

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

v.

DARELL ONEIL BOSTON,
Defendant.

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

) Case No(s): 2015-GS-10-06087

) Warrant No(s): 2015A1010201119

) Charge(s): Manufacturing cocaine base.

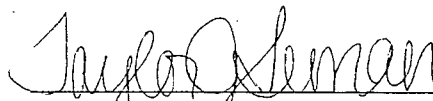
) MOTION TO RECONSIDER SENTENCE

PLEASE TAKE NOTICE that Defendant Boston, by and through his undersigned attorney, will ask the Presiding Judge of the Court of General Sessions at the Charleston County Judicial Center, as soon as the matter can be heard, to reconsider Defendant's sentence. A jury convicted Defendant Boston of manufacturing cocaine base on February 7, 2018, and the Honorable R. Markley Dennis imposed a sentence of 17 years. Defendant Boston respectfully requests a reconsideration of his sentence.

RECEIVED

FEB 20 2018

SC Court of Appeals



Taylor J. Seman, Assistant Public Defender
Charleston County Public Defender's Office
101 Meeting Street
Fifth Floor
Charleston, SC 29401
(843) 958-2007

ATTORNEY FOR DEFENDANT DARELL
BOSTON

February 16, 2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

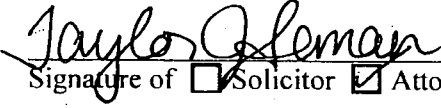
-vs-

Darrell Boston
DEFENDANT

IN THE COURT OF GENERAL SESSIONS
MOTION COVERSHEET

WARRANT/TICKET/

INDICTMENT #'s 2015A1010201119

Solicitor: <u>Nina Savas</u> , Bar No. _____ Address: _____ Phone: _____ E-mail: _____	Defendant's Attorney: <u>Taylor Seman</u> , Bar No. <u>101974</u> Address: <u>101 Meeting Street, 5th Floor</u> Phone: <u>843-958-1850</u> E-mail: <u>tseman@charlestoncounty.org</u>
☒ MOTION HEARING REQUESTED ☐ FORM MOTION, NO HEARING REQUESTED ☐ PROPOSED ORDER/CONSENT ORDER	
SECTION I: Hearing Information Nature of Motion: <u>Motion For New Trial</u> Estimated Time Needed: <u>10min</u> Court Reporter Needed: ☒ YES ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. <u></u> Signature of ☐ Solicitor ☒ Attorney for Defendant <u>2/14/18</u> Date submitted	

2018 FEB 14 PM 2:45
CLERK OF COURT
FILED

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF GENERAL SESSIONS

FOR THE NINTH JUDICIAL CIRCUIT

Case No(s): 2015-GS-10-06087

Warrant No(s): 2015A1010201119

STATE OF SOUTH CAROLINA

Charge(s): Manufacturing cocaine base

v.

DARELL ONEIL BOSTON,

Defendant.

MOTION FOR NEW TRIAL

PLEASE TAKE NOTICE that Defendant Boston, by and through his undersigned attorney, will ask the Presiding Judge of the Court of General Sessions at the Charleston County Judicial Center, as soon as the matter can be heard, to grant a new trial. A jury convicted Defendant Boston of manufacturing cocaine base on February 7, 2018. Defendant Boston requests a new trial because of Defendant Boston's denied motions and overruled objections. Defendant Boston respectfully requests a hearing on this matter.

Taylor J. Seman

Taylor J. Seman, Assistant Public Defender
Charleston County Public Defender's Office
101 Meeting Street
Fifth Floor
Charleston, SC 29401
(843) 958-2007

ATTORNEY FOR DEFENDANT DARELL
BOSTON

February 14, 2018
Charleston, South Carolina

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER: 2015-GS-10-06087

VS.

VERDICT FORM

Defendant.

We, the Jury, by unanimous consent, find the Defendant, **DARELL ONEIL BOSTON**, on the charge of **MANUFACTURING CRACK COCAINE**:

✓ GUILTY

NOT GUILTY

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SC Court of Appeals

3 Jay R. L.
PRESIDING JUROR

FEBRUARY 7, 2018

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

STATE VS.

DARELL ONEIL BOSTONAKA: Darrell O Boston, Darrell Oneil BostonRace: Black/African AmericanSex: MDOB: 1976

SS#: _____

Address: _____

City, State, Zip: North Charleston, SC 29405

DL# _____

SID# SC01211408*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

☒ CONVICTED OF or☐ PLEADSTO: Dist/PWID/Manuf Cocaine Base or MethIn violation of § 44-53-0375(B)(3) of the S.C. Code of Laws, bearing CDR Code # 3039☒ NON-VIOLENT☐ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☒ §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:

Nina L. Savas 100888
Nina L. Savas, Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

101974
SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 17 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. 62 days☐ 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: _____

FEB 20 2018

SC Court of Appeals

Recipient: _____

*Fine: _____ \$ _____

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

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

§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-§14-1-213 (Drug Court Surcharge) \$150 \$ 150-

§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 \$ 293.25☐ Appointed PD or appointed other counsel.

\$47.12 requires \$500-be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: Nina L. SavasCourt Reporter: Kath WeesePresiding Judge: Mark D. ...Judge Code: 2060Sentence Date: 2/7/18

ARREST WARRANT

2015A1010201119

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

THE STATE
against

Darell Oneil Boston

Address: North Charleston, SC 29405-

Phone: SSN:

Sex: M Race: B Height: 5'9" Weight: 150

DL State: SC DL #:

DOB: Agency ORI #: SC0100800

Prosecuting Agency: North Charleston Police Department

Prosecuting Officer: Officer Sherwood 0777

Offense: Drugs / Manufacture, distribution, etc. of cocaine base, 1st

Offense Code: 3014

Code/Ordinance Sec: 44-53-0375 (B) (1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant
on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
Charleston County Judicial Center
100 Broad Street, Suite 106
Charleston, SC 29401

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518Personally appeared before me the affiant Officer Sherwood / L. Brazil who
being duly sworn, deposes and says that defendant Darell Oneil Boston
did within this county and state on or about 3/7/2015 violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Charleston)
in the following particulars:

DESCRIPTION OF OFFENSE: Drugs / Manufacture, distribution, etc. of cocaine base, 1st

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

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SC Court of Appeals

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Charleston

Affiant's Address: 2500 City Hall Lane
North Charleston, SC 29406-

Affiant's Telephone:

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 3/7/2015 defendant Darell Oneil Boston

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Charleston) as set forth below.

DESCRIPTION OF OFFENSE: Drugs / Manufacture, distribution, etc. of cocaine base, 1st

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.

Sworn to and subscribed before me:

on 3/7/2015

Signature of Issuing Judge
Priscilla Bridges Baldwin
Judge Code: 5749

(L.S.)

Judge's Address: 3870 Leeds Avenue, Suite 106
North Charleston, SC 29405-7469

Judge's Telephone: (843) 746-9822

Issuing Court ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

BAIL set by

WITNESSES

Judge Baddewi
on 3-7-15
Type and Amount: 50,00
Name of Surety: [Signature]

Name: _____
Address: _____
Telephone: _____



PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____
Decision: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, not pros., etc.)

Name: _____
Address: _____
Telephone: _____

Disposition: _____
Sentence: _____

Name: _____
Address: _____
Telephone: _____

JURORS

Name: _____
Address: _____
Telephone: _____

CODEFENDANTS

2015 MAR 16 PM 2:31
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

NLS/0302503
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2015-007705

ARREST WARRANT NUMBER

2015A1010201119

DATE OF ARREST

03/07/2015

ACTION OF GRAND JURY

TRUE BILL

[Signature] NOV -13 2015
Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015-GS-10-06087

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2015

THE STATE

VS.

DARELL ONEIL BOSTON
B/M DOB 09/11/1976

Indictment for

MANUFACTURE CRACK COCAINE

SC Code: § 44-53-0375(B)(1)
CDR Code: 3014

FILED

11/17/2015 9:27:55 AM
JULIE J. ARMSTRONG
CLERK OF COURT

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FEB 20 2018
SC Court of Appeals

STATE OF SOUTH CAROLINA

**COUNTY OF CHARLESTON
CITY OF NORTH CHARLESTON**

AFFIDAVIT

**OCA# 2015007705
Pfc. J. Sherwood**

Personally appeared before me, a magistrate of this County, one _____
who, first being duly sworn, deposes and says that (name of the defendant)

L. BRAZIL

Darrell B
DARRELL BOSTON

Did within this County and State on the 6th day of March 2015, violate the criminal laws
of the State of South Carolina in the following particulars:

**DESCRIPTION OF OFFENSE
MANUFACTURING COCAINE BASE
VIOLATION OF SECTION 44-53-375**

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s)
set forth, and that such probable cause is based on the following facts:

That on March 6, 2015, at approximately 7:00 P.M., while at 1819 Clements Avenue, which is located in
the City of North Charleston, County of Charleston, State of South Carolina, the defendant, **DARRELL
BOSTON** did commit the offense of **MANUFACTURING COCAINE BASE** in violation of Section
44-53-375 of the South Carolina Code of Laws of 1976, as amended. In that the defendant did willfully,
unlawfully have in his possession and under his complete control approximately 7.2 grams of an off white
rock like substance. This substance was just manufactured in the microwave at this location.

Facts to establish the aforesaid are that officers were at the above mentioned address in reference to a
drug complaint. Officers were able to secure a search warrant for the above mentioned location. After
officers conducted a search of the apartment they located 7.2 grams of off white rock like substance,
which field-tested presumptive for cocaine. This substance was found inside of a Pyrex measuring cup
that was still hot to the touch. The microwave also field-tested presumptive for cocaine, which is
consistent with the manufacturing of "crack" cocaine. Post Miranda warning the defendant and co-
defendant stated they had knowledge of 2650 Carner Avenue (Military Magnet High School), which was
within a 1/2 mile of this location.

Sworn to and Subscribed before me
this _____ day of **MAR 07 2015**
2015

[Signature]

Signature of Judge

[Signature]

(AFFIANT)

Address: 2500 City Hall Ln.
N. Charleston, SC 29418
Phone: 554-5700

STATE OF SOUTH CAROLINA

INDICTMENT

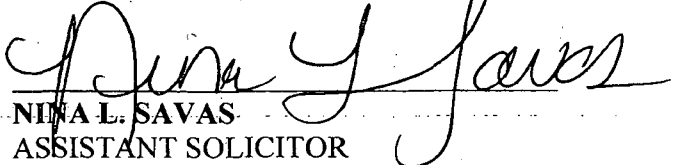
COUNTY OF CHARLESTON

At a Court of General Sessions, convened on November 2, 2015, the Grand Jurors of Charleston County present upon their oath:

Manufacture Crack Cocaine

The defendant, Darell Oneil Boston, did on or about March 7, 2015, in Charleston County, South Carolina, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase, or possess with the intent to manufacture, distribute, dispense, deliver, or purchase Crack Cocaine, a cocaine base, in violation of the provisions of Section 44-53-370. All in violation of 44-53-0375(B)(1) 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.


NINA L. SAVAS
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF GENERAL SESSIONS
MOTION COVERSHEET

STATE OF SOUTH CAROLINA

-vs-

Darell Oncil Boston

DEFENDANT

WARRANT/TICKET/

INDICTMENT #'s

2015A1010201114

2015A1010201116

2015A1010201119

Solicitor:

Nina Savas, Bar No.

Address:

Phone:

E-mail:

Defendant's Attorney:

Taylor Seman, Bar No. 101974

Address:

101 Meeting Street, 5th Floor

Phone: 843-958-1850

E-mail: tseman@charlestoncounty.org

☒ MOTION HEARING REQUESTED

☐ FORM MOTION, NO HEARING REQUESTED

☐ PROPOSED ORDER/CONSENT ORDER

SECTION I: Hearing Information

Nature of Motion: Motion To Suppress Evidence

Estimated Time Needed: 20min

Court Reporter Needed: ☒ YES/ ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Taylor Seman

Signature of ☐ Solicitor ☒ Attorney for Defendant

11/20/2017

Date submitted

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

v.

DARELL ONEIL BOSTON,

Defendant.

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

Case No(s): 2015-GS-10-06082; 2015-GS-10-06086; 2015-GS-10-06087

Warrant No(s): 2015A1010201114, 2015A1010201116, 2015A1010201119

Charge(s): Manufacturing cocaine base, possession with intent to distribute cocaine base, possession with intent to distribute cocaine base within a half-mile proximity of a school

MOTION TO SUPPRESS EVIDENCE

PLEASE TAKE NOTICE that Defendant Boston, by and through his undersigned attorney, will move before the Presiding Judge of the Court of General Sessions at the Charleston County Judicial Center, as soon as the matter can be heard, to suppress all evidence that the North Charleston Police Department seized on March 6, 2015 at 1819 Clements Avenue Apartment 2. Defendant Boston requests that this Court suppress the evidence on the grounds that the search violated Defendant Boston's rights to be free from unreasonable searches and seizures afforded by both the Fourth Amendment to the United States Constitution and Article 1 § 10 of the South Carolina Constitution. Additionally, Defendant Boston asserts that the search was an unreasonable invasion of his privacy according to Article 1 § 10 of the South Carolina Constitution.

FILED
CLERK OF COURT
JULIE A. IRONG

2017 NOV 20 PM 2:58

Taylor J. Seman

Taylor J. Seman, Assistant Public Defender
Charleston County Public Defender's Office
101 Meeting Street
Fifth Floor
Charleston, SC 29401
(843) 958-2007

ATTORNEY FOR DEFENDANT DARELL
BOSTON

November 20, 2017
Charleston, South Carolina

FILED
2017 NOV 20 PM 2:58
CLERK OF COURT
BY *[Signature]*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case No(s): 2015-GS-10-06082; 2015-GS-10-
	)	06086; 2015-GS-10-06087
	)	Warrant No(s): 2015A1010201114,
	)	2015A1010201116, 2015A1010201119
STATE OF SOUTH CAROLINA	)	Charge(s): Manufacturing cocaine base,
	)	possession with intent to distribute cocaine base,
v.	)	possession with intent to distribute cocaine base
	)	within a half-mile proximity of a school
DARELL ONEIL BOSTON,	)	
	)	MEMORANDUM IN SUPPORT OF
Defendant.	)	MOTION TO SUPPRESSE EVIDENCE

Defendant Darell Boston respectfully submits this Memorandum in Support of his Motion to Suppress Evidence and requests that this Court grant his motion.

For over two years, the State has been attempting to sustain after-the-fact justifications for a warrantless and unconstitutional search. None exist. Now, the State asks this court to use illegally obtained evidence against Boston at trial. This Court should suppress the evidence.

FACTS

On March 6, 2015, at about 5:25 PM, North Charleston police officers Sherwood and Etminan finished a traffic stop at Carner Avenue and Clements Avenue. *See* Exhibit 1, a true and correct copy of the Incident Detail Report dated Mar. 6, 2015. As soon as the officers finished the traffic stop, they noticed Darell Boston and William Holmes leave a taxi and go into Denise Holman's apartment at 1819 Clements Avenue Apartment 2. *See* Exhibit 2, a true and correct copy of an e-mail from Assistant Solicitor Nina Savas to Ben C. Lewis & Luke J. Malloy (Jan. 23, 2017). Officer Sherwood recognized Holman's apartment because he had spoken with her the week before; "during an area check, he approached [Holman] to ask her if she had any concerns and she told him that she had a crackpipe and gave it to [him]." *See id.*

FILED
 2015 APR 14 12
 CLERK OF COURT
 2

Boston and Holmes could only have been inside Holman's apartment for a matter of seconds when officers approached the apartment and knocked on the door, presumably because of a "drug complaint." *See* Exhibit 3, a true and correct copy of the Incident Report dated Mar. 6, 2015. Later, Officer Sherwood clarified that the so-called drug complaint did not actually involve drugs at all. *See* Exhibit 2. In fact, the complaint happened a week earlier, when Kyle Franklin, the landlord, complained about feeling threatened by an individual that did not live there. *See* Exhibit 4, a true and correct copy of the Incident Report dated Feb. 27, 2015.

Holman answered the door and allowed the officers to step inside the threshold. *See* Exhibit 2; *see also* Exhibit 5, a true and correct copy of an e-mail from Assistant Solicitor Nina Savas to Ben C. Lewis & Taylor J. Seman (Nov. 16, 2017). From there, things escalated quickly. First, Boston and Holmes were "extremely nervous to the point of there [*sic*] hands shaking and labored breathing." Exhibit 3. Then officers, standing in the living room, noticed "two plastic bags with . . . powder residue" on Holman's kitchen counter. Exhibit 3; *see also* Exhibit 6, a true and correct copy of a picture of the bags. Then, officers say they performed a protective sweep. Exhibit 2.

In a matter of minutes, officers detained Boston and Holmes. Exhibit 2. Boston and Holmes sat in another officer's police car while officers sought a search warrant. *Id.* In the warrant, Officer Sherwood wrote that officers approached Holman's apartment after a "complaint about drug deals [*sic*] using the apartments for drug sales." *See* Exhibit 7, a true and correct copy of the search warrant. A magistrate signed the search warrant at 6:49 PM, and officers went back in to Holman's apartment. *See id.* Officers then recovered several items of contraband, including a Pyrex glass measuring cup containing what appeared to be cocaine base. Exhibit 3. Officers arrested Boston and Holmes for manufacturing cocaine base, possession of cocaine base with intent to distribute, and possession of cocaine base with intent to distribute within a half-mile proximity of a school.

Officers released Holman without further inquiry because “she mentally handicap unable to comprehend the situation at hand [sic].” Exhibit 3.

LEGAL STANDARD AND BURDEN OF PROOF

The Fourth Amendment to the United States Constitution protects people against unreasonable searches and seizures. Indeed,

[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV. In general, the Fourth Amendment prevents the government from searching a person, his home, or his property, without a warrant, unless certain exceptions apply.

Katz v. United States, 389 U.S. 347 (1967). If the government does not comply with the Fourth Amendment during a search, the government may not use any evidence it recovers. *Mapp v. Ohio*, 367 U.S. 643 (1961). The purpose of this exclusionary rule is to deter bad-faith violations of the Fourth Amendment. *Rakas v. Illinois*, 439 U.S. 128, 168 (1978) (White, J., dissenting).

“[T]he federal Constitution sets the floor for individual rights while the state constitution establishes the ceiling.” *State v. Forrester*, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (S.C. 2001). South Carolina’s Constitution expands the rights under the U.S. Constitution to protect against unreasonable invasions of privacy. See S.C. CONST. art. I, § 10. South Carolina is one of only a handful of states that have written a right to privacy into constitutional provisions prohibiting unreasonable searches and seizures. *State v. Counts*, 413 S.C. 153, 168, 776 S.E.2d 59, 67–68 (S.C. 2015). South Carolina’s constitutional provisions are almost identical to the Fourth Amendment, with one crucial difference:

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures *and unreasonable invasions of privacy*, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and

particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained.

S.C. CONST. art. I, § 10 (emphasis added). This provision “creates a distinct privacy right that applies both within and outside the search and seizure context.” *State v. Counts*, 413 S.C. 153, 168, 776 S.E.2d 59, 68 (S.C. 2015). Ultimately, the South Carolina Constitution “favors an interpretation offering a higher level of privacy protection than the Fourth Amendment.” *Id.* at 168, 776 S.E.2d at 68; *State v. Weaver*, 374 S.C. 313, 322, 649 S.E.2d 479, 483 (S.C. 2007); *State v. Forrester*, 343 S.C. 637, 645, 541 S.E.2d 837, 841 (S.C. 2001). So a South Carolina court can exclude evidence even when a search complies with the Fourth Amendment. *State v. Weaver*, 374 S.C. 313, 322, 649 S.E.2d 479, 483 (S.C. 2007); *State v. Forrester*, 343 S.C. 637, 644, 541 S.E.2d 837, 841 (S.C. 2001).

ARGUMENT

I. Boston had a reasonable expectation of privacy in Holman’s apartment.

The Fourth Amendment protects Boston because he had a reasonable expectation of privacy in Holman’s apartment. To challenge a search according to the Fourth Amendment, a person must have a reasonable or legitimate expectation of privacy. *Minnesota v. Olson*, 495 U.S. 91, 95 (1990). An expectation of privacy meets this standard if it is “one that society is prepared to recognize as reasonable.” *Id.* at 95–96.

The United States Supreme Court is clear that a person can have a legitimate expectation of privacy in someone else’s home. *Minnesota v. Carter*, 525 U.S. 83, 89 (1998) (“a person may have a legitimate expectation of privacy in the house of someone else”); *Minnesota v. Olson*, 495 U.S. 91, 96–97, 98 (1990) (finding that the government had mistakenly assumed that “a place must be one’s ‘home’ in order for one to have a legitimate expectation of privacy”); *Rakas v. Illinois*, 439 U.S. 128, 142 (1978) (“a person can have a legally sufficient interest in a place other than his

own home”); *Jones v. United States*, 362 U.S. 257, 267 (1960) (“anyone legitimately on premises where a search occurs may challenge its legality by way of a motion to suppress, when its fruits are proposed to be used against him”), modified by *Rakas v. Illinois*, 439 U.S. 128 (1978). Indeed, a property interest is not a prerequisite to a Fourth Amendment challenge. *Minnesota v. Olson*, 495 U.S. 91, 99 (1990); *Rakas v. Illinois*, 439 U.S. 128, 143 (1978); *Katz v. United States*, 389 U.S. 347, 353 (1967).

Yet U.S. Supreme Court case law delineating the circumstances under which a person can have a reasonable expectation of privacy in another person’s home is complex and contradictory. First, in *Jones*, a guest successfully sought to suppress evidence seized from someone else’s apartment. *Jones v. United States*, 362 U.S. 257 (1960), modified by *Rakas v. Illinois*, 439 U.S. 128 (1978). Evans, the owner of the apartment, was out of town and had given Jones a key. *Id.* at 259. Jones had slept at Evans’s apartment “maybe a night” and stored two items of clothing there. *Id.* While Jones was staying there, federal narcotics officers seized drugs from the apartment. *Id.* at 258–59. Jones challenged the search as unconstitutional. *Id.* at 259. The U.S. Supreme Court held that Jones could use the protections of the Fourth Amendment to challenge a search of Evans’s apartment because he was “legitimately on the premises.” *Id.* at 267.

In *Rakas*, the Court limited its earlier holding in *Jones*. *Rakas v. Illinois*, 439 U.S. 128 (1978). The petitioners in *Rakas* were two passengers in someone else’s car. *Id.* at 129. Police officers searched the car and discovered evidence that inculpated petitioners in an armed robbery. *Id.* at 130. Petitioners challenged the search as unconstitutional. *Id.* at 130. The Court re-examined its own standard and decided that “the phrase ‘legitimately on the premises’ coined in *Jones* create[d] too broad a gauge for measurement of Fourth Amendment rights.” *Id.* at 142. Instead, the *Rakas* Court adopted the standard it had announced in *Katz v. United States*, 389 U.S. 347

(1967): “capacity to claim the protection of the Fourth Amendment depends not upon a property right in the invaded place but upon whether the person who claims the protection of the Amendment has a legitimate expectation of privacy in the invaded place.” *Id.* at 143. The Court rejected petitioners’ ability to challenge the search and claim the protections of the Fourth Amendment. *Id.* at 148.

