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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

Kristi Lea Harrington, Circuit Court Judge

Circuit Court Case No. 2014GS1004379
Appellate Case No. 2016-002470

THE STATE,..... Respondent,
v.
ADRIAN LESSTON,..... Appellant.

RECORD ON APPEAL

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Attorney General
Mark Farthing
Assistant Attorney General
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Columbia, SC 29211
Scarlett A. Wilson
Solicitor, Ninth Judicial Circuit
101 Meeting Street, Suite 400
Charleston, SC 29401

Attorneys for Respondent

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Attorney for Appellant

RECEIVED

AUG 18 2017

SC Court of Appeals

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I certify that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Christopher R. Geel
102 Broad St., Suite C
Charleston, SC 29401
843-577-2153
Attorney for Appellant

July 27, 2017.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

v.

ADRIAN LESSTON,

Defendant.

FILED

2016 SEP 16 AM 8:57

JULIE J. ARMSTRONG
CLERK OF COURT

BY

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT

Indictment No.: 2014-GS-10-4379

ORDER

THIS MATTER IS BEFORE THE COURT on Defendant Adrian Lesston's Motion to Suppress Evidence. Defendant Lesston was indicted on a charge of Possession With Intent to Distribute Cocaine Base following a search of the property located at 2530 Otranto Road.

Defendant Lesston filed the instant Motion to Suppress on August 28, 2016. This Court conducted a hearing on August 30, 2016. Present were Assistant Solicitor Christopher Lietzow and Attorney Christopher Geel for Defendant.

The Defendant argues that physical evidence obtained during the search of the premises should be suppressed as the result of an illegal search. The Fourth Amendment protects against unreasonable searches and seizures. U.S. Const. amend. IV. Evidence must be excluded if it would not have been discovered but for the illegal actions of police. *State v. Tindall*, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010). The Defendant bears the burden of demonstrating an actual and reasonable expectation of privacy in the place illegally searched. *State v. Robinson*, 410 S.C. 519, 528, 765 S.E.2d 564, 569 (2014), citing *Rakas v. Illinois*, 439 U.S. 130 n.1, 99 S.Ct. 421 (1978). The State bears the burden to demonstrate that it was (1) entitled to conduct the search or seizure under an exception to the Fourth Amendment and (2) to show that warrantless entry was limited

9/12/16

in scope and duration in accordance with the exigent circumstances which required its presence.
Id. at 530.

The State alleges Defendant Lesston did not have a reasonable expectation of privacy in the residence and premises searched. This Court finds that the Defendant failed to meet its burden of proving he had a reasonable expectation of privacy in the home. Testimony indicated that the Defendant did not reside in the house, pay rent, or conduct activity sufficient to demonstrate a subjective expectation of privacy which would be recognized as reasonable. *State v. Missouri*, 361 S.C. 107, 115, 603 S.E.2d 594, 597-98 (2004); *see also Robinson*, 410 S.C. 519.

The State has met its burden of demonstrating that it was entitled to conduct the warrantless search under an exigent circumstance exception to the rule. Officer Thomas Bilancione was initially present to investigate an unrelated malicious injury to property incident at the apartment complex. A witness to the incident approached Officer Bilancione to indicate that she had discovered two unaccompanied minor children in an apartment in the area the suspect had fled towards. Officer Bilancione requested assistance, and Detective Charles Benton responded. Detective Benton was escorted to the apartment by an employee of the complex who opened the door for the officer. Detective Benton viewed two minor children in the apartment, presumably alone. Detective Benton asked the children if they were alone, and they affirmatively answered. Detective Benton testified that he believed the children were not being truthful based on their suspicious behavior. Testimony indicated that Detective Benton had a reasonable belief that a welfare check was necessary, and he proceeded to enter the premises and announced his presence multiple times. The Defendant was found in the bedroom lying under a blanket. Detective Benton further testified that he had reason to believe the Defendant potentially possessed a weapon as the Defendant had concealed his hand under a pillow.

The State contends Ms. Williams had proper authority to consent to both the search of the residence and Defendant Lesston's pants, which were lying on the floor of the bedroom at the time of the search. The test to determine whether a third party has sufficient status to consent to a search is whether the third party possesses common authority over or has some sufficient relationship to the premises or effects searched. *State v. Laux*, 344 S.C. 374, 376, 544 S.E.2d 276, 277 (2001). Common authority does not require common ownership, but simply "mutual use of the property" by persons with general joint access to the property. *State v. Flowers*, 360 S.C. 1, 5, 598 S.E.2d 725, 728 (Ct. App. 2004). The mutual use must be reasonable as to allow searching officers to believe that the person consenting to the search had authority to do so. *Id.* Police officers are allowed to rely on the owner's consent if the property is occupied by a guest. *State v. Moultrie*, 271 S.C. 526, 529, 248 S.E.2d 486, 488 (1976).

Kimberly Williams was the sole lessee of the apartment that was subject to the search. Officer Bilancione asked Ms. Williams if he could search the bed and surrounding area in the master bedroom where Defendant was discovered to retrieve any drugs or weapons the Defendant may have concealed. Ms. Williams consented to the search. As the sole resident and lessee of the premises, Ms. Williams had valid authority to consent to the search of her own bedroom and the items within it. Moreover, the State established that the search was limited to the area specified by police and did not exceed the scope of consent.

After hearing the testimony, together with Defendant's Motion and the State's Response, the Court finds that the Defendant failed to meet his burden and was unable to demonstrate a reasonable expectation of privacy in the premises searched. Therefore, the Defendant lacks standing to challenge the validity of the search. Nonetheless, even if Defendant had been able to establish standing, the search would fall under the consent exception to the warrant requirement.

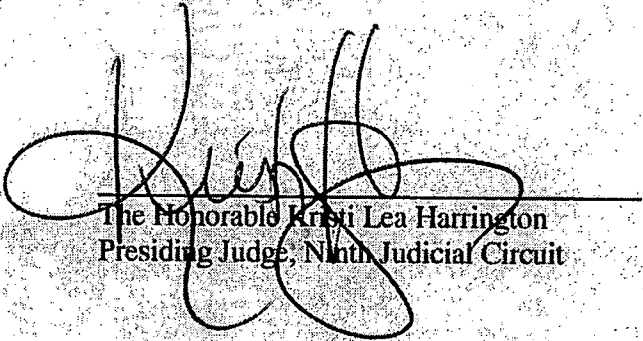
9/12/16

Ms. Williams had authority to and did give proper consent to the search of the premises and the clothing.

THEREFORE, IT IS ORDERED that Defendant Adrian Lesston's Motion to Suppress is hereby **DENIED**.

IT IS ORDERED!

September 12, 2016
Charleston, South Carolina


The Honorable Kristi Lea Harrington
Presiding Judge, Ninth Judicial Circuit

FILED
2016 SEP 16 AM 8:57
JULIE A. ARSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

ADRIAN WALLACE LESSTON

AKA: Adrian Lesston

Race: Black/African American

Sex: M

DOB: 11/18/1991

SS#: 250-87-4048

Address: 1632 Louis St

City, State, Zip: North Charleston, SC 29405-4509

DL# 101550993

SID# SC01851813

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADS

TO: Dist/PWID/Manuf Crack 2nd

In violation of § 44-53-0375(B)(2) of the S.C. Code of Laws, bearing CDR Code # 3015

☒ NON-VIOLENT☐ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)

The charge is:

☒ As indicted,☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is:

☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

100521

Chris Lietzow, Assistant Solicitor

SC Bar #

Defendant

Attorney for Defendant

101458

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment of \$ _____, plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

~~DEFERRED~~ ~~Accepted~~

Judge:

Date: 11/16/16

☐ Appointed PD or appointed other counsel, \$47.12 required \$500 be paid to Clerk during probation.

Presiding Judge:

Judge Code: 12/5/16

Sentence Date: _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 61.6 (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ 150.00

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ \$ 8.25TOTAL \$ 283.25Clerk of Court/Deputy Clerk: Plea Christine Davis / CallieCourt Reporter: Plea Karen Ambrozian / Denise

LTZ20140303029

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2014008449

ARREST WARRANT NUMBER

2014A1010201377

DATE OF ARREST

March 15, 2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: *Carroll Goble* AUG 5 - 2014

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1004379

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2014

THE STATE

vs.

ADRIAN WALLACE LESSTON

DOB: 1991-11-18

B/M

Indictment for

Possession With Intent To Distribute
Cocaine Base

FII

8/13/20

JULIE J. A

CLERK

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

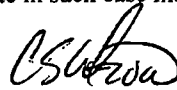
INDICTMENT

At a Court of General Sessions, convened on August 4, 2014 the Grand Jurors of Charleston County present upon their oath:

Possession With Intent To Distribute Cocaine Base

That in Charleston County, South Carolina, on or about March 14, 2014, the Defendant, ADRIAN WALLACE LESSTON, did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to distribute, dispense or deliver a controlled substance or a controlled substance analogue, to wit: Cocaine Base; in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



CHRIS LIETZOW
ASSISTANT SOLICITOR

LTZ20140303029

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2014008449

ARREST WARRANT NUMBER

2014A1010201377

DATE OF ARREST

March 15, 2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: *Adrian Wallace Lesston* AUG 5 - 2014

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1004379

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2014

THE STATE

vs.

ADRIAN WALLACE LESSTON

DOB: 1991-11-18

B/M

Indictment for

Possession With Intent To Distribute
Cocaine Base

FII

8/13/20

JULIE J. A

CLERK

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

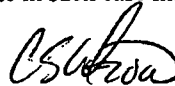
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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



CHRIS LIETZOW
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

2016 AUG 29 PM 4: 28

JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA

vs.

ADRIAN WALLACE LESSTON,

Defendant

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT

Case No(s):

Warrant No(s): 2014A1010201377;

Charge(s): Drugs / manufacture, distribution, etc.
of cocaine base, 1st

MOTION TO SUPPRESS

COMES NOW, the Defendant in the above-referenced matter, by and through undersigned counsel, and hereby moves this Court to suppress all evidence in this case, due to the evidence in this matter being obtained in violation of the Defendant's rights under the Fourth Amendment of the United States Constitution, as well as the corresponding provisions of the South Carolina Constitution. In support of this motion, the Defendant respectfully shows as follows:

FACTS:

On March 14, 2014, at approximately 3:00 pm, North Charleston Police Department officers conducted an investigation into malicious property damage at 2530 Otranto Rd. One officer was approached by a witness to the alleged incident, who informed the officer that they may have seen the mother of the suspect in apartment G9. Officers proceeded to apartment G9 with an employee of the apartment complex. When they arrived at the apartment, the employee of the apartment complex knocked on the door, and then turned the doorknob to open the door. Once the door was open, officers made entry into the apartment and located the Defendant Adrian Lesston in the bedroom sleeping. There were also two juveniles in the apartment.

Mr. Lesston was underneath a blanket in the bedroom, and the officers used force to remove him from the bed and place him in handcuffs. Mr. Lesston was wearing only a pair of underwear at the time. Lesston was then removed from the bedroom. Soon after, the owner/renter of the apartment, Kimberly Williams, arrived at the apartment. She informed officers that Mr. Lesston was the father of one of the children in the apartment, and that Mr. Lesston was in a romantic

relationship with Ms. Williams. She further informed officers that she knew Lesston was in the apartment taking a nap when she left.

Ms. Williams ultimately gave officers consent to search the apartment. Pursuant to that search, officers located Adrian Lesston's pants on the floor next to the bed where he had been sleeping. When asked, Lesston admitted that the pants belonged to him. Officers searched Lesston's pants and located a bag containing approximately 4 grams of a substance alleged to be cocaine base.

ARGUMENT:

I. The initial entry into the apartment was illegal, and made in violation of the Fourth Amendment and the corresponding provisions of the South Carolina Constitution.

As a preliminary matter, Lesston is entitled to Fourth Amendment protections with respect to the apartment in this case, due to the fact that he was a guest in the home. *State v. Missouri*, 361 S.C. 107 (2004) (holding that guests are entitled to Fourth Amendment protection, and thus have standing to challenge illegal searches of the host's residence).

Regarding searches of residences, is axiomatic that under the Fourth Amendment, police officers are prohibited from entering a person's home or its curtilage without a warrant, absent consent or a showing of exigent circumstances. The Fourth Amendment is triggered if a private person acts as an instrument or agent of the Government. *State v. Cohen*, 409 S.E.2d 383 (S.C. 1991). Here, the employee of the apartment complex acted as an instrument/agent of the government when she accompanied officers to apartment G9 and opened the door, allowing officers to enter the apartment. The Fourth Amendment violation is not removed simply because officers did not physically open the door themselves. The officers had no valid basis for making entry into the apartment, and thus all evidence revealed as a result of the illegal search must be suppressed.

II. The search of Adrian Lesston's pants was illegal, and conducted in violation of the Fourth Amendment and the corresponding provisions of the South Carolina Constitution.

Assuming (without conceding) that the initial entry into the apartment was valid, the subsequent search of Mr. Lesston's pants was illegal. Warrantless searches are *per se* unreasonable

unless they fall within an established exception to the Fourth Amendment's warrant requirement. *State v. Peters*, 271 S.C. 498, 501 (1978). In the instant case, the Defendant anticipates that the State will argue that the officers had consent to search Lesston's pants. However, the consent that the officers received from Ms. Williams did not and cannot be extended to authorize the officers to search Mr. Lesston's pants, because Williams lacked the authority (actual or apparent) to provide valid consent. In other words, no reasonable person could have believed that Williams had the authority to grant the officers consent to search Lesston's pants.

With regards to third-party search and seizure, South Carolina has adopted the test set forth in *United States v. Matlock*, 415 U.S. 164 (1974):

In *Matlock*, the test devised for determining whether a third party had sufficient status to consent to a search was whether the third party possessed **common authority** over or had some other sufficient relationship to the premises **or effects** searched. *State v. Middleton*, 266 S.C. 2551 (1976)(emphasis added).

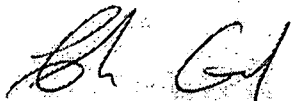
Common authority is a mutual use of the property by persons having joint access or control, such that it is reasonable for officers to believe that the person granting consent has the authority to do so. *State v. Moultrie*, 271 S.C. 526 (1978). In this case, Williams simply lacked the authority - actual or apparent - to grant officers permission to search Lesston's pants. Further, the officers readily acknowledge that they believed the pants belonged to Lesston. Thus there is no possibility that they mistakenly believed that the pants belonged to Williams, and therefore they had no basis for believing she had the right to consent to the search. Consequently, the search of Lesston's pants was illegal, and the evidence found pursuant to that search must be suppressed.

Based on the foregoing, Mr. Lesston respectfully moves this Court to grant him the following relief:

- 1) That this Court conduct a hearing into the above-stated matters, and that the State shall be required to present evidence regarding the validity of the search(es) conducted in this case;
- 2) That this Court allow the Defendant to present argument regarding the above-stated legal matters;
- 3) At the conclusion of the hearing, that this Court enter an order suppressing all evidence obtained in this case that was obtained in violation of Mr. Lesston's rights under the U.S. Constitution and the South Carolina Constitution.
- 4) Any further relief that this Court deems appropriate.

FILED
2016 AUG 29 PM 4:28
JUDGE ANASTASIO
CLERK OF COURT
BY *MR*

Respectfully submitted,



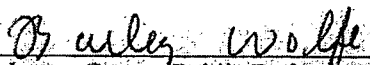
Christopher R. Geel
Public Defender's Office
ATTORNEY FOR THE DEFENDANT

Charleston, South Carolina
Monday, August 29, 2016.

