequent offense and possession with intent to distribute cocaine within proximity of school or park (2012-GS-43-0315). Tiffany Butler, Esquire represented Applicant. On February 20, 2013, Applicant pled guilty before the Honorable W. Jeffrey Young. Judge Young sentenced Applicant to fifteen year term of imprisonment for possession with intent to distribute cocaine base- 2nd or subsequent offense and ten year term of imprisonment for possession with intent to distribute cocaine within proximity of school or park; with all sentences to run concurrently.

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

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- a. "Petitioner's counsel provided ineffective assistance of counsel because she failed to investigate all possible defenses for Petitioner. Counsel failed to inform Petitioner of the evidence that could have been presented against him with regard to the chain of custody of the drugs alleged in his case and the weight of the drugs alleged in his case. Counsel failed to procure the chain of custody documentation and the drug weight evidence for Petitioner to consider in defending his case."
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- grams to substantiate a Trafficking charge could not be proven to the actual chemist weight..."
- f. "...her failures to obtain and review chain of custody evidence and drug weights with Petitioner cause him to be uniformed and disadvantaged such that he was prejudiced in his ability to make an informed and knowing decision about his options in his case."
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Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

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The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

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WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

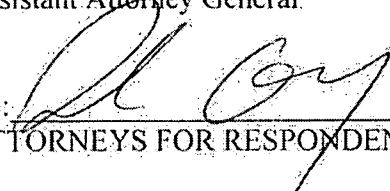
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

November 10, 2014.

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

LIONEL BRADLEY, #266225,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2014-CP-43-537

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Amended Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Melisa White Gay, Esquire
 Melissa W. Gay, LLC
 PO Box 2144
 Mt. Pleasant, SC 29465-2144

DATED this 20th day of November, 2014.


 Caroline Collins, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA

2 COUNTY OF SUMTER .

3

4 Lionel Bradley,) 2014-CP-43-00537
5 Plaintiff) PCR Hearing

6 vs.

7

8 The State of South Carolina,) April 15, 2015
9 Defendants) Sumter, S.C.

10

11

12

13 Before the Honorable George C. James, Jr.,
14 Judge.

15

16

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

18 Ms. Melisa White Gay,
19 Attorney for Plaintiff

20 Mr. Daniel F. Gourley,
21 Attorney for Defendants

22

23

24

25

Margaret T. Sullivan,
Court Reporter

	WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
1	<u>Opening Comments</u>				
2	by Ms. Gay	3			
	Tiffany Butler				
3	by Ms. Gay	10		49	
	by Mr. Gourley		36		53
4	Lionel Bradley				
	by Ms. Gay	54		72	
5	by Mr. Gourley		67		
	Closing				
6	by Ms. Gay	73			
	by Mr. Gourley	83			
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1 THE COURT: This is Mr. Lionel Bradley
2 versus the State of South Carolina. Docket No.
3 2014-CP-43-537. Mr. Bradley is present with Ms.
4 Gay. Mr. Gourley is present. And Ms. White is
5 present. Are you ready to proceed, Ms. Gay?

6 MS. GAY: Yes, Your Honor.

7 THE COURT: You can tell me a little bit
8 about it, or you can call your first witness.

9 MS. GAY: Well I have the introductory
10 remarks, Your Honor, brief. This case is an
11 interesting situation. I'm sure you've reviewed the
12 transcript, Your Honor. There's several things that
13 it's not. It's not the TIA. It's not a standard
14 trial where you know where the defendant is present
15 for all critical stages of the trial. It's not a
16 guilty plea in the sense that my client is -- has,
17 you know, gone over all the evidence with his
18 attorney at the time, and thoroughly and completely
19 understood and knowingly and intelligently and
20 voluntarily waived all his rights to trial. So
21 those are all the things that this case is not.

22 What ends up happening in this case
23 procedurally is, my client is present on a morning.
24 He then leaves the courthouse, that's obvious. And
25 he -- the judge decides to go forward without him.

1 And he proceeds in a TIA or a trial in absentia
2 fashioned with bail forms and notice and such, which
3 is all understandable and constitutional.

4 At the second day of the trial, my client
5 appears. He is taken into lock up. He has a 25
6 minute conversation with his attorney. He comes out
7 and he does a guilty plea, to not only what he's on
8 trial for, but three other charges. One of the
9 charges has already been maxed out and was not part
10 of my process. But the other two charges which he
11 did the plea at the same time are also part of this
12 PCR hearing. It is my position, Your Honor,
13 starting from the most important issue, that this
14 plea was not knowingly and intelligently and
15 voluntarily given based on the circumstances of
16 what happened on the day before, and how this trial
17 proceeded.

18 THE COURT: And that plea was to.

19 MS. GAY: That plea was to everything.

20 THE COURT: I know, but what is
21 everything?

22 MS. GAY: He pled to trafficking. He pled
23 to possession with intent to distribute second, and
24 he pled to proximity of a school. He was given 15
25 years on the trafficking, 15 years on the possession

1 with intent to distribute second, and 10 years on
2 the proximity of a school, sir.

3 THE COURT: Okay.

4 MS. GAY: And so the significance of the,
5 you know, going to the PCR issues and the guilty
6 plea, you know we have the Strickland standard.
7 Obviously I believe that I can show that was
8 substandard or un -- below the reasonable standard
9 of care for some situations with the attorney that
10 happened during the trial, and the course of
11 misrepresentation. And that's not to state the
12 public defender is a bad person in any way. There
13 was just things about this case that I don't think
14 were handled correctly.

15 Primarily is how the trial started, and
16 the fact that they weren't sure whether or not
17 Mr. Bradley was going to show up. And I do believe
18 that if he has been significantly prejudiced, he's
19 in prison for 15 years. He has, I believe, not had
20 adequate, did not have had adequate time to review
21 all the elements of the offense and the charge he
22 went to trial for. And also the other charges. I
23 think he believed he was, you know, shoved up
24 against the corner and better make that decision
25 quickly. And I believe he was prejudiced. And he

1 was under duress and coercion during the time of the
2 guilty plea process.

3 THE COURT: And what was the source of the
4 duress or coercion?

5 MS. GAY: well I think the problem is,
6 Your Honor, and the evidence is going to be
7 established here. There are constitutional rights
8 that attach to Mr. Bradley's process, that were not
9 afforded him during this trial process. And I can
10 explain that further after the public defender when
11 he testifies.

12 THE COURT: Can I interrupt you on one
13 point. What I have from the attorney general are
14 plea sheets and an amended return that reflect
15 possession with intent to distribute cocaine base
16 second offense. There is no reference at least on
17 the sentencing sheet for trafficking. But it says
18 5 to 30, which I think is a trafficking sentencing
19 category.

20 MS. GAY: He was actually sentenced to
21 trafficking on the indictment he went to trial on.
22 He was also sentenced at the time of his guilty plea
23 during the process, to a different charge, for a
24 different date of arrest.

25 THE COURT: Well maybe possession with

1 intent to distribute crack second, is 5 to 30. But
2 I don't see anything about trafficking.

3 MS. GAY: The trafficking is what he went
4 to trial for.

5 THE COURT: But he didn't plead to that.

6 MS. GAY: No, he didn't plead to that.

7 MR. GOURLEY: Your Honor, if I may
8 clarify. On the application for PCR, it was
9 Indictment No. 2012-GS-43-315. That's what's listed
10 in the amended return. And that's what you have on
11 sentencing sheets. That indictment included, Your
12 Honor, one count of possession with intent to
13 distribute cocaine base, and one count of proximity
14 with intent to distribute cocaine, crack cocaine
15 within proximity of a school or park. That's what
16 is listed in the application, and that's what you
17 have before you today.

18 MS. GAY: Well, Your Honor, I am looking
19 at the application we filed, and it says trafficking
20 in cocaine and possession with intent. And it's
21 2012-GS-43-315.

22 THE COURT: And that's fine. I understand
23 you're saying. But what I am looking at are
24 sentencing sheets. Let me tell you what I am
25 looking at. I'm looking at one sentencing sheet

1 that says possession with intent to distribute
2 cocaine base, second or subsequent. Sentence of
3 15 years. Then I am looking at the sentencing sheet
4 for violation of a sex offender registry for second
5 offense, 366 days. A different indictment number,
6 which is not relevant today. It is not relevant
7 today.

8 Then I have the same indictment number,
9 possession of -- excuse me, another reference to
10 possession with intent to distribute crack cocaine.
11 It might just be a photocopy of the other one. And
12 then I've got possession of marijuana second or
13 subsequent, where he received a year, and I assume
14 he is not contesting that today. But whatever the
15 case is, I'll be glad to hear your evidence and
16 we can get the issues about the indictments
17 straightened out later. But he, according to the
18 amended return, he was true billed indicted for
19 possession with intent to distribute crack cocaine
20 and possession with intent to distribute cocaine
21 within proximity of a school, park, playground, so
22 forth and so on.

23 He was sentenced to 15 years for
24 possession with intent to distribute crack cocaine,
25 second offense. And 10 years for doing that within

1 the proximity of a school or park. And those were
2 to run concurrent. Now whether it's trafficking or
3 PWID, that be will be born out by the transcript and
4 any other supporting documents. But why don't you
5 go ahead call your first witness, and then we will
6 move forward on that basis.

7 MS. GAY: One more thing just in closing
8 on that, Your Honor. There's two separate dates of
9 arrest, and that is in the transcript. And
10 they're -- I've looked through my paperwork and I
11 don't believe that the State actually gave me a copy
12 of the trafficking sentencing sheet. But we've
13 agreed, he and I both agree that that is part of
14 this case as well. So we will get you a copy of
15 that sentencing sheet. I would like to call---

16 THE COURT: What was he sentenced to for
17 trafficking?

18 MS. GAY: 15 years.

19 THE COURT: All concurrent.

20 MS. GAY: Yes.

21 THE COURT: So you're saying he plead
22 guilty to three things?

23 MS. GAY: He plead guilty to four things.

24 THE COURT: Well that you're contesting
25 today.

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1 MS. GAY: Three things that I'm
2 contesting; yes, because we're not contesting the
3 sex offender registry.

4 THE COURT: And how about possession
5 marijuana second offense?

6 MS. GAY: No, I don't think that's
7 relevant. You maxed out your time on that.

8 THE COURT: You can go ahead and call your
9 client or whoever you would like to call.

10 MS. GAY: I'd like to call Ms. Butler.

11 THE COURT: Ms. Butler, come on up, and I
12 will swear you in.

13 Tiffany Butler, being first duly sworn,
14 testified as follows.

15 THE COURT: Yes, ma'am.

16 Direct Examination by Ms. Gay:

17 Q. Ms. Butler, I understand that you were
18 attorney that represented Mr. Bradley in this case.

19 A. Yes, ma'am.

20 Q. And can you tell us a little bit about
21 your background. I understand when we were talking,
22 that you said you had been a public defender for a
23 about 4 years.

24 A. A little less than 4 years, yeah.

25 Q. And you worked in Sumter County?

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1 A. I did. I worked in Sumter County from
2 June 2011, until September of last year. And now I
3 work for appellate defense in Columbia.

4 Q. When you, during the course of your job
5 responsibilities, were you appointed a client,
6 Mr. Bradley?

7 A. I was.

8 Q. Do you recall how many charges he had?

9 A. He had several charges. Several drug
10 charges, I know off the top of my head. But I
11 represented him on several charges.

12 Q. So anything that he would have pending in
13 the county, you would have been appointed to.

14 A. As long as he included those warrants on
15 his public defender application. And if he did,
16 then I represented him on those warrants.

17 Q. And with regard to the stuff that we're --
18 the charges that we're here for today, the trial
19 charges and the charges he pled to during the course
20 of the trial, you represented him only those
21 charges.

22 A. Yes.

23 Q. And I believe that this case started, I
24 assume it was a Monday morning. Do you remember?

25 A. Monday or Tuesday. Sometimes we would.

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1 start trials Tuesday. Pick a jury Monday, and then
2 start the trial Tuesday. But I can't remember.

3 Q. When this case started, you had notified
4 Mr. Bradley that he had a trial, was on the trial
5 docket?

6 A. Yes.

7 Q. And did Mr. Bradley acknowledge that he
8 knew that?

9 A. I want to say I got a call from the
10 solicitor that week before. Maybe that Friday. And
11 I remember having someone from my office call
12 Mr. Bradley to let him know to be there that
13 morning. Because, you know, his trial was going to
14 start and we were going to pick a jury. And he was
15 in fact there that first morning when the jury panel
16 was there.

17 Q. So the first morning when the jury panel
18 was there, he was present.

19 A. Yes.

20 Q. But then he left.

21 A. He left.

22 Q. Did he leave -- he left before the panel
23 sat for his case.

24 A. Yes. I spoke with him, and I told him
25 that we were about to pick the jury; that the jury

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1 panel was there. He told me that he wasn't ready to
2 go to trial, and that he was going to go hire
3 Murrell Smith. And if I recall correctly before
4 that particular trial term, he had been on the
5 docket two or three previous terms. And he was
6 always present, it wasn't a problem. But even on
7 those -- during those terms, he would tell me that
8 he was going to hire Murrell Smith.