In *Minnesota v. Olson*, the Court again expanded protections for guests according to the Fourth Amendment. *Minnesota v. Olson*, 495 U.S. 91 (1990). Respondent in *Olson* challenged a search of the Bergstroms’ duplex that resulted in his arrest and conviction for murder, armed robbery, and assault. *Id.* at 94. Respondent had been staying at the duplex with the Bergstroms’ permission. *Id.* at 93 n.6. He had a change of clothes there, but had never been left alone in the duplex. *Id.* at 93 n.6, 94. He did not have a key. *Id.* at 94. The Court found that respondent could challenge the search because “a houseguest has a legitimate expectation of privacy in his host’s home.” *Id.* at 98.

Finally, in *Minnesota v. Carter*, the Court held that guests did not have a reasonable expectation of privacy in a home used solely for a “business transaction.” *Minnesota v. Carter*, 525 U.S. 83 (1998). In *Carter*, two Chicago residents visited Thompson’s apartment in Minnesota. *Id.* at 85–86. The Chicagoans had never been to Thompson’s apartment before. *Id.* at 86. While all three people were inside the apartment, a police officer looked inside the window and saw them bagging cocaine. *Id.* at 85–86. Officers arrested all three. *Id.* at 85–86. Both Chicagoans tried to challenge the search of Thompson’s apartment as unconstitutional. *Id.* at 86. Both were unsuccessful and convicted at trial. *Id.* The Court upheld the lower court’s ruling and found that the Chicagoans did not have a reasonable expectation of privacy in Thompson’s apartment. *Id.* at 91. In its decision, the Court focused on the fact that the connection between the Chicagoans and

Thompson's apartment was commercial in nature. *Id.* at 90 ("While the apartment was a dwelling place for Thompson, it was for these respondents simply a place to do business."); *see also New York v. Burger*, 482 U.S. 691 (1987).

These decisions clearly show that whether a person has a reasonable expectation of privacy in a particular place is a fact-specific inquiry that is not subject to bright-line rules. Most recently in *Carter*, the Court explained that a guest's Fourth Amendment protections properly belong on a spectrum:

If we regard the overnight guest in *Minnesota v. Olson* as typifying those who may claim the protection of the Fourth Amendment in the home of another, and one merely "legitimately on the premises" as typifying those who may not do so, the present case is obviously somewhere in between. But the purely commercial nature of the transaction engaged in here, the relatively short period of time on the premises, and the lack of any previous connection between respondents and the householder, all lead us to conclude that respondents' situation is closer to that of one simply permitted on the premises.

Minnesota v. Carter, 525 U.S. 83, 91 (1998). The *Carter* Court considered factors establishing the Chicagoans' connection to Thompson's home, including the nature of the transaction there, the period of time that they were present, and the connection between the Chicagoans and Thompson.

Id.

Boston has a much stronger connection to Holman and her apartment than the guests in *Carter*. First, and most importantly, Boston will testify at the hearing on this motion that he has known Holman for about 15 years. Boston will also say that he has been to Holman's home for social purposes at least 30 times over a period of years. Additionally, Boston will tell this Court about his social relationship with Holman. Holman previously lived near Boston's cousin, and they were friends. Boston reasonably expected privacy in Holman's apartment.

The connection between Boston, Holman, and Holman's apartment is much like the connection in *State v. Missouri*, 361 S.C. 107, 603 S.E.2d 594 (S.C. 2004). In that case, Missouri

challenged the search of the Siberts' apartment, where he had been found "in the kitchen standing over several dishes of cooling crack cocaine." *Id.* at 110, 603 S.E.2d at 595. Missouri was visiting the apartment, but had not stayed overnight. *Id.* Missouri and Curtis Sibert were close friends and had known each other for many years. *Id.* Every once in a while, Curtis Sibert gave Missouri a key to the apartment. *Id.* Missouri lived nearby, but would visit the Siberts' apartment to "get away." *Id.* Despite the fact that he was not an overnight guest, the South Carolina Supreme Court held that Missouri had a reasonable expectation of privacy in the Siberts' apartment. *Id.* at 115, 603 S.E.2d at 597-98. The same is true here.

Further, policy reasons support a finding that Boston had a reasonable expectation of privacy in this case. Courts properly consider policy reasons when determining whether conduct implicates or violates Fourth Amendment prohibitions. *See, e.g., Minnesota v. Carter*, 525 U.S. 83, 108 (1988) (Ginsburg, J., dissenting); *Rakas v. Illinois*, 439 U.S. 128, 168-69 (1978) (White, J., dissenting). Justice White's dissent in *Rakas* is powerful and pertinent here:

This decision invites police to engage in patently unreasonable searches every time an automobile contains more than one occupant. Should something be found, only the owner of the vehicle, or of the item, will have standing to seek suppression, and the evidence will presumably be usable against the other occupants. The danger of such bad faith is especially high in cases such as this one where the officers are only after the passengers and can usually infer accurately that the driver is the owner. The suppression remedy for those owners in whose vehicles something is found and who are charged with crime is small consolation for all those owners *and* occupants whose privacy will be needlessly invaded by officers following mistaken hunches not rising to the level of probable cause but operated on in the knowledge that someone in a crowded car will probably be unprotected if contraband or incriminating evidence happens to be found. After this decision, police will have little to lose by unreasonably searching vehicles occupied by more than one person.

Rakas v. Illinois, 439 U.S. 128, 168-69 (1978) (White, J., dissenting). Finding that Boston lacks a reasonable expectation of privacy in Holman's apartment has important and far-reaching negative

implications, because unlike the owner and co-defendant in *Carter*, 525 U.S. 83 (1998), Holman is not Boston's co-defendant. If Boston and Holmes can't challenge the search, no one can.

II. Even if Defendant Boston did not have a reasonable expectation of privacy in Holman's apartment, he is still entitled to challenge the search according to the heightened privacy protections afforded by the South Carolina Constitution.

The inquiry does not end if Boston lacks a reasonable expectation of privacy. South Carolina's constitutional "provision protecting unreasonable invasions of privacy necessarily requires some analysis of the privacy interests involved when a warrantless seizure is made on private property." *State v. Counts*, 413 S.C. 153, 172, 776 S.E.2d 59, 69. "The focus in the state constitution is on whether the invasion of privacy is reasonable, regardless of the person's expectation of privacy in the [place] to be searched." *State v. Weaver*, 374 S.C. 313, 322, 649 S.E.2d 479, 483 (S.C. 2007). Additionally, Boston can challenge the search warrant even absent a reasonable expectation of privacy. *State v. McKnight*, 291 S.C. 110, 115 352 S.E.2d 471, 474 (S.C. 1987); *State v. Freeman*, 319 S.C. 110, 118 n.7, 459 S.E.2d 867 (S.C. Ct. App. 1995). Based on the false testimony in the affidavit used to obtain the search warrant, *see* Exhibit 7, and the other information in the affidavit that was tainted by the initial unconstitutional entry, *see Murray v. United States*, 487 U.S. 533 (1988), Boston has a legitimate challenge to the sufficiency of the search warrant. For these reasons and the reasons set forth below, North Charleston police officers violated Boston's right to privacy according to the South Carolina constitution.

III. North Charleston Police Department officers conducted an improper knock-and-talk.

North Charleston Police Department officers conducted an improper and unconstitutional knock-and-talk. A knock-and-talk occurs when officers proactively approach a person's home and knock on the door to confront him with an accusation of illegal activity. *See, e.g., State v. Counts*, 413 S.C. 153, 158, 776 S.E.2d 59, 62 (S.C. 2015). In general, knock-and-talks are permissible according to both the United States and South Carolina constitutions. *Id.* at 161, 776 S.E.2d at 64.

A knock-and-talk is not a search. *State v. Bash*, 419 S.C. 263, 273, 797 S.E.2d 721, 728 (S.C. 2017). Still, many courts and scholars have recognized the potential for officers to abuse this tactic. *See, e.g., id.* at 164, 776 S.E.2d at 65 (citing the scholarly proposition that “[t]he potential for abuse arises when police attempt to gain access for consensual searches and instead provoke exigencies that normally validate a warrantless search”). Because of this potential for abuse, the South Carolina Supreme Court has found that knock-and-talks without reasonable suspicion violate the higher level of privacy that the South Carolina Constitution affords. *Id.* at 172, 776 S.E.2d at 69. In other words, knock-and-talks in South Carolina require reasonable suspicion. *Id.* at 172, 776 S.E.2d at 70.

Here, reasonable suspicion does not exist. The State asserts several reasons for the knock-and-talk. The Incident Report states that officers approached Holman’s apartment because of a “drug complaint.” *See* Exhibit 3. However, the complaint did not involve drugs and occurred over a week before, at a different apartment. *See* Exhibit 4. Over a year later, Officer Sherwood remembered that he also recognized Defendant Boston from a “known drug house.” *See* Exhibit 8, a true and correct copy of an e-mail from Assistant Solicitor Nina Savas to Ben C. Lewis & Michael R. Loignon (Nov. 16, 2016). This, the State asserts, is enough to prove reasonable suspicion sufficient to approach Holman’s apartment. It is not.

Reasonable suspicion is a “reasonable and articulable suspicion that the person seized is engaged in criminal activity.” *United States v. Foster*, 634 F.3d 243, 246 (4th Cir. 2011). “Just as an officer’s knowledge of a suspect’s past arrests or convictions is inadequate to furnish reasonable suspicion; so too is knowledge that a suspect is merely under investigation, which is an even more tentative, potentially innocuous step towards determining criminal activity.” *Id.* at 247.

Even assuming that officers knew Boston's criminal history or association with a "known drug house," Exhibit 8, that is not enough to prove reasonable suspicion sufficient to approach Holman's apartment. Additionally, the so-called drug complaint upon which the Incident Report relies does not exist. *See* Exhibit 3; Exhibit 4. The State can assert no constitutionally permissible reason for its belief that criminal activity was occurring in Holman's apartment.

IV. North Charleston Police Department officers conducted a warrantless search, and no exception to the warrant requirement applies.

"Only in a few specifically established and well-delineated situations will a warrantless search withstand constitutional scrutiny, even when law enforcement has probable cause to conduct it. The burden rests on the prosecution to establish the existence of such an exceptional situation." *State v. Brown*, 289 S.C. 581, 587, 347 S.E.2d 882, 885 (S.C. 1986). Here, the State relies on three exceptions to the warrant requirement: consent, plain view, and exigent circumstances. None apply.

A. Holman did not effectively consent to North Charleston Police Department officers' search of her apartment.

North Charleston police officers did not have effective consent to search Holman's apartment. Consent is only an exception to the warrant requirement when it is free and voluntary. *Bumper v. North Carolina*, 391 U.S. 543, 548 (1968). Whether consent is free and voluntary is a question of fact determined by the totality of the circumstances. *Schneckloth v. Bustamonte*, 412 U.S. 218, 248-49 (1973). The State has the burden to prove that Holman's consent was free and voluntary. *Bumper v. North Carolina*, 391 U.S. 543, 548 (1968). "If a consensual search is preceded by a Fourth Amendment violation, the government must prove both the voluntariness of the consent under the totality of the circumstances and that there was a break in the causal connection between the illegality and the evidence obtained." *United States v. McCurdy*, 40 F.3d 111, 1119 (10th Cir. 1994). Here, the search of Holman's apartment was preceded by an

unconstitutional and illegal knock-and-talk, *see supra* § III; since there was very little time between the knock-and-talk and the search, no such break occurred. Even if it had, though, Holman's consent was not voluntary. Finally, even if Holman's consent was voluntary, the officers' search exceeded the scope of her consent.

1. *Holman's consent was not effective because it was not voluntary.*

Holman did not give free and voluntary consent. In determining whether consent was free and voluntary under the totality of the circumstances, courts should consider "evidence of minimal schooling, low intelligence, and the lack of any effective warnings to a person of his rights." *Schneckloth v. Bustamonte*, 412 U.S. 218, 248 (1973). Intelligence, mental state, and mental illness are relevant to determine whether consent has been freely and voluntarily given. *United States v. McCurdy*, 40 F.3d 1111, 1119 (10th Cir. 1994) ("In determining whether a consent to search is voluntary, a court should consider, *inter alia*, physical mistreatment, use of violence, threats, threats of violence, promises or inducements, deception or trickery, and the physical and mental condition and capacity of the defendant within the totality of the circumstances."); *United States v. Duran*, 957 F.2d 499, 503 (7th Cir. 1982) ("[A fragile emotional state] bears on voluntariness."); *United States v. Elrod*, 441 F.2d 353, 355 (5th Cir. 1971) ("The question is one of mental awareness so that the act of consent was the consensual act of one who knew what he was doing and had a reasonable appreciation of the nature and significance of his actions."); *Welch v. United States*, 466 A.2d 829, 843-44 (D.C. 1983) ("Relevant factors in making this [voluntariness] determination include the age of the person, his or her education, mental and physical condition, whether he or she was under arrest, the length and nature of the interrogation, and whether he or she was told of the right to refuse to consent."); *State v. Allies*, 621 P.2d 1080, 1086 (Mont. 1980) ("[A] defendant's mental condition at the time of executing a consent to search is a factor to be

considered in the totality of the circumstances.”); *State v. McDowell*, 407 S.E.2d 200, 208 (N.C. 1991) (“[A] person’s subnormal mental capacity is but *one factor* to be considered in determining whether a knowing and intelligent waiver of rights has been made.”); *State v. Sondergaard*, 938 P.2d 351, 355 (Wash. Ct. App. 1997) (“[L]ack of capacity is, by itself, a sufficient basis on which to find a consent to search involuntary.”).

Despite the State’s contention to the contrary, Holman did not have the mental capacity to consent to a search of her apartment. In the Incident Report, Officer Sherwood wrote that “After speaking with Mrs. Holman officers found that she mentally handicap [*sic*] unable to comprehend the situation at hand. She released due to this.” Exhibit 3. Further, officers clearly did not believe that Holman’s consent was effective because they sought a search warrant to re-enter her apartment. *See* Exhibit 7. If Holman’s consent truly was free and voluntary, officers would not have needed a warrant.

2. *If Holman’s consent was effective, the scope of the consent was not broad enough to permit the subsequent intrusion.*

Even if this Court finds that Holman’s consent was effective, the search was still not lawful because it exceeded the scope of her consent. According to the South Carolina Constitution, people can limit the scope of the searches to which they consent. *State v. Forrester*, 343 S.C. 637, 648, 541 S.E.2d 837, 843 (S.C. 2001); *State v. Mattison*, 352 S.C. 577, 585, 575 S.E.2d 852, 856 (S.C. Ct. App. 2003). “The standard for measuring the scope of a suspect’s consent under the Fourth Amendment is that of ‘objective’ reasonableness—what would the typical reasonable person have understood by the exchange between the officer and the suspect?” *Florida v. Jimeno*, 500 U.S. 248, 251 (1991). If a search exceeds the scope of a person’s consent, the search is unreasonable. *State v. Forrester*, 343 S.C. 637, 648, 541 S.E.2d 837, 843 (S.C. 2001). For example, in *Forrester*, an officer asked to search Forrester’s purse. *Id.* at 640, 541 S.E.2d at 839. Forrester kept the purse

in her hand, but opened the purse to let the officer see inside. *Id.* at 640–41, 541 S.E.2d at 839. Without asking permission, the officer “took the purse, felt it inside and out, tore out the bottom lining, and discovered [drugs].” *Id.* at 641, 541 S.E.2d at 839. The South Carolina Supreme Court suppressed the evidence because the officer “exceeded the scope of Forrester’s consent when he proceeded beyond the visual inspection of the purse granted by Forrester to an intense physical examination of the purse.” *Id.* at 648, 541 S.E.2d at 843.

Here, Holman allowed officers to enter her apartment, but not to search. Consent to enter is not consent to search. *United States v. Weber*, 668 F.2d 552, 559–60 (1st Cir. 1981); *United States v. Beasley*, 199 Fed. App’x 418, 424 (6th Cir. 2006); *United States v. Mejia*, 1992 U.S. App. LEXIS 1999, at *11–12 (9th Cir. 1992). While Holman allowed officers to come inside, she clearly did not consent to a search. Otherwise, officers would not have needed a search warrant.

B. The officers’ initial entry was unconstitutional, and the incriminating nature of items that they saw was not obvious, so the plain view exception to the warrant requirement does not apply.

The State cannot use the plain view exception to the warrant requirement to justify its unconstitutional search. The plain view exception applies when a law enforcement officer sees and seizes an item that he plans to introduce as evidence against a suspect. *State v. Wright*, 391 S.C. 436, 443, 706 S.E.2d 324, 327 (S.C. 2011). In South Carolina, the plain view exception to the warrant requirement requires both that the initial intrusion giving officers the ability to see the items they seized was lawful and that those officers could immediately tell that the items were incriminating. *Id.* at 443, 706 S.E.2d at 327. “The ‘plain view’ doctrine may not be used to extend a general exploratory search from one object to another until something incriminating at last emerges.” *State v. Brown*, 289 S.C. 581, 588, 347 S.E.2d 882, 886 (S.C. 1986).

Here, the plain view exception does not apply. First and most importantly, the officers' initial intrusion was an unconstitutional knock-and-talk. *See supra* § III. Second, the nature of the items that officers could see from their entry point was not obviously incriminating. *See* Exhibit 6. Plastic bags are often found in kitchens. Any alleged "powder residue," Exhibit 3, would not have been visible from where officers stood in Holman's living room. The State's claim that plain view justifies the search must fail.

C. Exigent circumstances did not exist such that officers could search Holman's apartment without a warrant.

North Charleston police officers were not entitled to use the exigent circumstances exception to the warrant requirement to conduct a protective sweep. "A 'protective sweep' is a quick and limited search of premises, incident to an arrest and conducted to protect the safety of police officers or others. It is narrowly confined to a cursory visual inspection of those places in which a person might be hiding." *Maryland v. Buie*, 494 U.S. 325, 327 (1990); *see also* Exhibit 9, a true and correct copy of the North Charleston Police Department Policy & Procedure Manual ("Officers entering a house or other premises *to arrest an individual* may make a protective sweep of the premises for the limited purpose of discovering persons on the premises who might present a danger to the officers.") (emphasis added). Even then, an officer must have a reasonable belief based on facts that the area "harbored an individual posing a danger to the officer or others." *Maryland v. Buie*, 494 U.S. 325, 327 (1990).

Here, officers' protective sweep occurred before anyone was arrested and before anyone was even detained. *See* Exhibit 2. That officers noticed the supposedly incriminating plastic bags did not yet give officers probable cause to arrest anyone, including Boston. Further, Holman's apartment was quite small and Boston and Holmes were immediately visible to officers. Exhibit 3 ("As officers entered into this two room apartment two male subjects came quickly out of the

bathroom and kitchen area.”). Only after the protective sweep did officers arrest Boston and Holmes. No exigent circumstances justified this action.

CONCLUSION

“As I see it, the seeds of this bad search were sown when the police decided to use the ‘knock and talk’ technique. . . . That’s why, I suspect, they tried to gussy up their case (i.e., inject it with probable cause).” *United States v. Johnson*, 170 F.3d 708, 721 (7th Cir. 1999) (Evans, Circuit J., concurring). “[T]he Government cannot rely upon post hoc rationalizations to validate those seizures that happen to turn up contraband.” *United States v. Foster*, 634 F.3d 243, 249 (4th Cir. 2011). For the reasons and authority set forth in this Memorandum, this Court should suppress any evidence that officers found and seized at Holman’s apartment.

Respectfully submitted,



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DARELL BOSTON

November 22, 2017
Charleston, South Carolina

BY

CLERK OF COURT

2017 NOV 22 PM 4:42

FILED

EXHIBIT 1

MEMORANDUM IN SUPPORT OF DEFENDANT BOSTON'S MOTION TO SUPPRESS EVIDENCE

State of South Carolina

v.

Darell Boston

Case Nos. 2015-GS-10-06082; 2015-GS-10-06086; 2015-GS-10-06087

Incident Detail Report

Data Source: Data Warehouse
Incident Status: Closed
Incident number: 201500176027
Incident Date: 3/6/2015 17:09:03
Last Updated: 1/24/2017 15:36:01

Incident Information

Incident Type:	TS_Traffic Stop	Alarm Level:	
Priority:	Officer Initiated	Problem:	Traffic Stop
Determinant:		Agency:	Law
Base Response#:		Jurisdiction:	North Charleston PD-NCPD
Confirmation#:		Division:	NCZ1
Taken By:	Grant, April S	Battalion:	NCZ1
Response Area:	NCPD 101	Response Plan:	
Disposition:	LW_Written Warning	Command Ch:	
Cancel Reason:		Primary TAC:	
Incident Status:	Closed	Secondary TAC:	
Certification:		Delay Reason (if any):	
Longitude:	79966062	Latitude:	32846451

Incident Location

Location Name:	County:
Address:	Location Type:
Apartment:	Cross Street:
Building:	Map Reference:
City, State, Zip:	

Carner Av / Clements Av
NORTH CHARLESTON SC
29405
Charleston

Supplemental Information - Vehicle

VEHICLE 1

License: KUB278 - SC - PC:Passenger Car

Call Receipt

Caller Name:

Method Received:

Caller Type:

Call Back Phone:

Caller Location:

Time Stamps

Description	Date	Time	User	Elapsed Times	Time
Phone Pickup	3/6/2015	17:09:03			
1st Key Stroke	3/6/2015	17:09:03		Received to In Queue	00:00:00
In Waiting Queue	3/6/2015	17:09:03		Call Taking	00:00:00
Call Taking Complete	3/6/2015	17:09:03	Grant, April S	In Queue to 1st Assign	00:00:00
1st Unit Assigned	3/6/2015	17:09:03		Call Received to 1st Assign	00:00:00
1st Unit Enroute	3/6/2015	17:09:03		Assigned to 1st Enroute	00:00:00
1st Unit Arrived	3/6/2015	17:09:03		Enroute to 1st Arrived	00:00:00
Closed	3/6/2015	17:25:25	Dearborn, Alicia K	Incident Duration	00:16:22

Resources Assigned

Unit	Assigned	Disposition	Enroute	Staged	Arrived	At Patient	Delay Avail	Complete	Odm. Enroute	Odm. Arrived	Cancel Reason
NC232	17:09:03	LW_Written Warning	17:09:03		17:09:03			17:25:25			
NC227	17:14:37		17:14:37					17:15:00			
NC349	17:14:58	LW_Written Warning	17:14:58		17:15:33			17:25:25			
NC081	17:15:50	LW_Written Warning	17:15:50		17:15:50			17:25:25			

Personnel Assigned

No Personnel Assigned

Pre-Scheduled Information

No Pre-Scheduled Information

Transports

No Transports Information.