CERTIFICATE OF SERVICE

I hereby certify that this document was served on the Solicitor for the Ninth Judicial Circuit on

August 29, 2016


Charleston County Public Defender's Office

STATE OF SOUTH CAROLINA

COUNT OF CHARLESTON

STATE OF SOUTH CAROLINA

Adrian W. Lesston

Defendant.

IN THE COURT OF GENERAL SESSIONS

NINTH JUDICIAL CIRCUIT

Indictment: 2014GS1004379

Warrant: 2014A1010201377

Charges: PWID Cocaine Base 2nd

**STATE'S OPPOSITION TO
SUPPRESSION HEARING**

FACTS

On March 14, 2014, Officer Thomas Bilancione of the North Charleston Police Department responded to 2630 Otranto Road in North Charleston due to reports of malicious injury to personal property. While on scene, Officer Bilancione learned there were two unsupervised juveniles in apartment G9. Officer Bilancione requested assistance and Detective Charles Benton responded.

Detective Benton met with the apartment manager and went to apartment G9 to investigate. The apartment manager knocked on the door and got no response. The apartment manager turned the knob and discovered the door was unlocked. Detective Benton immediately observed a juvenile inside. The juvenile indicated he was alone in the apartment with his six year old sister. Detective Benton had reason to believe the juvenile was not being truthful. Detective Benton announced his presence multiple times and conducted a safety sweep through the residence.

Detective Benton cleared the house and observed the defendant hiding under the covers in the master bedroom. Detective Benton took the defendant into custody. The defendant was only dressed in boxer shorts.

The renter of the apartment, Kimberly Williams, returned home shortly after the defendant was placed in custody. Ms. Williams stated that the defendant is the father of one of her children and that they have been in some form of a romantic relationship for approximately three years. Ms. Williams also stated that the defendant does not live with her at that residence. It should be noted that Ms. Williams conducted a DNA test after this incident and learned that the defendant was not the father of her child.

Officer Bilancione asked Ms. Williams for permission to search the area confined to where the defendant was hiding. Ms. Williams provided consent. On the floor immediately next to the bed was a single pair of men's pants. The defendant indicated they were his pants. Officer Bilancione located a clear plastic bag with 3.49 grams (SLED Lab Weight) of cocaine base, a bag of marijuana, a cell phone, and \$508 cash in the defendant's pants.

LAW

1. Suppression Hearing Procedure

A suppression hearing is required whenever evidence is introduced that was allegedly obtained by conduct violative of a defendant's constitutional rights. *State v. Patton*, 322 S.C. 408 (1996). The defendant must articulate specific factual and legal grounds to support his contention that the evidence was obtained by such conduct. *Id.* The court must grant a suppression hearing if the defendant's grounds are sufficiently definite, specific, detailed and nonconjectural to enable the court to conclude that contested issues of fact going to the validity of the search are in question. *Id.* A bare allegation that the evidence was obtained in violation of the defendant's

Fourth Amendment rights will not suffice to justify the duplicative consumption of the trial court's time required by a suppression hearing. *Id.*

2. Expectation of Privacy and Standing

The defendant who seeks to suppress evidence on Fourth Amendment grounds must demonstrate a legitimate expectation of privacy in connection with the searched premises in order to have standing to challenge the search. *U.S. v. Salvucci*, 448 U.S. 83 (1980). Whether a defendant has a reasonable expectation of privacy in a particular premise depends on his status. *State v. Missouri*, 361 S.C. 107 (2004). The Fourth Amendment offers more protection to an overnight guest than to one who is merely a casual guest or conducting a business transaction. *Id.*

3. Exception to Search Warrant Requirement

Generally, a warrantless search is *per se* unreasonable and violates the Fourth Amendment prohibition against unreasonable searches and seizures. *State v. Dupree*, 319 S.C. 454 (1995).

Undoubtedly, a law enforcement officer may request permission to search at any time. *State v. Rivera*, 682 S.E.2d 307, 310 (S.C. Ct. App. 2009). The State must show that the third party had the authority to give consent to search. *State v. Brockman*, 339 S.C. 57 (2000). The party must have a common authority over or some other sufficient relationship to the premises or effects to be searched. *Id.*

ARGUMENT

The defendant does not have an expectation of privacy in connected with the searched premise and therefore does not have standing to challenge the search pursuant to *U.S. v. Salvucci*. Kimberly Williams advised officers that the defendant did not live with her at the residence. The defendant was merely a guest in Ms. Williams residence. Accordingly, he does not have standing to object to the search and seizure of evidence in this case.

In the event the Court decides the defendant does have standing, there was proper third party consent to search pursuant to *State v. Brockman* and therefore the evidence should not be suppressed. Ms. Williams was the individual renting the apartment that was searched. Her name was on the lease. She was kicked out of her apartment as a result of this incident. Ms. Williams further indicated the defendant did not reside at the apartment. Being the sole lessee, Ms. Williams had sole authority over the premise and could lawfully give third party consent to search. Furthermore, officers asked to search a very limited area confined to the immediate area the defendant was hiding. They did not deviate from this request.

The defendant does not have a reasonable expectation of privacy over a residence he does not reside at. Therefore, he does not have standing to object to the seizure of evidence in this case. Therefore, the Court should deny the Defendant's motion to suppress the evidence.

Even if the Defendant has standing, Ms. Williams, the sole lessee of the apartment, granted sufficient third party consent. Accordingly, the contraband was found pursuant to a recognized exception to the warrant requirement and therefore should not be suppressed.

Respectfully Submitted



Christopher Lietzow
Assistant Solicitor
Ninth Circuit Solicitor's Office

30
August 29, 2016

- Csc

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2016 AUG 31 PM 3:30

FILED

1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
2 COUNTY OF CHARLESTON) 2014-GS-10-4379
3
4 STATE OF SOUTH)
CAROLINA,)
5 Plaintiff,) Transcript of Record
6 vs.)
7 ADRIAN LESSTON,) Date: August 30, 2016
8 Defendant.)

9 * * * * *

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12 B E F O R E:

13 THE HONORABLE KRISTI HARRINGTON
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22 Denise J. Lauder, RPR
23 Ninth Judicial Circuit
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A P P E A R A N C E S

REPRESENTING THE PLAINTIFF:

CHRISTOPHER LIETZOW, ASSISTANT SOLICITOR
Charleston County Solicitor's Office
101 Meeting Street
Charleston, SC 29401

REPRESENTING THE DEFENDANT:

CHRISTOPHER GEEL, PUBLIC DEFENDER'S OFFICE
100 Meeting Street
Charleston, SC 29401

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INDEX OF EXHIBITS

(No exhibits were offered or
marked for identification.)

1 (The following proceedings were had
2 August 30, 2016, 2:11 p.m., Court of Common Pleas,
3 in front of Judge Harrington.)

4 THE COURT: Mr. Lietzow, ready to go
5 forward?

6 MR. LIETZOW: Yes, ma'am, we are ready.

7 THE COURT: Mr. Geel, this is your
8 motion.

9 MR. GEEL: Yes, Judge. We're ready.

10 THE COURT: Where is your client?

11 MR. GEEL: He's right here, Judge.

12 THE COURT: Where? Mr. Lesston, why
13 were you late?

14 THE DEFENDANT: I apologize. Thought
15 it was at 1:30.

16 THE COURT: I'm sorry?

17 THE DEFENDANT: I apologize. I thought
18 it was at 1:30.

19 THE COURT: All right. But you weren't
20 here at 1:30. Why were you late?

21 THE DEFENDANT: I got up a little late.

22 THE COURT: All right. Have a seat.

23 Mr. Geel, so I know what I'm looking
24 for, what's the basis of your motion? What do I
25 need to be listening for?

1 MR. GEEL: Okay. Judge, we're
2 asserting two independent issues; the first being
3 that Mr. Lesston, being a guest in the apartment in
4 question, is entitled to a reasonable expectation
5 of privacy therein. And on that basis, the initial
6 entry by the officers into the apartment -- and you
7 will hear facts that the officers came to the
8 apartment door and opened the door and entered the
9 apartment.

10 We submit to the Court that
11 Mr. Lesston, first of all, has the right to
12 challenge that entry which I know is an issue of
13 detention; and, secondly, that that entry was a
14 violation of his Fourth Amendment rights and
15 corresponding rights under the State Constitution.

16 Subsequent to that entry, there was a
17 second search that took place which was the search
18 of Mr. Lesston's pants. That search was conducted
19 extensively after the consent of Ms. Williams, who
20 is the person that rented that apartment. It's our
21 contention, Your Honor, that her consent to the
22 officers -- which we don't dispute that she did
23 indeed give the officers consent to search the
24 apartment.

25 What we submit to the Court is that her

1 consent does not extend to Mr. Lesston's personal
2 property which was in the apartment, more
3 specifically his pants, which is where the alleged
4 narcotics were found, and he was charged with PWID
5 crack so the bag of narcotics was found in his
6 pants. And so we would submit to the Court that
7 that second search also violated his Fourth
8 Amendment rights and his corresponding rights under
9 the State Constitution.

10 So it is our position, Your Honor, that
11 the State potentially has the burden to show that
12 both of those searches were valid under the Fourth
13 Amendment, and we submit to the Court that they
14 cannot with the evidence in this case meet their
15 burden on both of those points.

16 THE COURT: Okay.

17 MR. LIETZOW: Just briefly, Your Honor.
18 As to the initial intrusion, it's our position that
19 that's not a violation of the Fourth Amendment.
20 Officers were there, and you will hear testimony
21 they were there, and ultimately conducted a welfare
22 check on two minor children that were supposedly
23 alone inside that building, inside that apartment.
24 There was no intent on law enforcement's part to
25 search or seize anything. They were merely

1 checking on the welfare of the child -- two minor
2 children, and from there the subsequent actions did
3 in fact take place.

4 Secondly, to Mr. Geel's point, we would
5 argue that Mr. Lesston does not have sufficient
6 standing to assert Fourth Amendment violation. Mr.
7 Lesston does not have a legitimate expectation of
8 privacy. The courts have talked about how --
9 whether an individual has standing depends on their
10 status. For example, somebody who is an overnight
11 guest would be afforded standing and could assert
12 the Fourth Amendment violation.

13 (In this case, I don't think this is in
14 contention; Mr. Lesston did not live at the house.
15 He was merely there at the time this incident
16 occurred, and as a result, he was a casual guest
17 and is not afforded the protection of the Fourth
18 Amendment in this case.

19 As to the search that took place -- and
20 we're not conceding that he does have standing,
21 Your Honor, but if he does have standing and Your
22 Honor finds that, we are prepared to argue that Ms.
23 Williams, the sole lessee of the apartment provided
24 valid consent to the officers to search. That
25 search as Mr. Geel referenced, was not done

1 particularly on Mr. Lesston's pants.

2 Officer Bilancione and Detective Benton
3 requested permission to search the area confined to
4 where Mr. Lesston was detained. There was no
5 intent to only search the pants. They were merely
6 wanting to search the area around where he was
7 detained for potential weapons, and through
8 testimony you will understand why they felt that
9 was necessary.

10 And so case law, in particular
11 State v. Flowers, says that proper third-party
12 consent applies to a homeowner of guest property.
13 In this case, Ms. Williams is considered the
14 homeowner. Although she's not paying the mortgage,
15 she is paying a lease; she is considered a
16 homeowner in this case. Mr. Lesston does not live
17 at the residence and, therefore, Ms. Williams had
18 every right to give law enforcement authority
19 consent to search of a narrow area confined to
20 where Mr. Lesston was detained at.

21 THE COURT: Call your first witness.

22 MR. LIETZOW: The State calls Detective
23 Charles Benton.

24 MR. GEEL: Your Honor, could I move for
25 the witnesses to be sequestered during the

1 evidence?

2 THE COURT: Any objection?

3 MR. LIETZOW: No, ma'am.

4 CHARLES EARL BENTON,

5 being first duly sworn, testified as follows:

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

8 THE WITNESS: Charles Earl Benton,
9 B-E-N-T-O-N.

10 THE COURT: Mr. Lietzow.

11 MR. LIETZOW: Thank you. May it please
12 the Court?

13 THE COURT: Yes.

14 DIRECT EXAMINATION

15 BY MR. LIETZOW:

16 Q. Detective Benton, can you briefly tell
17 Judge Harrington where you work?

18 A. Sure. I'm a human trafficking
19 investigator with the North Charleston Police
20 Department. I've been a detective with North
21 Charleston now for approximately five years. The
22 unit that I currently work in is -- I was in
23 special victims before which is sex crimes, child
24 abuse, things of that nature, and now I investigate
25 trafficking cases, and it's in the unit I actually

1 wrote the proposal for and created.

2 Q. Cool. Were you involved in this case
3 against Mr. Lesston?

4 A. I was, yes, sir.

5 Q. Explain to Judge Harrington how you
6 became involved in this case.

7 A. Sure. I was in my city-issued vehicle
8 pulling into North Charleston City Hall and heard
9 Officer Bilancione request an assisting unit at the
10 apartment complex up on Otranto, Greentree
11 Apartments. I heard that no one was available at
12 the time so I started in route from City Hall up
13 there.

14 He indicated that he needed somebody to
15 do a welfare check at apartment G9 on a couple of
16 children who were supposed to be left there by
17 themselves. And so I arrived there on scene to
18 perform that welfare check.

19 Q. And when you got there, what did you
20 become aware of? What did you learn?

21 A. I was told that the apartment in
22 question, obviously, like I said before, was G9.
23 There were two young children who were supposed to
24 have been left there by their mother, and their
25 mother supposedly had driven away a suspect from

1 the initial incident that Officer Bilancione was
2 investigating. He was investigating a malicious
3 damage call and the suspect was allegedly driven
4 away from the complex by the mother of these two
5 children; therefore, she was leaving them there at
6 the apartment by themselves.

7 Q. Do you know whether this apartment in
8 question was in any way involved, other than
9 leaving with the suspect per your reason Officer
10 Bilancione was originally there?

11 A. No, sir, I wasn't aware. I was aware
12 that there was a welfare check that needed to be
13 done on two children supposedly by themselves.

14 Q. Okay. So what happened next?

15 A. I proceeded over to the apartment, and
16 there were two ladies that were with me that worked
17 in management there at Greentree. When we got
18 there to the apartment one of the ladies actually
19 stepped in front of me and knocked on the door, and
20 just in kind of one motion knocked on the door and
21 grabbed the handle.

22 And I kind of told her to back off a
23 little bit. She did convey that the handle
24 appeared to be open -- the door appeared to be
25 open. Unlocked is what I mean by that. A short

1 time later a young man, eight-year-old-boy,
2 answered the door, opened the door.

3 I then spoke with him and asked if
4 anybody else was there at the apartment, and he
5 told me that nobody else was there other than his
6 six-year-old-sister. And I asked him if his mother
7 was there and he said she was not. I asked him the
8 last time he had seen his mother, and he said that
9 he had seen her when she was walking home from
10 school and that --

11 Q. Was he able to give a time line on
12 that?

13 A. Not that I recall. No. I would have
14 to look back in the file to give you a timeline.

15 Q. Did you -- did you tell him that you
16 were a police officer?

17 A. I did.

18 Q. Did you announce loudly you were a
19 police officer?

20 A. I did. Once the knock was made at the
21 door, I did announce who I was. It's just standard
22 procedure.

23 Q. What does that announcement consist of?

24 A. Just very loudly telling whomever might
25 be inside the apartment that I'm North Charleston

1 Police, North Charleston Police Officer.

2 Q. Describe the eight-year-old-child's
3 demeanor when you were questioning him.

4 A. I asked him, I believe it was a total
5 of at least three times, if anyone else was in the
6 apartment, other than -- than just him and his
7 sister. And the reason I asked him multiple times
8 is because each time I would ask him, he would
9 divert his eyes and kind of look behind him, which
10 I perceived to be kind of a bizarre behavior that
11 made me a little concerned as to who may or may not
12 be inside the apartment.