9 So even before this particular court term,
10 he knew that his case was coming up; that his case
11 was high in the solicitor's office.

12 Q. Before you said that the Friday before you
13 were told his case would be coming up, and someone
14 from your office contacted him. That was not you.

15 A. No.

16 Q. And so on that day when he showed up
17 before your trial, had you and Mr. Bradley sat down
18 over the weekend or within about 72 hours of the
19 date of the trial to discuss the elements of the
20 offense and the evidence?

21 A. We had met prior to that. If I recall
22 correctly, in this trial in 2013, I was appointed
23 shortly after his arrest maybe late 2011, or earlier
24 2012. And we had met. He was out on bond then, and
25 we had met several times between the time I was

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1 appointed and on his date of trial. So we had met
2 and we had discussed the discovery and the elements
3 and everything. And we even discussed what his plea
4 offer was at the time.

5 Q. When you were discussing with him the
6 elements of the offense and the discovery material,
7 do you remember discussing with him the fact that
8 you did not have a copy of the drug analysis in this
9 case?

10 A. I do not recall that.

11 Q. You do recall telling him that?

12 A. I don't recall telling him that.

13 Q. Do you recall going over the information
14 that you had in your file with him?

15 A. I do.

16 Q. And pursuant to this case, I subpoenaed
17 your actual file. Do you recall getting a subpoena?

18 A. I do recall that.

19 Q. And do you recall providing your file copy
20 to me?

21 A. Yes.

22 Q. And obviously you had to review that to
23 give it to me.

24 A. Uh-huh. (Affirmative.)

25 Q. Do you recall as you were reviewing your

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1 file and handing me information, that there was no
2 drug analysis in this trafficking charge?

3 A. I recall that.

4 Q. In your file there was the drug analysis.

5 A. I got the drug analysis before trial, but
6 it did not make it into his file that was scanned
7 into the documents. Because what happened, in the
8 public defender's office whenever we get discovery
9 from the solicitor's office, the first thing we do
10 is scan it into our client's file. And so all the
11 discovery is in the file. And then when the case is
12 closed, the remaining contents of the file is
13 scanned in except for the discovery. So that is why
14 the discovery or the drug analysis wasn't included
15 in the file that you got from me.

16 Q. Well I'm more concerned about whether or
17 not it was included in anything that was discussed
18 with Mr. Bradley. And that takes me to my next
19 question.

20 A. Uh-huh. (Affirmative.)

21 Q. When you started the trial, you did not
22 make a motion to continue the trial until Mr.
23 Bradley could be located.

24 A. I did not.

25 Q. And I believe that after -- you picked a

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1 jury without Mr. Bradley present.

2 A. Yes.

3 Q. And I saw in your transcript that you had,
4 you know, picked some and strike others. Obviously
5 there was a thought out plan on how you were working
6 towards the jury for Mr. Bradley.

7 A. Yes.

8 Q. And then in the trial, your first motion
9 that you made was to -- was what was referred to as
10 a Brady motion in your case.

11 A. Yes.

12 Q. And in the Brady motion, you made the
13 motion to the judge, and this was on page 18. And
14 if you need a copy of the transcript, we can give
15 you one.

16 A. No, I don't gave a copy right now. So if
17 you want me to have one, you can give me one.

18 MS. GAY: May I approach, Your Honor.

19 THE COURT: Yes.

20 Q. So between 1 and 18, there is if you want
21 to check and look, there was no opportunity or no
22 time for you to say to the judge, I think this
23 should be continued because my client isn't here.

24 A. No, I did not move for a continuance on
25 the record. But prior to picking a jury the

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1 assistant solicitor and I met with the judge back in
2 chambers, and explained to him the situation.

3 Q. And it was your understanding that this
4 case since Mr. Bradley was not present, would go
5 forward as a TIA.

6 A. Yes.

7 Q. And in furtherance of that, I believe that
8 there was discussion in the jury -- in the trial
9 transcript about the notice documents for bail and
10 the fact that he was -- you all were able to TIA and
11 try him in his absence. Right?

12 A. Yes.

13 Q. So going to page 18, you said, do you see
14 in the record, I have motion or two. And the judge
15 says, the court says, yes. And you say, I want to
16 make a Brady motion.

17 A. Yes.

18 Q. In that Brady motion and going into page
19 19 and 20, you indicated to the court that you did
20 not have on the time before the trial started, a
21 copy of the drug analysis. Not the chain of custody
22 form which is a separate document, but the actual
23 chemist form.

24 A. Yes.

25 Q. And so you indicated to the court at that

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1 time, that that form was not a part of your file.

2 A. Yes.

3 Q. And so my other question is, when you
4 started the trial or the weekend before, or when you
5 all were calling Mr. Bradley on the Friday before,
6 you did not have the drug analysis form.

7 A. I did not; not the actual form in my file.

8 Q. Now just as a question. In terms of the
9 elements of an offense in a drug case and specially
10 a trafficking case, the drug analysis form is a
11 critical piece of evidence to establish -- for the
12 State to establish the elements of the offense.

13 A. Yes.

14 Q. And so before the trial started and during
15 the -- up until the trial negotiations and or plea
16 negotiations, Mr. Bradley would never have seen or
17 been given that document.

18 A. No.

19 Q. And you're familiar with the South
20 Carolina Rules of Criminal Procedure?

21 A. Yes.

22 Q. And one of the South Carolina Rules of
23 Criminal Procedure is Rule 6. You know, one of
24 those 5 and 6's that we all know about. Are you
25 familiar with what Rule 6 is, or would you like me

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1 to refresh your recollection?

2 A. You can refresh if you want.

3 Q. I am going to show you a document just to
4 refresh your recollection. This is Rule 6.

5 MR. GOURLEY: I've got it.

6 Q. And it's a few other things. Okay, well
7 for instance, Rule 5 is one of those rules that says
8 that the State is to disclose any evidence that's
9 relevant and or helpful in any form or fashion,
10 exculpatory and for purposes of impeachment. All
11 those kinds of things. That's Rule 5.

12 A. Uh-huh. (affirmative.)

13 Q. Correct. And in your practice, you would
14 have sent a notice to the solicitor's office asking
15 for Rule 5 material or discovery material.

16 A. As soon as we're appointed, that's what we
17 do.

18 Q. And then pursuant to that, you were given
19 a certain amount of stuff, paperwork, in response to
20 your Rule 5 request.

21 A. Yes.

22 Q. And I believe in your Brady motion on page
23 18, 19 and 20, you said to the court that you had
24 not been given photos and that you had not been
25 given the drug analysis test. If you want to look

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1 at that you can.

2 A. Yes.

3 Q. And so before the trial started during the
4 weekend before, when you were all were talking to
5 Mr. Bradley on Friday and going into plea
6 negotiations, he had not actually been shown
7 pictures related to his case, and he had not been
8 shown the drug analysis report.

9 A. No, he did not have a copy. He wasn't
10 shown that.

11 Q. Because they certainly weren't present in
12 your file on this day when you were making this
13 motion.

14 A. No.

15 MS. GAY: May I approach, Your Honor, the
16 witness?

17 THE COURT: Yes, ma'am.

18 Q. This is something I printed out from
19 about the South Carolina Rules of Criminal
20 Procedure. And this is Rule 5 and this is Rule 6.
21 If you would take a moment to review this. I'm sure
22 you're familiar with this, and we can talk about
23 that?

24 A. Uh-huh. (Affirmative.)

25 Q. Under Rule 6, isn't it true that a person

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1 is -- a defendant in the State of South Carolina is
2 entitled to receive the drug analysis report, the
3 chemist reports, and have 10 days to review those
4 documents to be able to determine if they want to
5 contest them or what their view of them is.

6 A. According to the rule, yes.

7 Q. Are you by any chance familiar with the
8 fact that in South Carolina they give us 10 days,
9 but in the federal system they give us 5? So in
10 South Carolina we actually have more time than in
11 the federal system.

12 A. Okay.

13 MS. GAY: May I approach, Your Honor.

14 THE COURT: Yes, ma'am.

15 Q. So under Rule 6 at the time that you were
16 given this drug analysis report on the day of trial,
17 you did not make a continuance request on
18 Mr. Bradley's behalf pursuant to the rule.

19 A. I did not.

20 Q. And at that time Mr. Bradley was not even
21 present in the courtroom. So and I understand that
22 everybody believed that this was just going to be a
23 TIA, and most of this was just being put on the
24 record. Wouldn't you agree with me that that was
25 what was happening?

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1 A. We proceeded as though it was a TIA.

2 Q. Correct. And so as we went through in the
3 trial transcript, they showed pictures that they
4 brought up. And I believe the next motion that you
5 made was a motion to suppress.

6 A. Yes.

7 Q. And that was, you know, well done in the
8 sense that you were asking to suppress the drugs for
9 a violation of the 4th amendment. And that goes
10 through page 20, 21, all the way through about to
11 page 26 or 27. And you made that motion and it was
12 denied.

13 A. Yes.

14 Q. And then when the trial started, the
15 actual process when the jury came in, and the jury
16 was sworn, did you make any motion to continue at
17 that point to continue to see whether Mr. Bradley
18 would be coming or you could contact him? Or that,
19 you know, there was any violations of any rules and
20 or constitutional problems to for his case to be
21 continued at that point?

22 A. I don't recall making any motions to
23 continue.

24 Q. So before the jury was sworn you didn't
25 make any motions.

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1 A. I did not. If I recall correctly, the
2 judge gave me time to look for Mr. Bradley. And
3 said that he would issue a bench warrant the
4 following morning before a trial started. But I did
5 not make any motions for a continuance.

6 Q. Yes, ma'am, I understand. And so the next
7 day when the trial started, I believe it was the
8 next day. They actually Mr. Bradley did show up.
9 And he was placed in his custody because he was
10 picked up on the bench warrant.

11 A. Yes.

12 Q. During the trial when they started the
13 process and they started doing the evidence, the
14 officer testified and during the period of time,
15 they admitted several pieces of evidence into -- you
16 know several pieces of evidence documents into
17 evidence.

18 A. I believe so, yeah.

19 Q. And I am going to take you to a place in
20 the trial transcript. I just need to find it. Hold
21 on one second. On page 60, on page 60 line 19 and
22 20, there is a point where it says, I'd like to have
23 State's Exhibit 8 entered into evidence at this
24 time, the chain of custody form. Do you see that?
25 19, 20, 21, 22.

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1 A. Oh, yeah, I see it.

2 Q. And do you recall, that it says, no
3 objection, Your Honor.

4 A. Yes.

5 THE COURT: Can I ask a question? Was the
6 defendant present by this time?

7 MS. GAY: No.

8 THE COURT: Still was not present.

9 MS. GAY: Still was not present. The
10 defendant was not present until the case was
11 finished, and all the State's evidence was
12 presented.

13 A. Well not actually, there is one more
14 witness I believe, that had to testify.

15 Q. Right. There was a chemist who was going
16 to come and testify for the actual analysis of the
17 drugs. And that they pled before the chemist
18 testified. That's what happened. So in this case,
19 the chain of custody is just a document.

20 A. Yes.

21 Q. A piece of paper.

22 A. Yes, it appears that way, yeah, in the
23 transcript.

24 Q. But that chain of custody document would
25 be significantly, could in fact be part of the

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1 objection or the continuance, need for a continuance
2 request on the Rule 6 violation, where my client had
3 just, you had just received the drug analysis form
4 from the solicitor on the day of the trial. That
5 all goes together, the chain of custody form as well
6 as the analysis. It's all part of the chain.

7 A. Well for whatever reason, I didn't see a
8 need to object. So...

9 Q. I understand, so you didn't object. And
10 I understand that.

11 A. I did not.

12 Q. On page 61 they then talk about, they are
13 moving into evidence on the lines 14, 15, 16. They
14 are moving into evidence No. 9. And No. 9, that was
15 the drug analysis form I believe. And you say on
16 line 18, no objection Your Honor.

17 A. Yes.

18 Q. And that's for the actual analysis form
19 that we discussed that you just received that same
20 day, that my client had never seen.

21 A. Yes.

22 Q. And it was moved into the trial without
23 objection.

24 A. I did not object according to the
25 transcript.

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1 Q. Nor did you make a continuance request.

2 A. I did not.

3 Q. And then on the page 62, they actually
4 moved the drugs into evidence. Or they talk about
5 the drugs. Small bag with drugs in it. And they
6 the lines are, this is the best evidence bag. Do
7 you have any objection. No objection Your Honor.

8 A. Yes, I see that.

9 Q. And so there was no objection given to the
10 introduction of the actual drugs. For one, there
11 had been no testimony by the chemist at that point
12 that they were in fact drugs for the chain of
13 custody at that point.

14 A. No. According to the transcript, no.

15 Q. And there was certainly no opportunity for
16 my client to even see pictures of those drugs or
17 pictures of how any of that was found in that. I
18 think it was found under a couch pillow. Because
19 none of the pictures had been provided to you as
20 part of your discovery request. That's part of this
21 case as well.

22 A. Yeah.

23 Q. So and there was no -- at this point there
24 was no continuance request saying my client has
25 10 days to review this information and determine

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1 whether the chain and the analysis was accurate.