Transport Legs

No Transports Information

Comments

Date	Time	User	Type	Conf.	Comments
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3/6/2015	17:09:04	ASG	Response	[1] GRN VOLVO
3/6/2015	17:09:05	ASG	Response	Y [2] [Query] NC232, Vehicle: 1,SC,KUB278,SC,2013,PC
3/6/2015	17:14:37	ASG	Response	[3] Backed up NC232 with NC227
3/6/2015	17:14:47	ASG	Response	[4] NC232 FINAL BURTON/CLEMENTS
3/6/2015	17:14:58	ASG	Response	[5] Backed up NC232 with NC349
3/6/2015	17:15:50	ASG	Response	[6] Backed up NC232 with NC081

Address Changes
No Address Changes

Priority Changes
No Priority Changes

Alarm Level Changes
No Alarm Level Changes

Activity Log

Date	Time	Radio	Activity	Location	Log Entry	User
3/6/2015	17:09:03	NC232	At Scene	Camer Av / Clements		ASG
3/6/2015	17:09:04		Supplemental Information	Camer Av / Clements	Supplemental Vehicle record 287680 was added for license plate KUB278	ASG
3/6/2015	17:09:05	NC232	[Query]	Av	[Query] Vehicle: 1,SC,KUB278,SC,2013,PC	ASG
3/6/2015	17:12:04		Incident Late		Active incident marked as late	
3/6/2015	17:14:08	NC232	Reset System Timer		[Reset Reason] Status/ Safety Check [NextASG Late Check Time] 03/08/2015 17:19:08	ASG
3/6/2015	17:14:37	NC227	Dispatched	Camer Av / Clements		ASG
3/6/2015	17:14:37	NC227	Responding	Camer Av / Clements	Responding From = 3245 Rivers Av [STARASG OF AMERICA MOTEL HOTEL]	ASG
3/6/2015	17:14:37	NC232	Unit Backed up	Camer Av / Clements	Backed up with NC227	ASG
3/6/2015	17:14:58	NC349	Dispatched	Camer Av / Clements		ASG
3/6/2015	17:14:58	NC349	Responding	Camer Av / Clements	Responding From = Chicora Av / Carlton St	ASG
3/6/2015	17:14:58	NC232	Unit Backed up	Camer Av / Clements	Backed up with NC349	ASG
3/6/2015	17:15:00	NC227	Available	Camer Av / Clements		ASG
3/6/2015	17:15:33	NC349	At Scene	Camer Av / Clements		ASG
3/6/2015	17:15:50	NC081	Dispatched	Camer Av / Clements		ASG
3/6/2015	17:15:50	NC081	Responding	Camer Av / Clements	Responding From = 3739 Saint Johns Av	ASG
3/6/2015	17:15:50	NC081	At Scene	Camer Av / Clements		ASG
3/6/2015	17:15:50	NC232	Unit Backed up	Camer Av / Clements	Backed up with NC081	ASG
3/6/2015	17:18:33		Incident Late		Active Incident marked as late	
3/6/2015	17:20:27	NC349	Reset System Timer		[Reset Reason] Status/ Safety Check [NextASG Late Check Time] 03/06/2015-17:25:27	ASG
3/6/2015	17:20:39	NC232	Reset System Timer		[Reset Reason] Status/ Safety Check [NextASG Late Check Time] 03/06/2015 17:25:39	ASG
3/6/2015	17:25:25	NC232	Available	Camer Av / Clements		AKD
3/6/2015	17:25:25	NC349	Available	Av		AKD
3/6/2015	17:25:25	NC081	Available	Camer Av / Clements		AKD
3/6/2015	17:25:25		Response Closed	Camer Av / Clements	Response Disposition: LW_Written Warning	AKD

Edit Log
No Edits

Custom Time Stamps
No Custom Time Stamps

Custom Data Fields
No Custom Data Fields

Attachments
No Attachment

EXHIBIT 2

MEMORANDUM IN SUPPORT OF DEFENDANT BOSTON'S MOTION TO SUPPRESS EVIDENCE

State of South Carolina

v.

Darell Boston

Case Nos. 2015-GS-10-06082; 2015-GS-10-06086; 2015-GS-10-06087

Ben C. Lewis

om: Nina L. Savas
Sent: Monday, January 23, 2017 12:42 PM
To: Ben C. Lewis; Luke J. Malloy
Cc: Matthew D. McClellan
Subject: RE: State v. Boston & Holmes

Luke & Ben,

I just met with the officers involved in this case. Below is a recap of our meetings.

Sherwood-

Clarification on the complaint and call-out. The complaint dated 2/27/15 by Kyle Franklin was made prior to this incident. As a result of that complaint, the NCPD LT had officers do area checks of the apartment complex area. This is part of DMH housing and it is supposed to be single tenant residents. On the day of the incident, Sherwood, Hoose, and Etminan (Sherwood's trainee) were in that area on an unrelated matter. They do not recall what the specifics were of that unrelated call. However, while they were there, a taxi cab pulled up and the defendant's got out of the cab and went to the apartment. Sherwood recognized Boston from a known drug house on Osceola. Sherwood knew that Denise Hollman lived in Apt. 2 because a week or so prior to this incident, during an area check, he approached Denise to ask her if she had any concerns and she had told him that she had a crackpipe and gave it to Sherwood. At this incident because it was supposed to be solo residents and he knew that only Denise lived in that apartment he decides to check on her and knocked on the door. When he knocked on the door she answered the door and gave consent to enter. That is when he saw drugs in plain view on the kitchen counter and the defendants were holding things in their hands at the microwave in the kitchen, then ran to the bathroom, then came out to the living room. From there, he did a protective sweep of the apartment and detained the defendants. The rest is in the incident report.

Etminan-

Officer Etminan was training with Officer Sherwood. Sherwood was his FTO. Anything he did was under the direction of Sherwood. Etminan did not write a report. Etminan was standing at the door while Sherwood and Hoose entered during the initial entrance. He was directed by Sherwood to Mirandize the defendants. The defendants were placed in the rear of Smoak's patrol car. Etminan then Mirandized the defendants using his Miranda Card. He did not ask the defendant's any questions. He then returned to assist Sherwood and wrote the search warrant return and collected evidence.

Smoak-

Officer Smoak was an assisting officer. She did not write a report. Officer Smoak was present when Etminan Mirandized the defendants in her patrol car. Post-Miranda, she asked Holmes if he had children and he said yes. She asked if they went to Chicora Cherokee Elementary school, he said no, they went to the Military Magnet school. Smoak then asked Boston if he had kids that went to Magnet too, and he said no, they were younger. The dash cam was not downloaded to the system so we do not have a recording of it. Smoak then transported the defendants to jail.

Rough-

Rough simply responded as an assisting officer, but he did not do anything and left shortly after arriving. He did not write a report.

Nina L. Savas

Assistant Solicitor

EXHIBIT 3

MEMORANDUM IN SUPPORT OF DEFENDANT BOSTON'S MOTION TO SUPPRESS EVIDENCE

State of South Carolina

v.

Darell Boston

Case Nos. 2015-GS-10-06082; 2015-GS-10-06086; 2015-GS-10-06087

NORTH CHARLESTON POLICE SC0100800		INCIDENT REPORT		INFORMATION ONLY ☐		CASE NUMBER 2015007705		NCIC INQ. Yes ENTD. Yes	
INCIDENT TYPE		COMPLETED		FORCED ENTRY		PREMISE TYPE		UNITS ENTERED	
1. PWD COCAINE BASE (44-53-375)		☒ YES ☐ NO		☒ YES ☐ NO		APARTMENT/CONDO			
2.		☐ YES ☐ NO		☐ YES ☐ NO					
3.		☐ YES ☐ NO		☐ YES ☐ NO					
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) 1819 Clements AVE, NORTH CHARLESTON, SC						ZIP CODE 29405		WEAPON TYPE	
INCIDENT DATE		24 HR. CLOCK		TO		DATE		24 HR. CLOCK	
03/06/2015		17:25				03/06/2015		19:24	
DISPATCH DATE/TIME		DISPATCH TIME		TIME ARRIVED		DEPART. TIME		LOCATION NO.	
03/06/2015		17:30		17:30		19:30			
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE) SHERWOOD, OFFICER				RELATIONSHIP TO SUBJECT		RESIDENT		RACE SEX AGE ETH DAYTIME PHONE EVENING PHONE	
						☒ J ☐ W ☐ M			
ADDRESS 2500 CITY HALL LN.				CITY NORTH CHARLESTON		STATE SC		ZIP CODE 29406- LOCATION NO.	
VICTIM'S NAME (LAST, FIRST, MIDDLE) SOCIETY				RELATIONSHIP TO SUBJECT		RESIDENT		RACE SEX AGE ETH DAYTIME PHONE EVENING PHONE	
						☐ J ☐ W ☐ M			
HEIGHT WEIGHT HAIR EYES FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
ADDRESS 2500 CITY HALL LANE				CITY		STATE SC		ZIP CODE 29406- LOCATION NO.	
VISIBLE INJURY (MCT.1) ☐ YES ☒ NO EXPLAIN.				COMPLAINANT OF ANY NON-VISIBLE INJURIES ☐ YES ☒ NO					
VICTIM (NO.1) USING: ALCOHOL ☐ YES ☒ NO ☐ UNK. ☐ DRUGS: ☐ YES ☒ NO ☐ UNK. ☐ TYPE:									
TWO MAN VEH. ☐ ONE MAN VEH. ☐ DETECTIVE FLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐				*J-This Jurisdiction, S-State, O-Out of State, U-Unknown.					
NAME (LAST, FIRST, MIDDLE) HOLMES, WILLIAM				RACE SEX AGE ETH		DATE OF BIRTH		HEIGHT WEIGHT HAIR EYES	
				☐ B ☐ M		33 / N		600 240 BLD BRO	
FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				DAYTIME PHONE EVENING PHONE					
				843-619-8887 ☒ ☐					
ADDRESS 3307 OTTAWA AVENUE				CITY		STATE SC		ZIP CODE LOCATION NO.	
SUBJECT (NO.1) USING: ALCOHOL ☐ YES ☒ NO ☐ UNK. ☐ DRUGS: ☐ YES ☒ NO ☐ UNK. ☐ TYPE: COCAINE BASE				ARRESTED NEAR OFFENSE SCENE ☐ YES ☒ NO ☐		DATE/TIME OF OFFENSE 3/6/2015 5:25:49 PM		DATE/TIME OF ARREST 3/6/2015 5:59:00 PM	
TOTAL # ARRESTED 2									
DAY OF THE WEEK S M T W T F S UNK				HOW REPORTED		A- OFFICER DISPATCHED ON CALL B- REPORT TAKEN BY PHONE C- COMPLAINANT WALKED IN		D- COMPLAINT WRITTEN IN E- OFFICER INITIATED F- OTHER	
J. SHERWOOD									
ON March 6, 2015 OFFICERS WENT TO 1819 CLEMENTS AVE APARTMENT 2 IN REFERENCE TO DRUG COMPLAINTS UNDER CASE NUMBER 2015005889. OFFICERS ARRIVED ON SCENE AND KNOCKED ON THE DOOR. THE RENTER OF THE APARTMENT, DENISE HOLMAN, ANSWERED THE DOOR. OFFICERS ASKED IF THEY COULD ENTER HER HOME TO TALK, WHICH SHE GRANTED PERMISSION. AS OFFICERS ENTERED INTO THIS TWO ROOM APARTMENT TWO MALE SUBJECTS CAME QUICKLY OUT OF THE BATHROOM AND KITCHEN AREA. THEY WERE EXTREMELY NERVOUS TO THE POINT OF THERE HANDS SHAKING AND LABORED BREATHING. I, OFFICER SHERWOOD, COULD SEE ON THE COUNTER OF THE KITCHEN FROM THE LIVING ROOM TWO PLASTIC BAGS WITH A WITH POWDER RESIDUE. AS I APPROACHED THE KITCHEN I COULD ALSO SEE THAT THE MICROWAVE WAS OPEN									
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY					
TYPE (GROUP)		DRUGS/NARCOTICS		TOTAL VALUE					
STOLEN		\$0.00		\$0.00					
DAMAGED		\$0.00		\$0.00					
BURNED		\$0.00		\$0.00					
RECOVERED		\$0.00		\$0.00					
SEIZED		\$0.00		\$0.00					
SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		S.F. ☐		☒ ACTIVE ☐ ADM. CLOSED		ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18	
						☐ UNFOUNDED		☐ ARRESTED 18 AND OVER ☐ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE IN CUSTODY									
REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE	
SHERWOOD, JOSEPH PEYTON		3/6/2015 5:25:49 PM		157		HOOSE, FREDERICK REED		81	
ETMINAN, PAIAM		3/6/2015 5:30:00 PM		348		FOLLOWUP INVESTIGATION ☐ YES ☒ NO			

RULE 5 NLS 83

ADDITIONAL NARRATIVE

Agency Name: NORTH CHARLESTON POLICE DEPARTMENT	ORI #: SC0100800	Report Date/Time: 03/06/2015 17:25	OCA #: 2015007705
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J. SHERWOOD

WITH MORE WHITE POWDER RESIDUE INSIDE. THERE WAS ALSO A SCALE ON TOP OF THE MICROWAVE WITH A WHITE RESIDUE. THE SCALE AND MICROWAVE BOTH TESTED-PRESUMPTIVE FOR COCAINE. AS OFFICERS ENTERED INTO THE BATHROOM THEY COULD SEE A PYREX MEASURING CUP WITH STEAM COMING FROM IT AND A WHISK ON THE SIDE OF THE TUB. (SARGENT) HOOSE REQUESTED CONSENT TO SEARCH MR. HOLMES PERSON, WHICH HE GRANTED, AND LOCATED A BLACK DIGITAL SCALE AND A 0.2 GRAMS OF WHITE POWDER LIKE SUBSTANCE. OFFICERS THEN SECURED ALL OF THE SUBJECTS PENDING A SEARCH WARRANT. THIS SUBSTANCE ALSO TESTED PRESUMPTIVE FOR COCAINE.

OFFICERS THEN SECURED A SEARCH WARRANT AND EXECUTED IT. OFFICERS RECOVERED THE FOLLOWING ITEMS:

1. CLEAR PLASTIC BAGS WITH WHITE POWDER RESIDUE FROM RIGHT SIDE OF SINK ON COUNTER
2. BLACK DIGITAL SCALE FROM LEFT OF SINK ON KITCHEN COUNTER
3. PYREX MEASURING CUP FROM KITCHEN CABINET ABOVE LEFT SIDE OF SINK
4. ARM & HAMMER BAKING SODA FROM KITCHEN CABINET LEFT OF THE SINK
5. SILVER METAL WHISK FROM KITCHEN CABINET LEFT OF SINK
6. SILVER METAL WHISK WITH OFF WHITE ROCK LIKE SUBSTANCE ON IT FROM BATHROOM TUB
7. 7.2 GRAMS OF OFF WHITE ROCK LIKE SUBSTANCE FROM INSIDE OF ITEM 8 ON BATHROOM TUB
8. PYREX MEASURING CUP FROM BATHROOM TUB

DURING THE SEARCH OFFICERS TESTED THE MICROWAVE AND FOUND THAT IT FIELD-TESTED PRESUMPTIVE FOR COCAINE. THE PYREX MEASURING CUP FROM THE BATHROOM WAS ALSO HOT TO THE TOUCH. THIS IS CONSISTENT WITH THE MANUFACTURING OF "CRACK" COCAINE. BOTH SUBJECTS, WHICH WERE IDENTIFIED AS WILLIAM HOLMES AND DARRELL BOSTON, WERE READ THERE MIRANDA WARNING BY OFFICER ETMINAN AND UNDERSTOOD. NONE OF THE SUSPECTS WOULD CLAIM OWNERSHIP OF ANY OF THE ABOVE MENTIONED SUBSTANCES. OFFICER SMOKE LATER ASKED IF THEY KNEW OF ANY SCHOOLS IN THE AREA AND MR. HOLMES STATED HE HAD CHILD THAT WENT TO MILITARY MAGNET HIGH SCHOOL (2650 CARNER AVE). MR. BOSTON ALSO ACKNOWLEDGED HE KNEW OF THE SAME SCHOOL. THIS INCIDENT TOOK PLACE WITHIN 1/2 MILE OF 2650 CARNER AVE. BOTH SUSPECTS WERE CHARGED WITH POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE, MANUFACTURING COCAINE BASE, AND POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE WITH IN 1/2 MILE OF A SCHOOL. MR. HOLMES WAS ALSO CHARGED WITH POSSESSION OF COCAINE. ALL OF THE ABOVE MENTIONED SUBSTANCES FIELD-TESTED PRESUMPTIVE FOR COCAINE. OFFICERS TRANSPORTED BOTH SUBJECTS TO CHARLESTON COUNTY DETENTION CENTER. CHARLESTON COUNTY DETENTION OFFICERS CONDUCTED A STRIP SEARCH OF MR. HOLMES PER THERE POLICY. OFFICERS LOCATED .2 GRAMS OF WHITE POWDER LIKE SUBSTANCE AND 3 GRAMS OF GREEN PLANT LIKE MATERIAL FROM HIS BUTTOCKS. BOTH SUBSTANCES FIELD-TESTED PRESUMPTIVE. ALL OF THE WHITE POWDER LIKE SUBSTANCE WAS PLACED INTO BEST KIT NUMBER B247361 AND THE OFF WHITE ROCK LIKE SUBSTANCE WAS PLACED INTO BEST KIT NUMBER B247360 FOR SLED ANALYSIS. AFTER SPEAKING WITH MRS. HOLMAN OFFICERS FOUND THAT SHE MENTALLY HANDICAP UNABLE TO COMPREHEND THE SITUATION AT HAND. SHE RELEASED DUE TO THIS. THERE IS NOTHING FURTHER TO REPORT AT THIS TIME.

AGENCY: NORTH CHARLESTON
ORI #: SC0100600
Report Date/Time: 03/06/2015 17:26
Incident #: 2015007705

INCIDENT REPORT
ADDITIONAL OTHERS

PERSON TYPE SUSPECT	NAME (LAST, FIRST, MIDDLE) BOSTON, DARRELL, ONEIL					RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT J	RACE B	SEX M	AGE 38	D.O.B. 09/11/1976	ETH N
	HEIGHT 509	WEIGHT 150	HAIR BLK	EYES BRO	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
	ADDRESS 3315 FLORIDA AVE				CITY NORTH CHARLESTON	STATE SC	ZIP CODE 29405-	LOCATION NO.	DAYTIME PHONE F E		EVENING PHONE F E			
VIOLENCE ☐ YES ☐ NO ☐ EXPLAIN- COMPLAINT OF ANY NON-VIOLENCE ☐ YES ☐ NO ☐														
USING: ALCOHOL ☐ YES ☐ NO ☒ UNK. ☐ DRUGS: ☒ YES ☐ NO ☐ UNK. ☐ TYPE: COCAINE BASE "CRACK"														

PERSON TYPE	NAME (LAST, FIRST, MIDDLE)					RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE F E		EVENING PHONE F E			
VIOLENCE ☐ YES ☐ NO ☐ EXPLAIN- COMPLAINT OF ANY NON-VIOLENCE ☐ YES ☐ NO ☐														
USING: ALCOHOL ☐ YES ☐ NO ☐ UNK. ☐ DRUGS: ☐ YES ☐ NO ☐ UNK. ☐ TYPE:														

PERSON TYPE	NAME (LAST, FIRST, MIDDLE)					RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE F E		EVENING PHONE F E			
VIOLENCE ☐ YES ☐ NO ☐ EXPLAIN- COMPLAINT OF ANY NON-VIOLENCE ☐ YES ☐ NO ☐														
USING: ALCOHOL ☐ YES ☐ NO ☐ UNK. ☐ DRUGS: ☐ YES ☐ NO ☐ UNK. ☐ TYPE:														

PERSON TYPE	NAME (LAST, FIRST, MIDDLE)					RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE F E		EVENING PHONE F E			
VIOLENCE ☐ YES ☐ NO ☐ EXPLAIN- COMPLAINT OF ANY NON-VIOLENCE ☐ YES ☐ NO ☐														
USING: ALCOHOL ☐ YES ☐ NO ☐ UNK. ☐ DRUGS: ☐ YES ☐ NO ☐ UNK. ☐ TYPE:														

PERSON TYPE	NAME (LAST, FIRST, MIDDLE)					RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE F E		EVENING PHONE F E			
VIOLENCE ☐ YES ☐ NO ☐ EXPLAIN- COMPLAINT OF ANY NON-VIOLENCE ☐ YES ☐ NO ☐														
USING: ALCOHOL ☐ YES ☐ NO ☐ UNK. ☐ DRUGS: ☐ YES ☐ NO ☐ UNK. ☐ TYPE:														

PERSON TYPE	NAME (LAST, FIRST, MIDDLE)					RELATIONSHIP SUBJECT #1 #2 #3			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.									
	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAYTIME PHONE F E		EVENING PHONE F E			
VIOLENCE ☐ YES ☐ NO ☐ EXPLAIN- COMPLAINT OF ANY NON-VIOLENCE ☐ YES ☐ NO ☐														
USING: ALCOHOL ☐ YES ☐ NO ☐ UNK. ☐ DRUGS: ☐ YES ☐ NO ☐ UNK. ☐ TYPE:														

RULE 5 NLS 85

AGENCY:

ORI #:

NORTH CHARLESTON POLICE

SC0100800

Report Date / Time:

03/06/2015 17:25

Incident #:

2015007705

INCIDENT REPORT ADDITIONAL OFFENSES

UCR	OFFENSE	BIAS MOTIVATED	BIAS CODE	STATUS	OFFENDER
		☐		☐ Attempt ☐ Complete	
		☐		☐ Attempt ☐ Complete	
		☐		☐ Attempt ☐ Complete	
		☐		☐ Attempt ☐ Complete	
		☐		☐ Attempt ☐ Complete	
		☐		☐ Attempt ☐ Complete	

INCIDENT REPORT DRUGS

Code	Status	Quantity	Measure	Suspected Type	Check up to 3 types of activity for each							
					Using	Buy	Cultivating	Distributing	Exploiting Children	Operating	Possess	Transport
A	Z	7.2	GM	"CRACK" COCAINE	☐	☐	☐	☒	☐	☐	☒	☐
					☐	☐	☐	☐	☐	☐	☐	☐
					☐	☐	☐	☐	☐	☐	☐	☐
					☐	☐	☐	☐	☐	☐	☐	☐
					☐	☐	☐	☐	☐	☐	☐	☐
					☐	☐	☐	☐	☐	☐	☐	☐

 AGENCY ID
SC0100800

 CASE NUMBER
2015007705

RULE 5 NLS 86

AGENCY: NORTH CHARLESTON POLICE
 ORI #: SC0100800
 Report Date / Time: 03/06/2015 17:25
 Incident #: 2015007705

ADDITIONAL PROPERTY

STATUS: SEIZED	RELATED TO: VICTIM 1, SOCIETY		CLASS: DRUGS/NARCOTICS
DESCRIPTION: OFF WHITE ROCK LIKE SUBSTANCE		LOCATION:	
BRAND:	MODEL:	SERIAL NO.:	
UCR CODE: 35A	QUANTITY: 1	VALUE:	
DATE RECOVERED:	JURISDICTION STOLEN:	JURISDICTION RECOVERED:	

STATUS:	RELATED TO:		CLASS:
DESCRIPTION:		LOCATION:	
BRAND:	MODEL:	SERIAL NO.:	
UCR CODE:	QUANTITY:	VALUE:	
DATE RECOVERED:	JURISDICTION STOLEN:	JURISDICTION RECOVERED:	

STATUS:	RELATED TO:		CLASS:
DESCRIPTION:		LOCATION:	
BRAND:	MODEL:	SERIAL NO.:	
UCR CODE:	QUANTITY:	VALUE:	
DATE RECOVERED:	JURISDICTION STOLEN:	JURISDICTION RECOVERED:	

STATUS:	RELATED TO:		CLASS:
DESCRIPTION:		LOCATION:	
BRAND:	MODEL:	SERIAL NO.:	
UCR CODE:	QUANTITY:	VALUE:	
DATE RECOVERED:	JURISDICTION STOLEN:	JURISDICTION RECOVERED:	

STATUS:	RELATED TO:		CLASS:
DESCRIPTION:		LOCATION:	
BRAND:	MODEL:	SERIAL NO.:	
UCR CODE:	QUANTITY:	VALUE:	
DATE RECOVERED:	JURISDICTION STOLEN:	JURISDICTION RECOVERED:	

STATUS:	RELATED TO:		CLASS:
DESCRIPTION:		LOCATION:	
BRAND:	MODEL:	SERIAL NO.:	
UCR CODE:	QUANTITY:	VALUE:	
DATE RECOVERED:	JURISDICTION STOLEN:	JURISDICTION RECOVERED:	

AGENCY:

NORTH CHARLESTON POLICE

ORI #:

SC0100800

Report Date / Time:

03/06/2015 17:25

Incident #:

2015007705

ADDITIONAL PROPERTY ESTIMATE SHEET

PROPERTY EST.	TYPE (GROUP)						
	STOLEN						
	DAMAGED						
	BURNED						
	RECOVERED						
	SEIZED						
PROPERTY EST.	TYPE (GROUP)						
	STOLEN						
	DAMAGED						
	BURNED						
	RECOVERED						
	SEIZED						
PROPERTY EST.	TYPE (GROUP)						
	STOLEN						
	DAMAGED						
	BURNED						
	RECOVERED						
	SEIZED						
PROPERTY EST.	TYPE (GROUP)						
	STOLEN						
	DAMAGED						
	BURNED						
	RECOVERED						
	SEIZED						
PROPERTY							
STATUS:	SEIZED	RELATED TO: VICTIM 1, SOCIETY				CLASS: DRUGS/NARCOTICS	
DESCRIPTION		OFF WHITE ROCK LIKE SUBSTANCE				LOCATION	
BRAND		MODEL			SERIAL NO.		
UCR CODE	35A	QUANTITY			1		
DATE RECOVERED		JURISDICTION STOLEN			JURISDICTION RECOVERED		

EXHIBIT 4

MEMORANDUM IN SUPPORT OF DEFENDANT BOSTON'S MOTION TO SUPPRESS EVIDENCE

State of South Carolina

v.