13 I do recall when I first got there, one
14 of the management -- one of the employees, one of
15 the female managers, indicated that the mother may
16 have returned to the apartment. So when I saw him
17 behaving in that manner I thought, well, maybe
18 she's there and just told him to say that nobody
19 else was there.

20 His behavior was bizarre and seemed to
21 indicate that something was not okay.

22 Q. And in your position you've dealt with
23 children before?

24 A. I have.

25 Q. And did this kind of raise your alert a

1 little bit to want to figure out what was going on
2 and make sure that his safety was paramount?

3 MR. GEEL: Objection; leading.

4 THE COURT: Overruled.

5 THE WITNESS: It did.

6 BY MR. LIETZOW:

7 Q. So what did you do next?

8 A. I then walked into the apartment. I
9 observed his six-year-old-sister to be sitting on
10 the couch. I announced my presence very loudly.
11 It's a small apartment and I have a pretty loud
12 voice when I need to.

13 I announced very loudly that I was
14 North Charleston Police and if there was anybody
15 else in the apartment they needed to make
16 themselves known. I announced it multiple times
17 and got no response.

18 Q. Explain to the Court what your purpose
19 of doing all of this was.

20 A. I was trying to make sure that the kids
21 in the apartment were safe. That's the reason I
22 was called there, because if there were two
23 children left there in the apartment by themselves
24 and they are not able to care for themselves, an
25 eight-year-old and six-year-old, then I have to

1 take further steps to try and locate the parents,
2 possibly get DSS involved, but I certainly have to
3 look further into the situation. I can't just
4 leave.

5 Q. And so you just mentioned that you
6 stepped into the apartment and you saw the
7 six-year-old. What did you do next?

8 A. That's when I loudly announced my
9 presence in the apartment and called for anyone
10 else that was in there to identify themselves and
11 got no response.

12 Q. So what happened next?

13 A. I took my weapon out, and the children
14 stayed with the management staff up in the front of
15 the apartment, and I proceeded down the hallway.
16 First, I went into the children's bedroom, cleared
17 that bedroom. I came back out into the hallway,
18 there was a closet, cleared that. There was also
19 another doorway that when you opened it, there was
20 a little water heater, I believe, in there.

21 I then made my way into the door on the
22 right-hand side which went into a bathroom. There
23 wasn't anybody in the bathroom. There was a second
24 door in the bathroom that opens into the master
25 bedroom. At that point, I opened the door into the

1 master bedroom, and I could see a lump under the
2 covers in the bed consistent with a person lying
3 under the covers. I walk over and I grab the
4 covers, pull them off and confirm there was, in
5 fact, someone there, Mr. Lesston.

6 At that point, he and I were looking at
7 each other. I loudly announced that I am the
8 police and that I wanted him to show me his hands.
9 He had his right hand concealed under a pillow. He
10 continues to look at me and refuses to comply,
11 which is very concerning for me because he's not
12 showing me his hands.

13 Q. Why is that concerning?

14 A. Because I'm concerned that he has a
15 weapon concealed under the pillow. I told him
16 multiple times to show me his hands. He refuses.
17 I then grabbed his ankle and pulled him down
18 towards the bottom of the bed. At that point his
19 hand becomes visible and I can see at this point
20 there is nothing in his hand. I can't see what may
21 or may not have been concealed under the pillow at
22 that point.

23 And I, again, tell him to roll over on
24 his stomach, put his hands behind his back. He
25 refuses. At that point, I holster my weapon and

1 get on the bed with him and physically flip him
2 over, tell him again to put his hands behind his
3 face, again he fails to comply. So I grabbed his
4 wrists, put them behind his back, put him in
5 handcuffs and then escorted him to the kitchen.

6 Q. What was he wearing?

7 A. A pair of boxer briefs.

8 Q. Is that it?

9 A. That was the only thing he was wearing.

10 Q. Okay. So what happened after you took
11 him into the kitchen?

12 A. Took him into the kitchen, I sat him
13 down. The children did not indicate in any way,
14 shape, or form that they knew who he was. He told
15 me he didn't have an ID. He gave me his name and
16 date of birth. I then ran him on records, was
17 calling for Officer Bilancione to come over and
18 join me. In the process of running him on records,
19 Ms. Williams, the mother of the children, arrived
20 back on scene at the apartment.

21 Officer Bilancione arrived very shortly
22 thereafter, and during a conversation with
23 Mr. Lesston, he indicated that he was currently out
24 on bond for PWID cocaine, or cocaine base I
25 believe.

1 Q. When you first discovered him in the
2 bedroom, what was going through your mind?

3 A. I was pretty terrified that there would
4 be somebody that's in the room, when I had very,
5 very loudly announced my presence, that hadn't
6 indicated that they were there. It's a -- it's a
7 -- you know, a pretty big adrenaline dump, and then
8 you add to that the fact that he has his hand
9 concealed under the pillow, and we're looking at
10 each other, and I'm giving him very loud verbal
11 commands, and I'm wearing something that very
12 obviously states I'm the police and for him not to
13 comply.

14 At that point, I think there is a
15 pretty good chance that he has something concealed
16 there that he doesn't want me to see.

17 Q. As it relates to the children, what was
18 going through your mind?

19 A. I'm certainly even more concerned for
20 their safety when they come into the kitchen and
21 they make no recognition of him at all.

22 Q. Okay. Did that include your
23 involvement in this case?

24 A. It did not.

25 Q. What happened next then?

1 A. Officer Bennett arrived and we began
2 speaking with Ms. Williams. I was particularly
3 involved with Mr. Lesston. He was more involved --
4 Officer Bilancione was more involved with Ms.
5 Williams. I did make the point to her -- because
6 she indicated something along the lines of, you
7 know, Mr. Lesston being a father to one of her
8 children, or something along those lines, and that
9 she had not left her children home alone because
10 Mr. Lesston was there.

11 And I reminded her they very clearly
12 told me multiple times that there was no one else
13 there, and add to that the fact that he was hiding
14 and failing to comply with my commands, that there
15 was a strong, strong level of concern.

16 Q. Okay. And did you have an opportunity
17 to run Mr. Lesston's name through the system just
18 to verify if there were any pending warrants?

19 A. Correct.

20 Q. And what was the result of that?

21 A. I don't believe that he had any
22 outstanding warrants at that point.

23 Q. So what was the purpose of him being
24 detained at that point?

25 A. He had -- he was detained because he

1 was hiding in an apartment and failing to comply
2 with my commands in an apartment where I was there
3 to check on the status of children and their
4 welfare. So he was -- suspicious behavior, he
5 didn't have an ID on him. I was basing the records
6 check on his statement as to who he was and his
7 date of birth and then the children not recognizing
8 him.

9 Q. Did you learn if he was a resident at
10 that location?

11 A. Ms. Williams indicated that he did not
12 live there.

13 Q. Did you have any other involvement?

14 A. I stayed in that area of the house
15 after Office Bilancione obtained consent from Ms.
16 Williams to check the immediate area around where
17 Mr. Lesston was detained.

18 Q. Were you with Mr. Lesston when Officer
19 Bilancione was handling that matter?

20 A. I was.

21 Q. Okay. Did Mr. Lesston say anything to
22 you at all?

23 A. Not that I recall.

24 Q. Did he make any objection to his pants
25 being searched while you were near him?

1 A. No.

2 Q. Did he make any statements to you
3 indicating he owned the pants?

4 A. He did.

5 Q. Explain that to the Court, please.

6 A. After Office Bilancione found the
7 contraband in his pants, specifically the crack
8 cocaine and marijuana, I believe Office Bilancione
9 did call me into the hallway. The hallway was
10 right next to where Mr. Lesston was seated. I
11 stuck my head in the hallway as he indicated what
12 he found to me discretely.

13 And then, at that point, once
14 Mr. Lesston was placed under arrest for having the
15 drugs, he indicated that he wanted his pants to
16 wear them to jail and again stated those were the
17 pants that he wanted to wear, those were his pants.

18 MR. LIETZOW: Court's indulgence?

19 BY MR. LIETZOW:

20 Q. When you detain somebody, do you pat
21 them down for officer safety?

22 A. I do.

23 Q. Did you pat him down in this case?

24 A. I did.

25 Q. Did you find anything?

1 A. No.

2 Q. And again, you said he was dressed in
3 his boxer shorts only?

4 A. Boxer briefs.

5 MR. LIETZOW: Okay. I have no further
6 questions for this witness, Your Honor.

7 THE COURT: Mr. Geel.

8 MR. GEEL: Thank you, Judge.

9 CROSS-EXAMINATION

10 BY MR. GEEL:

11 Q. How are you, sir?

12 A. Doing well.

13 Q. Let's go back and walk through from the
14 beginning if you could. Could you specify -- when
15 you arrived on scene you got a report that there
16 was some children who may have been in apartment
17 G9; did I recall that correctly?

18 A. Yes.

19 Q. Describe, if you remember, specifically
20 who told you what about those children.

21 A. Office Bilancione told me that there
22 were potentially two children in apartment G9 that
23 had been left there by their mother, and then one
24 of the ladies who manages Greentree indicated that
25 she may have seen a female going back into

1 apartment G9, an adult female.

2 Q. Okay. So none of that gave you any
3 indication that there was any alleged perpetrators
4 of the incident that the officer was investigating,
5 correct?

6 A. She -- she being the mother, Ms.
7 Williams -- was indicated by Officer Bilancione to
8 me that she had driven in a vehicle with the
9 suspect from his malicious damage call, unknown
10 where they went.

11 Q. So there was no indication that Ms.
12 Williams was the perpetrator of the malicious
13 damage investigation?

14 A. Correct.

15 Q. Okay. So you walked over to apartment
16 G9. Did you know where G9 was or were you -- how
17 did you know where to go to get to G9?

18 A. The ladies who manage the complex.

19 Q. Do you recall their names?

20 A. I would have to look back. One of them
21 was Ms. Darecot.

22 Q. Ms. Darecot is Ms. Nap; does that sound
23 familiar?

24 A. I believe so.

25 Q. How did you come into contact with

1 those two women?

2 A. I don't recall. They were on scene
3 when I got there.

4 Q. Were they talking to officer -- can you
5 do the pronunciation again?

6 A. Bilancione.

7 Q. Were they talking to Bilancione?

8 A. I don't recall.

9 Q. Did you talk to them directly?

10 A. I did.

11 Q. And what did you say to them?

12 A. I don't recall.

13 Q. Okay. And did you tell them to take
14 you to apartment G9?

15 A. I asked if they could show me where it
16 was.

17 Q. Okay. So they led you there?

18 A. Yes.

19 Q. Why were they going to G9 with you?

20 A. To show me where it was.

21 Q. So it was your intention to just have
22 them show you where the apartment was?

23 A. Yes.

24 Q. Okay. And so what happened when you
25 actually got to the apartment?

1 A. One of the two ladies actually just
2 walked right up and knocked on the door and grabbed
3 the handle.

4 Q. And you indicated that she said --
5 relayed to you that the door was unlocked?

6 A. Correct.

7 Q. So she had turned the handle?

8 A. Yes.

9 Q. Okay. Who -- when she turned the
10 handle, did she open the door?

11 A. I don't recall. When she touched the
12 handle she indicated it was unlocked. She did not
13 swing the door open, no.

14 Q. But you're not certain whether the door
15 opened at all? I mean, we're not thinking it swung
16 all the way opened, but you're not certain whether
17 the door opened a little bit?

18 A. I'm not sure.

19 Q. You can't say one way or the other?

20 A. No.

21 Q. And how did the door come to be opened?

22 A. When the eight-year-old opened it.

23 Q. And so, at that point, your concern is
24 if there was someone in the apartment with that
25 child?

1 A. I was concerned as to whether or not
2 the children were there by themselves or whether
3 the mother, who had alleged driven away with the
4 suspect from the other case, had returned.

5 Q. Okay. You said that -- you just
6 testified that you were concerned -- this was a
7 welfare check?

8 A. Correct.

9 Q. You were concerned for the safety of
10 the children?

11 A. Yes.

12 Q. And you just said that you were
13 concerned that -- you heard that they had been left
14 there alone potentially?

15 A. Yes.

16 Q. So your concern was whether there was
17 an adult there with them, correct?

18 A. Correct.

19 Q. And so, at that point, you made entry
20 into the apartment, correct?

21 A. No. I asked them several times if
22 anyone was in the apartment with them, and he
23 indicated that his six-year-old-sister was the only
24 one there. And each time I asked specifically, is
25 there anyone else, an adult, anyone other than your

1 sister, he replied, no, and looked behind him each
2 time he said that.

3 He was still in the doorway. I had not
4 entered the apartment at that point.

5 Q. Did you see his sister?

6 A. Not until I went into the apartment.

7 Q. After you had the interaction with the
8 young boy, the one you just described, that's when
9 you made entry into the apartment?

10 A. Yes.

11 Q. And I guess, just so we cover all of
12 our bases here, you didn't have a search warrant or
13 anything at that point?

14 A. No.

15 Q. So you made entry into the apartment
16 and did sort of a protective sweep of the
17 apartment, correct?

18 A. Yes.

19 Q. And you located an individual in the
20 bedroom, correct?

21 A. Yes. Prior to the protective sweep, I
22 announced my presence several times.

23 Q. When you saw someone in the bedroom at
24 that point, you did know someone was in the
25 apartment with the children, correct?

1 A. I saw a lump under the covers that
2 looked like it was going to be a person so I
3 removed the covers.

4 Q. And you removed the covers. And at
5 that point it became apparent that there was
6 someone in the apartment with the children?

7 A. Correct.

8 Q. And that individual is Mr. Lesston in
9 the bedroom?

10 A. Yes.

11 Q. And he was wearing boxer briefs?

12 A. Yes.

13 Q. And would you agree that by your
14 description, you kind of removed him or moved him
15 out of bed by force? I mean, you pulled him?

16 A. After he refused to show me his hands,
17 yes.

18 Q. Right. And then how did he get -- did
19 you say that he ended up on the ground at any
20 point? How did you handcuff him? I will ask you
21 the question that way: How did he end up in cuffs?

22 A. I got onto the bed with him.

23 Q. Okay. So he never actually made it
24 onto the floor?

25 A. No. The covers made it to the floor.

1 Q. Okay. And when that was happening, did
2 you see the pants that were in question later? Did
3 you observe those when you first made entry into
4 the room?

5 A. I don't recall. My attention was
6 focused on the --

7 Q. Okay.

8 A. -- on the lump under the covers.

9 Q. So you placed him in handcuffs and then
10 took him out of the bedroom?

11 A. Correct.

12 Q. And when I say, he, I mean Mr. Lesston.

13 A. Yes.

14 Q. And did you later come to see those
15 pants or was that Officer Bilancione who did that?
16 Did you see the pants that were ultimately
17 searched?

18 A. He showed them to me. I don't recall
19 seeing them.

20 Q. Okay. So you don't recall anything
21 about where they were positioned when you were in
22 the room?

23 A. I don't recall that, no.

24 Q. Okay. When -- so you took -- just to
25 clarify your testimony, you took Mr. Lesston into

1 the hallway, and you were sitting with him there.