2 A. I did not move for a continuance.

3 Q. And then on page 83 of the trial

4 transcript, there was a lunch break. And it says,

5 this is lines 5, 6 and 7. Lunch break was taken.

6 Trial resumed. The court is there anything we need

7 to take up. Apparently he is in holding. And you

8 go through and you inform the court that Mr. Bradley

9 has shown up at his trial, and he has been into

10 custody.

11 A. Yes.

12 Q. Okay. And then during the next page,

13 which is page 83, 84, he tells you to go take a few

14 minutes and talk with Mr. Bradley. Do you recall

15 that?

16 A. Yes.

17 Q. If you look at the times this is line 19

18 and 20 on page 84. From 2:14 to 2:39 p.m. That's

19 approximately 25 minutes.

20 A. Yes.

21 Q. So during this trial that was for

22 trafficking and all of this had happened. All this

23 evidence had already been put into evidence and all

24 that. You had 25 minutes to talk to Mr. Bradley.

25 A. It appears so.

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1 Q. Do you recall what Mr. Bradley and you
2 talked about?

3 A. The only thing that comes to mind is
4 Mr. Bradley telling me he doesn't want 30 years. I
5 just remember him saying that repeatedly. He
6 doesn't want 30 years. But as far as the actual
7 conversation, the exchange, I do not recall the
8 details.

9 Q. So and then at that point, Mr. Bradley
10 comes out and you inform the judge on page 85 that
11 Mr. Bradley wants to plead guilty.

12 A. Yes.

13 Q. And there has been no motion for a
14 continuance now that Mr. Bradley has been present.

15 A. No.

16 Q. No discussion about how it's a critical
17 stage for Mr. Bradley to be present at his jury
18 selection or of any of that type of stuff.

19 A. At that point the trial had already
20 started so.

21 Q. I understand. But there had been no
22 motions to continue at that point.

23 A. No.

24 Q. And I believe that on 86, the court, the
25 solicitor notifies the court that they are going to

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1 add three new charges to the plea situation.

2 A. Yes.

3 Q. And there is the colloquy that goes on
4 about the plea. And there is several questions
5 asked of you and of Mr. Bradley about the plea
6 process that goes on for several pages.

7 A. Yes.

8 Q. And then okay, so and there is no point in
9 this colloquy for the plea that you make any
10 objection and say, you know, you continue my client
11 has just seen this drug report for the first time.
12 He has 10 days under Rule 6 to review it. We need
13 to continue this matter to give him additional time
14 to figure this out.

15 A. Well Mr. Bradley wasn't there, he left.

16 Q. No, I know that. But during -- when he
17 showed up and during the plea process, you didn't
18 ever inform the court that he had just seen these
19 documents.

20 A. I did not. If it's not in the transcript,
21 I didn't do it.

22 Q. Right. So you had never informed him
23 that, you know, he just got this analysis report.
24 We just got these pictures.

25 A. No.

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1 Q. And then I think that pursuant to the
2 plea, the sled agent doesn't testify. And then
3 there is this other case that he talks about as,
4 this was a package deal. Right? We all know what
5 that means.

6 A. Yes.

7 Q. And if you're going to plea to this, you
8 need to plea to this too. And they were all, the
9 whole plea process was connected.

10 A. Yes, he pled to everything.

11 Q. Well he pled to everything because
12 everything was packaged together.

13 A. Yes.

14 Q. In other words, if didn't want to plead to
15 the old stuff, he wasn't going to plea and not have
16 to have to go to trial on the new stuff. There's
17 two cases from -- there's like one from September
18 and one from another month. And so was it your
19 understanding that this plea that was offered for
20 him to either take or not take was all together.
21 We're going to do it this way, and this is how
22 you're going to plea?

23 A. I don't know if it was that firm as in
24 take it or leave it. But from what I recall, all
25 parties wanted to dispose of his charges at one

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1 time. But I don't know if the solicitor made it
2 that firm either, plea to everything at once. Or
3 you know, you have to finish out the trial. I
4 don't -- so I don't want to say yes, because I don't
5 think it was that firm. But all the parties
6 understood that he would take care of everything
7 during that plea.

8 Q. Well let me ask you a question. My client
9 has a pretty significant drug record.

10 A. Yes.

11 Q. And in that drug record there is, I would
12 imagine at least one possible strike in there, in
13 his prior record. Is it possible that he had a
14 strike in there?

15 A. Yeah, if I recall, he did some federal
16 time for similar.

17 Q. Right. So with what the plea offer was,
18 we have a trafficking charge. We have a proximity
19 of a school charge, and we have a serious offense of
20 PWID second, which is also a strike. So as in just
21 looking at what could have happened, if he had a
22 prior strike, gotten convicted of the trafficking,
23 gotten convicted of the other, he would be looking
24 at life without parole. Very possibly.

25 A. Possibly.

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1 Q. And do you recall talking to him about any
2 of that at that time?

3 A. I don't recall.

4 Q. So when Mr. Bradley pled guilty, you know,
5 this was sort of to, if you want to call it do
6 damage control, for the fact that trial had already
7 started without him, and he needed to make some
8 quick decisions.

9 THE COURT: Can I ask question real
10 quickly? Earlier when you began, you said you were
11 not contesting the fact that the trial began in his
12 absence.

13 MS. GAY: No, sir.

14 THE COURT: Because he wasn't there. You
15 are contesting that?

16 MS. GAY: No, I am not contesting the fact
17 that they attempted to do a TIA initially. That's
18 not what I -- I mean I know.

19 THE COURT: Because you keep on referring
20 to her not making a motion for a continuance,
21 because he wasn't there for his trial.

22 MS. GAY: Well there is reasons along the
23 way that I think a continuance requests should have
24 been done.

25 THE COURT: I understand that under Rule

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1 6, but are you also saying that she should have
2 moved for and would have in fact been granted more
3 than likely a continuance because he wasn't present?

4 MS. GAY: Yes. However, when they started
5 his case and the judge made that choice, I know the
6 judge was doing a TIA, and so there's no
7 misinformation and bail information that's put in.
8 I am going to contend that she should have made a
9 motion until her client came. Or found -- made no
10 effort to find the client before they picked the
11 jury. Because I believe that the picking of the
12 jury is a critical stage.

13 THE COURT: I understand. Okay, I'm with
14 you. But you are contesting the failure to move to
15 continue because he wasn't physically present.

16 MS. GAY: Right. Yes, sir. Now I
17 understand that the judge chose to go to a TIA, and
18 they proceeded initially that way. But I do believe
19 that it should have been -- a continuance request
20 should have been initially. I'm almost finished.

21 THE COURT: Okay.

22 MS. GAY: So he waives his rights. He
23 does the things he needs to do on record to do the
24 plea process. And then we're all aware and you're
25 familiar with the fact that he was given 15 years on

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1 two of the charges, and 10 on the other.

2 A. Yes.

3 Q. And the other thing just as an aside, they
4 bring up, this is in 2013, when this trial is done.

5 And they bring up a conviction that's a juvenile
6 conviction from 1995, did you ever think to---

7 THE COURT: What page is that on?

8 MS. GAY: I'm sorry, it's on page 101.

9 Q. And did you ever think to object to the
10 them bringing in something that was almost 10 years
11 old that was a juvenile conviction?

12 A. I don't recall what I was thinking at the
13 time.

14 Q. I understand. That's very honest, thank
15 you. I would imagine at this point in the trial you
16 just wanted all this to end.

17 A. No, not necessarily. I wanted my guy to
18 get, you know, get the best, or be in the best
19 position as we could possibly be in at that time,
20 due to the fact that he left before trial.

21 Q. I do. And then he was sentenced to 15
22 years. And I believe that's all the questions I
23 have at this time. And the other thing is, as I
24 said, when I subpoenaed your file which you provided
25 to me, there was no drug report in here at all.

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1 There were no pictures in here. And I understand
2 you said that was maybe because it was uploaded
3 differently. But certainly based on the record in
4 the trial, there was no time where Mr. Bradley would
5 have been able to see that drug report before the
6 day that the trial started.

7 A. Not the actual report.

8 THE COURT: Can I ask a question real
9 quickly of you, Ms. Gay?

10 MS. GAY: Yes.

11 THE COURT: If he went back and got a new
12 trial, would he be facing life because of his
13 previously strikes?

14 MS. GAY: No, not if everything in the
15 plea is overturned, because---

16 THE COURT: That's it.

17 MS. GAY: I mean it would just start over,
18 and he would go to trial and or not go to trial. He
19 could be.

20 THE COURT: At some point.

21 MS. GAY: Yeah, he could be. But
22 that's....

23 THE COURT: If there cases were tried
24 separately as was envisioned, there would be enough
25 strikes at some point to where one of these undone

Tiffany Butler-Cross by Gourley

1 pleas could expose him to LWOP sentence.

2 MS. GAY: That is possible based on the
3 circumstances. And, you know, I might need to
4 explain that to him as we move forward here today.
5 Because I kind of thought of that as I was talking
6 to her, Your Honor. But the -- but there -- I
7 believe he still wants move forward on his PCR at
8 this time.

9 THE COURT: Mr. Gourley, you can cross
10 examine.

11 MR. GOURLEY: May it please the court,
12 Your Honor.

13 THE COURT: Yes, sir.

14 Cross Examination by Mr. Gourley:

15 Q. Ms. Butler, how many times did you meet
16 with Mr. Bradley prior to his trial and subsequent
17 plea?

18 A. At least three times.

19 Q. And during the course of your
20 representation, he was out on bond?

21 A. He was out on bond the entire time.

22 Q. The entire time?

23 A. Yes.

24 Q. During these three meetings were you able
25 to review the discovery material and everything like

Tiffany Butler-Cross by Gourley

1 that?

2 A. Yes.

3 Q. Did you all talk about any kind of
4 possible defenses to the charges or anything?

5 A. We discussed everything, even whether he
6 wanted to plead or not or work out the charges.

7 Q. Did he ever indicate to you that he wanted
8 to plead guilty?

9 A. From my understanding, he did not want to
10 go to trial. There was an offer extended. The
11 solicitor, the assistant solicitor, offered him
12 8 years. He was not happy with that 8 years, and
13 wanted to see if she would go lower. And for some
14 reason, the number 5 just sticks in my head. And I
15 remember making the counter offer to her, but she
16 said no. And I think the big reason was because he
17 had already done some time in federal prison for a
18 similar type charge.

19 Q. And just to get a little bit of background
20 information, he was proceeding to trial without
21 being present on two separate charges, correct?

22 A. Yes.

23 Q. And then he showed up, and you all pled
24 guilty as a package deal.

25 A. To everything, yes.

Tiffany Butler-Cross by Gourley

1 Q. Now had you had any discussion with him
2 prior to selecting a jury and everything like that?

3 A. Well I told him like I told Ms. Gay, he
4 had been on the trial docket for I know 2 or 3 court
5 terms in a row. And he would always be present at
6 court and we would talk, and each time he would say
7 he's going to hire Murrell Smith. He's going to
8 hire Murrell Smith. And I would tell him, well, you
9 know, the solicitor is looking at your case. It's
10 hot. If you're going to do that, you need to do it.
11 And the morning of when the jury panel was there, we
12 had the exact same conversation.

13 Q. So just to be clear,---

14 A. Yeah.

15 Q. ---he was there that morning?

16 A. He was there that morning when the jury
17 panel was there.

18 Q. Did you have an opportunity to talk to
19 Murrell Smith to see if he was hired?

20 A. Well when Mr. Bradley left me, he said he
21 was still going to hire Murrell Smith. And I
22 believe someone in my office called. And they said
23 that they did not represent him, and had not talked
24 to him.

25 Q. Okay.

Tiffany Butler-Cross by Gourley

1 A. And I do know that I think Murrell Smith
2 represented him years before on some charges. But
3 someone from my office did contact Murrell Smith's
4 office.

5 Q. And on direct examination you said that
6 you and the assistant solicitor had a conversation
7 back in the judge's chambers?

8 A. Yes.

9 Q. Can you explain or elaborate on that?

10 A. Yeah, we told the judge what was going on.
11 Well first he asked if we would be willing if we
12 could work out the charge.

13 Q. Right.

14 A. And I explained to him that there was a
15 plea offer on the table, but it had already expired.
16 And he said he would be willing to honor the same
17 plea offer. So that was still a possibility. And
18 we told him that Mr. Bradley had just left. I hold
19 him I hadn't had any problems with him being present
20 before, and he just left. He said he was going to
21 go hire Murrell Smith. The judge said that we would
22 pick the jury, and he gave me the rest of the day to
23 look for him. And I think at that point, he hadn't
24 issued a bench warrant or anything. So he gave me
25 the rest of the day to look for him.

Tiffany Butler-Cross by Gourley

1 And then the following morning when we
2 were about to start a trial, he issued the bench
3 warrant for Mr. Bradley.

4 Q. That afternoon did you try to make contact
5 with Mr. Bradley?

6 A. I did. We called every number we had. I
7 remember contacting his bondsman. We contacted
8 Mr. Smith's officer. We called every number we had
9 on file.

10 Q. And you weren't able to get in contact
11 with him?

12 A. Could not get in touch with him.

13 Q. Now the morning of the trial, did you feel
14 there was any basis to object to proceeding TIA
15 without him present?