Darell Boston

Case Nos. 2015-GS-10-06082; 2015-GS-10-06086; 2015-GS-10-06087

NORTH CHARLESTON POLICE
SC0100800

INCIDENT REPORT

INFORMATION
ONLY
☐

CASE NUMBER
2015006889

NCIC
INC. ENTG.

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM	
1. INFORMATION		☐ YES ☒ NO	☐ YES ☒ NO	HIGHWAY/ROAD/ALLEY		☒ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☐ Soc. Public ☐ Other ☐ Unknown ☐ Police Off.	
2.		☐ YES ☐ NO	☐ YES ☐ NO				
3.		☐ YES ☐ NO	☐ YES ☐ NO				
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) 1819 Clements AVE, NORTH CHARLESTON, SC				ZIP CODE 29405	WEAPON TYPE		
INCIDENT DATE 02/27/2015	24 HR. CLOCK 16:30	TO /	DATE 02/27/2015	24 HR. CLOCK 16:52	LOCATION NO.		
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	
		#1 #2 #3					
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.	
VICTIM'S NAME (LAST, FIRST, MIDDLE) FRANKLIN, KYLE, DEAN		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	
		#1 #2 #3		S			
WEIGHT		HAIR		EYES			
FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.							
ADDRESS		CITY		STATE	ZIP CODE	LOCATION NO.	
VISIBLE INJURY (MCT.1) ☐ YES ☐ NO ☐ EXPLAIN: COMPLAINT OF ANY NON-MAJOR INJURIES ☐ YES ☐ NO							
VICTIM(S) USING: ☐ YES ☐ NO ☐ UNK. ☐ DRUGS: ☐ YES ☐ NO ☐ UNK. ☐ TYPE:							
TWO MAN VEH. ☐ ONE MAN VEH. ☐ DETECTIVE/PLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ *J-This Jurisdiction. S-State. O-Out of State. U-Unknown.							
☒ SUSPECT	NAME (LAST, FIRST, MIDDLE) Unknown		RACE	SEX	AGE	ETH.	
☐ RUNAWAY							
☐ WANTED	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		RELATED OFFENSE(S) 902		DAYTIME PHONE	EVENING PHONE	
☐ WARRANT					☒ H ☐ B	☒ H ☐ B	
☐ ARREST	ADDRESS		CITY		STATE SC	ZIP CODE	
☐ JAIL					LOCATION NO.		
☐ SUMMONS	SUBJECT(S) USING ALCOHOL ☐ YES ☐ NO ☐ UNK. ☐ DRUGS ☐ YES ☐ NO ☐ UNK. ☐ TYPE:		ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO ☐		DATE/TIME OF OFFENSE 2/27/2015 4:30:33 PM		
DAY OF THE WEEK S M T W T F S UNK		HOW REPORTED A= OFFICER DISPATCHED ON CALL B= REPORT TAKEN BY PHONE C= COMPLAINANT WALKED IN		DIFF. FACTOR D= COMPLAINT WRITTEN IN E= OFFICER INITIATED F= OTHER		DATE/TIME OF ARREST	
ON THE LISTED DATE AND TIME I RESPONDED TO THE LISTED LOCATION AND MET WITH MR. KYLE FRANKLIN WHO STATED THAT HE WAS THE PROPERTY OWNER OF [REDACTED]. HE FURTHER STATED THAT HE OBSERVED A MALE COME OUT OF APT 13 THAT DID NOT RESIDE AT THE PROPERTY. FRANKLIN STATED THAT WHEN HE ASKED THE INDIVIDUAL HIS BUSINESS ON THE PROPERTY THE SUBJECT, WHOM HE DESCRIBED AS A BLACK MALE WEARING BLACK CLOTHING WITH FACIAL HAIR, BECAME BELLIGERENT AND INFORMED FRANKLIN THAT HE "RAN THE PROPERTY" AND PLACED HIS HAND UNDER HIS SHIRT INSINUATING THAT HE WAS POSSIBLY ARMED, AND THE HE (SUSPECT) WOULD TAKE CARE OF HIM (FRANKLIN). FRANKLIN STATED THAT HE FELT AS IF THIS INDIVIDUAL WAS THREATENING HIS LIFE. FRANKLIN STATED THAT HE INFORMED THE INDIVIDUAL THAT HE WAS CONTACTING LAW ENFORCEMENT AND THE							
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY				JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY			
TYPE (GROUP)						TOTAL VALUE	
STOLEN							
DAMAGED							
BURNED							
RECOVERED							
SEIZED							
SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		S. F.	☒ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18 ☐ ARRESTED 18 AND OVER ☐ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE		1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION PROSECUTION		3. ☐ EXTRACTION DENIED DENIED 4. ☐ VICTIM DECLINES COOPERATION		5. ☐ JUVENILE NO CUSTODY	
REPORTING OFFICER(S) BURNEM, JONATHAN LYNN		DATE 2/27/2015 4:30:33 PM		UNIT NUMBER 328		APPROVING OFFICER	
						DATE	
						UNIT NUMBER	
				FOLLOWUP INVESTIGATION ☐ YES ☒ NO		OFFICER	

ADDITIONAL NARRATIVE

Agency Name: NORTH CHARLESTON POLICE DEPARTMENT	ORI #: SC0100800	Report Date/Time: 02/27/2015 16:30	OCA #: 2015006889
--	---------------------	---------------------------------------	----------------------

SUBJECT FLED THE SCENE ALONG WITH ANOTHER BLACK MALE WEARING A WHITE T-SHIRT THAT HAD JOINED THE MALE IN BLACK. FRANKLIN FURTHER STATED THAT ALL RESIDENTS OF THE PROPERTY WERE SPECIAL NEEDS RESIDENTS AND WERE ALL SINGLE RESIDENTS. FRANKLIN WAS GIVEN A CASE NUMBER IN THE INCIDENT.

EXHIBIT 5

MEMORANDUM IN SUPPORT OF DEFENDANT BOSTON'S MOTION TO SUPPRESS EVIDENCE

State of South Carolina

v.

Darell Boston

Case Nos. 2015-GS-10-06082; 2015-GS-10-06086; 2015-GS-10-06087

Taylor J. Seman

From: Nina L. Savas
Sent: Thursday, November 16, 2017 4:44 PM
To: Ben C. Lewis; Taylor J. Seman
Cc: Truc Tran
Subject: Denise Hollman

Ben & Taylor,

I spoke with Denise Hollman yesterday and wanted to give you a summary of her statement. It is consistent with the incident report.

She confirmed that she lived at that apartment at that time. She said she knows your clients from around the streets and to have drugs, as well as from a club. She said that the "skinny guy" walked in the apartment first and said he is waiting for a friend, then the "bigger guy" came inside after him. She said she was playing a game on her phone in the living room while they were in the kitchen. They were making crack and supposed to leave her a little on the counter when they were done. She confirms she consented to the officers entering her apartment. She freely let them in and knew they were the police.

Nina L. Savas

Assistant Solicitor
Ninth Circuit Solicitor's Office
O.T. Wallace Building
101 Meeting Street, Suite 400
Charleston, SC 29401
Email: SavasN@scsolicitor9.org
Office: 843.958.1924
Fax: 843.958.1905

EXHIBIT 6

MEMORANDUM IN SUPPORT OF DEFENDANT BOSTON'S MOTION TO SUPPRESS EVIDENCE

State of South Carolina

v.

Darell Boston

Case Nos. 2015-GS-10-06082; 2015-GS-10-06086; 2015-GS-10-06087

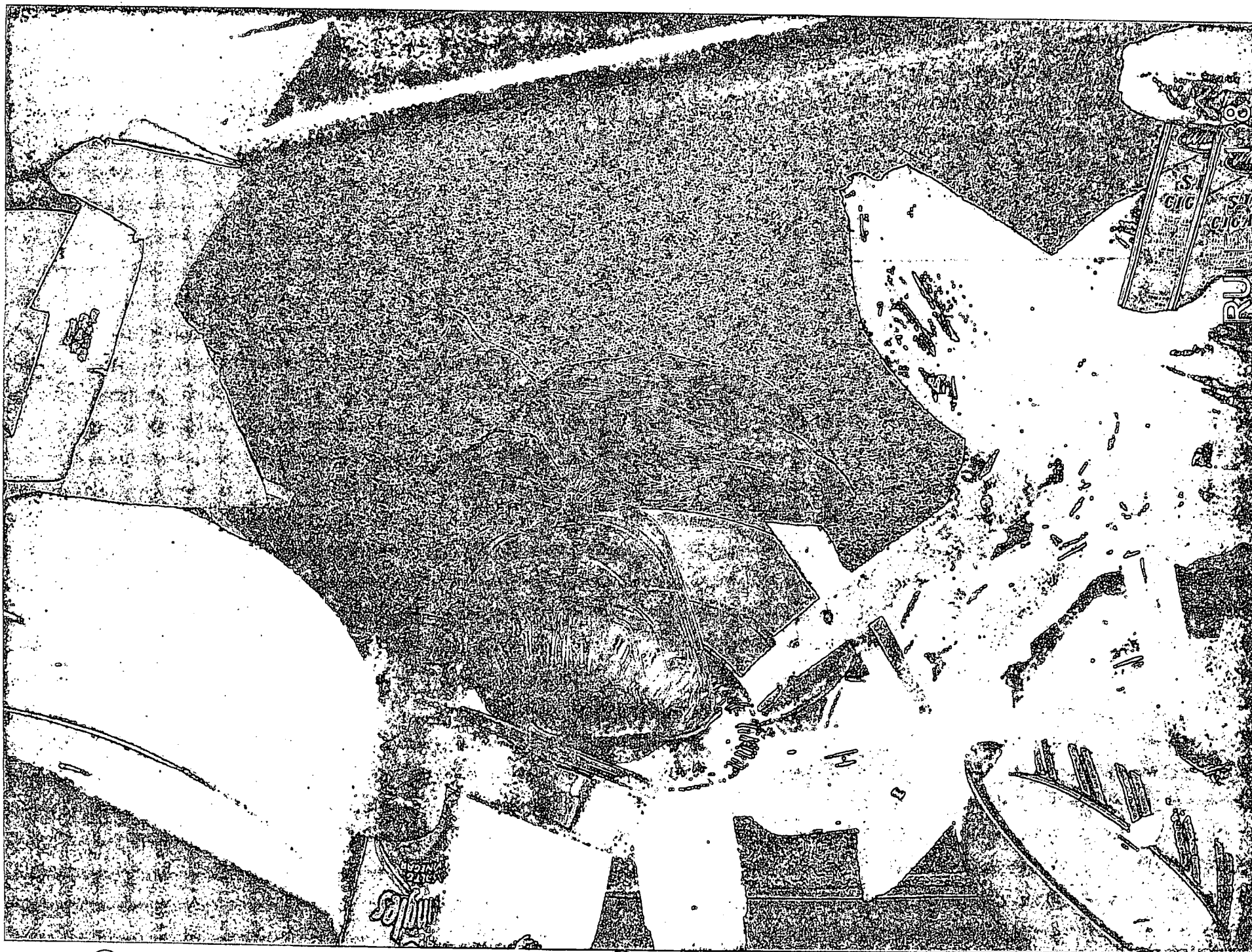


EXHIBIT 7

MEMORANDUM IN SUPPORT OF DEFENDANT BOSTON'S MOTION TO SUPPRESS EVIDENCE

State of South Carolina

v.

Darell Boston

Case Nos. 2015-GS-10-06082; 2015-GS-10-06086; 2015-GS-10-06087

STATE OF SOUTH CAROLINA

County of Charleston

City of North Charleston

SEARCH WARRANT

OCA: 2015007705

**Location: 1819 Clements Ave Apt 2
North Charleston SC, 29405**

**Date: March 6, 2015
Officer: J. Sherwood**

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF CHARLESTON

Personally appeared before me, one J. Sherwood
 who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions of
 Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

See Attachment #1

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

The location to be searched is located at 1819 Clements Ave Apartment 2. This is a single person cinder block apartment that is green in color with white trim. The number 2, which is black with a white background, is clearly posted on the black front door. The address was later located in the mail box at the front door. When one makes a right onto Mall drive from North Charleston City Hall and then makes a right onto Rivers Avenue. One would continue on Rivers Avenue until Reynolds Avenue. From Rivers Avenue one would make a left on Reynolds and continue down Reynolds until Spruill Avenue. Once at Spruill Avenue one would take a right onto Spruill and continue until Clements Ave. Upon reaching Clements Ave one would make a left and continue until you reach 1819 Clements Ave on your right. This search is to include all rooms, attics, basements, closets, cabinets, safes, false walls, and any other location that could conceal illegal narcotics or evidence of illegal narcotics trafficking and/or sales. Also to include any outbuildings or storage areas located on the property and the grounds within the property's borders. The location has been identified as a place where illegal narcotics are used, sold, or stored, and it is common in such places that subjects conceal illegal narcotics and/or weapons on their person, therefore, also to include all persons located at the house at the time the search is executed. Also in these locations, it is common to have numerous vehicles coming to and from the home and that illegal narcotics are transported in these vehicles, therefore, also to include any vehicles located at the residence at the time the search is executed.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

That on March 6, 2015, at approximately 5:25 pm members of the North Charleston Police Department went to 1819 Clements Ave apartment 2 in reference to a complaint about drug deals using the apartments for drug sales. The apartments are rented to the mentally handicapped. Officers knocked on the door and asked and received permission to enter the residence. As officers entered they notice a plastic bag with white residue laying on the counter of the kitchen in plain view. They also noticed the microwave to be open with more white residue inside. There was a scale laying on top of the microwave with white residue on it. All of the above mentioned residue tested presumptive for cocaine. Officers then secured the residence for a search warrant. It is believed that a search of this residence will reveal additional evidence of illegal drugs, sales and or distribution.

Sworn to and Subscribed before me

This 6th day of March 2015.

Signature of Judge

(L.S.)

6:49 PM

Affiant

Address: 2500 City Hall Lane.
 North Charleston, SC 29418
 Phone: 554-5700

OCA# 2015007705

STATE OF SOUTH CAROLINA

SEARCH WARRANT

COUNTY OF CHARLESTON

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE
MUNICIPALITY OF NORTH CHARLESTON.

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

-See Attached Affidavit-

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

-See Attached Affidavit-

This Search Warrant shall not be valid for more than ten days from date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to Issuing Judge within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of premises searched at the time of such search if practicable, and if not, to such person as soon thereafter as is practicable; in the event the identify of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to prominent place on such premises.

Norah Chubb S. C.
MAY 26 2015

[Signature] (L.S.)
Signature of Judge

RETURN

I received the attached Search Warrant March 6, 2015, and
Have executed it as follows:

On March 6, 2015 at 7:00 o'clock P M, I searched
(the person) described in the warrant and
(the premises)

I left a copy of the warrant with Denise Holman
(Name of person searched or "at the place of search") with: Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

Property	Recovered by	Location Recovered
1. Clear Plastic bags w/ white powder substance	P. Etminan	kitchen counter right of sink
2. Black digital scale	P. Etminan	kitchen counter left of sink
3. Pyrex measuring cup	P. Etminan	kitchen cabinet above left of sink
4. Arm & Hammer Baking soda	P. Etminan	kitchen cabinet above left of sink
5. silver metal whisk	P. Etminan	kitchen cabinet above left of sink
6. silver metal whisk w/ off white powder substance	P. Etminan	Bathroom tub
7. off white rock like substance	P. Etminan	Bathroom tub
8. Pyrex measuring cup	P. Etminan	Bathroom tub

Closed

This inventory was made in the presence of J. Sherwood, P. Etminan, K. Rough
AND

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 6th
day of March, 2015.

(Signature of Officer Executing Warrant)

(L.S.)

Form Approved by

RETURN
(Page 2)

Property

Recovered by

Location Recovered

AND This inventory was made in the presence of _____

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

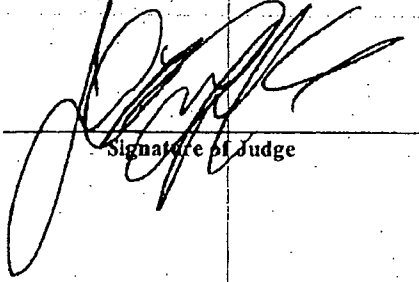
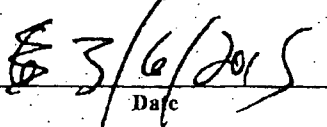
SWORN to before me this _____
day of _____, 20__.

(Signature of Officer Executing Warrant)

(L.S.)

ATTACHMENT "1"

1. Illegal drugs commonly known as Marijuana, but not limited to, also cocaine, crack cocaine, methamphetamine, heroine, opiates, LSD, hashish, prescribed controlled medication and any other illegal drug or controlled substances.
2. Paraphernalia used for the administration of illegal drugs by oral, intravenous, subcutaneous, inhalation, to include, but not limited to, small hollow metal/glass pipe, copper in color mesh, drinking straws, rolling papers, syringes, spoons and any other instrument fashioned in such a way as to assist in the administration of illegal or controlled substances.
3. Books, records, notes, ledgers and other papers relating to the transportation, ordering, purchasing and distribution of controlled substances.
4. Papers, tickets, notes, schedules, receipts and other items relating to domestic and international travel.
5. Books, electronic documents, records, receipts, bank statements / records, currency drafts, letters of credit, money orders, cashier's checks, passbooks, bank checks, safe deposit box keys and other items evidencing the obtaining, secreting, transfer, concealment, and/or expenditure of currency.
6. United States currency (or currency from abroad), precious metals, jewelry, financial instruments, including but not limited to, stocks and bonds in the amount indicative of the proceeds of illegal drug enterprising.
7. Photographs, in particular photographs of conspirators and co-conspirators, of assets and/or controlled substances, still photographs, negatives, video tapes, cassette tapes, films, undeveloped film, slides and undeveloped film and the contents therein.
8. Electronic related device that may house information pertaining to sales, purchase, co-conspirators information or any information pertaining to illegal drug enterprising. To include but not limited to computers, floppy disc, compact disk, lap top, hard drive, organizers, cellular phones and pagers.
9. Papers, records and any other item showing a combination or relationship among conspirators and co-conspirators by real or alias names, correspondence, papers, records and any other items showing employment or lack of employment, or reflecting income or expenses.
10. Paraphernalia for packaging, manicuring, weighing and distributing illegal drugs, including but not limited to, scales, measuring devices, bags, grinders, diluters, wrapping boxes and tape.
11. Indicia of occupancy, residency and/or ownership of the premises described above, including but not limited to, utility bills, telephone bills, water bills, concealed envelopes, keys and misc. bills or letters identifying such occupant / owner.
12. Firearms and ammunition, including but not limited to, handguns, pistols, revolvers, rifles, shotguns or any other weapons and any receipts or records pertaining to firearms and ammunition.
13. Receipts for items evidencing the expenditure of the proceeds of drug distribution, including but not limited to, clothing, furniture and electronic equipment or any other fruits of illegal drug sales.


Signature of Judge
Date

RETURN

I received the attached Search Warrant March 6, 2015, and
Have executed it as follows:

On March 6, 2015 at 7:00 o'clock P M, I searched
(the person) described in the warrant and
(the premises)

I left a copy of the warrant with Denise Holman
(Name of person searched or "at the place of search") with. Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

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5. silver metal whisk	P. Etminan	kitchen cabinet above left of sink
6. silver metal whisk w/ off white powder substance	P. Etminan	kitchen cabinet above left of sink
7. off white rock like substance	P. Etminan	Bathroom tub
8. Pyrex measuring cup	P. Etminan	Bathroom tub
<u>Closed</u>		

This inventory was made in the presence of J. Sherwood, P. Etminan, K. Rough
AND

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 6th day of March, 2015.

(L.S.)

(Signature of Officer Executing Warrant)

Form Approved by

EXHIBIT 8

MEMORANDUM IN SUPPORT OF DEFENDANT BOSTON'S MOTION TO SUPPRESS EVIDENCE

State of South Carolina

v.