2 Is that --

3 A. Kitchen.

4 Q. The kitchen. And you indicated that at
5 some point Officer Bilancione popped his head out
6 and told you that he'd found drugs in the pants?

7 A. Correct.

8 Q. Okay. And were you -- let me ask you
9 this question this way: From the time you placed
10 Mr. Lesston in cuffs and took him into the kitchen,
11 were you away from him at any point? Were you
12 separated from him?

13 A. No.

14 Q. Okay. And was he in the kitchen the
15 entire time?

16 A. He was.

17 Q. Okay. So he was not in the bedroom
18 when Officer Bilancione searched the pants?

19 A. Correct.

20 Q. Okay. Let me back up to when you found
21 him in the bedroom. He was the only person in the
22 bedroom, correct?

23 A. Yes.

24 Q. In the bed under the covers?

25 A. Yes.

1 Q. And you came to see -- obviously, you
2 couldn't see it at the beginning, but once you
3 pulled the covers off, you saw he was wearing boxer
4 briefs only?

5 A. Yes.

6 Q. And now you indicated that Ms. Williams
7 showed up at some point. She is the woman who
8 rented that apartment?

9 A. Yes.

10 Q. And after she showed up, you came to
11 learn that Mr. Lesston did, in fact, have
12 permission to be in the apartment?

13 A. She indicated that she knew he was
14 there, but he did not live there.

15 Q. Right. He had permission to be there,
16 in other words. I mean, she didn't say he was an
17 intruder, correct?

18 A. Correct.

19 Q. So he was there with her permission,
20 correct?

21 A. To my knowledge, yes, sir.

22 Q. Okay. Can you provide any further
23 testimony about the search that happened with
24 Officer Bilancione? Did you observe any portion of
25 it whatsoever?

1 A. No.

2 Q. So you were in a completely different
3 room?

4 A. Yes.

5 Q. When he searched the pants?

6 A. Yes.

7 Q. And, to your knowledge -- I know you
8 can't testify to this necessarily, but, to your
9 knowledge, that was conducted in the bedroom,
10 correct?

11 A. Yes.

12 Q. The search? Okay.

13 MR. GEEL: Thank you, Judge. Nothing
14 further.

15 THE COURT: Redirect?

16 MR. LIETZOW: Yes, ma'am.

17 REDIRECT EXAMINATION

18 BY MR. LIETZOW:

19 Q. Does an unlocked door with possible
20 unattended juveniles cause you any reason for
21 concern?

22 A. It does.

23 Q. And when the kids told you no one was
24 there and you found somebody there, did that cause
25 you reason for concern?

1 A. It did.

2 Q. And when you got there, were you
3 investigating or looking for the suspect that was
4 involved in the malicious injury to personal
5 property?

6 A. No.

7 Q. When you got there -- what was the sole
8 reason for you being at the property?

9 A. To do a welfare check on the children.

10 MR. LIETZOW: Thank you. Nothing
11 further, Your Honor.

12 THE COURT: Mr. Geel?

13 MR. GEEL: Nothing further.

14 THE COURT: You may step down. Please
15 stay with us.

16 THE WITNESS: Thank you, Your Honor.

17 MR. LIETZOW: The State calls Officer
18 Bilancione.

19 TOM BILANCIONE,
20 being first duly sworn, testified as follows:

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

23 THE WITNESS: First name is Tom, last
24 name is Bilancione, B-I-L-A-N-C-I-O-N-E.

25 DIRECT EXAMINATION

1 BY MR. LIETZOW:

2 Q. Thank you, Officer. Please tell the
3 Court where you work and what your job duties are.

4 A. I work for the North Charleston Police
5 Department. My duties are assigned as a patrol
6 officer. I work regular shift work on the road,
7 respond to calls -- 911 calls for service. I also
8 have a collateral duty involved with firearm
9 instructing as well as SWAT Team.

10 Q. Okay. Were you involved in this
11 incident on March 14, 2014?

12 A. I was, yes.

13 Q. And tell the Court how you became
14 involved and how you got to be at this location.

15 A. So, initially, on the date and time in
16 question, I was at 2630 Otranto Road involved in a
17 malicious damage complaint. There was a vehicle
18 damaged by several suspects. I was on scene
19 investigating that, and during the course of that
20 investigation I was approached by a witness to that
21 incident indicating that one of the suspects may
22 have fled into an apartment on the property. That
23 apartment was identified as G9.

24 Q. And just to clarify, where is 2630
25 Otranto Road? What county?

1 A. In the county of Charleston. It's in
2 the city of North Charleston.

3 Q. When you learned that a suspect
4 potentially fled into apartment G9, what did you do
5 as a result?

6 A. At the current time, I had several
7 suspects detained in reference to my investigation.
8 I was in contact with Detective Benton at the time,
9 and I requested that he respond to that apartment
10 to check on the welfare of the two juveniles that
11 were allegedly unattended.

12 Q. You mentioned unattended juveniles.
13 How did you become aware of that?

14 A. The witness to my malicious damage case
15 responded to that apartment to locate a fleeing
16 suspect, and during the course of trying to locate
17 that suspect, she observed that the apartment had
18 an unsecured door and two juveniles inside without
19 an adult present. That witness approached me and
20 shared that information which I related to
21 Detective Bennet.

22 Q. What was the purpose of you relaying
23 that to Detective Benton?

24 A. I was concerned about the welfare of
25 the two juveniles that were left by themselves in

1 the apartment. I wasn't in a position to respond
2 out there to make sure that they were okay because
3 of my current investigation, so I needed somebody,
4 to respond there and check on them.

5 Q. Is that part of your duty, to make sure
6 that children are safe?

7 A. It is, absolutely.

8 Q. And what happened next?

9 A. After I was able to clear from the
10 malicious damage investigation, I responded to the
11 apartment where I made contact with Detective
12 Benton, Mr. Lesston, as well as Ms. Williams, the
13 renter of that apartment. While speaking with
14 them, I explained again to Ms. Williams the reason
15 for our contact with her at the apartment. And I
16 had spoke with Detective Benton about what
17 information he gathered regarding unattended
18 juveniles.

19 Q. Okay. What was the reason you gave Ms.
20 Williams for why you were involved at that point?

21 A. I told her that we were given
22 information that a suspect fled towards that
23 direction, and when a witness to my malicious
24 damage investigation went to find her, two
25 juveniles were located unattended. I indicated to

1 her that the two juveniles were found unattended at
2 that time and that Detective Benton was sent over
3 there to check on their welfare and try to locate
4 Ms. Williams herself to ensure they were okay.

5 Q. Was there any thought that the
6 individual responsible for the malicious injury was
7 hiding in this apartment?

8 A. It was a possibility. The information
9 that I gained was that she was seen fleeing in that
10 direction.

11 Q. Okay.

12 A. And when the witness reapproached me,
13 she simply said that the juveniles were located
14 unattended and there were no adults that she saw
15 present. So we didn't know where the suspect had
16 fled to.

17 Q. So were you ever able to apprehend the
18 person involved with the malicious injury?

19 A. Not at that point.

20 Q. After you explained to Ms. Williams why
21 you were there, what happened next?

22 A. While speaking to Ms. Williams and Mr.
23 Lesston, we learned some further information about
24 Mr. Lesston and Ms. Williams. She indicated that
25 she lives there by herself with the two juveniles

1 and that nobody else lives with her. We also
2 learned that Mr. Lesston was out on bond for some
3 significant drug charges.

4 Also, speaking with Detective Benton on
5 scene, he indicated that Mr. Lesston was attempting
6 to conceal himself under a blanket, and when
7 directly confronted with Mr. Lesston eye to eye,
8 Mr. Lesston was concealing his hands on the bed and
9 was continually not complying with officer's
10 commands to show his hands.

11 Q. What did you do as a result of learning
12 all this information?

13 A. I immediately thought the worst. I
14 assumed that he was concealing a firearm or a bag
15 of drugs somewhere near the bed where he was
16 detained. I immediately assumed that it was being
17 left behind, and I was concerned that the juveniles
18 might find it later on.

19 Q. So what did you do?

20 A. I asked Ms. Williams if she was the one
21 that lived in the room. She indicated she was. I
22 asked her if anybody else lived there. She said
23 that she lived in the apartment by herself with the
24 two juveniles. At that time I asked Mr. Williams
25 for her consent to search the bed area where Mr.

1 Lesston was for firearms and drugs to ensure that
2 they weren't left behind.

3 Q. Did you ask for permission to
4 specifically search the pants?

5 A. I specifically asked to search the area
6 where he was detained to include the bed area.

7 Q. And so in giving that narrow scope of
8 where you wanted to search, what did Ms. Williams
9 do?

10 A. She provided consent to myself and
11 Officer Benton to search that area.

12 Q. And what happened next?

13 A. I went to the bed area and began
14 searching for a firearm or drugs that may have been
15 left behind. Nothing was located on the bed. Next
16 to the bed there were a pair of pants that appeared
17 to be a male's pair of pants given the size and
18 whatnot.

19 Inside that pair of pants were two bags
20 containing substances later determined to be
21 marijuana and cocaine.

22 Q. Do you recall, approximately, the
23 weight of the cocaine?

24 A. It was, approximately, four grams.

25 Q. Okay. What else was in his pocket?

1 A. There was a large sum of cash to the
2 tune of approximately \$508 and I believe a cell
3 phone was in the pants.

4 Q. Okay. What happened next?

5 A. I came back out and confronted
6 Ms. Williams about what was located to further
7 validate to her the reason for my concern and show
8 her that something was found that the kids may have
9 located after we left. It was determined during
10 that time that the pants belonged to Mr. Lesston
11 given his admission that the pants were his, and he
12 was subsequently charged with the drugs that were
13 located in the pants.

14 Q. Okay. Did you ever search beyond the
15 scope that you told Ms. Williams you were going to
16 search?

17 A. I did not.

18 Q. Did you believe that Ms. Williams had
19 adequate authority to grant you permission to
20 search --

21 MR. GEEL: Objection; that's a legal
22 conclusion.

23 THE COURT: Sustained.

24 MR. LIETZOW: Withdraw that question.

25 BY MR. LIETZOW:

1 Q. When did you come to learn about the
2 owner of the pants?

3 A. Prior to taking Mr. Lesston to jail, he
4 indicated that he wanted us to put his pants on him
5 for him to be transported because he was in
6 underwear. And when we went to look for the pants,
7 he indicated that the pants next to the bed were
8 his pants.

9 Q. What other involvement did you have?

10 A. At the conclusion of that
11 investigation, Mr. Lesston was turned over to the
12 transport officers, and I further spoke with Ms.
13 Williams regarding the fact that drugs were found
14 in her apartment and that the case would be
15 forwarded to the housing people at the apartment
16 complex since it's their policy that address those
17 things.

18 MR. LIETZOW: Okay. Beg the Court's
19 indulgence?

20 THE COURT: Take your time.

21 MR. LIETZOW: Thanks, Officer. I have
22 no further questions.

23 THE COURT: Mr. Geel.

24 MR. GEEL: Thank you, Judge.

25 CROSS-EXAMINATION

1 BY MR. GEEL:

2 Q. How are you?

3 A. I'm well.

4 Q. Let's go back to the beginning when you
5 were on the scene investigating the -- well, the
6 initial incident. Why is it that the apartment
7 management people went to apartment G9 initially?

8 A. I believe initially they went along
9 with the witness assuming that the suspect was
10 going to be found at the apartment.

11 Q. So you weren't with them when they
12 first went to apartment G9?

13 A. I was not.

14 Q. Were you -- at that point, were you
15 kind of talking to other people? What were you
16 doing while they went over there?

17 A. I was investigating the malicious
18 damage complaint, so I had a victim in my presence
19 as well as several suspects to the incident
20 detained.

21 Q. Okay. So you had people detained. And
22 did the apartment -- people who work for the
23 complex, did they make contact with you directly
24 before they went over? How did --

25 A. I believe initially the witness to my

1 malicious damage complaint approached me indicating
2 that she went to look for the outstanding suspect.

3 Q. And when you say the witness, you mean
4 the individual who worked for the apartment
5 complex?

6 A. No. There was a witness to the
7 malicious damage incident.

8 Q. Was that a resident of the complex?

9 A. I don't remember.

10 Q. Okay. So that individual tells you
11 what exactly?

12 A. She tells me that she went to go find
13 my other suspect, and when doing so, the apartment
14 she went to, she located an unsecured door and two
15 juveniles by themselves.

16 Q. Okay. And so this individual who did
17 that was just a lay person, not an employee of the
18 apartment complex?

19 A. Correct.

20 Q. So at what point did you make contact
21 with the employees of the apartment?

22 A. I don't remember if I specifically
23 spoke to them before they linked up with my witness
24 to the malicious damage or if they came to me
25 afterwards.

1 Q. Afterwards --

2 A. After they went and located the
3 unattended juveniles. I don't remember at what
4 point the manager spoke with me.

5 Q. I see. When you -- just to be clear,
6 when you refer to them going and making contact
7 with the juveniles, do you mean with Detective
8 Benton?

9 A. Correct.

10 Q. So when you're talking about the
11 employees of the apartment complex going to the
12 apartment G9, you're referring to when they went
13 there with Detective Benton; is that true?

14 A. Correct.

15 Q. So you're not aware of them going to
16 the apartment at any point other than with
17 Detective Benton?

18 A. I don't recall.

19 Q. Okay. Okay. And by the time you
20 arrived at apartment G9, Ms. Williams was already
21 on scene?

22 A. She was.

23 Q. And of course Detective Benton was
24 there?

25 A. He was.

1 Q. And Mr. Lesston had at that point
2 already been taken out of the bedroom, correct?

3 A. Correct.

4 Q. Was he in the kitchen, to your
5 recollection?

6 A. He was in a dining room area that's
7 attached to the kitchen.

8 Q. But suffice it to say, no longer in the
9 bedroom?

10 A. Correct.

11 Q. Okay. And, to your knowledge, he was
12 being detained at that point? Was he in cuffs?

13 A. I believe he was in handcuffs.

14 Q. Okay. Do you have any knowledge of
15 what precisely he was being detained for?

16 A. Initially, no.

17 Q. Okay. Now, when you arrived, you made
18 contact with Ms. Williams, correct?

19 A. Correct.

20 Q. And she informed you that Mr. Lesston
21 was a guest in her home?

22 A. She indicated he was there taking a
23 nap.

24 Q. With her permission?

25 A. Yes.

1 Q. She was aware that he was in the
2 apartment with her children?

3 A. It appeared that she was aware he was
4 there, yes.

5 Q. And you're not aware of anyone else
6 having been at the apartment other than Mr. Lesston
7 and the two juveniles, correct?

8 A. I'm not aware that anyone else was
9 located in the apartment.

10 Q. Right. Okay. And so after talking
11 with everyone on scene, you requested consent from
12 Ms. Williams to search the bedroom area?

13 A. Correct.

14 Q. Okay. And you discovered what you
15 described as a pair of male pants on the floor?

16 A. Correct.

17 Q. When you say male pants, I think we all
18 know what you mean by that, they were sort of
19 bigger pants? They didn't look like they would be
20 for a woman?

21 A. Yes. I believe there was a belt on
22 them that was a pretty thick belt.

23 Q. Right. It was the style that you would
24 expect a man to wear?

25 A. Correct.

1 Q. And you've already testified that you
2 were aware Mr. Lesston had been removed from the
3 bed by Detective Benton, correct?