16 A. No, I didn't see a...

17 Q. In fact the bond paperwork and everything
18 like that.

19 A. Yeah. Yeah, all that.

20 Q. Warned Mr. Bradley of it, of the
21 possibility.

22 A. Yeah, all that was in place. He knew
23 terms, even several terms before that his trial was
24 quickly approaching. And the fact that he had been
25 there that morning and chose to leave, I mean, I

Tiffany Butler-Cross by Gourley

1 knew a continuance wouldn't be granted. I just
2 didn't move for a continuance.

3 Q. Were you prepared to go to trial?

4 A. I was prepared to go to trial.

5 Q. Now at the start of the trial, you made
6 the Brady motion as Ms. Gay discussed, and you
7 received at that point and time, the sled analysis.
8 Correct?

9 A. Uh-huh. (Affirmative.)

10 Q. And during that discussion on the record,
11 I believe page 19, Your Honor. The solicitor,
12 assistant solicitor McElveen discusses -- you all
13 had the discussion of whether or not the sled
14 analysis was turned over back in December, correct?

15 A. Yes.

16 Q. And she indicated in her Rule 5 that it
17 had already been turned over. You indicated that
18 you did have a copy of it, right?

19 A. Yeah.

20 Q. And then also the pictures that Ms. Gay
21 continued to discuss with you. Ms. McElveen stated
22 that she didn't have a copy of it, but they were
23 available with the sheriff's department for you to
24 view, if you so chose to do so, correct?

25 A. I think so, yeah.

Tiffany Butler-Cross by Gourley

1 Q. Now the sled analysis that you received,
2 did that in any affect your trial preparation?

3 A. It did not.

4 Q. Did it prejudice you in any way by
5 receiving it at that point and time?

6 A. It didn't prejudice me.

7 Q. Did you feel that you needed to continue
8 or ask for a continuance because you had just
9 received the sled analysis?

10 A. I did not feel as though I needed a
11 continuance.

12 Q. Now you proceeded to trial. Ms. Gay
13 discussed the not objecting to the chain of custody,
14 right?

15 A. Yes.

16 Q. During the course of trial, the State
17 called Calvin Fullmore. Do you recall that?

18 A. Yes.

19 Q. And Detective Fullmore was the one who
20 actually observed the defendant. Well let's take a
21 step back. Mr. Fullmore, or it was alleged that the
22 defendant was -- had a car, a gray charger, correct?

23 A. Uh-huh. (Affirmative.)

24 Q. And that the console was being taken out
25 of it. And Mr. Fullmore arrived on the scene, and

Tiffany Butler-Cross by Gourley

1 defendant then walked into an apartment. And the
2 window was open and Mr. Fullmore observed the
3 defendant put something in the couch, correct?

4 A. Yes.

5 Q. And that apartment belonged to, do you
6 recall who that apartment belonged to? A Ms.
7 Wilson?

8 A. Either, yeah. Either Mr. Bradley's
9 girlfriend or his co-defendant's girlfriend. But I
10 think a female. A female was involved as far as
11 renting the apartment.

12 Q. And the State got -- and the officers got
13 consent to search the apartment, correct?

14 A. Yeah, I think that was sort of the basis
15 for my suppression motion. I think was consent
16 given or, but I argue. There was some issue with
17 consent.

18 Q. Okay.

19 A. And I think it was given.

20 Q. Right.

21 A. But not really. I remember having a
22 problem with that.

23 Q. But again you had the full suppression
24 motion with the judge.

25 A. I did.

Tiffany Butler-Cross by Gourley

1 Q. And the judge denied your suppression
2 motion.

3 A. Yes.

4 Q. And during the course of the trial, the
5 State was attempting to establish a chain of
6 custody, correct?

7 A. Yes.

8 Q. And in fact, they were just one witness
9 short, the sled agent, who did the chemical
10 analysis.

11 A. Yes.

12 Q. But you would agree with me outside the
13 sled agent and the chain of custody up until that
14 point and time, had been established.

15 A. Yeah, I had no issue with it.

16 Q. So regardless if you -- an objection would
17 have been meritless at that point and time because a
18 chain of custody had already been established,
19 correct?

20 A. Yes.

21 Q. Now I believe it was during a lunch break
22 that the defendant showed up, is that correct?

23 A. Yes.

24 Q. And you were given the opportunity to
25 discuss what was going on with him?

Tiffany Butler-Cross by Gourley

1 A. Yes.

2 Q. And you said you don't specifically recall
3 your discussions with. How did -- do you recall how
4 it came about that he elected to plead guilty?

5 A. I think I remember he knew that the trial
6 had started, and that the trial was almost over.
7 And I remember telling him, now this is before. He
8 knew he was looking at 30 years.

9 Q. Okay.

10 A. And I believe some way I communicated that
11 if you wanted to plead, he could still plead. Like
12 I said, I don't remember the details. But when I
13 first went back and the holding cell is in the back
14 behind the bench, I remember Mr. Bradley telling me
15 he didn't want to do 30 years; didn't want to do
16 30 years. So we sort of talked about, you know, I
17 think how the trial was going to turn out or how it
18 was looking. And if he wanted to plea, there was
19 still an opportunity.

20 I think I remember going back and forth.
21 I went back and talked to Mr. Bradley. And I think
22 I came back out and talked to the solicitor. So I
23 wasn't just back there the entire time. I do think
24 I was kind of back and forth talking to the
25 solicitor. So I think it was during that time, we

Tiffany Butler-Cross by Gourley

1 had kind of figured out the plea.

2 Q. And you had mentioned earlier that there
3 was an 8-year plea offer that had now disappeared?

4 A. Yeah, it had expired, but the judge was
5 still -- well prior to picking to a jury; prior to
6 trial starting, he was still going to honor the
7 8 year offer.

8 Q. But that went out the window once you
9 picked the jury and started the trial.

10 A. Yeah, I couldn't find Mr. Bradley.

11 THE COURT: What was the offer on the
12 table right before that happened?

13 A. It was 8 years.

14 THE COURT: Eight years right before he
15 left the courthouse?

16 A. At that point, it had expired. And we
17 hadn't talked to the judge yet. So technically,
18 there wasn't an offer, but after I talked to the
19 judge, then that's when he agreed to honor it.

20 Q. And just to be clear, you had relayed that
21 8-year offer in prior meetings to Mr. Bradley?

22 A. That offer was made a while before, at
23 least 6 months, because I had Mr. Bradley's case
24 from the very beginning. But it was relayed to him
25 several months before.

Tiffany Butler-Cross by Gourley

1 Q. And he didn't want to accept that.

2 A. He did not want the 8 years.

3 Q. And it only came back when you all had
4 discussions with the judge---

5 A. Yeah.

6 Q. ---the day of trial.

7 A. Yeah.

8 THE COURT: Would you ask the witness
9 please, if that 8 years applied to everything that
10 he was charged with, or whether it was just the
11 trial charges?

12 Q. Did it apply to everything or just the
13 trial charges that he was facing?

14 A. I can't recall. I'm thinking it was just
15 the drug charge, but I can't recall. I can't recall
16 if it included everything.

17 Q. And obviously the defendant showed up.
18 You all had 25 minutes as Ms. Gay discussed, to talk
19 about the plea. Did you feel that was adequate time
20 to discuss Mr. Bradley's options at that point?
21 Limited options?

22 A. Yeah, he didn't want to go trial. So I
23 mean he never indicated that he wanted to go to
24 trial. It was just a matter of what plea he could
25 get, what I could work out. And he wasn't happy

Tiffany Butler-Cross by Gourley

1 with the offer that was extended to him. But he
2 never indicated to me that he wanted to go to trial.
3 In fact I think he said he didn't want to go to
4 trial. So.....

5 Q. And in any way was Mr. Bradley forced or
6 forced in to pleading guilty in your opinion?

7 A. I did not force him. I did not coerce
8 him.

9 MR. GOURLEY: I beg the court's
10 indulgence, Your Honor.

11 Q. In your opinion, was it beneficial for
12 Mr. Bradley to plead to all the charges that he had
13 open at that time?

14 A. Yes.

15 Q. And why is that?

16 A. At that point, we had one more witness to
17 go. We really had no defense, and so I did not see
18 a not guilty verdict coming in. And, you know, the
19 way it works when you lose at trial, you usually
20 get a lot more time than if you had just pled
21 guilty.

22 Q. And just to be clear for the record,
23 Ms. Butler, under Rule 6 even though you had the 10
24 days and could have requested a continuance in that,
25 you didn't feel it was necessary at that point and

Tiffany Butler-Redirect by Gay

1 time.

2 A. No.

3 MR. GOURLEY: Your Honor, I don't have any
4 other questions. Thank you, Ms. Butler.

5 THE COURT: Redirect?

6 MS. GAY: Yes sir.

7 Redirect Examination by Ms. Gay:

8 Q. Back to where the drugs and the chain of
9 custody and the analysis were admitted, I think
10 that's 8, 9, 10. That's maybe page 60, 61 and 62.
11 There is a point where they're admitting the drugs
12 or admitting the chain information, which involves
13 several different pieces of evidence. And we
14 discussed and you talked to him. But you didn't
15 object to any of that, including the actual
16 admission of the drugs.

17 A. I did not object according to the
18 transcript.

19 Q. And so they brought the drugs in, into
20 evidence in the trial before the chemist testified.

21 A. It appears so.

22 Q. And you -- your testimony on cross was
23 that the solicitor, or the attorney general asked
24 you did you believe a chain of custody had been
25 established. But yet my client had never seen the

Tiffany Butler-Redirect by Gay

1 drug analysis report, correct?

2 A. He did not see the form.

3 Q. And so as just to kind to belabor the
4 point here, as a drug case, the element of the
5 offense, is the fact that the substance is in fact
6 drugs.

7 A. Yes.

8 Q. And so before the picking of the jury in
9 this case, my client had never seen the evidence
10 that established that the stuff they alleged him to
11 to be possession of was in fact drugs.

12 A. He didn't see the drug analysis form.
13 Whether we discussed -- whether we discussed whether
14 it was drugs or whether he admitted to me the nature
15 of that conversation, I cannot recall. But he did
16 see that actual form.

17 Q. Correct. Now in the course of the 4 years
18 that you were a public defender, have you ever in
19 your life seen like I have, one of those analysis
20 forms that come back, and for some reason they're
21 something else other than drugs?

22 A. Yeah, I've seen that before.

23 Q. And so as an element of the offense, it
24 would have been crucial for him to have been shown
25 the drug analysis form stating that it was fact

Tiffany Butler-Redirect by Gay

1 drugs. That's crucial.

2 A. Yes.

3 Q. And critical to his understanding of the
4 evidence that the State had against him. Right?

5 A. Yes.

6 Q. And so until a person sees that form, they
7 don't know whether or not the State has enough
8 evidence to convict him or not.

9 A. Well not necessarily. Because in a lot of
10 drug cases, the drugs are field tested. And
11 although that in and of itself is inadmissible, at
12 least it gives us a basis for trying to work out
13 charges and whether to proceed to trial or not.

14 Q. I understand.

15 A. So---

16 Q. When I requested your file, there was
17 nothing in this file there was not anything in this
18 file that had to do with the field test, was there?

19 A. I cannot recall.

20 Q. In this trial, there was no testimony
21 presented that they did a field test and it came
22 back positive.

23 A. I don't recall.

24 Q. And your testimony is that you told him
25 how it was looking in the trial, and I think your

Tiffany Butler-Redirect by Gay

1 impression to this court, as well as to my client
2 would have been, this is not looking good for you.

3 A. It wasn't.

4 Q. I understand. And so if this is not
5 looking good for you, would have been how you
6 presented his case to him, that's when he decided to
7 do this package deal.

8 A. No, not necessarily, because he never
9 wanted to go to trial. Mr. Bradley---

10 Q. Well he was in trial.

11 A. Well, yeah, because he wasn't there, so
12 there no opportunity to maybe work it out before
13 picking the jury.

14 Q. I understand.

15 A. He never indicted to me that he wanted to
16 go trial. It was a matter of Mr. Bradley not liking
17 the plea offer.

18 Q. Well at the time the plea offer though he
19 still had not been given a crucial piece of
20 evidence.

21 THE COURT: That's been covered. Now
22 we're arguing. Don't argue with the witness.
23 She -- he had not seen the drug analysis. I so
24 find.

25 MS. GAY: Thank you.

Tiffany Butler-Recross by Gourley

1 Q. And he tells me that what he told you was
2 that he wanted to go get his family; that after you
3 told you him you were going to trial this morning,
4 yes he said he wanted to go talk to the other
5 lawyer, but he also wanted to go get his family. Do
6 you remember that?

7 A. He did not tell me that before he left.

8 Q. Okay. I have no further---

9 A. Whether that's true or not, I don't know.
10 He did say that. He told before he left me in the
11 stairwell, that he was going to hire Murrell Smith.
12 He didn't say anything about getting his family. So
13 whether that's true or not, I don't know.