Darell Boston

Case Nos. 2015-GS-10-06082; 2015-GS-10-06086; 2015-GS-10-06087

Ben C. Lewis

From: Nina L. Savas
Sent: Wednesday, November 16, 2016 6:40 PM
To: Ben C. Lewis; Michael R. Loignon
Subject: Darell Boston and William Holmes Trial

Ben & Michael,

Below are updates on conversations I have had with officers in this case in preparation for trial:

Officer Sherwood:

For clarification, the complaint that he referred to in his report was made by the landlord of the apartment complex on Feb. 27, 2015. The apartment complex is designated for residents from DMH and are single resident units. The landlord was threatened by an individual who did not live there. As a result, NCPD Captain Smith had assigned Sherwood and others to monitor that complex. While responding to another unrelated call in that complex, Sherwood noticed the two co-defendants exiting a taxi cab and entering a unit where he knew there was a single female who lived there. She had previously approached him regarding drug paraphernalia in the apartment complex. Sherwood recognized the co-defendants from a known drug house on Osceola St.

Officer Etminan:

Officer Etminan was in training during this incident. He was assisting Officer Sherwood. He assisted in securing the residence and Mirandized the defendants on scene.

Officer Danielle Smoak:

Officer Smoak responded as back-up to the call. Her name was misspelled in the incident report as "smoke."

Nina L. Savas

Assistant Solicitor
Ninth Circuit Solicitor's Office
C.T. Wallace Building
101 Meeting Street, Suite 400
Charleston, SC 29401
Email: SavasN@scsolicitor9.org
Office: 843.958.1924
Fax: 843.958.1905

EXHIBIT 9

MEMORANDUM IN SUPPORT OF DEFENDANT BOSTON'S MOTION TO SUPPRESS EVIDENCE

State of South Carolina

v.

Darell Boston

Case Nos. 2015-GS-10-06082; 2015-GS-10-06086; 2015-GS-10-06087

North Charleston Police Department Policy and Procedure Manual

POLICY # O – 04



Subject: Search and Seizure	Issue/Rev. Date: Sept. 01, 2007
Approved by: <i>Jim A. [Signature]</i>	Effective Date: Oct. 01, 2007
CALEA Reference: 1.2.4, 1.2.8	Page(s): 1 of 8



I. Purpose

To establish policies and procedures for conducting searches with and without a warrant under various circumstances.

II. Policy

The Constitution of the United States, the Constitution of the State of South Carolina, Supreme Court Rulings, South Carolina State Statutes, and other case law dictate when a police officer must obtain a warrant to search a person, place, or thing. There are limited exceptions to these rules, which are outlined in this policy and procedure. The key to the successful, legal discovery of evidence and/or contraband is the reasonableness of an officer's actions.

III. Definitions

A. **High Risk Search Warrant:** A search warrant where the associated risk to the safety of the officers serving the warrant is elevated due to the known presence of weapons and/or the possibility of a methamphetamine laboratory.

IV. Procedure

A. Administrative

1. The Supreme Court of the United States has defined a search as any government conduct which intrudes upon a person's reasonable expectation of privacy.
2. The Fourth Amendment protects all persons located within the United States. This includes U.S. citizens, legal aliens and illegal aliens. United States citizens living abroad are also protected.
3. Under a search warrant, or in the course of a valid warrantless search, virtually any article may be seized where the State can show a connection with criminal activity.
4. The S. C. Code (§ 17-13-140) identifies five categories of seizable property:
 - (a) Stolen or embezzled property.
 - (b) Property the possession of which is unlawful (contraband).
 - (c) Property which is being used or has been used in the commission of a criminal offense (instrumentalities).
 - (d) Property constituting evidence of a crime (mere evidence).
 - (e) Any controlled substance (narcotics and drugs).
5. There is no requirement that the things to be seized are in the possession of one suspected of criminal activity. A search warrant may be directed against a criminal or non-criminal element.

6. Prisoners/detainees will be searched by an officer of the same sex if possible. Prisoners/detainees may only be searched by an officer of the opposite sex, in a cursory manner, except in the following emergency situations:
 - (a) When there is reason to believe that the prisoner/detainee has in his/her possession a weapon, drugs, contraband, or other means of causing death or injury to themselves or another.
 - (b) When there is reason to believe that the prisoner/detainee has evidence on his/her person and there is imminent danger that it may be disposed of or destroyed.
7. When an officer of the opposite sex searches a prisoner/detainee, he/she will do so with all possible regard for decency and there will be a second officer present to act as a witness. All searches of this type will be documented in an incident report.

B. Searches Requiring a Warrant

1. Legal requirements

- (a) The authority of a search warrant is the best assurance that a search will be deemed reasonable by the courts and it is generally accepted that, absent special circumstances, search warrants are required for all searches in the criminal investigation area.
- (b) In South Carolina, an affidavit must be sworn before a magistrate, which establishes the grounds for the warrant.
- (c) According to §17-13-140 of the South Carolina Code of Laws the procedure to obtain, execute, and return a search warrant is as follows:
 - (1) The requesting officer must write an affidavit in the format prescribed by the South Carolina Attorney General establishing grounds for the search, the items being searched for and the location to be searched.
 - (2) This affidavit must be presented under oath to a neutral, detached, magistrate, municipal judge or judge of a court of record, who will review and determine whether or not to sign and issue the search warrant.
 - (3) Should the magistrate, municipal judge, or judge of a court of record issue the search warrant, the officer has ten (10) days to serve the warrant and make a return to the issuing judge.
 - (4) There are circumstances where it is impossible to make the return in ten (10) days. An example would be phone records which are processed by facilities out of state and generally take more than ten (10) days to be completed. In this case the return will be made as quickly as possible once the records or items have been received.
 - (5) Officers who serve a search warrant will leave a copy of the signed warrant and a receipt at the place to be searched, or with the person searched, which includes all the items taken pursuant to the search warrant.
 - (6) Search warrants issued by municipal judges are only valid for service within the City limits.
 - (7) Search warrants for locations outside the City limits must be signed by a magistrate/judge having jurisdiction over that location.
- (d) Officers serving any search warrant, including forced entry, will announce their presence prior to entering any structure.

- (e) No officer will attempt service of a search warrant without notifying his/her supervisor prior to the service of the warrant. High risk search warrants will require the assistance of the department S.W.A.T. Team to maximize officer safety. The supervisor of the unit serving the search warrant will determine the need for S.W.A.T. assistance and make the necessary requests/ notifications.

2. Body cavity searches

- (a) Should visual inspection of an arrested person and/or other information lead an officer to believe that the suspect is concealing a weapon, evidence or contraband within a body cavity, the following procedures will be followed:
 - (1) The arrested person will be kept under constant surveillance.
 - (2) The officer will consult with her/her immediate supervisor to determine whether probable cause exists to seek a search warrant for a body cavity search.
 - (3) The decision to seek a search warrant will recognize that a body cavity search is highly invasive of personal privacy and is reasonable only when the suspected offense is of a serious nature and/or poses a threat to the safety of the officers or the suspect.
 - (4) If probable cause exists for a body cavity search, an affidavit for a search warrant will be prepared that contains the following:
 - (a) a finding there is a clear indication that material evidence of guilt will be found;
 - (b) a finding that the method used to secure the evidence is safe and reliable; and
 - (c) a balancing of the seriousness of the crime, the importance of the evidence, and the unavailability of less obtrusive means against the right to be free from bodily intrusion.
 - (5) Once a search warrant is obtained the officer will deliver the arrested person and the warrant to medical facility where a qualified medical professional will conduct the search.
 - (6) Under no circumstances will body cavity searches be performed by anyone other than a qualified medical professional, at a medical facility, acting under a search warrant.
 - (7) All body cavity searches will be documented in an incident report.

C. Exceptions to the Warrant Requirement.

1. Stop and frisk

- (a) An officer has the right to stop and perform a pat-down search of the outer garments of a suspect for weapons if the officer has knowledge of facts that reasonably lead him/her to believe that the suspect is involved in criminal activity and may be armed and dangerous.
- (b) An officer is permitted only to externally feel the outer clothing of the suspect. Officers may not place their hands in pockets unless they feel an object that could reasonably be a weapon, such as a firearm, knife, club or other item. An officer cannot remove items from a suspect's clothing that he/she does not reasonably believe to be weapon, except as provided for by plain touch.
- (c) An officer who, during the course of a stop and frisk, detects objects in a suspect's clothing that are recognized by the officer, through the officer's sense of touch, as contraband or other incriminating evidence, may seize that evidence and utilize it in a subsequent arrest and prosecution. The object must be immediately identifiable as contraband or criminal evidence. No further squeezing, sliding, or other manipulation of the object through the clothing is permitted.

- (d) If the facts justify it, the frisk may be extended to include unlocked and unsealed hand carried items where the size and design permits easy access to possible weapons.
- (e) If the suspect is carrying an object such as a handbag, suitcase, briefcase, sack or other item that is sealed or locked and may conceal a weapon, the officer should not open the item but instead place it out of the suspect's reach.
- (f) If an officer reasonably suspects that a motorist whom he/she has stopped is dangerous and may be able to gain control of a weapon in his/her vehicle, that officer may conduct a brief search of the vehicle, limited to areas where a weapon might be placed or hidden.
- (g) An officer may obtain enough cause to stop and frisk from sources of information other than his/her own personal observation.
- (h) An officer may use handcuffs or other protective measures during an investigative stop, if the circumstances of the stop create a degree of danger to the officer(s) that reasonably justify such measures.

2. Consent searches

- (a) Officers may conduct a search of a person or property even though he/she does not have a warrant or probable cause, if the officer has obtained consent from the person, or someone who has the right and authority to act for that person, who will be affected by the search.
- (b) Consent must be voluntary and a product of the free will of the consenter.
- (c) Consent must be positive, as silence does not imply consent.
- (d) The person consenting must have the actual or apparent authority to permit the search. Examples where such authority is lacking are:
 - (1) A landlord cannot consent to search a tenant's premises.
 - (2) A hotel or motel owner or employee cannot consent to search a guest's room, until the rental period is over.
- (e) The search may be conducted only as far as the permission received. The consenter controls the conditions, scope, and time of the search and may revoke his/her consent at any time. When a subject specifically revokes their consent the officer must stop the search.
- (f) The consent to search is generally obtained in writing using an approved Consent to Search Form which is available on the City's Computer Network "IT" share drive under forms (I:\Forms). Verbal consent may be sufficient to conduct a search depending on the circumstances surrounding the search.

3. Search incident to an arrest

- (a) The authority to search following a full custody arrest allows a full and complete search for weapons, implements of escape, and for evidence.
- (b) The purpose of the search is to protect the arresting officer, prevent escape, and preserve any evidence in the possession of the arrestee.
- (c) The officer is entitled to search the person of the arrestee and the area within the immediate control of the arrestee at the time of his arrest. The area of immediate control is any place from which the person arrested may seize a weapon or destroy evidence and can be viewed generally as the space within arm's reach and slightly beyond.
- (d) Items of personal property which fall within this area and are accessible to the arrestee, such as an open desk drawer or unlocked suitcase, may be searched. However, absent emergency circumstances, non-portable items of personal property that are locked or sealed may not be searched.

- (e) Items of personal property removed from a person, who has been arrested and is to be incarcerated, will be carefully inventoried by officers prior to being stored for safekeeping. This inventory will include the content of all containers whether or not these containers are locked and sealed.
 - (f) In the event a container is locked, great care will be taken to minimize damage to the container or its contents while gaining access.
 - (g) Officers will record the inventory of personal property on a Chain of Custody Sheet and provide the arrestee with a copy.
4. Search of a moveable motor vehicle
- (a) An officer may make a warrantless search of a motor vehicle, which was in motion or at least mobile when seized, and which the officer has probable cause to believe the vehicle contains contraband or evidence of a crime.
 - (b) If an officer obtains probable cause to search a motor vehicle after it has lost its mobility, or has been taken into custody, a search warrant must be obtained before making a search.
 - (c) A motor vehicle search founded on probable cause may extend to any part of the vehicle, including closed containers found inside, in which the object of the search can be concealed.
 - (d) Vehicles of any type that have been immobilized in one location for use as a temporary or permanent residence or storage facility, or which are otherwise classified by the law as residences or buildings should not be treated as a motor vehicle for Fourth Amendment purposes.
5. Crime scene search
- (a) As allowed by an exigent circumstances exception to a warrant requirement, officers may enter a building or premises where a crime has occurred and may remain on the scene without a warrant for a reasonable time to investigate the crime scene.
 - (b) Absent exigent circumstances, officers responding to an emergency may seize evidence in plain view but any extended search of premises directed against the person possessing Fourth Amendment protection in that premises, must be done with the consent of the person in lawful possession or with a search warrant.
 - (c) Once officers have completed processing a crime scene and relinquish control, the location is then subject to all the protections granted by the Fourth Amendment against unreasonable searches and seizures.
6. Exigent circumstances
- (a) Officer may make a warrantless search of a person, personal belongings, vehicle, or a building when there is good reason to believe it necessary to:
 - (1) save a life;
 - (2) prevent injury; or
 - (3) prevent serious property damage.
 - (b) Exigent circumstances searches can be made only under extraordinary circumstances. Officers should be prepared to justify their actions by supporting a reasonable belief that an emergency existed.

7. Inventory of impounded, seized, or towed vehicles

- (a) An inventory is different from the vehicle search. It does permit an officer to make a warrantless seizure of contraband or other evidence from a vehicle and has been held reasonable by the courts because of its non-investigatory nature. The concept of inventory is based upon the idea that police frequently come into possession of property belonging to other people and is further based upon three primary interests:
 - (1) Protecting the vehicle owner's property.
 - (2) Protecting the police against claims of theft and damage.
 - (3) Protecting the police and the public against dangerous instrumentalities.
- (b) The following requirements must be met in order to conduct an inventory:
 - (1) The vehicle must be taken into custody.
 - (2) The inventory must be done pursuant to written policy and procedures of the department.
- (c) The scope of the inventory extends to the entire vehicle plus containers therein.
- (d) The inventory should be documented on the Towed Vehicle Protective Custody Form. Non-evidentiary items of significant value found in the vehicle will be removed for safekeeping and placed in the department Evidence and Property room in accordance with departmental policy and procedures governing the safekeeping of property.

8. Hot pursuit

- (a) Officers may make a warrantless entry and search when in hot pursuit of a person suspected to be involved in a felony crime when exigent circumstances exist in which the safety of the officer, the safety of the public, the escape of the person sought, or the destruction of evidence is at risk.
- (b) In the case of misdemeanors, a warrantless entry of a home to make an arrest is not justified. An officer will obtain consent for the entry or will obtain a search warrant.
- (c) The authority of hot pursuit searches is limited and once the legitimate object or subject of the search has been found, the search must stop.

9. Protective sweep

- (a) Officers entering a house or other premises to arrest an individual may make a protective sweep of the premises for the limited purpose of discovering persons on the premises who might present a danger to the officers.
- (b) In conducting a protective sweep after an arrest, officers must confine the sweep to a cursory visual inspection of those places in which a person might be hiding.

10. Abandoned property

- (a) Officers who are in a location where they have a legal right to be may, without a warrant, seize and search property that he or she has good reason to believe is abandoned.

11. Open fields

- (a) An officer may enter and search any unoccupied or undeveloped area that lies outside the curtilage of a dwelling.

12. Plain view

- (a) An officer may, without a warrant, seize any contraband or evidence of a crime that is in plain view if the following conditions are met:
 - (1) the officer must be in a place where they have a right to be;
 - (2) the evidentiary nature of the items discovered must be immediately apparent to the officer; and
 - (3) the discovery of the evidence must be inadvertent.

13. Criminal Domestic Violence exceptions

- (a) A law enforcement officer may arrest, with or without a warrant, a person at the person's place of residence or elsewhere if the officer has probable cause to believe that the person is committing or has freshly committed a misdemeanor or felony under the provisions of Section 16-25-20 (A) or (E) or 16-25-65, even if the act did not take place in the presence of the officer.
- (b) In effecting a warrantless arrest under this section, a law enforcement officer may enter the residence of the person to be arrested in order to effect the arrest where the officer has probable cause to believe that the action is reasonably necessary to prevent physical harm or danger to a family or household member.
- (c) Evidence discovered as a result of a warrantless search administered pursuant to a complaint filed under the Criminal Domestic Violence Statute is admissible in a court of law:
 - (1) if it is found:
 - (a) in plain view of a law enforcement officer in a room in which the officer is interviewing, detaining, or pursuing a suspect; or
 - (b) pursuant to a search incident to a lawful arrest for a violation of the Criminal Domestic Violence Statute, or for a violation of Title 16, Chapter 3 of the South Carolina Code of Laws.
 - (2) if it is evidence of a violation of the Criminal Domestic Violence Statutes.

14. Strip searches

- (a) An officer may make an in-custody field strip search, outside the confines of a detention center, when the officer reasonably believes that the individual may be concealing contraband or weapons. The decision to make a strip search may be based upon, but is not limited to the following:
 - (1) The nature of the offense charged.
 - (2) The arrestee's appearance and demeanor.
 - (3) The circumstances surrounding the arrest.
 - (4) The arrestee's criminal record, particularly past crimes of violence and drug offenses.
 - (5) The discovery of evidence of a major offense in plain view or in the course of a search incident to arrest.
 - (6) Detection of suspicious objects beneath the suspect's clothing during a field search incident to arrest.
- (b) In-custody strip searches of prisoners will be conducted only in the rarest of circumstances and only in privacy with explicit approval of a supervisor.

- (c) When a supervisor authorizes an in-custody strip search, the following procedure will be followed by the officers conducting the search:
- (1) The arrested person will be kept under constant surveillance until the search is conducted in order to prevent the subject from destroying evidence or contraband.
 - (2) Officers will take the necessary precautions to prevent any possible contamination. Necessary precautions will include the wearing of gloves and other personal protective equipment as dictated by circumstances.
 - (3) Strip searches will be conducted in a controlled environment which provides adequate protection to the arrested person's privacy.
 - (4) The strip search will be conducted and witnessed by two officers of the same sex as the arrested person.
 - (5) The officer will inform the arrested person of the intention to conduct a strip search thus giving the subject an opportunity to surrender any contraband material.
 - (6) The officer will direct the arrested person to surrender any or all articles of clothing, to include wigs or dentures, to the officer for inspection.
 - (7) All in-custody strip searches, conducted outside of the confines of a detention center, will be documented on an incident report.
- (d) Strip searches of confidential informants, prior to controlled purchases, will be in accordance with the procedure established in Policy O-09 (Drugs, Vice, and Organized Crime).

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA
vs.
DARELL ONEIL BOSTON,
DEFENDANT,

STATE OF SOUTH CAROLINA
vs.
WILLIAM HOLMES,
DEFENDANT.

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

STATE'S TRIAL BRIEF

Arrest Warrant #2015A1010201114
Arrest Warrant #2015A1010201116
Arrest Warrant #2015A1010201119

Indictment #2015-GS-10-06082
Indictment #2015-GS-10-06086
Indictment #2015-GS-10-06087

Arrest Warrant #2015A1010201122
Arrest Warrant #2015A1010201123
Arrest Warrant #2015A1010201124
Arrest Warrant #2015A1010201125

Indictment #2015-GS-10-06088
Indictment #2015-GS-10-06089
Indictment #2015-GS-10-06090
Indictment #2015-GS-10-06091

THE HONORABLE R. MARKLEY DENNIS, JR.
South Carolina Circuit Court Judge, Ninth Judicial Circuit

Appearances:

For the State: Nina L. Savas, Assistant Solicitor

For the Defendants: Taylor Seman, Attorney for Darell Boston
Ben Lewis, Attorney for William Holmes

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Contents:

- I. Statement of the Case
 - A. Procedural History
 - B. Factual Summary
 - C. Sentencing Enhancement
 - 1. Evidence of Defendant's Prior Convictions
 - a) Defendant Darell Boston
 - b) Defendant William Holmes
 - D. State's Response to Defense Motion to Suppress Evidence
 - 1. Defendants' Lack of Standing
 - 2. Knock-and-Talk
 - 3. Consent to Enter Apartment
 - 4. Protective Sweep
 - 5. Search Warrant
 - E. State's Response to Defense Motion to Suppress Statements
- II. State's Proposed Witness List
- II. State's Proposed Voir Dire

I. STATEMENT OF THE CASE

A. Procedural History

On March 6, 2015, North Charleston Police Department performed a knock-and-talk at 1819 Clements Avenue Apartment #2 in the City of North Charleston in Charleston County. Officers were granted consent by the sole lawful tenant, Denise Holman. In plain view, officers observed two plastic bags containing white powder residue on the kitchen counter and the two co-defendants, Darell Boston and Williams Holmes, in the kitchen. Officers performed a protective sweep and in plain view observed illegal narcotics and items used to manufacture cocaine base. A lawful search warrant was executed based upon the probable cause of the items in the apartment. Holmes consented to a search of his person on scene and was found to be in possession of cocaine and a digital scale. Additionally, during an intake search at the Al Cannon Detention Center, officers located cocaine and marijuana on Holmes. Post-Miranda, both defendants acknowledged knowing of the Military Magnet School located nearby at 2650 Carner Avenue. Defendant Darell Boston was charged and indicted for Possession With Intent to Distribute (PWID) Cocaine Base, PWID Cocaine Base Proximity Within ½ Mile of a School, and Manufacturing Cocaine Base. Defendant William Holmes was charged and indicted for Manufacturing Cocaine Base, PWID Cocaine Base, PWID Cocaine Base Proximity Within ½ Mile of a School, and Possession of Cocaine.

B. Factual Summary

The State anticipates various law enforcement officers and other witnesses will testify about the events leading to the arrest of co-defendants Darell Boston and William Holmes. A summary of the facts gathered by law enforcement follows.

On February 27, 2015, the North Charleston Police Department received a complaint from the property manager of the Clements Arms Apartment Complex located at 1819 Clements Avenue in the City of North Charleston in Charleston County. The complaint was regarding violent threats made by an unknown individual who claimed to be armed with a gun. The landlord had safety concerns for the single resident units due to nonresidents in the complex. Arising from the complaint, the North Charleston Police Department (NCPD) tasked patrol officers to proactively monitor the apartment complex for any additional concerns and perform routine area checks. On March 6, 2015, while in the area, Sgt. Sherwood, Officer Etminan, and Sgt. Hoose observed the co-defendants exit a taxi cab and enter 1819 Clements Avenue Apartment #2. Sgt. Sherwood recognized Holmes from a nearby house that is well-known for illegal narcotic activity. Sgt. Sherwood knew the tenant of Apartment #2 was a single female, Denise Holman, and that she had a history of drug use. Given Sgt. Sherwood's experience as law enforcement, he knew that it was common in that area for drug dealers to have arrangements with the tenants to make crack in the apartment to sell and give them some of what they make in exchange for using the apartment. Based upon that reasonable suspicion, officers performed a knock-and-talk as an investigative technique.