4 A. Correct.

5 Q. Okay. And so, at that point, it was
6 your belief that those pants belonged to
7 Mr. Lesston, correct?

8 A. Prior to gaining consent, I was not
9 aware there were a pair of male pants in the
10 bedroom.

11 Q. Okay. You -- now, you filled out a --
12 filed a report after the incident, correct?

13 A. Beg your pardon?

14 Q. You filed out an incident report?

15 A. Yes.

16 Q. And this is something that you normally
17 do I guess when you're on a call, you fill out an
18 incident report?

19 A. Yes.

20 Q. And the purpose of an incident report
21 is so that you can write down all of the facts,
22 everything you see, everything you hear, and
23 everything told to you so that you can remember it
24 at hearings like this, correct?

25 A. Yes.

1 Q. And you would agree that the primary
2 purpose of doing so is that your memory is very
3 fresh right after the incident took place, so you
4 don't have to work off of your memory when you come
5 -- two years later when you come to testify about
6 something, correct?

7 A. Correct.

8 Q. Just to be clear, you did indeed file a
9 report in this case, correct?

10 A. I did.

11 Q. And have you had the opportunity to
12 review that?

13 A. I have.

14 Q. Okay. And in that report you indicated
15 that during your search you located what appeared
16 to be Lesston's pants on the floor next to where he
17 was hiding. Do you recall writing that?

18 A. Yes.

19 Q. Okay. So in your report that you wrote
20 right after this incident took place, you indicated
21 that when you located his pants you did believe
22 that they were Lesston's pants?

23 A. After the consent was given and I
24 located his pants, I did believe them to be his. I
25 believe your prior question was, did I know there

1 were pants in there.

2 Q. Oh, I see. I apologize if I
3 misunderstood your answer. Are you saying that
4 after Ms. Williams gave you consent to search, you
5 found the pants and it was at that point that you
6 believed they belonged to Lesston?

7 A. That's correct.

8 Q. You're not saying that you didn't --
9 when you picked up the pants you didn't believe
10 they were Lesston's?

11 A. That's not what I'm saying.

12 Q. Okay. When you -- I think I
13 understand. I apologize, I think I understand your
14 answer better. You're saying when you picked up
15 the pants you believed that they were Lesston's?

16 A. Correct.

17 Q. And when you searched the pockets and
18 removed the contents, at that point you did believe
19 they belonged to Mr. Lesston?

20 A. Correct.

21 Q. And just so we're abundantly clear at
22 this point, you had not received permission from
23 Mr. Lesston to search those pants, correct?

24 A. Correct.

25 Q. Okay. What you -- your basis, at least

1 in your mind, for your authority to search those
2 pants was because of Ms. Williams telling you, you
3 could search the bedroom, correct?

4 A. Correct.

5 Q. And the search of those pants revealed
6 the alleged narcotics in this case?

7 A. Yes.

8 MR. GEEL: Thank you, sir. Nothing
9 further.

10 REDIRECT EXAMINATION

11 BY MR. LIETZOW:

12 Q. Where was everybody located when
13 consent was granted to search these pants?

14 A. Mr. Lesston was in the dinning room
15 area, Ms. Williams was I believe next to the
16 kitchen which is the adjacent room. We were all
17 kind of within six to eight feet of each other. I
18 was standing in the main living room, which is
19 connected to the dining room, and Detective Benton
20 was also in that room.

21 Q. When you asked Ms. Williams for
22 consent, what did she say?

23 A. She said yes.

24 Q. And, specifically, where did you ask
25 her to search?

1 A. The bed area where Mr. Lesston was
2 detained.

3 Q. And did Mr. Lesston hear you asking Ms.
4 Williams --

5 MR. GEEL: Objection; speculation.

6 THE COURT: Finish the question.

7 BY MR. LIETZOW:

8 Q. Did Mr. Lesston ever object to you
9 asking Ms. Williams for consent to search that
10 confined area?

11 THE COURT: Overruled as to
12 speculation.

13 MR. GEEL: Yes.

14 THE COURT: You may answer.

15 THE WITNESS: He did not object.

16 MR. LIETZOW: Okay. No further
17 questions.

18 THE COURT: Thank you. Mr. Geel?

19 MR. GEEL: Nothing further, Judge.
20 Thank you.

21 THE COURT: You may step down. Feel
22 free to stay with us. Thank you.

23 MR. LIETZOW: That concludes the
24 State's witnesses.

25 THE COURT: Thank you. All right.

1 Reserving any argument, Mr. Geel, do you have any
2 witnesses?

3 MR. GEEL: No, we have no evidence,
4 Your Honor.

5 THE COURT: All right.

6 MR. GEEL: Just argument if the Court
7 would hear it.

8 THE COURT: Mr. Lietzow, do you have
9 argument?

10 MR. LIETZOW: Yes, ma'am, we do. Would
11 you like the State to go first?

12 THE COURT: Yes.

13 MR. LIETZOW: Thank you, Judge. May it
14 please the Court.

15 I think, in this case, it's clear that
16 North Charleston Police Department did not go to
17 the location, specifically 2630 Otranto Road, with
18 the express intent of searching and seizing any
19 contraband that was in possession of Mr. Lesston.
20 They were merely there, at least Detective Benton
21 was, to conduct a welfare check. There was no
22 intent to commit a search and seizure.

23 When the door was opened and he
24 observed the juveniles, he further investigated and
25 became aware that they were telling him they were

1 there alone; however, he had reason to doubt that,
2 and for his safety, and especially the safety of
3 the children, he conducted a safety sweep
4 throughout the house. In doing so, he located Mr.
5 Lesston and continued to investigate from that
6 point.

7 It's the State's position that this
8 does not violate the Fourth Amendment. The Fourth
9 Amendment is designed to protect against
10 unreasonable searches and seizures. It is not
11 designed to prevent law enforcement from conducting
12 safety sweeps and ensuring the welfare of juvenile
13 children who may or may not be left unattended in
14 their own residence.

15 As to whether or not Mr. Lesston has
16 standing to object to the seizure of the contraband
17 that was found, it's our position that he did not
18 have standing. Whether a defendant has standing
19 depends on the legitimate expectation of privacy in
20 connection with the search premise. That is a US
21 Supreme Court case, United States v. Salducci, and
22 also South Carolina Supreme Court,
23 State v. Missouri.

24 And in determining what the legitimate
25 expectation of privacy is, the courts have said

1 that it is subjective and objective review. The
2 defendant must show he had a subjective expectation
3 of not being discovered and that his expectation is
4 one that society recognizes as reasonable.

5 And the Court said that a lot of this
6 rides on what the status of the defendant is. For
7 example, an overnight guest the Court has said has
8 more standing than a casual guest does. They have
9 not specifically defined exactly what point the
10 guest would get the protection of the Fourth
11 Amendment, but I think in doing so and including
12 that overnight guest has more protection than a
13 casual guest, we're arguing that Mr. Lesston was a
14 casual guest in this residence.

15 He was there at 3:30, 4:00 in the
16 afternoon taking a nap, or hiding in the bedroom.
17 Ms. Williams said that he did not live there. He
18 was merely passing time there as a casual guest,
19 and in doing so, we would argue that he does not
20 have standing to assert a Fourth Amendment
21 violation and, therefore, any contraband that was
22 discovered and used against him was not done in
23 violation of --

24 THE COURT: Do we know whether or not
25 he was actually the father of one of these

1 children, or is it your position that perhaps at
2 this time it does not matter?

3 MR. LIETZOW: I do know the answer to
4 that and I will allow Your Honor to determine
5 whether or not that matters. I spoke with Ms.
6 Williams and she advised me that she'd had a DNA
7 test done and that Mr. Lesston is not the father of
8 her child. I think that it could matter.

9 If he was the father of the child, he
10 may have more protection than not being the father.
11 In this case, he's not the father and, therefore,
12 that's one less connection he has to this residence
13 and one less reason -- one more reason why he
14 should not be granted protection under the Fourth
15 Amendment.

16 At this point, he's just a friend of
17 the defendant's -- I'm sorry, Mr. Lesston is a
18 friend of Ms. Williams, just hanging out at her
19 apartment in the middle of the afternoon.

20 And, finally, Your Honor, we're arguing
21 that Mr. Lesston does not have protection and
22 standing under the Fourth Amendment. So I would
23 say that whether or not consent was granted is a
24 moot issue; however, to be safe, I would like to
25 argue that even if you do find Mr. Lesston has

1 standing, which we're asking you not do, the search
2 is still valid because Ms. Williams, the homeowner,
3 granted valid consent for Officer Bilancione to
4 search the residence.

5 Court precedence has said a search
6 based on consent cannot exceed the scope of the
7 consent to search and the search may be limited to
8 time, place, objective, and type of activity. I
9 think it's clear here that, that was the case. He,
10 he being Officer Bilancione, requested a narrow --
11 reached a narrow area that he was going to search.

12 And, in this case, for a third party to
13 consent to a search, that third party must have the
14 authority to give consent to search. They must
15 have common authority over some or other
16 relationship to the premise or effects to be
17 searched.

18 In this case, Your Honor, Ms. Williams
19 is the primary authority, the primary party that
20 can grant consent to search her residence. It's
21 her master bedroom, and the police are asking if
22 they can search her master bedroom. She is the
23 only person that can grant consent to search and
24 she did do that.

25 State v. Flowers, which is a South

1 Carolina Supreme Court case, has said proper
2 third-party consent applies to homeowners of guest
3 property.

4 If Your Honor finds that Mr. Lesston
5 has standing, we would argue that State v. Flowers
6 governs the search that then took place.
7 Furthermore, in State v. Flowers, the court said a
8 guest refusal to consent does not deprive the
9 homeowner of the right to subsequently grant
10 consent. A guest does not have standing to
11 challenge the owner's consent. Again, that is on
12 point in this case. And, furthermore, Mr. Lesston
13 never objected to the search that was to take
14 place.

15 A United States Supreme Court case,
16 Your Honor, Georgia v. Randolph, which was decided
17 in 2006, states that -- the court held that a
18 warrantless search of a shared dwelling for
19 evidence over the express refusal of consent by a
20 physically present resident cannot be justified as
21 reasonable as to him on the basis of consent given
22 to the police by another resident.

23 That's not entirely the case, however,
24 it's helpful. Again, I would like to reiterate, in
25 this case, Mr. Lesston is not a residence of this

1 location. He does not have standing to assert the
2 Fourth Amendment, and even if he does and
3 Ms. Williams granted valid consent, she was the
4 homeowner, it was her room, and the consent she
5 granted was limited and Officer Bilancione
6 respected that limit and did not exceed the scope.

7 And, finally, Your Honor, essentially
8 the defense is asking you to set a very bad
9 precedent for police officers by finding that, that
10 initial intrusion was against the Fourth Amendment.
11 Essentially, that would render law enforcement
12 unable to conduct investigations to determine the
13 safety of a child if they don't have a warrant to
14 go into a house.

15 When they are told that there are
16 juveniles that are potentially unattended inside
17 the house, they have an obligation to ensure the
18 safety of those juveniles, and in doing so they
19 investigated further and they went inside the house
20 to make sure that those juveniles were safe. They
21 never went in for purposes of searching and
22 seizing, and the Fourth Amendment should not apply
23 to that, Your Honor.

24 We would respectfully ask the Court to
25 --

1 THE COURT: How does retrieving drugs
2 out of his pants keep the children safe?

3 MR. LIETZOW: At that point, Your
4 Honor, it's just a consent issue. I don't think
5 that analysis really applies to this case. Once we
6 get past that initial intrusion, they then can ask
7 consent to search whatever they want, and that's
8 what they did. And in doing so, they did find the
9 drugs. I think those two are not necessarily
10 connected, unless I'm misunderstanding your
11 question somehow.

12 THE COURT: You're telling me that I
13 should deny the motion to suppress because that
14 would set a precedent that officers couldn't go in
15 for safety of the children. My question more
16 specifically was, how did then -- checking on the
17 safety of the children, how do they get into the
18 pants then?

19 MR. LIETZOW: Yes, ma'am. They're
20 asking you to find that the initial intrusion into
21 the house was a violation of the Fourth Amendment,
22 and by their argument the analysis would stop at
23 that point and the drugs should be suppressed.

24 I'm arguing that, that is not a valid
25 Fourth Amendment protection and, therefore, if that

1 limit was placed on the officer's ability, in the
2 future they would not be able to conduct this kind
3 of activity. So I think my answer to that is,
4 respectfully, I don't think that really matters,
5 Your Honor.

6 THE COURT: Well, we're beyond really
7 the analysis of whether or not they had the
8 opportunity or the rights to check on the children,
9 right?

10 MR. LIETZOW: Yes, ma'am.

11 THE COURT: We're then, how far do
12 they get to go into the home and what do they get
13 to do once they're in the home, right?

14 MR. LIETZOW: Yes, ma'am.

15 THE COURT: Was Mr. Lesston under --
16 what was he under arrest for?

17 MR. LIETZOW: He was not under arrest.
18 He was merely detained at that point.

19 THE COURT: So removing him -- so, at
20 that point, they were removing him from the bedroom
21 and then allowing him to get dressed; is that
22 correct?

23 MR. LIETZOW: They were not allowing
24 him to get dressed at that point, but they were
25 removing him from the bedroom to further

1 investigate, to further clear him from the scene so
2 that if there was contraband, for officer's safety
3 and for the juveniles' safety, he would be removed
4 from the presence of where the potential firearm
5 could have been located.

6 THE COURT: Anything further?

7 MR. LIETZOW: No, ma'am. Thank you,
8 Your Honor.

9 THE COURT: Mr. Geel.

10 MR. GEEL: Thank you, Judge.

11 Judge, I want to start off by drawing a
12 quick distinction. I understand from Mr. Lietzow's
13 argument that he's asserting that the standing
14 issue would cover any searches that would take place
15 in the apartment. Of course, it's our position
16 that's not the case.

17 We are challenging the initial entry
18 into the apartment, we are challenging the sweep of
19 the apartment, we are challenging the officers
20 continued presence in the apartment after they had
21 resolved the basis for their entry, which is to say
22 the welfare check. Those all do require Mr.
23 Lesston to have some kind of expectation of privacy
24 in the apartment.

25 Now, Mr. Lesston does not need an

1 expectation of privacy in the apartment to
2 challenge the search of his pants. So if Your
3 Honor finds that he lacks standing -- I mean, it's
4 referred to as standing. What we're talking about
5 --

6 THE COURT: Shouldn't there be some
7 distinction of whether or not he had his pants on
8 or whether the pants were on the floor?

9 MR. GEEL: Well, yes. Absolutely, Your
10 Honor, and it gets -- I mean, I'll get into that
11 more in a moment, but what my position is on that
12 question is that -- I mean, the lynchpin of the
13 Fourth Amendment is reasonableness. What was
14 apparent to the officers when they arrived on the
15 scene, what they saw, you know, what they thought
16 about, what the evidence showed. They knew that
17 these were his pants. They said it. They said
18 they knew these were Lesston's pants before they
19 were searched.

20 So we don't even necessarily need to
21 think about what a reasonable officer might have
22 thought, because it's obvious to everyone what a
23 reasonable officer might have thought. Mr. Lesston
24 was in the bed moments before, they pull him out,
25 he's in his boxers and there's a pair of men's

1 pants on the floor right next to the bed. No
2 reasonable person would think that they were
3 anyone's but Mr. Lesston's pants. And, indeed, the
4 officers did not think that they were anyone's but
5 Mr. Lesston's pants. They knew they were his
6 pants.

7 So as far as -- I believe that, that is
8 what would be controlling as far as what would have
9 been reasonable for the officers to think about. I
10 mean, obviously if he's wearing the pants, that
11 would change the analysis, but, Your Honor, I think
12 that functionally this is the same thing. What is
13 the difference between finding a man in his boxers
14 in a bed and a pair of pants that were men's pants
15 on the floor next to the bed?