14 MS. GAY: I have no further questions for
15 this witness, Your Honor.

16 THE COURT: Any recross?

17 MR. GOURLEY: Yes, Your Honor. Just one
18 question.

19 THE COURT: Make sure you devote yourself
20 to only any new points she may have raised.

21 MR. GOURLEY: Yes, Your Honor.

22 Recross Examination by Mr. Gourley

23 Q. Ms. Butler, did the sled analysis drug
24 report reveal that it was in fact cocaine and
25 marijuana?

Nathaniel Bradley-Direct by Gay

1 A. Yes, It was the actual substance.

2 MR. GOURLEY: No further questions, Your
3 Honor.

4 THE COURT: You can step down. Next
5 witness.

6 MS. GAY: Your Honor, I would like to call
7 Lionel Bradley.

8 Nathaniel Lionel Bradley, being first
9 duly sworn, testified as follows:

10 DIRECT EXAMINATION by Ms. Gay:

11 Q. Mr. Bradley, you are the subject of this
12 PCR hearing today. And you are the one who filed
13 the application in this case. Do you stand by what
14 you said in your application that you believe your
15 conviction is unconstitutional?

16 A. Yes, ma'am.

17 Q. And do you believe that your conviction is
18 unconstitutional because of the things that happened
19 during this transcript, the trial and then the plea?

20 A. Yes, ma'am.

21 Q. And do you believe that Ms. Butler
22 provided adequate information to you for you to make
23 the decisions that you made on this day?

24 A. No, ma'am.

25 Q. Can you describe to the court what kind of

Nathaniel Bradley-Direct by Gay

1 happened in the process of what -- of this trial
2 date. For you this was one day actually. So---

3 A. Yes, ma'am.

4 Q. ---describe that.

5 A. The night before I got call from a
6 bondsman, from another bail bonding company, stating
7 that they were calling my name in the courtroom
8 after someone else's trial or plea hearing. And he
9 told me that I needed go to the courthouse that
10 morning to see what was going on. I was never
11 contacted by anyone from the public defender's
12 office about that, that my trial was supposed to be
13 going to -- that my case was going to trial.

14 I called the number that we usually call
15 for General Sessions Court and my name was not on
16 the docket, on the list to go for trial.

17 Q. Let me stop you there for one second. Did
18 anyone from the public defender's office call you
19 the Friday or the Thursday before your case was
20 supposed to start that week?

21 A. No, ma'am.

22 Q. So it's your testimony that the only way
23 you knew you were supposed to be in the courtroom is
24 because of your bondsman.

25 A. It wasn't even an actual bondsman who

Nathaniel Bradley-Direct by Gay

1 bonded me out. It was bondsman for another bonding
2 company that I knew. And I guess it was in the
3 courtroom the day before. And he said they was
4 calling my name in the courtroom. But I had no -- I
5 was never under the impression that I was supposed
6 to be going to trial, I was even on the docket.

7 Q. Let me stop you there. So before you
8 showed up in the courtroom on the morning of your
9 trial, of your court appearance, had you and
10 Ms. Butler recently talked about the elements of the
11 offense, the evidence they had against you in all
12 your cases?

13 A. No, ma'am. It wasn't recently.

14 Q. Can you remember---

15 THE COURT: I'm sorry, what was that
16 answer?

17 A. No, ma'am, it wasn't recently.

18 THE COURT: She said ever.

19 A. Oh, yes, ma'am, we spoke once.

20 Q. Well before this trial, can you remember
21 the time period that passed between the time you
22 talked to her and the time you were supposed to
23 appear in court?

24 A. Well when I initially spoke with her, it
25 was months, months prior to me going to trial.

Nathaniel Bradley-Direct by Gay

1 Q. And when you got together with her, were
2 you in her office or were you somewhere else?

3 A. I was in the court. Are you talking about
4 the time we talked, we spoke?

5 Q. Was it like a roll call day or something?

6 A. Before the trial?

7 Q. No, no. The time that you met with her
8 several months before?

9 A. It was, you know, in the public defender's
10 office.

11 Q. So you went to the public defender's
12 office and you met with her. Do you remember her
13 giving you a copy of what we call discovery
14 material?

15 A. Yes, ma'am.

16 Q. Do you remember looking at that discovery
17 material yourself?

18 A. Yes, ma'am.

19 Q. Do you remember ever seeing anything in
20 there that might have been a drug analysis form?

21 A. No, ma'am.

22 Q. Was there ever a point in either written
23 correspondence or come by my office and pick this
24 up, or I'll fax it to you, or anything like that?
25 Were you provided a copy of that document or any

Nathaniel Bradley-Direct by Gay

1 information about it?

2 A. No, ma'am.

3 Q. So on the day that you came to court, you
4 were in the courthouse and you spoke to Ms. Butler.

5 A. Yes, ma'am.

6 Q. And I believe you left.

7 A. Yes, ma'am.

8 Q. Why did you leave?

9 A. She told me that the solicitor was ready
10 to bring my case to trial, and I told her I wasn't
11 prepared to go to trial, you know, what I'm saying
12 at the moment. Because I wasn't even aware that I
13 was even on the docket to go up for court at that
14 moment. But then she told me that the solicitor
15 wanted to offer me a plea for a 5 to 30, with an
16 8-year cap. And I said I needed to go get my family
17 to let them know what is going on. And to talk to
18 my mother and them to see what was going on and I'll
19 be back.

20 Q. Stop there for a minute. So on the
21 morning of that, still hadn't the drug analysis
22 report, and she was telling you of this plea offer
23 that was maybe 5 to 30.

24 A. Yes, ma'am.

25 Q. And your---

Nathaniel Bradley-Direct by Gay

1 THE COURT: With an 8 year cap.

2 Q. With an 8 year cap, I understand. So
3 you -- your testimony is, is that you wanted to go
4 get some relatives and bring them back to the
5 courthouse.

6 A. Yes, ma'am.

7 Q. Now as this trial progressed, you were not
8 there.

9 A. No, ma'am.

10 Q. And I understand that you came after
11 lunch.

12 A. Yes, ma'am.

13 Q. About what time was that?

14 A. Actually I came back about 11:30. It was
15 about 11:30 when I came back. But they say my
16 mother and them was standing in front of the
17 courthouse and they was like, they was taking a
18 recess, but they was in the middle of my trial. And
19 they was going to resume I believe at 2:30. So we
20 came back probably about 2:15.

21 Q. During that period of time did, did you
22 ever recall either maybe asking Ms. Butler to ask
23 for continuance for your case?

24 A. Well I actually called her. I called the
25 public defender's office and told them not to start

Nathaniel Bradley-Direct by Gay

1 the trial, because I was -- I went to go -- I went
2 to the college that I was attending to get my
3 transcripts. And I went to the work site where I
4 was working at, to go get some letters from my
5 supervisors.

6 Q. So what your position is, is that the
7 things that you doing while you were out of the
8 courthouse were things in furtherance of mitigation,
9 that might be good for you.

10 A. Yes, ma'am.

11 Q. And the reason you were scrambling around
12 on that day to do it, is because you had not known
13 until the night before that you were supposed to be
14 in court.

15 A. Yes, ma'am.

16 Q. So when you came back they put you in
17 custody?

18 A. Yes, ma'am, as soon as I walked through
19 the front door.

20 Q. When Ms. Butler came back to talk to you,
21 what do you recall of that conversation?

22 A. She stated that they were in the middle of
23 my trial and they were almost finished with my
24 trial. And the judge stated that if he was to find
25 me guilty in my absence, he was going to give me

Nathaniel Bradley-Direct by Gay

1 30 years. But if I stop the trial and take a plea,
2 he would be fair with me.

3 Q. So it's your understanding and
4 recollection that you were actually told that the
5 judge was probably going to give you 30 years.

6 A. Yes, ma'am.

7 Q. And that he had said that.

8 A. Yes, ma'am.

9 Q. And so when you decided to waive your
10 right to the trial that had already started, did you
11 feel like you had any option?

12 A. No, ma'am.

13 Q. Did you feel like you were in a good
14 position to bargain at that point?

15 A. No, ma'am, I felt like my back was
16 against the wall.

17 Q. And were you told during that conversation
18 anything about the fact that you, because you
19 weren't present at your jury selection may have had
20 some kind of argument to ask for a continuance
21 because that's a critical stage, and you should have
22 been there?

23 A. No, ma'am, I was never told that.

24 Q. Were you ever told that they gave -- that
25 they had produced the drug analysis report on that

Nathaniel Bradley-Direct by Gay

1 morning?

2 A. No, ma'am.

3 Q. Were you ever shown that document?

4 A. No, ma'am.

5 Q. Were you ever told that under the South
6 Carolina Rules of Criminal Procedure Rule 6, that
7 you had a right to ask for 10 days to review that
8 document and to see what you think of it?

9 A. No, ma'am.

10 Q. So there was any discussion during the
11 period of time that you were talking to her about
12 what could have been to either continue the trial or
13 something having to do with the trial, not having to
14 do with the plea process?

15 A. No, ma'am.

16 Q. So once that you weren't told all that,
17 and you decided to plead, what did she tell you
18 about this other charge, the one that you also pled
19 to?

20 A. They just threw them in.

21 Q. When he say to just threw them in, was it
22 a package deal to you?

23 A. The deal was already -- she told me the
24 deal was taken off the table for the 8 year cap.
25 And she said I had an open plea for 5 to 30. And

Nathaniel Bradley-Direct by Gay

1 she was like, he can give 5 or he can give you 30.

2 It's up to the judge's discretion.

3 Q. Well I guess my question is, did she ever
4 tell you that you needed to plead to all of it to
5 get off the big number? You know, this was a
6 package deal where you pled to two separate dates of
7 arrest. What was your understanding of why you pled
8 to two separate dates of arrest? Was it connected
9 in your mind?

10 A. I just thought he was going to put
11 everything together.

12 Q. And when you pled guilty to that charge,
13 there's questions that the judge asks you. And a
14 lot of questions having to do with whether or not
15 you are knowingly and intelligently and willing
16 pleading guilty to stuff. And we can go to the
17 record if you need me to pull you a copy of it. I
18 can give you that. But do you remember answering
19 yes to all of the -- it's page 96, Your Honor. In
20 that area.

21 THE COURT: Well I recognize he is
22 pleading guilty to 6 or 8 charges.

23 MS. GAY: Yes, sir.

24 THE COURT: Are you trying to establish
25 what he was thinking at the time?

Nathaniel Bradley-Direct by Gay

1 MS. GAY: Well I know he answered yes.

2 THE COURT: Well I mean, it's clear to me.
3 But if you want to establish what he was thinking,
4 that's a different matter. I've got that in the
5 transcript.

6 MS. GAY: Okay, thank you.

7 Q. During the course of the plea, the judge
8 is asking you questions. And he's asking you things
9 like, you know, are you waiving your rights to
10 trial. Are you -- things related to the plea. And
11 you answered yes to everything. What were you
12 thinking at that time?

13 A. I was just hoping that he wouldn't give me
14 30 years.

15 Q. And now do you -- when he asked you, let
16 me find the place. For instance on page 96, he's
17 asking you, do you understand that you're waiving
18 your constitutional rights to have a trial in order
19 to plead guilty. Did you know that you might have
20 some constitutional rights that affected that trial
21 that day?

22 A. No, ma'am.

23 Q. Did you know you had a constitutional
24 right or a fairness right or something to be in a
25 critical stage of your trial and pick your jury?

Nathaniel Bradley-Direct by Gay

1 The jury for your trial?

2 A. No, ma'am.

3 Q. And did you know that under the South
4 Carolina rules because that's the way it is, that
5 you had extra time that you could have seen used to
6 look at drug analysis?

7 A. No, ma'am, I was never aware of that.

8 Q. So when you said, yes, you had no idea
9 that those things even applied?

10 A. No, ma'am.

11 Q. It also says that you're waiving -- and it
12 says that you would be waiving your right to a trial
13 and the cross examining. Do have any idea that you
14 had a right to have independent drug testing if you
15 needed -- if you had decided to on that analysis
16 report?

17 A. No, ma'am.

18 Q. And so as I said, when you plead guilty,
19 you just thought you were doing damage control?

20 A. I thought I was just trying to save my
21 life.

22 Q. I understand. Now one of the things that
23 we've talked about in this proceeding is that in
24 your prior record you have a bunch of stuff going
25 on. And that it is possible that if you had pled

Nathaniel Bradley-Direct by Gay

1 like this, that you could have potentially been
2 looking at life without parole. Was that ever
3 discussed to you?

4 A. No, ma'am.

5 Q. And we haven't talking about it yet,
6 because we -- I just kind of talked to you today for
7 the first time.

8 THE COURT: Would you clarify as discussed
9 with him by whom? Because it's in the transcript.

10 MS. GAY: That he could have been given
11 life.

12 THE COURT: Not on this occasion, but that
13 at some point if he continued with serious offenses,
14 he could be.

15 MS. GAY: Yes, that was....

16 THE COURT: If you would clarify with the
17 witness who didn't tell him about strikes and so
18 forth.

19 Q. When you were speaking with Ms. Butler for
20 the find 25 minute period of time after you got to
21 the courtroom after lunch, did you and Ms. Butler
22 discuss the possibility or exposure to life?