Sgt. Sherwood knocked on the door, and Holman broadly opened the door. Sgt. Sherwood identified himself and Holman granted officers consent to enter the apartment. In plain view, Sgt. Sherwood immediately noticed two plastic bags containing white powder residue on the kitchen counter. The co-defendants were standing in the kitchen near the microwave and appeared to be extremely nervous. The co-defendants immediately went into the bathroom, attempting to conceal something, and then returned to the living room area. Sgt. Sherwood observed Boston holding something in his hands when running to the bathroom. The apartment

is small with an open living room and kitchen area with a bathroom next to the kitchen. Sgt. Hoose and Officer Etminan remained with the individuals in the living room while Sgt. Sherwood performed a protective sweep in search of any additional persons or weapons in the apartment for safety purposes. In the bathroom, Sgt. Sherwood observed a Pyrex measuring cup and silver metal whisk containing approximately 5.83 grams of cocaine base that was hot to the touch in plain view on the bathtub. Sgt. Hoose performed a Terry Frisk of the individuals for safety purposes. Holmes granted Sgt. Hoose consent to search his person, and a black digital scale and approximately 0.2 grams of cocaine were found in his pockets.

The co-defendants were detained, and the apartment was secured while Sgt. Sherwood obtained a search warrant. Upon execution of the search warrant, Sgt. Sherwood recovered the following: two plastic bags on the kitchen counter containing white powder residue near the sink; a black digital scale on the kitchen counter on the left of the sink; a Pyrex measuring cup; a silver metal whisk; a box of Arm and Hammer baking soda from the kitchen cabinet above the sink; and the Pyrex measuring cup and silver metal whisk containing cocaine base from the bathroom. During the search, the microwave field-tested presumptive for cocaine. These items are indicative of manufacturing cocaine base.

Officer Smoak responded as back-up to the scene. Once both co-defendants were arrested, they were placed in the rear of Officer Smoak's patrol car. Officer Etminan read both co-defendants their Miranda warnings, and they stated they understood and waived their rights. Neither claimed ownership of the drugs or items. Holmes informed Officer Smoak that his child went to the Military Magnet School, and Boston acknowledged knowing of the school, as well. The school is located within ½ mile of the location of the apartment.

The co-defendants were transported to the Al Cannon Detention Center. During an intake search of Holmes, officers located approximately 0.2 grams of cocaine and approximately 3 grams of marijuana on his person¹.

C. Sentencing Enhancement

1. Evidence of Defendant's prior convictions:

a. Defendant Darell Boston

For sentencing enhancement purposes, Darell Boston is charged with Possession with Intent to Distribute Cocaine Base, 3rd offense (S.C. Code 44-53-375(B)) and Manufacturing Cocaine Base, 3rd offense (S.C. Code 44-53-375(B)). SC Code Section 44-53-375(B)(3), clarifies for a third or subsequent offense, the sentence imposed must be no less than ten years and no more than thirty years, or the Defendant must be fined no more than fifty thousand dollars (\$50,000), or both. SC Code Section 44-53-470(A)(3), outlines for a controlled substance other than marijuana, an offense is considered a second or subsequent offense if, "the offender has been convicted within the previous ten years of a first violation," or, in accordance with SC Code Section 44-53-470(A)(4), if "the offender has at any time been convicted of a second or subsequent violation." According to Darell Boston's NCIC rap sheet, the Defendant has the following requisite convictions for enhancement purposes:

2009 PWID Cocaine 1st offense
2009 PWID Cocaine 1st offense
2010 Trafficking Cocaine Base 10-28g 1st offense
2010 Trafficking Cocaine 10-28g 1st offense

¹ Holmes is not charged with the possession of marijuana in this case.

b. Defendant William Holmes

For sentencing enhancement purposes, William Holmes is charged with Possession with Intent to Distribute Cocaine Base, 3rd offense (S.C. Code 44-53-375(B)), Manufacturing Cocaine Base, 3rd offense (S.C. Code 44-53-375(B)), and Possession of Cocaine, 3rd offense (S.C. Code 44-53-370(d)(3)). SC Code Section 44-53-375(B)(3), clarifies for a third or subsequent offense, the sentence imposed must be no less than ten years, and no more than thirty years, or the Defendant must be fined not more than fifty thousand dollars (\$50,000), or both. S.C. Code 44-53-370(d)(3), states for a third or more subsequent offense the sentence must be no more than ten years, or the Defendant must be fined no more than twelve thousand five hundred dollars (\$12,5000), or both. SC Code Section 44-53-470(A)(3), outlines for a controlled substance other than marijuana, an offense is considered a second or subsequent offense if, "the offender has been convicted within the previous ten years of a first violation," or, in accordance with SC Code Section 44-53-470(A)(4), if "the offender has at any time been convicted of a second or subsequent violation." According to William Holmes' NCIC rap sheet, the Defendant has the following requisite convictions for enhancement purposes:

- 1999 PWID Cocaine Proximity
- 1999 PWID Cocaine Base Proximity
- 1999 Trafficking Cocaine Base 10-28g 1st offense
- 1999 PWID Cocaine 1st offense
- 2002 PWID Cocaine Proximity
- 2013 Possession of Cocaine Base
- 2013 PWID Cocaine 1st offense

D. State's Response to Defense Motions to Suppress Evidence

Both defense attorneys have informed the State that they intend to move this Court to suppress the evidence in this case. Defendants filed written motions on November 22, 2017 that

challenged the lawfulness of the knock-and-talk, the consent to enter by Denise Holman, the protective sweep, and the search warrant executed at the apartment. The co-defendants must individually show that the evidence was allegedly obtained by conduct violative of a defendant's constitutional right. State v. Patton, 322 S.C. 408, 472 S.E. 2d 245 (1996).

1. Defendants' Lack of Standing

The first step in analyzing a Fourth Amendment claim is to determine whether the Defendant has standing to raise such a challenge. The Fourth Amendment of the U.S. Constitution safeguards individuals from unreasonable searches and seizures:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

U.S. Const. Amend. IV

Additionally, South Carolina added a parallel provision in Article I Section 10 codifying:

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained."

S.C. Const. Art. I Section 10

To determine whether someone has standing to challenge a search, the court must determine whether a reasonable expectation of privacy exists for the defendant.

The United States Supreme Court clearly laid out in *Alderman v. United States* that if Y's home is unconstitutionally searched and evidence is obtained against X, this does not give X a right to assert a Fourth Amendment violation. However, if evidence is obtained against Y, then Y does have a right to assert a Fourth Amendment violation. X does not have standing to challenge the search of Y's home, but Y does. Alderman v. United States, 394 U.S. 165, 174 (1969). If one does not have standing, then one may not benefit from the exclusionary rule. This was reiterated in the United States Supreme Court case of *Rakas v. Illinois*, where the Court determined, "A person who is aggrieved by an illegal search and seizure only through the introduction of damaging evidence secured by a search of a third person's premises or property has not had any of his Fourth Amendment rights infringed. And since the exclusionary rule is an attempt to effectuate the guarantees of the Fourth Amendment, it is proper to permit only defendants whose Fourth Amendment rights have been violated to benefit from the rules' protections...the fact that they were 'legitimately on the premises'...is not determinative of whether they had a legitimate expectation of privacy in the particular areas...searched." Rakas v. Illinois, 439 U.S. 128 (1978).

More specifically, the United States Supreme Court has ruled that if someone is on the premises for a drug transaction, it is deemed a brief commercial transaction and they are guests who do not have standing when it is not their home and they are temporarily on the premises for that sole purpose. Minnesota v. Carter, 525 U.S. 83 (1998). Property used for commercial purposes has less of an expectation of privacy than an individual's home. New York v. Burger, 482 U.S. 691 (1987).

In this case, this is the exact situation before the Court. The defendants do not have any expectation of privacy in Ms. Holman's apartment, therefore, they do not have a claim to Fourth Amendment rights violation and the exclusionary rule does not apply. The co-defendants did not live at the apartment searched by the police, only the sole tenant, Denise Holman. Ms. Holman is not claiming any Fourth Amendment violations and is the only person who would have standing to do so. Since the co-defendants were merely temporary guests in the apartment for the sole purpose of manufacturing crack cocaine and a drug transaction, they do not have standing to make a claim to suppress the drug evidence in this case.

In both motions by defense, they claim they were simply social guests of Holman. However, both strategically leave out the glaring fact that the defendants were manufacturing crack cocaine during this incident. They were not there for any other social reason, but to make the crack using Holman's microwave. Both legal analysis are incorrect because they did not properly use all of the facts in this case to apply the case law. Defense purposefully omitted the fact they were manufacturing crack in an attempt to mislead this Court in a proper legal analysis of standing applicable in this case. The defendants did not live at Holman's' apartment, neither defendant had a key, they were not overnight guests, nor did they have any personal belongings in the apartment other than the drugs and drug paraphernalia. The defendants were there for a matter of minutes to make the crack and had no relation to the tenant except being her drug dealers, therefore, they were there solely for commercial purposes.

Since the co-defendants do not have standing, this Court must deny their motions to suppress the drugs and the inquiry ends. This Court need not to analyze any other potential Fourth Amendment challenges made by the defendants in this case because of the lack of standing. However, if this Court finds they do have standing, against the clear rulings made by

the United States Supreme Court, then the State contends the officers' actions of the knock-and-talk, consent to enter the premises, protective sweep, and search warrant were all lawful and did not violate the defendants' Fourth Amendment rights.

2. Knock-and-Talk

Courts have carved out exceptions to the warrant requirement when exigent circumstances arise. The exigent circumstances doctrine provides an exception using an objective standard when there is "compelling need for official action and no time to secure a warrant exists." State v. Counts, 413 S.C. 153 (2015) *citing* State v. Abdullah, 357 S.C. 344, 351, 592 S.E.2d 344, 348 (Ct. App. 2004). The United States Supreme Court further articulated that the "knock-and-talk" investigative tactic is constitutionally permissible. Florida v. Jardines, U.S. 133 S.Ct. 1409. The Fourth Circuit has recognized this exception, as well as almost every other federal circuit. *See* United States v. Cephas, 254 F.3d 488, 493 (4th Circ. 2001) ("A voluntary response to an officer's knock at the front door of a dwelling does not generally implicate the Fourth Amendment, and thus an officer generally does not need probable cause or reasonable suspicion to justify knocking on the door and then making verbal inquiry.")

The South Carolina Supreme Court ruled that knock-and-talks do not violate an individuals' constitutional rights when law enforcement can articulate "reasonable suspicion of illegal activity at the targeted residence prior to approaching the residence and knocking on the door." State v. Counts, 413 S.C. 153 (2015). Reasonable suspicion is defined as something founded upon specific reasonable inferences the law enforcement officer is entitled to draw from the facts in light of his experience. State v. Burton, S.C. App. 2002, 349, S.C. 430. Knock-and-talks "safeguard the express constitutional right against unreasonable invasions of privacy and does not hamper law enforcement in their investigative efforts." State v. Counts, 413 S.C. 153

(2015). Additionally, during a knock-and-talk if law enforcement fails to advise a defendant of his right to refuse consent to a warrantless search, it does not vitiate a defendant's voluntary consent to search, under the state constitution's right to privacy. Id.

In *State v. Counts*, officers performed a knock-and-talk based on reasonable suspicion of multiple tips, the defendant's prior offenses, and other corroborated facts that led officers to believe illegal narcotic activity was occurring inside the home. Once the defendant opened the door, officers observed drugs and guns in plain view, performed a protective sweep, located drugs on the defendant's person, and obtained and executed a search warrant at the residence. The Court found the officers had reasonable suspicion to perform the knock-and-talk and they were justified under exigent circumstances to detain the defendant and conduct the protective sweep and search of the defendant's person, which lead to sufficient probable cause to secure a search warrant.

In this case, the North Charleston Police Department had received complaints from the landlord about illegal activity in the apartment complex, including individuals that were armed and dangerous who did not live in the units. The landlord requested officers investigate the apartment complex for increased security. NCPD deemed the area of the Clements Ferry Apartments as a high-crime neighborhood and well-known for illegal narcotic activity, so officers were placed on proactive patrol. Sgt. Sherwood was assigned to patrol that area and he observed the two co-defendants exit from a taxi cab and enter Apartment #2. Sgt. Sherwood knew the tenant in that apartment to be a single female and had a history of drug use. Additionally, he recognized Darrell Boston as a drug dealer from a nearby house. Based on Sgt. Sherwood's experience patrolling the neighborhood, he knew that it was common practice for drug dealers to go into the apartments and manufacture crack cocaine. They would take

advantage of the single tenants, and sometimes give them a small portion of the crack in exchange for use of their home. All of these facts gave rise to sufficient reasonable suspicion for Sgt. Sherwood to believe there was illegal narcotic activity in the apartment.

Upon approaching the home, Sgt. Sherwood knocked on the front door and the tenant answered. Sgt. Sherwood announced his presence as an NCPD police officer and asked to enter her apartment. Holman freely, voluntarily, and unequivocally granted the officers consent to enter. In plain view, Sgt. Sherwood was able to see two small baggies containing cocaine residue on the kitchen counter. The two co-defendants were at the microwave and concealed items in their hand and made quick movements running into the bathroom. Sgt. Hoose detained the co-defendants in the living room while Sgt. Sherwood performed a protective sweep to secure the premises. In the kitchen, Sgt. Sherwood observed a digital scale, baking soda, and baggies. Additionally, he located a Pyrex cup with a whisk and crack hot to the touch on the bathtub in the bathroom. Sgt. Hoose performed a consensual search of the co-defendants' persons and located a digital scale and a baggy of crack cocaine on Holmes' person. These facts were probable cause for a search warrant, which was executed and evidence was collected.

A knock-and-talk is an investigative technique used by law enforcement to investigate potential illegally activity. In this case, Sgt. Sherwood using his law enforcement experience, had reasonable suspicion that the co-defendants were involved in illegal narcotic activity in the apartment.

Defense for Boston and Holmes both attempt to argue that Sgt. Sherwood made "inconsistent statements" regarding the reasonable suspicion to perform the knock-and-talk based on conversations that were held with the State during trial preparations. However, this is absolutely false, a misstatement of fact, and purposefully misleading to this Court. Fulfilling the

duty of ongoing discovery, the State sent defense emails with summaries of follow-up conversations with witnesses during trial preparation for further clarification. With each conversation, the questions changed and became more detailed, which lead to more details produced than the initial basic incident report. As always in trial preparations, when speaking with witnesses there are more details that come to light, this is not out of the ordinary. Furthermore, in the emails provided to defense, the State prefaced them as further clarification. There is not one piece of information provided to the defense that was inconsistent, or changed from the original incident report, during the course of preparation in this case. For the defense to make such an assertion is falsely accusing the State and law enforcement of providing misinformation without any basis whatsoever. Officers did not change their narrative, nor is the State making "post hoc rationalizations to validate the seizures." The defense had ample opportunity to meet with law enforcement regarding this case, and the State fulfilled their duty of ongoing disclosure by providing defense with more details during the course of trial preparation. Officers do not have a duty of putting every known fact and detail into an initial incident report and the officers in this case have continually remained forthcoming with information regarding this incident. This has no bearing on the legality of the knock-and-talk or search and seizure of drug evidence in this case.

The tenant and the only individual with standing in this case, granted officers consent to enter and never withdrew the consent. The officers appropriately used the knock-and-talk technique and gained consensual access inside the apartment, therefore, this Court should determine the defendants' rights were not violated.

3. Consent

Consent to search is an exception to the warrant requirement, and an exception to probable cause. Warrantless searches and seizures conducted pursuant to valid consent are reasonable within the meaning of the Fourth Amendment. Palacio v. State, 333 S.C. 506 (1999). The State bears the burden to prove by a preponderance of the evidence that consent was made voluntarily and is a question of fact determined from the totality of the circumstances. Schneckloth v. Bustamonte, 412 U.S. 218 (1973). To determine voluntariness, the question is whether a person felt free to refuse permission to search. U.S. v. Stinson, 468 F. App'x 285, 290-91 (4th Cir. 2012). Even in a custodial situation, "the custodial setting is a factor to be considered in determining whether consent was voluntarily given...however, [that] is not enough in itself to demonstrate a coerced consent to search." State v. Mattison, 352 S.C. 577 (2003). There is no requirement that a police officer inform a suspect of his or her right to refuse consent prior to a search. State v. Forrester, 343 S.C. 637 (2001). Generally, law enforcement is entitled to rely on the consent of the owner and on the general appearance of the situation. State v. Moultrie, 271 S.C 526 (1978). If at a time, one withdraws their consent to search, in order to be effective, it requires unequivocal conduct. State v. Mattison, 352 S.C. 577 (2003). Ultimately, the United States Supreme Court has a long-standing approval of consensual searches, "because it is no doubt reasonable for the police to conduct a search once they have been permitted to do so." Florida v. Jimeno, 500 U.S. 248 (1991).

In this case, Denise Holman opened the door to officers. Holman was not in custody and willingly opened the door to her apartment. Sgt. Sherwood and Holman know each other from prior interactions. Sgt. Sherwood noticed the two co-defendants standing in the kitchen around

the microwave and two plastic baggies with white powder residue on the kitchen counter. Holman gave officers consent to enter her apartment. She freely and voluntarily allowed officers inside of her apartment, broadly opened the door, and stepped aside for them to enter. Boston and Holmes immediately ran from the kitchen into the bathroom, and then reentered the living room. For safety purposes, Sgt. Sherwood performed a protective sweep of the apartment. At no time did Holman, by express or implied words or actions, withdraw her consent. The co-defendants may potentially object to the consent during a pre-trial suppression hearing, however, neither have standing. Officers gained consent from the only lawful tenant, Denise Holman. Even if the co-defendants have standing, they were present during the time the consent was granted by Holman and did not object. Instead, they were making erratic movements in an attempt to conceal illegal narcotics from the officers. Therefore, consent to enter by Holman is valid, and does not violate the defendants' Fourth Amendment rights.

Defense for Boston in a pre-trial motion argued the consent was not valid because Holman was mentally incapacitated. However, this is false. Although Sgt. Sherwood outlined a reason for not charging Holman was based on her questionable mental state, Sgt. Sherwood did not have any information to make a proper claim of legal incapacitation. The South Carolina Supreme Court clarifies that the test is not whether someone is "mentally subnormal," but whether they have the "capacity to comprehend the meaning and effect of the waiver or statement." In re Williams, 265 S.C. 295 (1975). Furthermore, "mental deficiency alone is not sufficient to render a confession involuntary." In re Williams, 265 S.C. 295 (1975) quoting State v. Cain, 246 S.C. 536, 144 S.E.2d 905; State v. Callahan, 263 S.C. 35, 208 S.E.2d 284. Defense cites case law about mental incapacitation regarding lack of education, physical conditions, emotional state, and whether there was an interrogation. None such examples apply to Holman.

In this case, Holman had the ability to live on her own, there were not threats from officers, they did not interrogate Holman or either defendant, Holman recognized the officers in uniform as police, had prior interactions with Sgt. Sherwood, and is familiar with the legal system as she has a prior criminal history. Holman had the capacity to give voluntary consent to officers to enter her apartment and freely did so without hesitation.

Defense for Boston additionally claims that since officers obtained a search warrant it implies that they believed Holman's consent was not valid. However, that rationale is illogical and false. Officers obtained and executed a search warrant as a lawful method to search the home and as an extra means to uphold the search and seizure of evidence in this case. Officers went above and beyond their legal duty by obtaining the search warrant since they had voluntary consent by Holman and the evidence was found in plain view during the protective sweep. Officers never questioned the validity of Holman's consent. Defense implying that as a rationale for obtaining a search warrant is a blatant misrepresentation of fact.

Officers performed a lawful knock-and-talk to approach the apartment and gained lawful consent to enter which was freely and voluntarily given by the sole tenant, Holman. Upon entry, Sgt. Sherwood observed the plastic baggies with cocaine residue in plain view on the kitchen counter, which led to a protective sweep and the execution of a search warrant.

4. Protective Sweep

The Fourth Amendment protects individuals from unreasonable searches and seizures, and carves out a warrant exception for exigent circumstances. When there is no time to obtain a search warrant, protective sweeps have been deemed an exigent circumstance. State v. Brown, 289 S.C. 587 (1986); State v. Herring, 387 S.C. 201 (2009); State v. Abdullah, 357 S.C. 344 (2004). A protective sweep is a police procedure that is used when officers have a reasonable

belief of risk to their safety, and therefore conduct a search of the premises for any persons or weapons. The United States Supreme Court has clearly articulated “the Fourth Amendment permits a properly limited protective sweep in conjunction with an in-home arrest when the searching officer possess a reasonable belief based on specific and articulable facts that the area to be swept harbors an individual posing a danger to those on the arrest scene.” Maryland v. Buie, 494 U.S. 325 (1990). Terry v. Ohio and Michigan v. Long are used as guidelines to balance Fourth Amendment reasonable expectation of privacy when immediate safety interests of the police are involved. Terry v. Ohio, 392 U.S. 1 (1968); Michigan v. Long, 463 U.S. 1032 (1983). When there is a need for law enforcement officers to protect themselves, even if they lack probable cause for an arrest, the Court has deemed it to be “clearly unreasonable” to not grant the officer the power to take necessary measures. Terry v. Ohio, 392 U.S. 1 (1968). The Terry standard is used to determine a reasonable articulable suspicion risk to the officer at that time. Id. Whereas, the Long standard allows for a warrantless search of weapons when there is a reasonable belief, based on specific and articulable facts, and from the rational inferences derived from those facts, the officer believes the suspect is dangerous and may gain immediate control of a weapon. Michigan v. Long, 463 U.S. 1032 (1983). Even if the police created the exigent circumstance as a result of a reasonable investigation for even a minor offense, it is still a police procedure that does not have a constitutional bar. State v. Laboo, 396 N.J. Super. 97 (2007). It is well-known that an in-home arrest puts the officer at a disadvantage being on the “adversary’s turf,” and there is a high risk to their safety that is as great as, if not greater than, an on-the-street or a roadside investigative encounter. Maryland v. Buie, 494 U.S. 325 (1990).

The officer’s reasonable belief of a safety threat is based on an objective view of the totality of the circumstances. State v. Herring, 387 S.C. 201 (2009); Scott v. U.S., 436 U.S. 128

(1978). Nervousness of a suspect does give rise to a reasonable suspicion of danger. State v. Butler, 353 S.C. 383 (2003). Additionally, there is an “indisputable nexus” between guns accompanying drugs and safety concerns. United States of America v. Sakyi, 160 F.3d 164 (1998).

In the controlling case on the issue, *Maryland v. Buie*, the United States Supreme Court put limitations on protective sweeps that they must: (1) be a sweep, not a full search, and limited to cursory inspection of places a person can hide; (2) not be any longer than necessary to dispense reasonable suspicion of danger; and (3) the Government must show probable cause to believe a serious and demonstrable potentiality for danger. Maryland v. Buie, 494 U.S. 325 (1990). The location of a sweep can extend to spaces immediately adjoining the place of an arrest, and anywhere a person can possibly hide.

Furthermore, the Plain View Doctrine applies during protective sweeps. If an object falls within the plain view when an officer is in a lawful position to view the object, it can be lawfully seized. The doctrine has been applied to protective sweeps using the three elements: (1) initial intrusion which afforded authorities in plain view was lawful, such as when a protective sweep was based upon unsettling behavior which caused the initial intrusion; (2) the discovery of evidence was inadvertent, when guns, drugs, and money were found by officers searching for people in an attempt to secure the scene; and (3) incriminating nature of evidence was immediately apparent to seizure authorities, even when in plain view using a flashlight into a vehicle for legitimate concerns. State v. Abdullah, 357 S.C. 344 (2004) *citing* State v. Culbreath, 300 S.C. 232 (1990); Texas v. Brown, 460 U.S. 730 (1983).