16 If there are no other men in the
17 bedroom, no one else in the bedroom, no other men
18 in boxers nearby, any reasonable person could
19 conclude that those were Mr. Lesston's pants. And,
20 indeed, again, that's what the officers did.

21 So, Your Honor, if I could, I would
22 like to back up a little bit and talk about this
23 standing issue. Mr. Lietzow cites
24 State v. Missouri and, indeed, we agree that this
25 is the controlling language on this question. I

1 want to caution the Court that, that case addresses
2 the notion of whether a guest has standing, has a
3 reasonable expectation of privacy.

4 In that case, it was not an overnight
5 guest. It was an individual who was in the house
6 when the search took place and there was no
7 contention that he had spent the night. What it
8 was is that individual had been at the apartment
9 regularly and had a demonstrable connection to the
10 apartment, as does Mr. Lesston in this case.

11 THE COURT: Give me -- it's your burden
12 to show me that. Tell me what -- demonstrate that
13 he has a connection.

14 MR. GEEL: Well, he was there with the
15 children alone, there no other adults there. The
16 owner of the apartment said that he was there with
17 her permission to be there. He was taking a nap,
18 he was stripped down to his boxers. I mean, the
19 connection to the apartment is demonstrated by his
20 behavior.

21 THE COURT: How do we know -- what
22 indicia was there that he had been there before?

23 MR. GEEL: Well, Ms. Williams
24 identified him and there was an indication there
25 that he was the father of the child. I mean, at

1 the time that was perceived by the officers --

2 THE COURT: Just because he's the
3 parent of the child -- of her child doesn't mean
4 that he's been in that apartment before.

5 MR. GEEL: Yes, that's true.

6 THE COURT: Was he on the lease? I
7 don't think he was on the lease, was he?

8 MR. GEEL: No. No, Your Honor, he was
9 not on the lease.

10 THE COURT: Was there any other items
11 of his that were there?

12 MR. GEEL: Not that I'm aware of,
13 Judge, I mean, other than his clothing and personal
14 effects.

15 THE COURT: So in Missouri, there were
16 items there and it had been an ongoing pattern,
17 correct?

18 MR. GEEL: I believe there were, Judge,
19 yes.

20 THE COURT: And it was more than just
21 one time or just not overnight, it had been in and
22 out.

23 MR. GEEL: Yeah, that's true, Judge.

24 THE COURT: Do we have that here?

25 MR. GEEL: Judge, we don't have

1 evidence showing the type of relationship that
2 Mr. Missouri had in that case, as in we can't
3 demonstrate that he was there on numerous
4 occasions, but, of course, there is no evidence in
5 the record that Ms. Williams necessarily lived in
6 that apartment for any given period of time.

7 What we can demonstrate is that he was
8 in the apartment alone with her children, with her
9 permission, half naked, sleeping. And, Your Honor,
10 I submit to the Court that that demonstrates a
11 connection to the place.

12 I mean, we demonstrate what our
13 expectations of privacy are by our conduct. He
14 stripped down to his boxers and climbed into the
15 bed. Your Honor, I submit to you that, that
16 indicates what he expected.

17 We don't just get nude -- half nude and
18 sleep in a bed if we don't -- if we expect to be
19 disturbed. I mean, he is manifesting --

20 THE COURT: Is that the standard, Mr.
21 Geel?

22 MR. GEEL: Well, no, Your Honor, it is
23 what is reasonable. What we -- if you have a
24 reasonable expectation of privacy --

25 THE COURT: Well, then, we should have

1 reasonable expectation of every -- privacy
2 everywhere then, right?

3 MR. GEEL: Sorry?

4 THE COURT: We should have a
5 reasonable expectation of privacy just about
6 everywhere then, right?

7 MR. GEEL: No. No, I wouldn't say
8 that, Your Honor. I don't think that most people
9 would go to sleep just anywhere, for example. I
10 think that when a person chooses to go to sleep
11 when it's -- again, manifesting what they believe
12 about a place.

13 If you strip off your clothes and go to
14 sleep in a place, you are indicating that you don't
15 expect to be robbed, for example, that you don't
16 expect to be disturbed, that you have the right to
17 be there. You're indicating that it's a
18 comfortable place, that you think you have
19 permission of whoever's home this is, if it's not
20 yours, to sleep.

21 I mean, if you have -- you know, a
22 person, salesperson or something comes into your
23 house, and you step into the next room and come
24 back and they've jumped into the guest room under
25 the covers, I mean, that would be an extremely

1 strange thing to see happen. On the other hand, if
2 this woman leaves Mr. Lesston at her apartment with
3 the children and he ends up taking a nap, that
4 obviously doesn't surprise her. She says he's
5 taking a nap. It indicates what her belief about
6 his access to the apartment and his belief about
7 his own access to the apartment.

8 THE COURT: Should I place any
9 significance on the fact that when Detective Benton
10 asked if there was somebody else there, the
11 children said there wasn't anybody else in the
12 house?

13 MR. GEEL: It's difficult for me to
14 speculate about what they were thinking, Judge. I
15 mean, all I can point to is the fact that he was in
16 the bed and he was sleeping. I don't know why the
17 children would have said that. I mean, I can't
18 really speculate about why they would not have told
19 the officer that there was an adult in the
20 apartment.

21 I would like, if I could, Your Honor,
22 to talk about that very briefly. As far as getting
23 to my point about the initial entry and sweep, I
24 just want to clarify my position on that front.
25 The officers made entry into the apartment. Even

1 if it is the case -- it appeared to be the
2 testimony in the record that the child is the
3 person who opened the door.

4 So it does not appear from the record
5 that the officers were the individuals who made the
6 initial sort of opening of the door, as in making
7 the initial contact between the outside world and
8 the apartment itself, but they did enter the
9 apartment and begin to conduct a protective sweep,
10 a welfare check is what they called it.

11 At some point during that they locate
12 Mr. Lesston. Now, the purpose for the entry into
13 the apartment was to make sure there was an adult
14 in the apartment with the children. At that point,
15 they know that there's an adult in the apartment
16 with the children.

17 Mr. Lesston has not done anything
18 illegal. He hasn't broken the law. I completely
19 respect the officer's statements that they wanted
20 to see his hands and they wanted to see what was
21 under the pillow and everything like that. They
22 are not allowed to do that. This is a residence
23 that Mr. Lesston has every right to be in and he's
24 in the --

25 THE COURT: How are the officers to

1 know that?

2 MR. GEEL: Your Honor, they don't have
3 to know that. They see there is an individual in
4 there, an adult in the bed. At that point, the
5 purpose of this investigation has evaporated. Now,
6 I mean, at that point -- I mean, you see this in
7 vehicle stop context, all kinds of other Fourth
8 Amendment context.

9 Once the purpose for the Fourth
10 Amendment intrusion disappears, they have to
11 terminate that encounter. They can't detain
12 people. They can't remain in the apartment. I'm
13 not saying they have to sprint out of the
14 apartment, but they are no longer allowed to stay
15 in the apartment, because the whole reason they
16 were in there was to see if the children had an
17 adult, and now they know there is an adult in the
18 apartment.

19 So at that point, they have to
20 terminate this --

21 THE COURT: The purpose was they were
22 -- had been told that the children were left alone.

23 MR. GEEL: Right.

24 THE COURT: And then they walk in and
25 they're doing the sweep, which you agree that they

1 have the right to be doing?

2 MR. GEEL: Judge, it appears as though
3 the initial entry as in -- it appears as though
4 that may have been appropriate, given that they
5 didn't open the door themselves.

6 THE COURT: Right. So then they find
7 a lump that they later find out is a human.

8 MR. GEEL: Right. That's right.

9 THE COURT: So now they have come
10 across somebody that they did not anticipate being
11 there because the initial responding -- the initial
12 reason they were responding is because they were
13 told there was nobody there.

14 MR. GEEL: That's right.

15 THE COURT: So now they have somebody
16 that they've determined is under the covers, that
17 the children have indicated there was no one there,
18 the individual is not responding to their commands,
19 and you're telling me that they should have just
20 walked out?

21 MR. GEEL: Yes. And, furthermore,
22 Judge, they don't have any authority to give him
23 any commands. They have no reason to detain him at
24 that point. He's sleeping in the bed and he has a
25 right to be there. There is no indication that

1 he's a trespasser or anything along those lines.

2 They went in there looking to see if
3 these children were supervised, and they find an
4 adult in there. It's our position, Judge, that
5 they have to terminate this intrusion at that
6 point.

7 THE COURT: Well, Mr. Geel, how would
8 they know that he was not an intruder, that he
9 lawfully was there without having a conversation
10 with him?

11 MR. GEEL: Well, Judge, I suspect that
12 if there was some conduct that they could have
13 engaged in at that point afterwards -- I mean, I
14 guess I'm kind of thinking on my feet here. I
15 suspect that if they had concerns -- ongoing
16 concerns about the children's safety based on Mr.
17 Lesston's presence -- again, I'm not conceding -- I
18 mean, they find an adult in the apartment, that was
19 their concern.

20 Assuming, without conceding, that they
21 didn't -- this didn't, you know, remove those
22 concerns that they had, they would have been
23 authorized to, for example, remove the children
24 from the apartment, close the apartment door --

25 THE COURT: Mr. Geel, those are all

1 perfectly acceptable responses on some level, but
2 we have an individual that was hiding, or at least
3 covered up, napping, according to you. How do they
4 know that this individual is not going to cause
5 them or the children harm?

6 MR. GEEL: Well, they know he won't
7 cause the children harm. I've conceded they could
8 have removed the children from the apartment then
9 until they figured out who owned the apartment and
10 everything along those lines.

11 THE COURT: They couldn't see his
12 hands, right?

13 MR. GEEL: Yeah. I mean, that's their
14 testimony.

15 THE COURT: That's what the record is.
16 So we don't know who this individual is to these
17 children?

18 MR. GEEL: Right.

19 THE COURT: How he or whomever this
20 person is got into the home, right?

21 MR. GEEL: Right.

22 THE COURT: And so you're telling me
23 they should have backed out then and taken the
24 children out?

25 MR. GEEL: I'm thinking they should

1 have backed out, left. If they had taken the
2 children out, I don't think there would have been
3 any basis under the Fourth Amendment just to call
4 that improper conduct is what I'm saying. I mean,
5 they wouldn't be required to take the children out,
6 but they certainly, I think, would have been
7 authorized to arguably. Again, I would have to
8 think about that in more detail.

9 I don't think that that would
10 necessarily be a problem if there was some
11 articulable reason for thinking the children were
12 not safe in some ongoing way, but, again, the issue
13 here is their concern for -- their concern for the
14 children all came from the notion that the children
15 were not being supervised by an adult, or rather
16 that there was not an adult with them in the
17 apartment when, in fact, it turned out there was.

18 If they had additional concerns about
19 who this individual was or anything along those
20 lines, you know, I submit to Your Honor that they
21 could have removed the children from the apartment,
22 they could have closed the door, they could gotten
23 a warrant. You know, they can always solve all of
24 these issues by simply getting a warrant.

25 If they had an articulable basis for

1 thinking they needed entry into the apartment to
2 make contact with Mr. Lesston, then they could have
3 just gotten a warrant which of course solves all of
4 these Fourth Amendment issues. We wouldn't even
5 have this motion to suppress if, you know, officers
6 got search warrants before engaging in conduct like
7 this.

8 So, Your Honor, I guess that's my
9 argument as far as the entry, that's my argument as
10 far as the continued presence and the continued
11 detention of Mr. Lesston. That's the basis for
12 which we submit that all of that was illegal. And
13 if Your Honor agrees with our argument on that
14 front, we submit that the discovery of the
15 narcotics would of course flow directly from that
16 unlawful intrusion, and so that would be a basis
17 for suppression.

18 Now, as I've already said, and I would
19 like to discuss it in a little more detail, the
20 search of the pants is an independent basis for
21 suppression. So even if Your Honor did not feel --
22 if Your Honor feels that everything I've just said
23 is not true and you disagree with everything, he
24 still has an independent basis for moving to
25 suppress the search of his pants.

1 Of course, Your Honor, this is a scope
2 of third-party consent issue. We don't contest
3 that Ms. Williams had the authority to consent to a
4 search of the apartment, indeed has the authority
5 to consent to a search of the bedroom area. The
6 question is, what is the scope of that authority
7 and does it extend to Mr. Lesston's pants? And we
8 submit that it does not.

9 Your Honor, the test for third-party
10 consent and scope is from State v. Middleton. We
11 cited it in our motion. I'm sure Your Honor has
12 read it. It talks about whether the third party
13 has sufficient status to consent to a search is
14 whether the third party possessed common authority
15 over or had some sufficient relationship of the
16 premises or effects to be searched.

17 So there are two important things
18 there, Your Honor; what it means when the Court
19 says common authority, what common authority is,
20 and the fact that, that is required in order for
21 them to consent to a search of effects. So it
22 contemplates items and not just areas. So, in
23 other words, Ms. Williams would have to have common
24 authority to Mr. Lesston's pants to conduct -- to
25 consent to a search of his pants, and not just

1 common authority to the bedroom itself.

2 The other case we cited in our motion
3 is State v. Moultrie which provides additional
4 guidance on the common authority issue. There the
5 Court says, common authority is defined as mutual
6 use of the property by persons generally having
7 joint access or control for most purposes, such
8 that it is reasonable for the searching officers to
9 believe that the person granting consent had the
10 authority to do so.

11 Again, Your Honor, this gets back to
12 the fact that the officers themselves stated they
13 knew that these were his pants. There is simply no
14 conceivable way anyone could claim that they
15 believed Ms. Williams had mutual use, authority,
16 control, joint access or use for any purpose
17 whatsoever of Mr. Lesston's pants. She simply did
18 not have the authority to grant them consent to
19 search those pants.

20 And I'll add to this the fact that he's
21 in his boxer shorts, he was in the bed, pants are
22 right next to the floor, they're men's jeans. And,
23 also, one other point that I would like to add,
24 Your Honor, because Mr. Lietzow touched upon this,
25 it appears that Mr. Lietzow is indicating that

1 Mr. Lesston's failure to object to the consent sort
2 of negates his Fourth Amendment rights. Indeed, it
3 does not.

4 First of all, the search happened when
5 the officer was in the bedroom. We heard testimony
6 that the search had already taken place in the
7 bedroom and he came out and told Detective Benton
8 what he had described -- what he had discovered,
9 excuse me. At that point, Mr. Lesston was in the
10 kitchen. Okay.

11 So he's not in the room when the search
12 is taking place. He could not necessarily know
13 that the search was happening, he wasn't in the
14 room, he didn't have the opportunity to object.
15 Even if he had, he is not required to. His Fourth
16 Amendment rights are there. They can't just reach
17 into his pockets and search him, you know. It's
18 not incumbent upon him to object to an unreasonable
19 or unlawful search.

20 So, in closing, I would like to point
21 out one additional thing. My motion and this
22 argument I'll incorporate that by reference also
23 moves for suppression under the State Constitution.
24 I'm sure Your Honor is aware that the State
25 Constitution has an explicit right to privacy. So

1 Your Honor is entitled to hold that this is a
2 violation of the State Constitution.

3 We have an independent right to privacy
4 under our State Constitution that we do not have
5 under the Federal Constitution. There are a couple
6 of cases on this that say that courts are
7 authorized to carve out an even narrower Fourth
8 Amendment exception, but, you know, it would be
9 under the State Constitution as well.