23 A. No, ma'am.

24 Q. And when you pled guilty, did you plead
25 guilty voluntarily?

Nathaniel Bradley-Cross by Gourley

1 A. I felt like I had no choice.

2 Q. And did you plead guilty knowing
3 everything that you know today about some of the
4 things that would have been going on or potentially
5 could have gone on in your trial, would you have
6 pled guilty that day knowing what it is that you
7 know now?

8 A. No, ma'am.

9 Q. Would you have followed up on your trial
10 and asked Ms. Butler to make motions to continue
11 your case, and do other more aggressive---

12 A. Yes, ma'am.

13 Q. ---things on your behalf?

14 A. Yes, ma'am.

15 MS. GAY: I don't have any other questions
16 at this time, Your Honor.

17 THE COURT: Mr. Gourley.

18 MR. GOURLEY: Thank you, Your Honor.

19 Cross Examination by Mr. Gourley:

20 Q. Mr. Bradley, you were out on bond the
21 entire time?

22 A. Yes, sir.

23 Q. And the morning of your trial, eventual
24 trial, Ms. Butler told you that your case was going
25 to be called.

Nathaniel Bradley-Cross by Gourley

1 A. Yes, sir.

2 Q. And at that point and time, you felt the
3 need to go get family members and everything like
4 that?

5 A. Yes, sir.

6 Q. But you knew that your case was being
7 called for trial that day.

8 A. Yes, sir.

9 Q. And then you didn't show up until it had
10 already begun.

11 A. Yes, sir. I told her I was coming right
12 back.

13 Q. But you didn't come right back. You came
14 back a couple of hours later, right?

15 A. They was already in recess by the time I
16 came back.

17 Q. And you had been up for trial a couple of
18 times, right, on the docket?

19 A. I believe so, but it was -- I was out on
20 bond for over a year and a half.

21 Q. So you had the opportunity to gather all
22 these materials that you wanted to gather, long
23 before your trial ever came about.

24 A. I assume that's what she was doing.

25 Q. Now during your guilty plea and Ms. Gay

Nathaniel Bradley-Cross by Gourley

1 kind of hit on it. Do you recall waiving your
2 constitutional rights?

3 A. Could you repeat that?

4 Q. Do you recall waiving your constitutional
5 rights on your guilty plea?

6 A. I believe so.

7 Q. And you also told the judge that you were
8 satisfied with Ms. Butler's services?

9 A. Well I told him that me and Ms. Butler
10 just had met, you know what I'm saying, one or two
11 times beforehand. I wasn't satisfied, but still at
12 that point, I felt like that accepting a guilty plea
13 was the right thing to do. It was the safest thing
14 to do.

15 Q. And you told the judge specifically that
16 you weren't doing what you were supposed to do, you
17 know, like following up with everything and, you
18 know, getting her affiliated with the case, right?
19 Do you recall that?

20 A. I am not sure.

21 MR. GOURLEY: And, Your Honor, that's page
22 98 of the transcript.

23 Q. Do you recall telling the plea judge that
24 no one was promising you or threatening you to get
25 you to plead guilty?

Nathaniel Bradley-Cross by Gourley

1 A. It wasn't a threat, but she told me that I
2 had 30 seconds to make a decision; that if I was to
3 let them finish my trial in my absence, that I was
4 going to get 30 years. But If I stop the trial and
5 take a plea, he was going to be fair with me, and I
6 have 30 seconds to make my decision.

7 Q. 5 to 30 years, right?

8 A. Yes, sir, with the 8 year cap, but that
9 was off the table.

10 Q. So you didn't want to get 30 years.

11 A. No, sir.

12 Q. You pled guilty to avoid 30 years.

13 A. Yes, sir.

14 Q. Do you recall telling the judge that you
15 wanted to plead guilty?

16 A. Yes, sir.

17 Q. And that you were indeed guilty?

18 A. Yes, sir.

19 Q. So you are guilty.

20 A. I stated that at that time because he said
21 that if he was going to find me guilty in my
22 absence, I was going to get the max 30 years, and I
23 didn't want that.

24 Q. So you're guilty, yes or no?

25 A. Am I guilty?

Nathaniel Bradley-Cross by Gourley

1 Q. Yes, sir.

2 A. No, sir.

3 Q. So you lied to the judge under oath when
4 you pled guilty?

5 A. I didn't lie to him. I felt like I was
6 scared.

7 Q. Said you were guilty?

8 A. I was scared at the time.

9 Q. Do you recall agreeing with the State's
10 facts during the guilty plea?

11 A. I was never in there when they---

12 Q. During your guilty plea, the State recited
13 some of the facts that went along with the charges.
14 Do you recall that?

15 A. No, sir, I can't remember.

16 Q. The transcript reflects that, Your Honor,
17 page 91 and 92. And do you recall waiving the right
18 to challenge any of the evidence that was presented
19 against you during the guilty plea, right? The
20 judge went over all that with you.

21 A. Yes, sir. That was part of the plea.

22 Q. And you want to go back and face these
23 charges? Go back on trial on all these charges?

24 A. Yes, sir.

25 MR. GOURLEY: I beg the court's

Nathaniel Bradley-Redirect by Gay

1 indulgence, Your Honor.

2 THE COURT: Okay.

3 MR. GOURLEY: Your Honor, I don't have
4 any other questions. Thank you, Mr. Bradley.

5 THE COURT: Redirect on matters brought up
6 on cross only.

7 Redirect Examination by Ms. Gay:

8 Q. Before the day of the trial when you came
9 in, we know that this drug analysis report was not
10 present. Had you ever been shown anything that said
11 that these drugs were over 10 grams?

12 A. No, ma'am.

13 Q. And you were enough -- you know enough to
14 know that in order for it to be a trafficking
15 charge, it has to weigh over 10 grams.

16 A. Yes, ma'am.

17 Q. So you had no evidence presented to you
18 whatsoever that it did in fact weigh over 10 grams
19 before the trial---

20 A. No, ma'am.

21 Q. ---started.

22 A. No, ma'am.

23 MS. GAY: That's the only question I have.

24 THE COURT: You can step down. Thank you,
25 sir. Additional witnesses from the applicant?

Nathaniel Bradley-Redirect by Gay

1 MS. GAY: No, Your Honor.

2 THE COURT: Witnesses for the State?

3 MR. GOURLEY: No, Your Honor.

4 THE COURT: Any closing comments from
5 either side?

6 MS. GAY: Yes, sir. As you say can see
7 through the presentation of the the case, Your
8 Honor, and even in some of the questions that were
9 asked by the attorney general, my client does not
10 have an obligation to understand the law, his
11 constitutional rights, and some of the legal
12 protections that attach to his case as a defendant
13 in the State of South Carolina. He is subject to
14 the advice and competency of his appointed counsel
15 or his hired counsel at that time.

16 This case is very clear. There are some,
17 I wouldn't call them even red herrings. There are
18 some additional arguments that could be made that
19 make a difference. But the bottom line, Your Honor,
20 is, is there was a violation of Rule 6 in this case.
21 And Ms. Butler admittedly on the stand did not
22 protect my client's interest, ask for a continuance,
23 and allow him to have the time given to him under
24 the South Carolina Rules of Criminal Procedure Rule
25 6, to determine what he, you know, what his

1 impression of that piece of evidence is.

2 And not only was that piece of evidence
3 just a piece of evidence, but it was the crucial
4 piece of evidence but it was the crucial piece of
5 evidence on whether or not they had the requisite
6 evidence to establish all the elements of the
7 offense of trafficking. Because nothing else said
8 that the drugs were over 10 grams.

9 THE COURT: Well do you now have a copy of
10 those documents?

11 MS. GAY: They're not in her file. I
12 don't.

13 THE COURT: Do you have a copy of them?

14 MS. GAY: No, they were in the trial
15 transcript.

16 THE COURT: Do they at least does the
17 trial transcript reflect that they were crack
18 cocaine?

19 MS. GAY: The trial transcript I believe
20 when she was given the form on that date, does say
21 that it's cocaine and it's over 10 grams. Yes.

22 THE COURT: And that was put in to
23 evidence.

24 MS. GAY: It was put into evidence in the
25 trial. She, I don't know whether she kept a copy to

1 if it or not.

2 THE COURT: But your burden is to show me
3 that if these things had been done, he would not
4 have pled guilty. Are you saying he just wouldn't
5 have pled guilty that day?

6 MS. GAY: No, I am saying that he would
7 not have pled -- he would have had -- he would have
8 not have pled guilty.

9 THE COURT: At all?

10 MS. GAY: At all.

11 THE COURT: If he had seen a drug report
12 that showed these were illegal drugs, you're saying
13 that that means he would not pled guilty.

14 MS. GAY: If he had been shown a drug
15 report that said that it was 10 grams of drugs, I
16 believe that the whole process would have gone
17 differently.

18 THE COURT: How?

19 MS. GAY: That Mr. Bradley and his
20 attorney at the time, or if he'd hired a different
21 attorney, would have had different negotiations up
22 to the date of the trial. One of the things that
23 Mr. Bradley testified to was that it had been months
24 since he had seen the public defender who was
25 representing him. And that he was unaware until the

1 night before, that his case was on the trial docket.

2 THE COURT: Did he not say in the plea
3 transcript that he himself hadn't done the things he
4 should have done to get her familiar with the case?

5 MS. GAY: I think he said that he had not
6 met with her. But they had not met. And I think
7 what had -- if he during the whole time that he was
8 before the trial started, there was different things
9 going on in his life. He said he was going to
10 school. He had different things going on, trying to
11 get his life straightened out. And if there had
12 been this form provided to her, which I believe is
13 required under 5 and 6, they would have sat down and
14 had, you know, discussions. And she would have
15 said, you know, the but for test. Here it is. We
16 need to talk about it. We need to work this out.
17 We need to work this out right away. And
18 Mr. Bradley would have acted accordingly and
19 cooperated, and or met more often with her, got his
20 own attorney, whatever he did. And work towards,
21 you know, other negotiations.

22 THE COURT: I agree with you if the drug
23 analysis reports had said there weren't drugs. So
24 you're telling me that he would have continued down
25 the path of defending the case had he had a drug

1 report that said they were drugs.

2 MS. GAY: I tell you that on the day that
3 this -- that he was told to come to court, what his
4 testimony is, is that he would have handled his
5 situation differently. And if they---

6 THE COURT: Had he known that they had
7 proof that they were illegal drugs.

8 MS. GAY: Yes. And because he was not
9 able to do that and did not have that knowledge, he
10 was prejudiced because he did not have that
11 knowledge and been given that document to say, hey,
12 we need to talk about this right now. We need to
13 have some better negotiations right this minute. He
14 told me when I was initially hired, that he never
15 saw the drug report. He never -- he's never seen
16 it, I don't believe. Because it was admitted into
17 evidence. And also the lack of objection to admit
18 the drugs before the chemical analysis.

19 THE COURT: Well that's -- I understand
20 that. She shouldn't have done that, but you've got
21 to establish to me that that makes a difference.
22 That was during the trial.

23 MS. GAY: Yes, sir.

24 THE COURT: That would be ineffective
25 assistance during the trial. This is the whole

1 circumstance surrounding the plea. And what you're
2 telling me now is that now that he knows that the
3 drug analysis says they were illegal drugs, now he
4 wants to go back and face 72 years. Or 70 years.

5 MS. GAY: Well what I'm telling Your Honor
6 is if he had known that, because he did not know
7 that at the time. He was told when he showed up
8 that day, listen all this stuff has come in. It's
9 all admitted against you. You have no choice. You
10 have to do this. The judge has said you are getting
11 30 years if you don't plead.

12 THE COURT: No, she didn't say that. She
13 said that if he got convicted, he would get 30
14 years. Not that the judge said that he would give
15 him 30 years if he was convicted. That's not the
16 testimony from Ms. Butler.

17 MS. GAY: I understand that. Mr. Bradley
18 testified that he believed that to be true and
19 believed that he had been told that. But either
20 way, Your Honor, if he had known before the trial
21 started in his absence, which he believes he was
22 prejudiced from the beginning because it started
23 without him, he very well would have made different
24 decisions that would have significantly affected his
25 life.

1 See because part of problem with being
2 told or thinking that he was going to get 30 years
3 is because he didn't show up earlier that day to
4 pick his own jury. He says and he testified that he
5 was there by 11:30. The court resumed after lunch
6 at two. So he would have been gone a couple of
7 hours from what his testimony was.

8 THE COURT: But you and he are excusing
9 the fact that he left.

10 MS. GAY: No, I'm not, Your Honor. They
11 started the trial.

12 THE COURT: You all are both excusing
13 that; that he had a right to be present at a
14 critical stage of his trial. He's the one that
15 left.

16 MS. GAY: I understand.

17 THE COURT: You would have a great
18 argument if she said, oh, you can go ahead and go.
19 You don't need to be here. But he and you by your
20 argument, are saying that his failure to be there
21 for a critical stage of his trial, was somehow
22 Ms. Butler's fault.

23 MS. GAY: Well I think she should have
24 made a continuance.

25 THE COURT: And it would have been denied.

1 MS. GAY: And that she should have put
2 that on the record for him, Your Honor. That he --
3 she should have continued, asked for a continuance,
4 and said he's not here. He was here a little while
5 ago.