In the case before this Court, a protective sweep was performed by Sgt. Sherwood upon entering the apartment. Although the initial investigation may be considered “police created,”

since Sgt. Sherwood approached the apartment for a knock-and-talk, it is still well within police procedure to secure the scene for their safety. Officers were within their constitutional bounds to perform a protective sweep based upon the specific and articulable facts that caused them to fear for their safety. Given the totality of the circumstances, including Sgt. Sherwood's ability to see two plastic baggies of white powder residue on the kitchen counter when Holman opened the door broadly; the two co-defendants were both near the microwave and erratically ran into the bathroom to conceal things; and the co-defendants exhibited nervous behavior, officers were within their constitutional bounds to perform a protective sweep. The protective sweep was also within the limited search and location as deemed necessary. It was a small apartment with an open living room and kitchen, and a single bathroom. In the bathroom, Sgt. Sherwood observed a metal whisk and Pyrex measuring cup with cocaine base that was hot to the touch on the bathtub. Based on his training and experience, Sgt. Sherwood knew that the items found were indicative of manufacturing cocaine base. This is the exact situation the Supreme Court has carved out as an exigent circumstance. After locating the items in plain view from the protective sweep, there was sufficient probable cause for a search warrant.

In their written motions, defense attempts to assert protective sweeps must only occur during an arrest. However, the case law does not specify that it is the only time the officers can perform a sweep for their safety. The defense is inaccurately analyzing the case law. Additionally, defense for Holmes claims that the protective sweep is not valid because officers never wrote it in the initial incident report. This does not invalidate the lawful protective sweep, and Sgt. Sherwood did accurately describe in his report the actions of the protection sweep and in follow-up statements that was given to defense as discovery. Defense further argues the plain view doctrine does not apply, because the baggies were not immediately apparent as evidence of

a crime. The case defense cited was merely a North Carolina Court of Appeals case, and the facts were regarding a shotglass with white powder residue in the lap of a defendant in a car. State v. Beaver, 37 N.C. App. 513 (1978). In this case, there were plastic baggies of white powder residue on the kitchen counter next to the microwave where the defendants were manufacturing crack cocaine. Based on Sgt. Sherwood's extensive law enforcement training and knowledge of illegal narcotics, he knew that individuals carry cocaine in clear plastic baggies and it is the key ingredient in manufacturing crack. Sgt. Sherwood knew the defendants to be crack dealers and had reasonable suspicion they were in the apartment making crack. This led him to believe, at the time of entry on scene, that the plastic baggies of white powder residue were cocaine, not other cooking ingredients like flour as the defense claims, especially since there was no food in the apartment and they were clearly not baking a cake. Even if this Court rules the plain view doctrine does not apply, the evidence shall be admitted based on the totality of the circumstances of the validity of the protective sweep and search warrant.

Therefore, the protective sweep performed by Sgt. Sherwood fell within the warrantless search exception of exigent circumstances and did not violate the co-defendants' Fourth Amendment rights, and the evidence found in plain view should not be suppressed.

5. Search Warrant

The Fourth Amendment allows for a search of the premises to be conducted given a sufficient warrant, establishing the "Warrant Clause." SC Code 17-13-140 outlines the issuance, execution, and return of search warrants based upon probable cause for property connected with the commission of crime, including illegal narcotics, to be performed within ten days after it is dated. In general, there are six main elements to the warrant: (1) probable cause; (2) neutral and detached magistrate; (3) oath or affirmation; (4) particularity; (5) execution; and (6) return.

Probable cause does not mean absolute certainty. State v. Williams, 262 S.C. 186 (1974).

It has been defined as, “a fair probability that contraband or evidence of a crime will be found” and a reason to believe that contraband or evidence of a crime will be found in the place to be searched. Illinois v. Gates, 462 U.S. 213 (1983); Ornelas v. Ruiz, 161 U.S. 502 (1896). Factors to be considered in determining probable cause include, the experience of the police officer, and an officer’s knowledge of general trends in criminal behavior. State v. Dupree, 354 S.C. 348 (2003); Illinois v. Gates, 462 U.S. 213 (1983). The affidavit is to include sufficient underlying facts and information upon which a magistrate can make a probable cause determination. State v. Robinson, 335 S.C. 620 (1999). The particularity of the warrant simply requires a reasonable level of clarity. Steele v. United States, 267 U.S. 498 (1925). A concurrent reading of a warrant and affidavit is permissible to establish the identification of the property to be seized, and may include any illegal drugs. State v. Williams, 297 S.C. 404 (1989). Execution of the search warrant is to be completed by the law enforcement agency in the appropriate jurisdiction. Lastly, the return must be made within ten days of the execution of the warrant or its issuance.

Furthermore, the State contends that a *Franks* hearing is not necessary, because the search warrant did not contain any false information. A defendant must make a preliminary showing that the supporting affidavit contained false information in order to be entitled to a hearing. Franks v. Delaware, 438 U.S. 154 (1978). The defendant must show by a preponderance of the evidence that the affiant included a false statement made knowingly and intentionally, or with reckless disregard for the truth. *Id.* There must be allegations of deliberate falsehood or of reckless disregard for the truth, and those allegations must be accompanied by an offer of proof. State v. Missouri, 337 S.C. 548 (1999). After establishing the existence of a false statement, the court must determine whether, setting aside the false material, the affidavit’s remaining content

is insufficient to establish probable cause. State v. Jones, 331 S.C. 228 (Ct. App. 1998). There is no such evidence in this case that the search warrant affidavit contained any falsehoods. The officer swore sufficient probable cause established at the scene.

Even if this Court finds the execution of the search warrant was unlawful, the evidence should not be suppressed because of inevitable discovery. The evidence was found in plain view during the protective sweep. Inevitable discovery allows for a court to admit illegally obtained evidence if the evidence would have inevitably been discovered through independent, lawful means. U.S. v. Allen, 159 F.3d 832 (4th Cir. 1998). The exclusion of evidence is not necessary where inevitable discovery applies. State v. Woods, 676 S.E.2d 128 (S.C. 2009).

In this case, on March 6, 2015, the search warrant was drawn for the location of 1819 Clement Avenue, Apartment #2 in North Charleston, SC 29405. The search warrant contained a thorough description of the premises to be searched and included "all rooms, attics, basements, closets, cabinets, safes, false walls, and any other location that could conceal illegal narcotics or evidence of illegal narcotics trafficking and/or sales." In a signed affidavit, the probable cause was based upon a complaint about illegal narcotic activity in the apartment complex, which was the reason for the area check. When officers performed a knock-and-talk on the apartment, they were granted consent to enter the residence. Upon entering the apartment, officers noticed a plastic bag with white residue on the kitchen counter in plain view. During a protective sweep of the apartment, officers located cocaine base in the bathroom. Given the officer's experience and training the probable cause led them to reasonably believe evidence of drug manufacturing would be discovered at that residence. The search warrant was executed at approximately 7pm

on the same day it was sworn. The search warrant return was signed on March 25, 2015². A copy of the search warrant was left with the tenant, Denise Holman, at her apartment. Therefore, this Court should deny the defendants' motion to suppress the evidence obtained as a result of the search warrant because the execution of the search warrant was lawful.

Defense for both Boston and Holmes challenge the veracity of the search warrant affidavit, without any basis. As explained earlier, there were no inconsistent statements made by law enforcement regarding this case and the probable cause of the search warrant accurately represents the events of the incident. Defense claims that law enforcement changed the basis for the drug complaint as reason to enter the apartment, however, they are misstating the facts. The initial incident report mentions a complaint by the landlord of the apartment complex which was stated in an email dated November 16, 2016, and further clarified in a subsequent email dated January 23, 2017 to defense counsel by the State. The first email explained the complaint on February 27, 2017 was made in reference to suspicious activity in the apartment complex about individuals being armed and dangerous and the landlord asking for police assistance for safety matters. Due to this complaint and increased crime in the area, officers were tasked with proactively patrolling the area. Sgt. Sherwood made reference to this complaint in his incident report because it is common practice for police departments to reference other case numbers regarding a specific area. In a follow-up email, the State reiterated officers were performing area checks in the apartment complex and drugs were known to be at that location. This area is known for illegal narcotic activity and Sgt. Sherwood previously encountered drug issues with that tenant. Sgt. Sherwood wrote in the search warrant affidavit that it was in reference to drug deals

² According to the statute, a search warrant must be executed and returned to the issuing judge within 10 days after it is dated. (S.C. Code Section 17-13-140 (1976 Annotated)). However, a warrant not returned to the issuing magistrate within 10 days due to an administrative error does not void an otherwise perfectly valid warrant where defendant fails to show that he was prejudiced by the delay. (*State v. Wise*, 272 S.C. 384 (1979)).

and using the apartments for drug sales, officers received consent to enter, plastic baggies with white residue were in plain view in the kitchen, the microwave had residue inside, a scale had residue on top of the microwave, items field-tested presumptive for cocaine, and the locate was secured, which is exactly the situation at hand. NCPD had multiple complaints of drug deals and safety issues in the area. Sgt. Sherwood's reasonable suspicion for the knock-and-talk was related specifically to drugs since he knew the tenant had a history of drug use and the defendants were known drug dealers. Additionally, in the "Description of Premises to be Searched," Sgt. Sherwood stated, "The location has been identified as a place where illegal narcotics are used, sold, or stored." The affidavit is an accurate and detailed representation of the incident scene. Therefore, this Court should deny the defendants' request for a *Franks* Hearing and deny the motions to suppress.

In conclusion, the defendants do not have standing to challenge the search and seizure of evidence since they do not have an expectation of privacy in Denise Holman's apartment to claim a violation of their Fourth Amendments rights. Furthermore, the knock-and-talk investigative technique, the consent to enter, the drug paraphernalia in plain view which lead to a protective sweep, and execution of a search warrant were lawful and did not violate the defendants' Fourth Amendment rights. This Court should deny all defense motions to suppress the drug evidence found as a result of the lawful search and seizure in this case.

E. State's Response to Defense Motions to Suppress Statements

The United States Supreme Court has deemed a defendant's statement admissible after he has been Mirandized, if the statement is made voluntarily. Jackson v. Denno, 378 U.S. 368 (1964). A *Denno* hearing is required to safeguard a defendant's Fifth Amendment right against self-incrimination and Fourteenth Amendment Due Process rights that forbid involuntary

confessions obtained through coercive means. The State bears the burden of proof by a preponderance of the evidence to determine whether a statement was voluntary. State v. Von Dohlen, 471 S.E.2d 689 (1996). The statement cannot be a threat or violence, or obtained by any direct or implied promises. There must be a link between coercive activity of the State and the confession by the defendant. Colorado v. Connelly, 479 U.S. 157 (1986). It is determined by a totality of the circumstances whether a “defendant’s will was overborne,” including characteristics of the accused and the details of the interrogation.” Dickerson v. U.S., 530 U.S. 428 (2000); Schneckloth v. Bustamonte, 412 U.S. 218 (1973). Factors include the defendant’s age, education level, mental deficiency, intoxication, length of interview, physical punishment, deprivation of food or sleep, promises, and whether they were advised of constitutional rights. Arizona v. Fulminante, 499 U.S. 279 (1991); Schneckloth v. Bustamonte, 412 U.S. 218 (1973).

It is a two-prong test to determine whether a defendant should be advised of their Miranda rights: (1) whether the defendant was in custody, and (2) whether it was an interrogation. When a suspect is subject to a custodial interrogation then Miranda warnings should be advised. A custodial interrogation is questioning initiated by law enforcement after a person has been taken into custody. Miranda v. Arizona, 384 U.S. 436 (1966). Custody requires arrest or restraint. Bekemer v. McCarty, 468 U.S. 429 (1984). An interrogation involved direct or implied questions other than those normally attendant to arrest and custody, or functional equivalent, that are known to be reasonably likely to elicit an incriminating response, by the defendant’s perspective. Rhode Island v. Innis, 446 U.S. 291 (1980).

In order to introduce a statement made after an accused has been advised of his rights, the State must prove by a preponderance of the evidence that the defendant—(1) voluntarily, knowingly, and intelligently waived those rights, even if he signed a waiver form, and (2) that

the defendant comprehended the choice. Moran v. Burbine, 475 U.S. 412 (1986). Once a defendant waives his Miranda rights, it is continued until the accused wants to revoke his waiver. State v. Rochester, 301 S.C. 196 (1990). If a suspect himself reinitiates questioning, law enforcement may further interrogate the suspect. State v. Kennedy, 333 S.C. 426 (1998).

In this case, once the defendants were arrested and placed in the rear of Officer Smoak's patrol car, Officer Etminan read both defendants their Miranda warnings from his Miranda card. The defendants are in their 30s, there was no indication they had any mental deficiencies or were intoxicated, they were not punished or deprived of food or sleep, nor were any promises made to them. Both defendants indicated to Officer Etminan they understood their rights. Holmes advised Officer Smoak that his child went to the Military Magnet School, and Boston indicated he knew of the school, as well. This was a very brief moment, and there was not an extended interrogation. Both defendants voluntarily, knowingly, and intelligently waived their rights when speaking with Officer Smoak, and their statements are admissible.

II. STATE'S PROPOSED WITNESS LIST

(Attached)

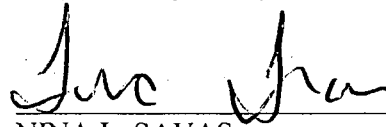
III. STATE'S PROPOSED VOIR DIRE

(Attached)

FILED
2017 NOV 27 AM 9:36
CLERK OF COURT
BY 

RESPECTFULLY SUBMITTED

By:



For

NINA L. SAVAS
Assistant Solicitor
Ninth Judicial Circuit

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

DARELL ONEIL BOSTON,

DEFENDANT,

STATE OF SOUTH CAROLINA

vs.

WILLIAM HOLMES,

DEFENDANT.

IN THE COURT OF GENERAL SESSIONS

NINTH JUDICIAL CIRCUIT

STATE'S WITNESS LIST

Arrest Warrant #2015A1010201114

Arrest Warrant #2015A1010201116

Arrest Warrant #2015A1010201119

Indictment #2015-GS-10-06082

Indictment #2015-GS-10-06086

Indictment #2015-GS-10-06087

Arrest Warrant #2015A1010201122

Arrest Warrant #2015A1010201123

Arrest Warrant #2015A1010201124

Arrest Warrant #2015A1010201125

Indictment #2015-GS-10-06088

Indictment #2015-GS-10-06089

Indictment #2015-GS-10-06090

Indictment #2015-GS-10-06091

1. Denise Holman
2. Sgt. Joseph Sherwood- NCPD
3. PFC Kyle Rough- NCPD
4. Sgt. Fred Hoose- NCPD
5. Officer Paiam Etminan- NCPD
6. Shawnta Middleton- NCPD
7. Danielle Smoak- Former NCPD
8. Cindy Hearn – Former NCPD
9. Justin Newcomb- ACDC

10. Kevan Sherbine- ACDC
11. Shana Sorrells- SLED
12. Doris Yarbrough- SLED
13. Jackie Davis- SLED
14. Investigator Erin Meyer – Solicitor's Office

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

DARELL ONEIL BOSTON,

DEFENDANT,

STATE OF SOUTH CAROLINA

vs.

WILLIAM HOLMES,

DEFENDANT.

IN THE COURT OF GENERAL SESSIONS

NINTH JUDICIAL CIRCUIT

STATE'S VOIR DIRE

Arrest Warrant #2015A1010201114

Arrest Warrant #2015A1010201116

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Indictment #2015-GS-10-06082

Indictment #2015-GS-10-06086

Indictment #2015-GS-10-06087

Arrest Warrant #2015A1010201122

Arrest Warrant #2015A1010201123

Arrest Warrant #2015A1010201124

Arrest Warrant #2015A1010201125

Indictment #2015-GS-10-06088

Indictment #2015-GS-10-06089

Indictment #2015-GS-10-06090

Indictment #2015-GS-10-06091

1. Have you or any member of your family ever had any criminal charges adjudicated by the Charleston County Solicitor's Office?
2. Is there anyone that has previously been a witness in a civil or criminal case?
3. Would any member of the jury panel have any problem following the law as the Judge cites it to you even if you believe that it is inappropriate or unfair?
4. Do you have any religious convictions, philosophical or moral beliefs or political orientations that would make it difficult for you to sit in judgment of another person?
5. Do you know of any reason why you cannot render this defendant a fair and impartial verdict?
6. Does any member of the jury panel have any relatives or close friends in prison?
7. Has any member of the jury panel ever had an unpleasant experience with a law enforcement officer?

8. Does any member of the jury panel or any family members of a member of the jury panel have strong opinions on the North Charleston Police Department?
9. Does any member of the jury panel or any family members of a member of the jury panel have strong opinions on drug laws?
10. Has any member of the jury panel or any member of your family ever been involved in crimes involving drugs?
11. Does any member of the jury panel or any family members of a member of the jury panel have strong opinions on law enforcement, prosecutors, and current events that it would prevent you from rendering a fair and impartial verdict?
12. Is any member of the jury panel or any family members of a member of the jury panel a part of any anti-law enforcement groups, and/or any civil action groups, such as NAN or Black Lives Matter?

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

-VS-
Darell Oneil Boston
DEFENDANT

IN THE COURT OF GENERAL SESSIONS
MOTION COVERSHEET

WARRANT/TICKET/

INDICTMENT #'s

2015A1010201114

2015A1010201116

2015A1010201119

Solicitor

Nina Savas

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Phone: _____

E-mail: _____

Defendant's Attorney:

Taylor Seman

Bar No. 101974

Address:

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Phone: (843) 958-2007

E-mail:

tsemane@charleston

county.org

☒ MOTION HEARING REQUESTED

☐ FORM MOTION, NO HEARING REQUESTED

☐ PROPOSED ORDER/CONSENT ORDER

SECTION I: Hearing Information

Nature of Motion: Motion to Suspend or Disqualify

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☐ YES ☒ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Taylor Seman

Signature of ☐ Solicitor ☒ Attorney for Defendant

11/29/17
Date submitted

FILED
2017 NOV 29 PM 4:22
JULIE A. ANDERSON
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

v.

DARELL ONEIL BOSTON,

Defendant.

IN THE COURT OF GENERAL SESSIONS

FOR THE NINTH JUDICIAL CIRCUIT

Case No(s): 2015-GS-10-06082; 2015-GS-10-06086; 2015-GS-10-06087

Warrant No(s): 2015A1010201114, 2015A1010201116, 2015A1010201119

Charge(s): Manufacturing cocaine base, possession with intent to distribute cocaine base, possession with intent to distribute cocaine base within a half-mile proximity of a school

**MOTION TO ADOPT PROPOSED
STIPULATION OR TO DISQUALIFY
ASSISTANT SOLICITOR SAVAS**

PLEASE TAKE NOTICE that Defendant Boston asks this Court to adopt the proposed stipulations attached to this Motion or, in the alternative, to disqualify Assistant Solicitor Savas from representing the State in this case because she is a material witness. Specifically, Boston believes that Assistant Solicitor Savas will be a material witness to impeach the testimony of the State's witnesses because she has sent e-mails to the counsel for both defendants that contained officers' additions and clarifications to the original Incident Report in this case. Boston believes that these "clarifications" may be necessary to impeach the officers' testimony if the officers do not remember or deny making these statements to Assistant Solicitor Savas.

After both parties spoke with Judge Dennis on November 27, 2017, Judge Dennis directed counsel for Holmes and Boston to interview potential witnesses in the Solicitors' Office to try to alleviate the issue posed by Assistant Solicitor Savas acting as both a lawyer and a witness in this case. Both attorneys and their investigator, Matthew Davis, met with two witnesses: Investigator Erin Meyer and Assistant Solicitor Matthew McClellan. When questioned about her memory of meetings with witnesses, Investigator Meyer was able to corroborate general facts, but could not remember details of the meetings for which she was present. Additionally, though Assistant Solicitor McClellan was familiar with two meetings and could corroborate that Assistant Solicitor

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CLERK OF COURT

Savas's emails matched his notes and his memory of the conversations. However, Assistant Solicitor McClellan said that he did not remember being present for any meetings involving Sergeant Sherwood, the lead officer in this case.

Boston believes that the State should agree to the attached stipulations. These stipulations would only be used if any State witness testifies inconsistently with Assistant Solicitor Savas's emails which provide a summary of their meetings. If one of the State's witnesses were to testify inconsistently with Assistant Solicitor Savas's emails, the parties would discuss the inconsistency with this Court, and, if necessary, read the particular stipulation into the record before the jury. In the alternative, Boston asks that Assistant Solicitor Savas be recused and the case prosecuted by another attorney in the Solicitors' Office.



Taylor J. Seman, Assistant Public Defender
Charleston County Public Defender's Office
101 Meeting Street
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Charleston, SC 29401
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ATTORNEY FOR DEFENDANT DARELL
BOSTON

November 29, 2017
Charleston, South Carolina

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FILED

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

v.

DARELL ONEIL BOSTON,

Defendant.

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

) **Case No(s):** 2015-GS-10-06082; 2015-GS-10-
) 06086; 2015-GS-10-06087

) **Warrant No(s):** 2015A1010201114,
) 2015A1010201116, 2015A1010201119

) **Charge(s):** Manufacturing cocaine base,
) possession with intent to distribute cocaine base,
) possession with intent to distribute cocaine base
) within a half-mile proximity of a school

) **STIPULATION:**

) **SERGEANT SHERWOOD**
)

1. On or about November 16, 2016, Assistant Solicitor Savas met with Sergeant Sherwood to discuss his memory of the case. Sergeant Sherwood said the following:

- a. The complaint that he referred to in his report was made by the landlord of the apartment complex on February 27, 2015. The landlord was threatened by an individual who did not live there.
- b. The apartment complex is designated for residents from DMH and are single-resident units.
- c. As a result, NCPD Captain Smith had assigned Sherwood and others to monitor that complex.
- d. While responding to another unrelated call in that complex, Sherwood noticed the two co-defendants exiting a taxi cab and entering a unit where he knew there was a single female who lived there.
- e. Holman had previously approached Sherwood regarding drug paraphernalia in the apartment complex.
- f. Sherwood recognized the co-defendants from a known drug house on Osceola Street.

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2. On or about January 23, 2017, Assistant Solicitor Savas met with Sergeant Sherwood to discuss his memory of the case. Sergeant Sherwood said the following:

- a. The complaint dated February 27, 2015 by Kyle Franklin was before this incident.
- b. As a result of the complaint, the NCPD lieutenant asked officers to do area checks of the apartment complex area.
- c. The area is part of DMH housing and supposed to be single-tenant residents.
- d. On the day of the incident, Sergeant Sherwood, Sergeant Hoose, and Officer Etminan were in the area on an unrelated matter. They do not recall the specifics of the unrelated call.
- e. While they were there, a taxi pulled up and both defendants got out and went inside Denise Holman's apartment.
- f. Sergeant Sherwood recognized Boston from a known drug house on Osceola.
- g. Sergeant Sherwood knew that Denise Holman lived in Apartment 2 because a week before, during an area check, he approached Denise Holman to ask her if she had any concerns and she told Sergeant Sherwood that she had a crack pipe and gave it to him.
- h. Sergeant Sherwood decided to check on Denise Holman because he knew that only she lived in the apartment, not anyone else.
- i. When Sergeant Sherwood knocked on the door, Denise Holman answered the door and gave consent to enter.
- j. When Sergeant Sherwood came in, he saw drugs in plain view in the kitchen.