10 THE COURT: Do you have a citation?

11 MR. GEEL: I could submit one, Your
12 Honor. I don't have a case off the top of my head,
13 but there was a case last summer I believe that had
14 to do with knock and talk searches. And they
15 indicated that under the State Constitution right
16 to privacy, knock and talk searches were unlawful
17 without reasonable suspicion. And that is an
18 independent -- that is not a Fourth Amendment
19 claim. That is a State Constitutional claim. We
20 have a right to privacy.

21 All of that is invoked by this.
22 Mr. Lesston is in an apartment; he has a right to
23 be there; he had permission to be there; the woman
24 who owns the apartment gave him permission to be
25 there; he's sleeping; he has manifested an attempt

1 to expect privacy there at least for the time he's
2 sleeping; he has disrobed; he has left his clothes
3 on the floor.

4 There is absolutely nothing that he did
5 to relinquish his Fourth Amendment right in those
6 pants. Ms. Williams did not have the authority by
7 any measure to grant them consent to search the
8 pants. So I assert that, Your Honor, as an
9 independent basis for suppression. This search of
10 the pants violated his Fourth Amendment rights and
11 it must be suppressed. Thank you.

12 THE COURT: Mr. Lietzow, anything
13 further?

14 MR. LIETZOW: Your Honor, I just want
15 to highlight that as the homeowner, the sole
16 lessee, Ms. Williams has consent to grant police to
17 search anywhere in her house. They were not
18 specifically asking for consent to search Mr.
19 Lesston's pants. They were asking for consent to
20 search the area that was around where Mr. Lesston
21 was detained. The reason for them doing that, they
22 explained, was so there were no firearms left
23 behind, no contraband left behind, so that any
24 danger --

25 THE COURT: What about Mr. Geel's

1 argument that I should carve out a specific
2 exception for that? Give more protection to his --
3 his personal property? Even assuming that they had
4 the right to be there under the Fourth Amendment,
5 that she had the authority, but that clearly that
6 those were his pants and that he would -- even if
7 he didn't have an expectation of privacy in the
8 home, he should have an expectation of privacy in
9 his own pants.

10 MR. LIETZOW: Well, I think that that's
11 not -- that's clearly not what the case law stands
12 for in South Carolina. I think State v. Flowers is
13 clear that a homeowner can grant consent to search
14 their home and, particularly, Ms. Williams can
15 grant consent to search this room. They can't just
16 leave these pants behind in the event that there is
17 contraband, and Officer Bilancione mentioned that.
18 He did that for the purpose of officer safety.

19 They were not going to leave those
20 pants behind in the house with juvenile children
21 when those pants very well could have had a gun.
22 Mr. Geel speculated a lot in his argument to the
23 Court, but what we don't know is whether or not Mr.
24 Lesston could have removed those pants when the
25 officers announced themselves, to distance himself

1 from any contraband that he may have.

2 It's completely reasonable that they
3 for officer safety can search those pants. And
4 even more so, I think State v. Flowers doesn't
5 extend that protection to those pants because Ms.
6 Williams grants consent to search her room. And
7 that's exactly what State v. Flowers stands for,
8 Your Honor.

9 So for those reasons, we would ask Your
10 Honor to deny the motion and not suppress the crack
11 cocaine. Thank you.

12 THE COURT: I think you're referring to
13 State v. Counts. Does that --

14 MR. GEEL: That's the one, Judge.

15 THE COURT: So that would be 413SC153,
16 and it was then decided July 2015.

17 MR. GEEL: Sounds about right.

18 THE COURT: Okay. Counsel, where are
19 we procedurally with this case?

20 MR. LIETZOW: It's been on two separate
21 trial dockets and, unfortunately, it hasn't been
22 reached yet. In conversations with Mr. Geel, we
23 thought this might dispose of the case, depending
24 on your ruling. I can't speculate whether it will
25 or not. That's where we stand.

1 THE COURT: Clearly, if I grant his
2 motion you would not have the narcotics.

3 MR. LIETZOW: Yes, ma'am.

4 THE COURT: If I deny your motion, are
5 we -- is this on the trial docket?

6 MR. GEEL: Judge, I would have to talk
7 to my client. We've had that conversation. I do
8 not believe that we have any guilt or innocence
9 issues here. I certainly don't believe that we
10 would need a jury trial. It's really just a
11 question of our position here that the Fourth
12 Amendment rights were violated. With that issue
13 resolved, I don't know of any evidentiary basis
14 that I would have to argue that he didn't have
15 constructive possession of the drugs.

16 So I guess it depends on what the
17 Court's ruling is. Obviously, we urge the Court to
18 grant the motion and resolve it that way. If we
19 get an adverse ruling, our main concern is that Mr.
20 Lesston be able to retain the right to appeal the
21 Court's ruling. So what I think that we could do
22 is have a bench trial simply so that -- I mean, if
23 he pleads guilty, he's going to waive his right to
24 appeal the case. I certainly don't think that
25 would be advisable. I guess it would depend on how

1 Your Honor would rule.

2 THE COURT: I had told Judge Nicholson
3 we were behind schedule, which is fine, but I just
4 wanted to take a few moments to articulate my
5 ruling and -- especially, given that you may want
6 -- he would have his right to appeal whatever
7 ruling I do issue. So I'm going to take the matter
8 under advisement.

9 I will give you a court date should
10 that be necessary, but I'll -- well, I will give
11 you a court date regardless so that I can advise
12 Mr. Lesston of his right to appeal.

13 Any objection to him remaining out on
14 his current bond?

15 MR. LIETZOW: No, ma'am.

16 MR. GEEL: Judge, can I ask a
17 procedural question? So here's the thing: As I
18 informed the Court that we don't have any guilt or
19 innocence issues, I'm not certain that we would
20 have any problem stipulating or kind of doing a
21 truncated bench trial. What I would be concerned
22 about is creating the impression that I'm waiving
23 the issue when I'm attempting to preserve it.

24 So in other words, if I were to, for
25 example, stipulate to what we just heard, I would

1 want to do that with my objection to that evidence
2 as preserved. Do you understand what --

3 THE COURT: Yes. So -- yes, I
4 understand.

5 MR. GEEL: I don't want to stipulate to
6 it and thereby waive the issue I'm trying to
7 preserve. Do you understand what I mean? If I
8 stipulate to everything you just heard, that
9 could --

10 THE COURT: You wouldn't stipulate --
11 you would stipulate if those officers were called
12 again they would testify to significantly the same?

13 MR. GEEL: Right. I guess stipulate to
14 everything but the drugs that were discovered and
15 then maybe they would have to prove that out --

16 THE COURT: You would just stipulate
17 that their testimony would be significantly the
18 same as what they testified to.

19 MR. GEEL: Sure, and subject to our
20 prior objection.

21 THE COURT: And that way they wouldn't
22 have to come back.

23 MR. GEEL: Right.

24 THE COURT: All right. You'll have my
25 ruling.

1 Thank you, Officers.

2 THE COURT: Good luck to you, Mr.

3 Lesston.

4 MR. LIETZOW: Could I ask the Court to
5 advise Mr. Lesston that failure to appear to any
6 further court dates would result in a bench
7 warrant?

8 THE COURT: I've already done that
9 several times.

10 Thank you.

11 (These proceedings were concluded at
12 3:32 p.m.)

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1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 20th day of November, 2016 at
13 Charleston, Charleston County, South Carolina.

14

15

16

17 S/Denise Lauder
18 Carol Denise Lauder
19 Registered Professional
20 Reporter, CP
21 My Commission expires
22 August 2, 2017

23

24

25

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of Charleston	)	2014A1010201377
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ADRIAN LESSTON,	)	
	)	
DEFENDANT,	)	

September 16, 2016
Charleston, South Carolina

BEFORE:

THE HONORABLE KRISTI HARRINGTON, JUDGE.

APPEARANCES:

CHRIS LIETZOW, ASSISTANT SOLICITOR
Attorney for the State

CHRISTOPHER GEEL, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

C O N T E N T S

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CERTIFICATE OF REPORTER 14

COURT'S EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1	SLED forensics	5	

1 THE COURT: All right. There is a copy of the order.
2 I administrated it. I denied your motion to suppress for
3 all of the reasons in my formal order, so now I understand
4 that you want to do a bench trial, Mr. Geel.

5 MR. GEEL: That was my hope, Judge. I'm not certain
6 we can proceed without my client here, though. I didn't
7 discuss waiving his presence. He was -- he was in the
8 courtroom all morning. It's astonishing to me that he's
9 not here, Judge.

10 THE COURT: I saw him.

11 MR. GEEL: Yeah.

12 THE COURT: I did see him. Do we need a trial, or
13 what is it that we would need now?

14 MR. GEEL: Not as such, Judge. So here is the issue:
15 What we would want to do is have Mr. Lesston retain his
16 right to appeal the ruling, but we don't need a sort of
17 full formal trial.

18 What I talked to Mr. Lesston about essentially was
19 just stipulating to all of the evidence that has been --
20 was set forth in the hearing subject to my objection, of
21 course, to the Fourth Amendment grounds and everything.

22 Mr. Lietzow would also like to offer as proof the
23 slide test, I believe, which I mean, there hasn't -- there
24 is no evidence in the record that this is actually any
25 illegal substance. I mean, that is just the testimony at

1 the suppression hearing, but we would be willing to
2 stipulate to that, again, subject to our Fourth Amendment
3 objection.

4 (Mr. Lesston entered the courtroom.)

5 THE COURT: Mr. Lesston, I need you to take a seat.
6 I have issued -- no, right here. Right here at the table.

7 THE DEPUTY: Right there.

8 THE COURT: Do you have a copy of the SLED report?

9 MR. LIETZOW: Yes, ma'am.

10 THE COURT: All right. Have you provided that to
11 Mr. Geel?

12 MR. GEEL: We have one, yeah.

13 THE COURT: Okay.

14 MR. GEEL: It was provided in discovery.

15 THE COURT: What was your recommendation? I guess
16 it's now --

17 MR. LIETZOW: It's a possession with intent to
18 distribute second offense, Your Honor.

19 THE COURT: Straight up?

20 MR. LIETZOW: Yes, ma'am.

21 THE COURT: All right.

22 MR. LIETZOW: However, I would have a special request
23 that you would hear at the appropriate time, Your Honor.

24 THE COURT: Okay. Why don't you let your client know
25 what my ruling is, take a few moments.

1 MR. GEEL: Okay.

2 THE COURT: What is your special request?

3 MR. LIETZOW: Would you like me to put it on the
4 record right now?

5 THE COURT: Yes. We're on the record, yes.

6 MR. LIETZOW: Okay. May we approach?

7 THE COURT: You may.

8 (Pause.)

9 THE COURT: We'll be at ease just a few moments.

10 (Pause).

11 MR. LIETZOW: May I approach, Your Honor?

12 THE COURT: You may.

13 (Pause).

14 THE COURT: We're back on the record with Adrian
15 Lesston.

16 Mr. Geel, I've been handed a South Carolina Law
17 Enforcement Division forensic report of the drugs. Have
18 you had an opportunity to review that document?

19 MR. GEEL: Yes, Judge.

20 THE COURT: We'll mark it for purposes of the record
21 as Court's 1.

22 (WHEREUPON, Court's Exhibit No. 1 was marked for
23 identification only.)

24 THE COURT: You have also had an opportunity to
25 review with your client my order that was filed today.

1 MR. GEEL: Yes, Judge.

2 THE COURT: In which I denied your motion to
3 suppress.

4 MR. GEEL: Correct.

5 THE COURT: Reserving your right to appeal, is there
6 anything else before -- we're kind of in an awkward
7 situation procedurally.

8 MR. GEEL: Right.

9 THE COURT: Your client does not wish to plead
10 guilty.

11 MR. GEEL: That's right.

12 THE COURT: Okay, but there's nothing really to --
13 now that there is testimony and evidence that's Court's 1
14 that the drugs were there, and that the testimony from the
15 motion of the suppression hearing that they were found on
16 your client. Is there anything else, any other defense or
17 any other evidence that you want to present?

18 MR. GEEL: No, Judge. We don't have any evidence to
19 offer for the purposes of this -- I guess what we're doing
20 is a bench trial.

21 One thing I do want to be careful to point out,
22 Judge, is that as far as Court's 1, the slide, I do object
23 to that on the Fourth Amendment grounds, reasserting the
24 motion. That evidence was not adduced at the hearing.

25 So I just want to be clear that I also object to that

1 on the same grounds as asserted in the motion to suppress.
2 Do you understand what I mean?

3 THE COURT: Right. So your motion to suppress, as I
4 recall, was only as to the manner in which it was found.
5 I don't recall --

6 MR. GEEL: Right.

7 THE COURT: -- that there was a challenge at that
8 stage to what was -- what the drugs were.

9 MR. GEEL: That's -- that's right, Judge. So there
10 wouldn't be anything in the hearing record to show that
11 there were, in fact, narcotics as that's being offered
12 here at this bench trial. I want to make sure not to
13 waive the objection by then letting the drugs come in, so
14 to speak. So I do renew my objection to that, but I have
15 nothing further to add by way of evidence in this hearing.

16 THE COURT: Okay. So in order to protect the record
17 just so we're clear, you're not agreeing with what the
18 officer has said, but you do agree that if we called this
19 case for trial, either jury or nonjury which we're doing
20 today, that those officers would testify to significantly
21 the same testimony that they testified to on the day of
22 the hearing?

23 MR. GEEL: That's right. We would stipulate to that
24 fact again subject to the objection, right.

25 THE COURT: You're not agreeing with the testimony.

1 You're also challenging my ruling for appellate purposes.

2 MR. GEEL: Right.

3 THE COURT: However, there is no need to have those
4 two officers come back in and testify; is that correct?

5 MR. GEEL: That's correct, Judge.

6 THE COURT: So with that, do you want me to hear any
7 arguments? I've heard the testimony, Mr. Lietzow.

8 MR. LIETZOW: Judge, I would just like to add that
9 the permissive inference has been met. There's 3.4 grams
10 of crack cocaine. The permissive inference is one gram.

11 Additionally, officers stated during their testimony
12 that also found with Mr. Lesston's belongings were a
13 quantity of cash and cellphones. Those would also
14 indicate intent to distribute those drugs. So for
15 purposes of the charge as he's being convicted of, I
16 wanted to set those factors out that it was possession
17 with intent to distribute crack cocaine.

18 THE COURT: And we also -- do you have a certified
19 copy of his prior record that would make this a second, or
20 can I just relate to that for the purposes of sentencing?

21 MR. GEEL: For the purposes of sentencing, we
22 stipulate to his prior conviction. We have been served
23 with his criminal history, and there is a triggering
24 conviction on that.

25 THE COURT: Okay. And so based upon the prior

1 testimony of what's been presented today, I find Mr.
2 Lesston guilty of possession with intent to distribute
3 crack cocaine second offense.

4 Now, I'm going to defer sentencing; is that correct?

5 MR. GEEL: Yes, please, Judge.

6 THE COURT: Okay. Any objection to him remaining out
7 on bond, Mr. Lietzow.

8 MR. LIETZOW: No objection from the State, Your
9 Honor.

10 THE COURT: Do we have an idea of when sentencing
11 will be, or we'll leave it open?

12 MR. LIETZOW: Your Honor earlier indicated a deadline
13 of December 31st. I'm going to go back to the office and
14 immediately contact the officer who is interested in
15 speaking with Mr. Lesston.

16 I do think it is wise to have that deadline set so
17 that all parties remain motivated to get this done in a
18 timely fashion, Your Honor.