6 THE COURT: It would have been denied.

7 MS. GAY: And then also that -- and I do
8 understand that when they tried, started the case,
9 they did do the bail process and the fact that he'd
10 been notified his trial could be without him. But I
11 think when he showed up, Your Honor, additional
12 constitutional rights popped into effect, because he
13 was no longer a trial in absentia. He was then a
14 person who was present for his trial. Who as an
15 example, I was doing a case in my county in
16 Charleston, and a man was not present at a trial
17 that was a jury that was picked by another attorney.
18 And when the man showed up, the judge made a -- the
19 attorney made a motion to continue, because he was
20 not present. He didn't want to waive his rights,
21 his constitutional right to be present picking his
22 jury, and the case was continued.

23 It happens all the time that that is
24 something he's entitled to be present for if he
25 shows up. So I guess---

1 THE COURT: How about if he comes and then
2 he knows it's ready to roll and then he says, well I
3 guess I need to go find my family. Are they
4 continued then too in Charleston?

5 MS. GAY: Well I don't know about that
6 one, Your Honor, but I do know that once they show
7 up in the middle of the trial, that the attorney
8 should in my professional opinion, ask for a
9 continuance because he wasn't present at the picking
10 of his jury, I think it should be done.

11 THE COURT: And would it be granted?

12 MS. GAY: There's no way, I'm not a judge
13 so.

14 THE COURT: The last question I have and
15 then you can continue. You say had he known of the
16 content of the drug analysis reports, he would acted
17 differently. I didn't hear him tell me how he
18 would have acted.

19 MS. GAY: He said---

20 THE COURT: He just said---

21 MS. GAY: ---he would not have pled.

22 THE COURT: ---he wouldn't have pled
23 guilty.

24 MS. GAY: Right.

25 THE COURT: Had he known they were really,

1 really drugs, he would not have pled guilty.

2 MS. GAY: I think what his testimony was
3 is if he had known that the attorney could have
4 asked for a continuance based on Rule 6, he would
5 have not pled guilty at that time. And I believe
6 that's prejudicial to him because he was as he
7 referred to it in his testimony, back up against
8 the wall and felt like he was going to get 30 years
9 because of the position. Let's play it out.

10 THE court: Would he have pled guilty
11 later?

12 MS. GAY: Let's play it out, Your Honor.
13 Let's say that she did in fact come out and say my
14 client is now present, I believe that I have not
15 have had an opportunity to show this document. It
16 is crucial. An element of his offense shows that
17 it's drugs. Shows that it's over 10 grams. And I
18 would ask for a continuance. I believe the court
19 would have been required to continue it at that
20 point. I don't believe that that was something
21 that could have been whitewashed in any way.

22 And then he then would have the
23 opportunity to sit down and talk with his attorney
24 and come up with, you know, whether it be plea
25 negotiations on both or all of his charges.

1 Something different would have occurred I believe
2 firmly. It could have been worse. It could have
3 been better. If he would have had more opportunity
4 himself to think clearly about what his choices
5 were, instead of feeling like he had, you know, was
6 had to make that decision as he claimed in 30
7 seconds.

8 So I think for sure that she -- that
9 motion would been granted. And I feel he has been
10 prejudiced.

11 THE COURT: Any additional comments at
12 this time?

13 MS. GAY: No, Your Honor.

14 THE COURT: Mr. Gourley.

15 MR. GOURLEY: Your Honor, first off, we
16 just submit to the court that Ms. Butler is not a
17 babysitter. Mr. Bradley is well familiar with
18 everything. He's had at least 10 additional prior
19 charges. So I would submit to the court that he is
20 well aware and experienced criminal defendant in
21 this process. Your Honor, he voluntarily left.
22 Didn't show up. He was tried in his absence. In my
23 opinion, properly.

24 The sled analysis report, I would submit
25 to the court there is no prejudice.

1 THE COURT: Why didn't she get the drug
2 report? Why didn't she make sure she had that drug
3 report to confirm that these were drugs?

4 MR. GOURLEY: Your Honor, I can't speak to
5 that. All I can say is that she had it beforehand.
6 It was her understanding that they were drugs.
7 There's no prejudice by the fact that they were
8 drugs. And they were over the trafficking weight.
9 Had they not been over the trafficking weight or
10 they weren't drugs, then I would submit to the
11 court, that there may be an issue with that, as far
12 as prejudice from. But being that they were
13 drugs---

14 THE COURT: Well he got -- he ended up
15 getting less than -- he got a strike, but he got
16 less than the 30 so.

17 MR. GOURLEY: That's correct, Your Honor.
18 Furthermore, I would submit to the court that, you
19 know, the burden is on the applicant to present the
20 sled report to you for your examination to determine
21 whether or not they were fake in any way. Your
22 Honor, he hasn't done so today. And for those
23 reasons, Your Honor, I would submit to the court
24 that Mr. Bradley's application should be denied.

25 THE COURT: Mr. Gay, anything else?

1 MS. GAY: Your Honor, if you would give me
2 5 minutes, I'm in Sumter courthouse. I could get a
3 copy of that drug report. It's an exhibit in this
4 trial.

5 THE COURT: I will hold the record open on
6 that, but I am not going to entertain any more
7 argument, because we've got other matters to hear.
8 If you get that drug report wherever it might be. I
9 don't know if it's still here, because the case was
10 tried across the street. And I don't what became of
11 exhibits after we moved over here. But that is
12 something that I would think would be pertinent for
13 me to know. But it's kind of counterintuitive that
14 had he known they were really illegal drugs, he
15 wouldn't have pled guilty. That doesn't make any
16 sense.

17 MS. GAY: Well the last thing I would say
18 when they say that she is not his babysitter, she's
19 required to give him advice based on the
20 constitution and the rules of evidence.

21 THE COURT: She told him they were going
22 pick a jury and he left.

23 MS. GAY: Well she also didn't tell him
24 that he had the opportunity to continue the case,
25 and have additional time to think about it and

1 determine what he wanted to do with the evidence.

2 THE COURT: You can go find the exhibit,
3 and we will conclude this hearing, but leave the
4 record open for that purpose. Thank you.

5 --End of Requested Transcript of Record--

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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced on April 15, 2015, in Common Pleas Court Nonjury PCR for Sumter County, Sumter, South Carolina.

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

1-8-15
DATE

Margaret T. Sullivan
COURT REPORTER
My Commission expires: 9/7/2021

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Lionel Bradley, #266225,

Applicant,

v.

State of South Carolina,

Respondent.

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2015 OCT 23 PM 3:08
THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

JAMES O. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2014-CP-43-537

CERTIFIED TRUE COPY
OF ORIGINAL FILED

[Signature]
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

ORDER OF DISMISSAL

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on March 19, 2014. Respondent submitted its amended return on November 20, 2014. An evidentiary hearing into the matter was convened on April 15, 2015, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Melisa W. Gay, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. The Applicant was true bill indicted at the February 2012 term of the Sumter County Grand Jury for possession with intent to distribute cocaine base, 2nd or subsequent offense and possession with intent to distribute cocaine within proximity of school or park (2012-GS-43-0315). Tiffany Butler, Esquire represented Applicant. On February 20, 2013, after the Applicant's trial began, Applicant pled guilty before the Honorable W. Jeffrey Young. Judge Young sentenced Applicant to fifteen year term of imprisonment for possession with intent to distribute cocaine base, 2nd or subsequent offense and a ten year term of imprisonment for

[Signature]

possession with intent to distribute cocaine within proximity of school or park, the sentences to run concurrently.

A timely notice of appeal was filed on February 20, 2013. After receipt of appellate counsel's letter explaining there were no reviewable issues on appeal, the South Carolina Court of Appeals issued an order dismissing Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv). The remittitur was issued on May 15, 2013.

ALLEGATIONS

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

1. Ineffective Assistance of Counsel

- a. "Petitioner's counsel provided ineffective assistance of counsel because she failed to investigate all possible defenses for Petitioner. Counsel failed to inform Petitioner of the evidence that could have been presented against him with regard to the chain of custody of the drugs alleged in his case and the weight of the drugs alleged in his case. Counsel failed to procure the chain of custody documentation and the drug weight evidence for Petitioner to consider in defending his case."
- b. "...She failed to request and or review with Petitioner all evidence that was available in Petitioner's case. Counsel failed to either request chain of custody and or drug weight evidence...or never filed a Motion to Compel the evidence to review with Petitioner."
- c. "...she failed to file a Motion to Continue Petitioner's trial that started in his absence thus placing Petitioner in a vulnerable position and causing him to be pressured into entering a guilty plea."
- d. "...she failed to object to the introduction of chain of custody and drug weight when counsel had not procured the evidence from the State before the date of the trial, thus placing Petitioner in a vulnerable position and causing him to be pressured into entering a guilty plea..."
- e. "...she never provided Petitioner with any evidence or discovery material; that indicated the chain of custody evidence of the actual chemist tested drug weight. Petitioner believes that the drug weight that was alleged in this case of over 10

grams to substantiate a Trafficking charge could not be proven to the actual chemist weight..."

- f. "...her failures to obtain and review chain of custody evidence and drug weights with Petitioner cause him to be uniformed and disadvantaged such that he was prejudiced in his ability to make an informed and knowing decision about his options in his case."
- g. "Petitioner is now aware through a request to his attorney of record that she did not have the chain of custody or drug weight evidence in her file because she mailed him what was in her file after he arrived at SCDC. Petitioner was prejudice in a way that he could not make an informed decision about his defense."
- h. "Petitioner's counsel was ineffective for failing to perfect an Appeal from his conviction. Counsel chose not to file a memorandum of issues under Rule 203(d) (1) (B) that was required to go forward with his appeal despite the fact that Petitioner did have valid appellate issues. He was never provided the chain of custody evidence or the drug analysis therefore objections should have been made that would have been the basis of an appeal."

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Tiffany Butler, Esquire (hereinafter "Trial Counsel"). This Court also had before it a copy of the Sumter County Clerk of Court records, Applicant's South Carolina Department of Correction records, appellate records, the PCR application, and amended return.

Trial Counsel testified that she was a public defender for less than four years. Trial Counsel stated that she was employed at the Sumter County Public Defender's office at the time of Applicant's plea. Trial Counsel stated that she was appointed to represent Applicant. Trial Counsel stated that Applicant had several drugs charges. Trial Counsel stated Applicant was out on bond during the majority of her representation. Trial Counsel stated that they met several times and discussed the case and the State's evidence. Trial Counsel stated that the Solicitor offered an eight year plea deal and Applicant was not willing to accept the offer. Trial Counsel



stated Applicant wanted to counter the solicitor's offer, but the solicitor refused to go any lower than eight years.

Trial Counsel could not recall specifically telling Applicant that she had not obtained the drug analysis prior to trial. Trial Counsel noted that she obtained the drug analysis prior to the start of trial. Trial Counsel stated that she did not make a motion for a continuance once she received the drug analysis. Trial Counsel stated they first selected a jury and then she renewed her Brady motion. Trial Counsel stated that she notified Applicant that his case was going to be called for trial. Trial Counsel stated Applicant was on the trial docket for two or three terms. Trial Counsel stated Applicant was present when the jury panel was being qualified, but failed to appear for the start of trial; the trial court then went through the typical procedures for proceeding with a trial *in absentia*. Trial Counsel stated Applicant claimed that he wanted to go hire Murrell Smith for trial. Trial Counsel stated that someone from her office contacted Murrell Smith and was informed that Mr. Smith did not represent Applicant.

Trial Counsel stated that she did not have the actual drug analysis form prior to the start of trial. Trial Counsel agreed that the actual weight and content of the drug was a crucial element of the State's case. Trial Counsel stated that she filed appropriate Rule 5 and Brady motions. Trial Counsel stated that she did not make a motion for a continuance under Rule 6. Trial Counsel stated that she did not think receiving the SLED analysis on the day of trial was prejudicial because it merely confirmed the weight of the drugs. Trial Counsel stated that the trial court gave her time to try to locate Applicant after he absconded. Trial Counsel stated that she saw no reason to object to the chain of custody of the drug analysis. Trial Counsel stated that there was no chemist testimony presented prior to Applicant's decision to pled guilty. Trial Counsel stated Applicant was picked up on the bench warrant the second day of trial. Trial

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Counsel stated she met with Applicant approximately twenty-five minutes. Trial Counsel stated Applicant told her that he wanted to plead guilty. Trial Counsel stated the Solicitor agreed to add three new charges to the plea in an effort to end any criminal litigation against Applicant.

Following Trial Counsel's testimony, Applicant was called to testify. Applicant opined that his guilty plea was unconstitutional. Applicant stated that he was out on bond the entire time he was represented by Trial Counsel and that he was never contacted by anyone from the Public Defender's office to say that he was up for trial the following week. Applicant stated that he had called and was told that his name was not on the trial list. Applicant stated that his bondsman telephoned him and told him that his trial would start the next day. Applicant stated that he left prior to trial because he felt Trial Counsel was not prepared for trial.