19 (Pause).

20 THE COURT: Monday December 5th at 9:30 a.m.

21 MR. LIETZOW: Okay. Thank you, Judge.

22 THE COURT: You don't have any vacation plans?

23 MR. LIETZOW: I'll be here, Your Honor.

24 THE COURT: All right. Mr. Lesston, please stand.
25 I'm going to place him under oath.

1 ADRIAN LESSTON, after being duly
2 sworn, testified as follows:

3 THE COURT: Mr. Lesston, do you understand what
4 happened here today?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: All right. And so I have found you
7 guilty.

8 THE DEFENDANT: All right.

9 THE COURT: And normally, I impose sentence right
10 then.

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: But your attorney and the State have
13 agreed to defer your sentencing --

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: -- which means I'm not going to impose
16 sentence upon you here today. We're going to pass your
17 case no later than -- I will review it December 5th at
18 9:30 a.m. If you don't show up, do you know what will
19 happen?

20 THE DEFENDANT: Bench warrant.

21 THE COURT: All right.

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And I'm going to impose the sentence.

24 THE DEFENDANT: Oh, yes, ma'am.

25 THE COURT: All right. So then that sentence would

1 just be sealed, all right?

2 THE DEFENDANT: All right.

3 THE COURT: So it is very important that you return
4 back on that date. Do you understand?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: And please stay in touch with Mr. Geel.
7 I think he has some requirements and some things that he
8 will be asking of you, as well.

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: All right?

11 THE DEFENDANT: I understand.

12 THE COURT: All right. Anything? Any other
13 requirements?

14 MR. LIETZOW: No, ma'am, Your Honor, I just would
15 like to clarify that the defendant's bond restrictions are
16 staying in place although he has been found guilty?

17 THE COURT: Yes. And what are the -- what are the
18 bond restrictions?

19 MR. LIETZOW: Just not getting rearrested, general
20 good behavior provisions.

21 THE COURT: So all of the things that you were doing
22 on your bond --

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: -- still are in place. You understand
25 that? So there are things that you should be doing

1 anyway.

2 THE DEFENDANT: Yes.

3 THE COURT: There are no additional restrictions or
4 anything like that?

5 MR. LIETZOW: No, ma'am.

6 THE COURT: All right. Mr. Lesston, good luck to
7 you.

8 THE DEFENDANT: Yes, ma'am.

9 MR. GEEL: Judge, could I just --

10 THE DEFENDANT: I appreciate it.

11 MR. GEEL: Could I add one thing for the purposes of
12 the record? I know it's very much implied by what we've
13 done, but my objection here to the evidence is overruled?

14 THE COURT: Yes.

15 MR. GEEL: I want to make sure for the appellate
16 record that that's in there. I know that might --

17 THE COURT: Yes.

18 MR. GEEL: -- constitute a waiver.

19 THE COURT: Right. So just because we kind of pieced
20 this together, you are objecting to the drugs coming in.

21 MR. GEEL: Right.

22 THE COURT: To the fact that -- to the SLED -- to the
23 SLED report.

24 MR. GEEL: Right.

25 THE COURT: And I think that's all of your

1 objections.

2 MR. GEEL: And any testimony about -- that was
3 derived from the illegal searches, the search that we
4 claim was illegal.

5 THE COURT: All right.

6 MR. GEEL: Any fruit of the poisonous tree so to
7 speak.

8 THE COURT: Yes. All right. Thank you. Noted for
9 the record. Thank you.

10 (Whereupon, the proceedings were concluded.)
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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

I, Karen Ambroziak, Official Court Reporter for the 5th 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 in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Charleston County, South Carolina, on the 16th day of September, 2016.

December 29, 2016

Karen Ambroziak

Karen Ambroziak, RPR
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
2 COUNTY OF CHARLESTON) CASE NO. 2014-GS-10-4379

3

4 STATE OF SOUTH)
CAROLINA,)
5) Transcript of Record
Plaintiff,)
6)
vs.)
7) Date: December 5, 2016
ADRIAN LESSTON,)
8)
Defendant.)
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B E F O R E:

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The Honorable Kristi Harrington

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Denise J. Lauder, RPR

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Ninth Judicial Circuit

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1 A P P E A R A N C E S

2

3 REPRESENTING THE STATE OF SOUTH CAROLINA:

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5 CHRISTOPHER LIETZOW, ASSISTANT SOLICITOR

6 Ninth Circuit Solicitor's Office

7 101 Meeting Street

8 Charleston, SC 29401

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10 REPRESENTING THE DEFENDANT:

11 CHRISTOPHER GEEL, ESQUIRE

12 Public Defender's Office

13 101 Meeting Street

14 Charleston, SC 29401

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(No exhibits were offered or
marked for identification.)

1 (The following proceedings were held
2 December 5, 2016, in Charleston County Circuit
3 Court, 11:44 a.m.)

4 THE COURT: Lesston. Mr. Geel, are
5 you ready?

6 MR. GEEL: Yes, Your Honor.

7 ADRIAN LESSTON,

8 being first duly sworn, testified as follows:

9 THE COURT: So we are here on
10 2014-GS-10-4379 to impose sentence that I took your
11 plea on, on September 16th of this year. Do you
12 remember that, Mr. Lesston?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And I can sentence you --
15 we actually had a small bench trial?

16 THE DEFENDANT: Yes.

17 THE COURT: I can sentence you from
18 five years up to 30 years, fine you not more than
19 \$50,000, or both. Do you understand that's the
20 possible punishment?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And it's classified as a
23 serious offense. Do you understand what that
24 means?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Mr. Geel, I'm happy to hear
2 from you regarding sentencing.

3 MR. GEEL: Thank you, Judge.
4 Mr. Lesston is 25 years old. He has four children;
5 they are seven, five, four, and six months old.
6 He's a Charleston native. He's currently in
7 school, Judge. He's taking night classes in
8 reading, English, and math.

9 Judge, he is currently living in Ladson
10 with his child's mother, Amber. She is present,
11 but she's outside the courtroom with the
12 six-month-old.

13 Judge, I've been representing
14 Mr. Lesston since I started with the Public
15 Defender's Office in October 2014. He's grown up a
16 lot in that time. He's still young now, but
17 there's been a major change. Those years between
18 23 and 25 have been significant for him.

19 He doesn't have a substantial record.
20 He does have the one conviction for possession with
21 intent to distribute that makes this a second, but
22 that is all as far as convictions on his record.
23 That was a 2011 conviction. It was a 2009
24 incident, so that particular incident was seven
25 years ago, the only other conviction on his record.

1 He received a probationary sentence for
2 that. He completed probation successfully; he paid
3 off all of his fines and everything that he -- was
4 owed last summer 2015. So --

5 THE COURT: How did he do on
6 probation?

7 PROBATION: Your Honor, his probation
8 actually expired, as he stated. It just expired,
9 Your Honor.

10 MR. GEEL: Judge, I don't want to speak
11 for Probation, but we have a receipt where he had a
12 balance and he paid it all off December 2015.

13 PROBATION: He doesn't have a balance.

14 MR. GEEL: Right. He paid off all of
15 his fines and everything that was left to pay at
16 the end of his probation. So, obviously, Judge, it
17 goes without saying he's not currently on
18 probation.

19 Since this incident is itself quite
20 old, Your Honor, this is a March 2014 incident, the
21 current case that we are here for today, he's not
22 been in trouble since then. He has made a major,
23 major, change in his life. Like I said, he's in
24 Ladson living with his child's mother. He's not
25 living in the same neighborhood that he was before;

1 he's not associating with the same people that he
2 was before.

3 He has a car, he has a good driver's
4 license, he's been looking for work, he has a great
5 family and they support him all the way. They
6 sometimes help him get odd jobs to make money.

7 Judge, I just -- he understands that
8 this is a serious charge and I've talked to him
9 about the nature of this charge, and he understands
10 that if he walks out of here today, this will be --
11 he will have come very, very, very, very close to
12 getting active time.

13 What I would ask Your Honor to do is
14 suspend the active time sentence you imposed and
15 place him on probation. He's done probation
16 before, he knows what the consequences will be. He
17 knows that he absolutely cannot step out of line in
18 any way, shape, or form if Your Honor gives him
19 this chance.

20 I'm 100 percent confident that he will
21 do what he has to do. He is extremely --

22 THE COURT: Can he pass a drug test
23 today?

24 THE DEFENDANT: Yes.

25 MR. GEEL: He says he can, Your Honor.

1 THE COURT: When is the last time you
2 used crack cocaine?

3 THE DEFENDANT: Oh, I wasn't using
4 crack cocaine.

5 THE COURT: You were just distributing
6 it?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: When's the last time you
9 used marijuana?

10 THE DEFENDANT: I just had a -- had a
11 birthday on November 18th, so that's -- that day.

12 THE COURT: So you could potentially
13 test positive today?

14 THE DEFENDANT: Yes, ma'am. My
15 birthday just now was November 18th --

16 THE COURT: You understand there's not
17 a birthday exception for violating the law?

18 THE DEFENDANT: Yeah, you're right.
19 You're right.

20 THE COURT: Mr. Lesston, I don't know
21 how to make it more clear than I did on
22 September 16th that you're facing 30 years in the
23 Department of Corrections.

24 THE DEFENDANT: Yes, ma'am. Can you
25 repeat that?

1 THE COURT: You're aware in September
2 that you were facing 30 years in the Department of
3 Corrections on this charge. Do you understand?

4 THE DEFENDANT: Yes.

5 THE COURT: And you just told me that
6 you violated the laws of the State of South
7 Carolina while you were pending this charge.

8 THE DEFENDANT: Yes.

9 THE COURT: Your attorney just told me
10 that you've gotten your life back together and
11 you're following the straight and narrow and then
12 you tell me you've violated the law.

13 THE DEFENDANT: I didn't want to lie to
14 you.

15 THE COURT: I was going to drug test
16 you anyway, so --

17 THE DEFENDANT: Yes, ma'am, I didn't
18 want to lie to you.

19 THE COURT: Well, why would you want
20 to lie to me?

21 THE DEFENDANT: I didn't want to,
22 that's why I told you the truth.

23 THE COURT: You just told this man you
24 were going to tell the truth.

25 THE DEFENDANT: I did told the truth.

1 I told you I used marijuana on my birthday.

2 THE COURT: I understand.

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And so should I place you
5 on probation, you need to make sure that you tell
6 the probation officer. The fact that you even
7 think about lying is concerning to me. You should
8 always tell the truth.

9 THE DEFENDANT: Yeah, that's what I
10 did. I made sure I told you the truth.

11 THE COURT: Tell me what's going on
12 that you're violating the law still.

13 THE DEFENDANT: It just -- I just was
14 around friends that had weed, it just happened. I
15 just did it that day.

16 THE COURT: Let's drug test him.

17 PROBATION: Yes, Your Honor.

18 THE COURT: Hold on, one second. Just
19 marijuana, sir? I just want to make sure.

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: All right. Thank you.

22 (Whereupon there was a break in these
23 proceedings.)

24 MR. GEEL: Mr. Lesston would like to
25 make a statement.

1 THE COURT: All right.

2 THE DEFENDANT: Yes, ma'am. I also
3 have cocaine in my system, too.

4 THE COURT: Okay. Mr. Lesston, we had
5 an extensive dialogue about telling the truth.

6 THE DEFENDANT: Yes, ma'am, and I
7 apologize. I didn't want you to think that I had a
8 habit, but that's what it is.

9 THE COURT: Okay. Mr. Geel.

10 MR. GEEL: I have nothing further to
11 add, Judge.

12 THE COURT: All right.

13 MR. LIETZOW: May I address the Court?

14 THE COURT: I'm heard enough.

15 Mr. Lesston, anything before I impose
16 sentence?

17 THE DEFENDANT: Yes, ma'am. I'm just
18 -- basically, I apologize to my family for my
19 mistakes, or whatever. And, really, since I did
20 catch the charge like I was staying out of trouble.
21 Even though I may have back lapsed on the drugs or
22 anything, I still was staying out of trouble for my
23 kids, and stayed out of jail and everything. I'm
24 trying to -- I went back to school and get back on
25 the right track.

1 I guess being out sometimes and knowing
2 people who have drugs, just being -- just being
3 caught up, I guess, sometimes makes me just -- but
4 other than being in trouble and doing bad stuff,
5 you know, I wasn't doing that. I was trying to
6 stay out of trouble.

7 THE COURT: All right. Taking
8 everything into consideration, it is the order of
9 the Court, on 2014-GS-10-4379, that you be
10 committed to the State Department of Corrections
11 for a term of five years, give you credit for the
12 time that you have served.

13 Good luck to your, sir. I'll order
14 ATU.

15 (These proceedings were concluded at
16 12:09 a.m.)

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1 CERTIFICATE OF REPORTER

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I, Carol Denise Lauder, Registered
Professional Reporter and Notary Public for the
State of South Carolina at Large, do hereby certify
that the foregoing transcript is a true, accurate,
and complete record.

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 29th day of January, 2017 at
Charleston, Charleston County, South Carolina.

Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

T. BILANCIONE
North Charleston Police Department
PO Box 62558
North Charleston, SC 29419

DRUG ANALYSIS
April 07, 2014
SLED LAB: L14-04005
Your Case No: 2014008449
Incident Date: 3/14/2014
[S] Adrian Lesston

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

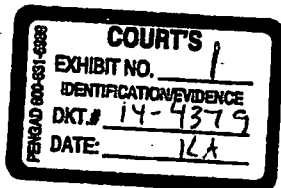
Sub # 1 On March 27, 2014, items were received in B240034 from Shawnta Middleton of the North Charleston Police Department.

Item: 1.1 Rock substance.

RESULTS:

Cocaine Base (Crack) (C-II) found in the sample tested; 1 tested. Net weight: 3.49 +/- 0.01 grams (53.85 +/- 0.15 grains). Confidence level for the weight is 99.7%.

This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.



Willie C. Smith, III
Willie C. Smith, III
Forensic Scientist

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P. & G.S. & F.C.
By *Julie J. Armstrong*
DEPUTY CLERK



FORM A
REPORT OF ANALYSIS FOR
CONTROLLED DANGEROUS SUBSTANCES
(Substance Found)

I, Willie C. Smith, III, am a Forensic Scientist employed by the South Carolina State Law Enforcement Division (SLED), certified by SLED as a Forensic Scientist qualified to perform testing and analysis for controlled and/or dangerous substances prohibited by law in this State by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environmental Control.

I have 13 years and 9 months experience as a Forensic Scientist. During that period, I have been qualified as an expert witness and testified in court no less than 69 times. I have received the following training as a Forensic Scientist.

B.S. Chemistry, University of South Carolina, Columbia, SC, 1995
B.S. Biology, University of South Carolina, Columbia, SC, 1991
Drug Enforcement Administration, Forensic Chemist Seminar, 2004
Training in Forensic Drug Analysis, South Carolina Law Enforcement Division, 2001
Basic Law Enforcement Training, South Carolina Criminal Justice Academy, 2000

Sub # 1 On March 27, 2014, items were received in B240034 from Shawnta Middleton of the North Charleston Police Department.

I tested the above item(s) using the following legally reliable forensic laboratory procedures approved by SLED:

☒ Chemical Test	☒ Gas Chromatography
☐ Microscopic Exam	☒ Mass Spectroscopy
☐ Infrared Spectroscopy	☒ Physical Test
☐ Visual Examination	☐ Published Literature

See Drug Analysis Report L14-04005 for Results.

Forensic Scientist


Willie C. Smith, III

Date: April 07, 2014

TEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.O.
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