Applicant stated that he only had one meeting with Trial Counsel at her office prior to his plea. Applicant recalled reviewing discovery material with Trial Counsel. Applicant stated that he never reviewed the SLED analysis form. Applicant recalled telling the plea judge that he was satisfied with Trial Counsel's services.

Applicant stated that he got a plea offer of a cap of eight years the morning of trial. Applicant but that he wanted to go get his family prior to pleading. Applicant stated that he called the public defender's office and told them not to start the trial because he was trying to get college and work information. Applicant did not explain why he thought he or Trial Counsel had the authority to unilaterally delay the trial when he left of his own accord after the case was called for trial.

Applicant stated that he returned the following day, February 20, 2013, around 11:30 a.m. and saw his mother outside. The transcript reveals the morning session ended at 11:49 a.m., so this time estimate of the Applicant is fairly accurate. The Applicant testified his mother told him

the trial was in recess so he left and came back at 2:15 p.m. The Applicant was apprehended on a bench warrant and put in a holding cell. The Applicant stated that Trial Counsel told him the plea offer was off the table and that he could enter a plea without a recommendation from the solicitor. The Applicant stated that he did not feel as though he was being threatened. Applicant stated Trial Counsel told him that she thought he would receive a thirty year sentence if he decided to continue with the trial and was found guilty.

Applicant stated that he was never advised that he had the constitutional right to be present for critical stages of his trial. Applicant stated he entered his guilty plea and hoped that he would not receive a thirty year sentence. Applicant testified that he was not aware of his constitutional rights or the SLED drug analysis. Applicant stated that he never discussed the possibility of facing a life without parole sentence. Applicant concluded that he would not have pled guilty knowing what he knows today.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, (1984); Butler, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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. With respect to guilty Trial Counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

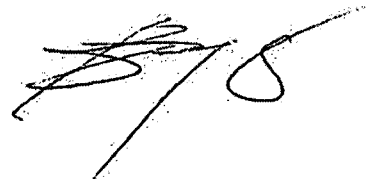
ALLEGATIONS

Initially, this Court notes the transcript reveals that after the jury was selected, Trial Counsel advised the court that the Applicant was on the phone and she asked for a recess to talk to him. The trial judge consented and Trial Counsel or someone in her office spoke with the applicant. Trial Counsel reported back that the Applicant stated he was on the way and that he

was hiring another attorney. Trial Counsel confirmed to the court that the Applicant had been present earlier in the morning but left. The trial began and adjourned for lunch at 11:49 a.m. The next witness for the state was to be the SLED chemist to testify about the crack cocaine which was the subject of the trafficking indictment.

Immediately after reconvening at 2:08 p.m., Trial Counsel advised the court that the Applicant was in the holding cell. She received permission to speak with him, and then reported to the court that Applicant wanted to plead guilty to the trafficking charge and several other charges. The subject plea then took place, along with pleas to failure to register as a sex offender, 2nd offense, possession of marijuana, PWID cocaine 2nd offense, and PWID cocaine within proximity of a school or park.

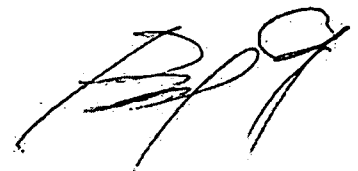
In his PCR counsel's email to the court of July 28, 2015, the Applicant argued that Trial Counsel should have asked for a continuance at trial because the State had not produced the SLED drug report within the ten day period required by Rule 6, SCRCrP. Applicant argued that Trial Counsel should have asked for a continuance and should have also objected to the SLED chemist's testimony and the introduction of the crack based on the supposed Rule 6 violation. Applicant argued that trial counsel did not inform the Applicant of the Rule 6 violation and that had the Applicant known of the Rule 6 violation, he would have asked Trial Counsel to raise the issue to the trial court. Applicant argued that this would have led to a continuance being granted, after which the Applicant and Trial Counsel would have had time to continue plea negotiations, which would have resulted in a better sentence. Applicant argued that if the continuance had not been granted, the Rule 6 violation would have provided a valid basis for the exclusion of the drug report and the chemist's testimony, thereby eliminating evidence of the trafficking weight of the drugs. Applicant argued that he would not have pled guilty had he

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known of the strategic importance of the Rule 6 violation. PCR Counsel states in the email, "[i]f Mr. Bradley knew during the trial that he could proceed with the trial and make motions to exclude the chemist testimony and the report itself, he would never have agreed to plead guilty."

PCR Counsel for the Applicant requested and received additional time to submit a memorandum on the Rule 6 issue and submitted this memorandum to this court on September 14, 2015. In this memorandum, the Applicant advances the argument that trial counsel never showed him a drug report establishing that the crack cocaine weighed over 10 grams and never informed the solicitor she had not received the drug report. The Applicant argues that he did not know that the drug weight met the statutory trafficking threshold.

In the memorandum, the Applicant also now argues that when the Applicant appeared at the courthouse on the morning of jury selection, he told Trial Counsel he intended to hire another attorney and "left the courthouse to go to the other attorney's office." He now argues that Trial Counsel did not ask for a continuance to allow him to be present for jury selection and the commencement of the trial, "despite the fact that [the applicant] had informed her on the phone that he was on his way to court. Whatever the case, it is clear he was not on his way to court because he did not arrive until after 11:30 a.m. Also, this Court concludes that a continuance would not have been granted, as the transcript reveals the Applicant was present in the courthouse the morning the trial was to begin, and Trial Counsel told the trial judge she had advised the Applicant his trial was going to start that morning (Tr., p. 16, lines 15-21). Immediately after that exchange, Trial Counsel told the trial judge the Applicant was on the phone, and the trial judge gave Trial Counsel a moment to speak to him. After that conversation, Trial Counsel told the trial judge that the Applicant told her that he was hiring another attorney, that she told the Applicant that "he needed to be here", and that the Applicant told her that he

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was on his way (Tr., pp. 17-18). This court concludes a motion for a continuance would have been futile, as the Applicant simply left the courthouse when he knew full well his trial was about to begin. This timeline is also important because it evidences that the Applicant's own failure to be present to take advantage of the opportunity to evaluate the plea offer made by the State resulted in the expiration/withdrawal of the plea offer.

The Applicant notes in this memorandum that when he returned to the courthouse, he was put in lockup and met with trial counsel in the courtroom. He argues Trial Counsel did not ask for a continuance on the basis that he was constitutionally allowed to be present for jury selection. In so arguing, he ignores the fact that he voluntarily left the courthouse with full knowledge that a jury was about to be selected. He claims Trial Counsel should have asked for a continuance on the basis that he had just seen for the first time the crucial evidence of the drug weight and that he needed time to discuss the drug report. The Applicant claims in this memorandum that since he had never seen the drug report, his decision to plead after the trial had started was based on desperation and was not a conscious decision. The Applicant ignores the fact that if he had stayed at the courthouse and had not absconded, he would have had the opportunity to review the drug report before the State withdrew the plea offer.

Applicant returns to the Rule 6 argument in his memorandum, but now couches it in terms of a chain of custody argument. Applicant states he was never shown the chain of evidence, "yet he was in a trial that was proceeding without him." Applicant claims that when he was shown the chain of evidence for the first time (when he returned to the courthouse), Trial Counsel should have asked for a continuance to allow time for her to show it to him (again ignoring the fact that he left the courthouse knowing his trial was about to begin). He alternatively claims Trial Counsel should have objected to the introduction of evidence relevant

to the drugs "in an attempt to keep the drug evidence out of the case, thereby allowing [the applicant] the ability to challenge the chain of evidence." Applicant claims that trial counsel's failure to understand the chain of custody issues "created a reasonable probability to undermine confidence in the outcome of the trial." However, the Applicant does not explain what the chain of custody issues are.

The applicant claims in the memorandum that he may have decided to never have a trial if the drug report was available and then immediately claims he may have decided to continue with his trial if he had known of the chain of custody issues. These positions are inconsistent, and the Applicant continues to ignore the fact that if he had remained at the courthouse instead of leaving, he could have seen the drug report before the State withdrew the plea offer. Again, with regard to the chain of custody "issues", the Applicant does not explain what those "issues" are. The chain forms and other chain evidence are not part of this record, and there is nothing in the record to explain any deficiency in the chain of custody.

The Applicant closes the memorandum with the statement that Rules 5 and 6 create the obligation on the part of the State to provide evidence of the chain of custody within 11 days of trial, and that while "Rule 6 may not create an ability to exclude the drug report from the trial, ... it serves to remind both the solicitor and defense counsel to get all the discovery to the defendant" in time for him to make an informed decision. The Court disagrees with this interpretation of Rule 6.

It is apparent to this Court that there was no Rule 6 "violation". Rule 6 provides a method for the drug report and drugs to be admitted into evidence without the necessity of having certain witnesses and does not contemplate exclusion of drug evidence when the chain witnesses and the chemist testify. The transcript establishes that the chain witnesses testified and that the SLED

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chemist was the next witness to be called before the Applicant pled. The Court respectfully rejects any ground for relief based on a Rule 6 violation. In addition, there is no basis for the applicant's argument that a chain of custody argument was available due to a perceived Rule 5 or Rule 6 violation. Even if there were a chain of custody issue, it would be necessary for the Applicant to establish such an issue at the PCR hearing by calling witnesses and presenting proof of such an issue. Again, there is no such evidence in the record.

The Applicant's claim that trial counsel should have requested a continuance to allow him the right to attend jury selection and his trial are fundamentally without merit. He was present just before jury selection, knew his trial was to begin, and simply left. He cannot now claim he was denied his right to be present when he left of his own accord. Trial counsel told him of the offer of the eight year cap, and he still left. According to his testimony at the PCR hearing and his memorandum, he left because he wanted to talk to his relatives or to hire another lawyer, or both. No criminal defendant can resort to the tactic of leaving the courthouse when jury selection is about to begin and then complain that he has been deprived of the right to be present for jury selection.

The primary issue in this case is whether trial counsel was ineffective for failing to obtain a drug report that showed the true weight of the crack cocaine, i.e., 13.2 grams. As previously noted, it is inconsistent for the Applicant to argue on the one hand that he would have continued with the trial and not pled guilty if he had known of the Rule 6 "violation" that would have led to the drug evidence being excluded, and to argue on the other hand that if he had known of the contents of the drug report early enough, he would have pled guilty under the eight year offer. The Applicant seems to concentrate now on the argument that he would have pled guilty in exchange for the eight year offer if he had been aware of the contents of the drug report. He

ignores the fact that the report was in his lawyer's hands when the eight year offer was still on the table but that he had left the courthouse and was not present to look at it. By the time he chose to return, the offer was off the table. Any prejudice was not the result of trial counsel's ineffectiveness, but rather the result of the Applicant's own choice to leave the proceedings. Based on the foregoing, this Court finds that Applicant has fallen well short of his burden of proof and this allegation must be denied and dismissed with prejudice. His testimony as to whether he would have pled guilty if his lawyer had performed up to standards is simply not credible in the least.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based upon 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 notes that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate

review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant is remanded to the custody of the Respondent.



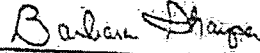
GEORGE C. JAMES, JR.
Presiding Judge
Third Judicial Circuit

October 12, 2015
Sumter, South Carolina

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SUMTER)

Drugs / Manufacture, distribution, etc. cocaine base
Drugs/ PWID Cocaine base within proximity school or parkCERTIFIED TRUE COPY
OF ORIGINAL FILE

At a Court of General Sessions, convened on February 9, 2012, the Grand Jurors of

SUMTER COUNTY
SOUTH CAROLINA

SUMTER County present upon their oath:

COUNT ONEPOSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE

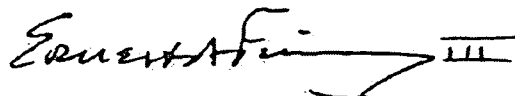
That in Sumter County, South Carolina, on or about October 10, 2011, the Defendant, Lionel Stefan Bradley, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to distribute, dispense, 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.

COUNT TWOPOSSESSION WITH INTENT TO DISTRIBUTE CRACK COCAINEWITHIN PROXIMITY OF SCHOOL OR PARK

That Lionel Stefan Bradley did in Sumter County, on or about October 10, 2011, unlawfully possess with intent to distribute a quantity of Cocaine Base, a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, while in, on, or within a one-half mile radius of the grounds of a public or private school, college or university, a public playground or park, or a public vocational or trade school or technical education center, to wit: Morris College, in violation of Section 44-53-445(B)(2), S. C. 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.

Solicitor



WITNESSES

Trevor Brown

Sumter County Sheriff

DOCKET NO. 2012-GS-43-0315

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

FEBRUARY

TERM

2012

THE STATE

vs.

LIONEL STEFAN BRADLEY

ARREST WARRANT NUMBER

M444233

M444234

ACTION OF GRAND JURY

TRUE BILL


 Foreperson of Grand Jury

Date: 02-09-2012

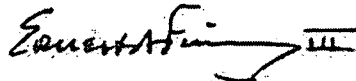
VERDICT

Foreperson of Petit Jury

Date:

Indictment for

Drugs / Manufacture, distribution, etc. cocaine base

Drugs / PWID Cocaine Base within proximity of school or
park


ERNEST A. FINNEY, III, SOLICITOR