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2017 NOV 29 PM 3:53
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- k. When Sergeant Sherwood came in, he saw the defendants holding things in their hands at the microwave in the kitchen. Then, they ran to the bathroom and came back to the living room.
 - l. Sergeant Sherwood did a protective sweep and detained the defendants.
3. On or about February 8, 2017, Assistant Solicitor Savas spoke with Sergeant Sherwood to discuss his memory of the case. Sergeant Sherwood said the following:
- a. Sergeant Sherwood saw both defendants at the microwave when he came inside the apartment.
 - b. Sergeant Sherwood said that Boston was trying to conceal what he believed to be the Pyrex and the whisk in his hands.
 - c. Sergeant Sherwood then said that Boston ran to the bathroom and Holmes followed him.

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2017 NOV 29 PM 3:53
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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

v.

DARELL ONEIL BOSTON,

Defendant.

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

) Case No(s): 2015-GS-10-06082; 2015-GS-10-
) 06086; 2015-GS-10-06087

) Warrant No(s): 2015A1010201114,
) 2015A1010201116, 2015A1010201119

) Charge(s): Manufacturing cocaine base,
) possession with intent to distribute cocaine base,
) possession with intent to distribute cocaine base
) within a half-mile proximity of a school

) STIPULATION:
) OFFICER ETMINAN
)

1. On or about November 16, 2016, Assistant Solicitor Savas met with Officer Etminan to discuss his memory of the case. Officer Etminan said the following:

- a. Officer Etminan was in training during this incident.
- b. Officer Etminan was assisting Officer Sherwood.
- c. Officer Etminan helped secure the residence and read both defendants their *Miranda* warnings.

2. On or about January 23, 2017, Assistant Solicitor Savas met with Officer Etminan to discuss his memory of the case. Officer Etminan said the following:

- a. Officer Etminan was training with Sergeant Sherwood, who was his field training officer.
- b. Anything Officer Etminan did was under the direction of Sergeant Sherwood.
- c. Officer Etminan did not write a report.
- d. Officer Etminan was standing at the door while Sergeants Sherwood and Hoose went inside.
- e. Officer Etminan read both defendants their *Miranda* warnings in Officer Smoak's patrol car, after Sergeant Sherwood asked him to.

2017 NOV 29 PM 3:53

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- f. Officer Etminan did not ask the defendants any questions.
- g. Officer Etminan returned to help Sergeant Sherwood collect evidence
- h. Officer Etminan wrote the search warrant return.

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2017 NOV 29 PM 3:53

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

v.

DARELL ONEIL BOSTON,

Defendant.

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

) Case No(s): 2015-GS-10-06082; 2015-GS-10-
) 06086; 2015-GS-10-06087

) Warrant No(s): 2015A1010201114,
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) Charge(s): Manufacturing cocaine base,
) possession with intent to distribute cocaine base,
) possession with intent to distribute cocaine base
) within a half-mile proximity of a school

) STIPULATION:
) OFFICER SMOAK
)

1. On or about January 23, 2017, Assistant Solicitor Savas met with Officer Smoak to

discuss her memory of the case. Officer Smoak said the following:

- a. Officer Smoak was an assisting officer, and did not write a report.
- b. Officer Smoak was there when Officer Etminan read the defendants their *Miranda* warnings in her patrol car.
- c. After *Miranda*, Officer Smoak asked Holmes if he had children. Holmes said that he did. Officer Smoak asked Homes if they went to Chicora Cherokee Elementary School, and Holmes said that they attended Military Magnet.
- d. After *Miranda*, Officer Smoak asked Boston if his children went to Military Magnet also. Boston said that his children were younger.
- e. Officer Smoak took both defendants to jail.

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2017 NOV 29 PM 3:53
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COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

v.

DARELL ONEIL BOSTON,

Defendant.

) IN THE COURT OF GENERAL SESSIONS

) FOR THE NINTH JUDICIAL CIRCUIT

) Case No(s): 2015-GS-10-06082; 2015-GS-10-
) 06086; 2015-GS-10-06087

) Warrant No(s): 2015A1010201114,
) 2015A1010201116, 2015A1010201119

) Charge(s): Manufacturing cocaine base,
) possession with intent to distribute cocaine base,
) possession with intent to distribute cocaine base
) within a half-mile proximity of a school

STIPULATION:
OFFICER ROUGH

1. On or about January 23, 2017, Assistant Solicitor Savas met with Officer Rough to discuss his memory of the case. Officer Rough said the following:
 - a. Officer Rough responded as an assisting officer, but did not write a report.
 - b. Officer Rough did not do anything and left shortly after arriving.

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2017 NOV 29 PM 3:53
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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

v.

DARELL ONEIL BOSTON,

Defendant.

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

) Case No(s): 2015-GS-10-06082; 2015-GS-10-
) 06086; 2015-GS-10-06087

) Warrant No(s): 2015A1010201114,
) 2015A1010201116, 2015A1010201119

) Charge(s): Manufacturing cocaine base,
) possession with intent to distribute cocaine base,
) possession with intent to distribute cocaine base
) within a half-mile proximity of a school

) STIPULATION:
) SERGEANT HOOSE
)

1. On or about February 2, 2017, Assistant Solicitor Savas met with Sergeant Hoose to discuss his memory of the case. Sergeant Hoose said the following:
 - a. Sergeant Hoose was with Sergeant Sherwood at an unrelated call.
 - b. Sergeant Hoose assisted Sergeant Sherwood in the case.
 - c. Sergeant Sherwood knocked on the door and Sergeant Hoose was behind him.
 - d. Once inside, Sergeant Hoose detained everyone in the living room while Sergeant Sherwood performed the protective sweep.
 - e. Sergeant Hoose remained with the defendants and Denise Holman while Sergeant Sherwood and Officer Etminan went to obtain a search warrant.

2017 NOV 29 PM 3:53

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

v.

DARELL ONEIL BOSTON,

Defendant.

) IN THE COURT OF GENERAL SESSIONS

) FOR THE NINTH JUDICIAL CIRCUIT

) Case No(s): 2015-GS-10-06082; 2015-GS-10-06086; 2015-GS-10-06087

) Warrant No(s): 2015A1010201114, 2015A1010201116, 2015A1010201119

) Charge(s): Manufacturing cocaine base, possession with intent to distribute cocaine base, possession with intent to distribute cocaine base within a half-mile proximity of a school

) STIPULATION:
) DENISE HOLMAN

1. On or about November 15, 2017, Assistant Solicitor Savas met with Denise Holman to discuss her memory of the case. Denise Holman said the following:
 - a. Denise Holman lived at that apartment at the time.
 - b. Denise Holman knew both defendants from the streets and a club, and knew them to have drugs.
 - c. The "skinny guy" walked into her apartment first and said he was waiting for a friend, then the "bigger guy" came inside after him.
 - d. Denise Holman was playing a game on her phone in the living room while they were in the kitchen.
 - e. Both defendants were making crack and supposed to leave her a little on the counter when they were done.
 - f. Denise Holman consented to officers entering her apartment and knew that the officers were police.

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

DARELL ONEIL BOSTON,
DEFENDANT,

STATE OF SOUTH CAROLINA

vs.

WILLIAM HOLMES,
DEFENDANT.

IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT

**STATE'S RESPONSE TO DEFENSE MOTIONS
TO STIPULATE OR RECUSE ASSISTANT
SOLICITOR SAVAS**

Arrest Warrant #2015A1010201114
Arrest Warrant #2015A1010201116
Arrest Warrant #2015A1010201119

Indictment #2015-GS-10-06082
Indictment #2015-GS-10-06086
Indictment #2015-GS-10-06087

Arrest Warrant #2015A1010201122
Arrest Warrant #2015A1010201123
Arrest Warrant #2015A1010201124
Arrest Warrant #2015A1010201125

Indictment #2015-GS-10-06088
Indictment #2015-GS-10-06089
Indictment #2015-GS-10-06090
Indictment #2015-GS-10-06091

On Tuesday, November 28, 2017, the State received via email written motions from defense counsel in this case. Attorney for William Holmes entitled the motion, "Motion to Accept Stipulation or in the Alternative – Recuse" and Attorney for Darell Boston captioned the motion, "Motion to Adopt Proposed Stipulation or to Disqualify Assistant Solicitor Savas." The defense is demanding the State accept stipulations prepared by the defense which are derived from emails sent by Assistant Solicitor Savas to the defense regarding witness meetings during trial preparations, or they will seek to disqualify the Assistant Solicitor from prosecuting the case. The State rejects the stipulations and objects to the Motion to Disqualify the Assistant Solicitor. Assistant Solicitor Savas is not a material witness in this case since Inv. Meyer and/or

Assistant Solicitor Matthew McClellan and/or Assistant Solicitor Truc Tran were also present in witness meetings. The State contends the defense continues to make misrepresentations to this Court as part of a delay tactic to prevent the case being called to trial.

In an effort of due diligence, Assistant Solicitor Savas has the common practice during trial preparations to routinely send defense counsel summary emails of witness meetings when new information arises, even though it is not required under SCCrimP Rule 5¹ or *Brady*². The defendants in this case were arrested on March 6, 2015. Over the two years this case has been pending, the State has been compliant under the rules of discovery and made evidence available to defense. These emails contained additional details of the incident, but did not contain inconsistent statements from any witness. On Tuesday, November 21, 2017, at a status conference where the trial was to be docketed to begin the week of November 27, 2017, defense attorneys raised an issue alleging witnesses made “inconsistent” statements that were delivered to defense in emails sent by Assistant Solicitor Savas³. Defense informed this Court they would be unable to proceed with trial until those issues were resolved, however, defense had not previously informed Assistant Solicitor Savas they would be bringing this up at the status conference. Knowing Assistant Solicitor Savas was under Orders of Protection and out of state at the time of the hearing, defense took that moment to raise the issue, even though there had been several other opportunities to address the court⁴. The State has requested a pre-trial hearing on the record regarding this issue.

¹ Witness’ or prospective witness’ non-exculpatory statements are not subject to disclosure. SCrimP 5(a)(2)

² The *Brady* Rule only requires the State to disclose exculpatory evidence. *Brady v. Maryland*, 373 U.S. 83 (1963).

³ In written motions filed November 22, 2017, defense attorneys cited emails sent from Assistant Solicitor Savas to defense counsel on November 16, 2016, January 23, 2017, and February 8, 2017 regarding witness statements.

⁴ The Court and the State continually asked defense to file pre-trial motions, however, they were not filed until close of business Wednesday, November 22, 2017 for the trial term beginning on Monday, November 27, 2017 and courts were closed for the Thanksgiving holiday Thursday, November 23, 2017 – Friday, November 24, 2017.

Procedural History of Case

The State has requested a jury trial since the defendants rejected the State's offers in 2016, however, the case has repeatedly been continued over the State's objections. This case has been on eight trial dockets thus far and is currently 1,000 days old. A timeline of the case's trial schedule is as follows:

- Defendants were arrested on March 6, 2015.
- Defendants were indicted on November 2, 2015.
- Defendant Holmes rejected the State's offer on February 4, 2016.
- Defendant Boston rejected the State's offer on November 10, 2016.
- Case set for trial week of December 12, 2016. The case was continued based on defense motion for continuance since Darell Boston's case was reassigned from Public Defender Michael Loignon to Public Defender Luke Malloy.
- Case set for trial week of February 6, 2017. The case was continued by Judge Couch because it was called on Thursday of that week and would not have enough time.
- Case set for trial week of March 20, 2017. The case was continued by Judge Jefferson because it was called on Wednesday of the trial week. The Judge requested the State to extend a second offer to defendants. Defendant Boston rejected the second offer on March 23, 2017 and Defendant Holmes rejected the second offer on April 25, 2017.
- Case set for trial week of May 15, 2017. The case was continued by Judge Dennis at the request of defense counsel.
- Case set for trial week of August 7, 2017. The case was continued due to witness unavailability.

- Case set for trial week of September 11, 2017. The Charleston County Clerk of Court set a trial not before date of November 13, 2017 due to Darell Boston's case being reassigned from Public Defender Luke Malloy to Public Defender Taylor Seman.
- On September 18, 2017 Public Defender Taylor Seman filed a notice of appearance for Darell Boston.
- Case set for trial week of November 13, 2017. At a continuance hearing on October 19, 2017, Judge Dennis continued the case to the week of November 27, 2017, at the request of Public Defender Seman over the State's objection.
- Case set for trial this week of November 27, 2017, but has been delayed due to defense.

Timeline of Witness Statements Raised as Issue by Defense

On November 21, 2017, at a status conference hearing the defense raised the issues of potential impeachment based on emails sent by Assistant Solicitor Savas of summaries of witness meetings during trial preparation. The State contends these are not inconsistent statements, but additional consistent details gathered during normal trial preparation witness meetings. A timeline of the issues raised by defense is as follows:

- On November 16, 2016, the State sent emails to defense updating them of witness statements of Sgt. Sherwood, Officer Etminan, and Officer Smoak.
- On January 23, 2017, the State sent emails to defense updating them of witness statements of Sgt. Sherwood, Officer Etminan, Officer Smoak, and Officer Rough.
- On February 8, 2017, the State sent emails to defense updating them of witness statement of Sgt. Sherwood. The defense replied via email claiming the statements were

“inconsistent”, however, the State clarified to defense the statements were additional details, not inconsistencies.

- On March 17, 2017, the State emailed defense that Investigator Erin Meyer and/or Assistant Solicitor Matthew McClellan were present at the witness meetings.
- On October 19, 2017, at a continuance hearing by defense, Judge Dennis set the case for trial for the week of November 27, 2017. The defense did not raise the issue at that hearing.
- On November 01, 2017, Assistant Solicitor Savas sent an email to the defense informing them she would be absent from the hearing, asked for the defense to stipulate to the drug chain and if they were going to file pre-trial motions, and offered to schedule a meeting with defense to review evidence prior to trial. Both defense attorneys denied stipulating to the chain, both stated they were going to file pre-trial motions but did not disclose the issues, and only Public Defender Seman met with Assistant Solicitor Savas in person.
- On November 15, 2017, Assistant Solicitor Savas sent an email informing this Court that she would be under protection Tuesday, November 21, 2017 – Friday, November 24, 2017 and unable to attend the status conference, but would have second chair Assistant Solicitor Truc Tran stand in at the hearing. She informed this Court the State was ready to proceed the assigned trial term the week of November 27, 2017, and that the defense had not raised any pre-trial issues at that time.
- On November 16, 2017, Assistant Solicitor Savas sent defense an email update on the witness statement of Denise Holman.
- On November 20, 2017, Assistant Solicitor Savas informed defense that Inv. Meyer and Assistant Solicitor Truc Tran were present at Holman's meeting.

- On November 20, 2017, Public Defender Taylor Seman requested Assistant Solicitor Savas to stipulate to emails about the witness statements. Assistant Solicitor Savas declined and advised that it was a matter to be handled at the time of trial.
- On November 21, 2017, the status conference was held and due to the issues brought by the defense, the case was not set for trial nor assigned a date for a hearing on pre-trial motions.
 - Assistant Solicitor Truc Tran sent a follow-up email after the status conference to defense again informing them that either Inv. Meyer or Assistant Solicitor McClellan were present at witness meetings, and she was present at the meeting with Holman.
 - After being notified of the events at the status conference, Assistant Solicitor Savas sent an email to the Court and defense counsel requesting defense to email any additional questions and reiterating the State was prepared to move forward with trial on Monday, November 27, 2017.
 - Public Defender Ben Lewis emailed asking for names of witnesses at the meetings and demanding the witnesses adopt Assistant Solicitor Savas' emails as their own recollection. He claimed Assistant Solicitor Savas would be a material witness to impeach the State's witnesses, Inv. Meyer, and Assistant Solicitor McClellan. It is only at that time would the defense be able to proceed with trial⁵.

⁵ The defense has demanded that the Solicitor's Office Investigator and the Assistant Solicitor who was previously second chair adopt the words of Assistant Solicitor Savas' email for impeachment purposes of the State's witnesses, even though these witnesses did not make any inconsistent statements and impeachment is not necessary prior to a witness testifying at trial.

- Assistant Solicitor Savas emailed the Clerk of Court asking for clarity on the trial docket and informed them the State answered the defense's questions and was prepared for trial to begin Monday, November 27, 2017.
- At the close of business on Wednesday, November 22, 2017, Assistant Solicitor Savas received via email defense motions to suppress evidence.
- On Monday, November 27, 2017, Assistant Solicitor Savas submitted the State's trial brief in response to the defense motions, and informed the Court the State's witnesses were present at court prepared to begin trial that morning.

On Monday, November 27, 2017, the State was prepared to move forward at trial. The State had the witnesses available to testify and submitted the State's trial brief. After jury qualifications on that day, attorneys for the defendants and representatives of the State had an in-chambers conference with Judge Dennis on the status of the case. Defense attorneys again stated they could not proceed with trial since their clients were not present at that time and the questions were not answered, however, they did not ask any additional questions than those that were previously answered on numerous occasions about witnesses present at meetings. Defense attorneys claimed Sgt. Sherwood made inconsistent statements based on the email updates sent by Assistant Solicitor Savas. Assistant Solicitor Savas clarified to this Court that they were not inconsistencies, but clarifications during the course of trial preparation. Additionally, Assistant Solicitor Savas informed this Court the State had in writing sent the defense emails immediately after the status conference the week prior, while under Orders of Protection, to ensure the case would go to trial. This Court asked if the defense had attempted to contact the Solicitor's Office Investigator Meyer and Assistant Solicitor McClellan to clarify these issues. The defense did not make any attempt to speak with the witnesses from the Solicitor's Office, but the State made

clear they would be available if needed. The Court then directed the defense to meet with the two witnesses. Both Investigator Meyer and Assistant Solicitor McClellan were subpoenaed by defense and met with defense that day. Additionally, defense informed this Court they wanted to remove Assistant Solicitor Savas from prosecuting this case because she would be a witness to impeach the officers and other witnesses. However, this Court stated that an attorney does not get removed from a case until the point they become a witness, and this depends upon the other witnesses testifying at trial.

Argument

On November 28, 2017, on behalf of both defendants, Public Defender Ben Lewis emailed Assistant Solicitor Savas defense motions requesting the stipulations of the emails be read into evidence to the jury at trial and moved to disqualify her as prosecutor on the case. Defense claims Assistant Solicitor Savas is a material witness for impeachment of the state's witnesses, even though Inv. Meyer and Assistant Solicitor McClellan were able to confirm the context of the emails. However, Assistant Solicitor Savas is not a material witness because Inv. Meyer and Assistant Solicitor McClellan are able to corroborate the witness statements made in the emails. The State also rejects the stipulations created by defense because they are inaccurate and unnecessary.

First, the State will not consent to the stipulations made by defense. This motion is not ripe as the witnesses have not disavowed any clarifications or testified inconsistently to anything. The defense has no reason to believe they will. In the event that the witnesses must be impeached, there are likely witnesses available other than Assistant Solicitor Savas. This is a matter to be taken up during cross-examination at the time of trial.

The defense has prepared stipulations for Sgt. Sherwood, Officer Etminan, Sgt. Hoose, and Denise Holman. This is literally every one of the State's witnesses, except for the drug chain. The Assistant Solicitor has gone above and beyond what is required by sending email updates regarding witness meetings during the course of trial preparation. To demand the Solicitor's Office sign stipulations for every witness meeting for every trial when new information comes to light is unnecessary and not required by law. The stipulations have incorrect meetings dates of the witnesses with Assistant Solicitor Savas. The dates listed are the dates Assistant Solicitor Savas sent the defense the emails, not the dates she met with the witnesses.

Second, attorneys for both defendants alleged in writing and verbally to this Court the witness statements contained in Assistant Solicitor Savas' emails were "inconsistencies" and they refused to move forward with trial until the State consented to their stipulations. Now, in the motion to disqualify the prosecutor the defense is saying the statements are "additions and clarifications," which is exactly what the State told the defense when the emails were sent over a year ago. This is now a non-issue. This is a completely different assertion than what the defense told this Court at the status conference on November 21, 2017, in their written motions submitted November 22, 2017, and in chambers on November 27, 2017 when they demanded to put the Solicitor's Officer Investigator and all Assistant Solicitors involved in this case as a defense witness and needed to continue the trial. Now, the defense is admitting the statements were merely additional details, which is not a sufficient reason for stipulations.

Furthermore, both attorneys for defense falsely accused the State of withholding information about who was present at the meetings. The State provided that information at least three times in writing since March 2017 when the emails were originally sent. Assistant Solicitor

Savas has continued to fulfill her duty of discovery and made herself available for meetings, phone calls, and emails to both defense attorneys since the day she was assigned the case.

Third, Assistant Solicitor Savas should not be removed from the case because she is not a material witness in this case since there are other witnesses available to testify if needed for impeachment purposes. There have not been any inconsistent statements made thus far nor in any emails sent by Assistant Solicitor Savas, therefore, there is not a reason to impeach a witness. The State has made clear that either Investigator Meyer, Assistant Solicitor McClellan, or Assistant Solicitor Tran were present at witness meetings. When questioned by defense, both Investigator Meyer and Assistant Solicitor McClellan confirmed the context of the witness statements.

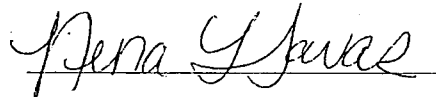
The decision to allow the defense to call a prosecutor as a witness for the defense is left to the sound discretion of the trial court. State v. Quattlebaum, 338 S.C. 441 (2000). Furthermore, calling a prosecuting attorney as a witness is only limited to instances in which the prosecutor's testimony "(1) will not be relevant and material to the theory of defense; (2) is not privileged; (3) is not repetitious; and (4) is not cumulative." State v. Inman, 395 S.C. 539 (2011); *see also* State v. Lee, 203 S.C. 536 (1943). In this case, the conversations between Assistant Solicitor Savas and the witnesses were done in the course of trial preparation which is privileged work product. Also, the information would be repetitious and cumulative since the witness themselves would be able to testify to their own statements at trial, and both Inv. Meyer and Assistant Solicitor McClellan would be able to testify for impeachment purposes. Even if the Court does call the prosecutor to testify as a defense witness, it is not necessary for a trial judge to recuse the prosecutor or the entire prosecutor's office. "There is no inherent right to disqualification when a member of the state's attorney's office is called as a witness in a case

prosecuted by a state attorney in the same office, unless actual prejudice can be shown." State v. Inman, 395 S.C. 539 (2011).

In conclusion, the State vehemently objects to Assistant Solicitor Savas being recused from the case as prosecutor. The State rejects the stipulations presented by defense. The State respectfully requests this Court deny the defendants' motions.

RESPECTFULLY SUBMITTED

By:



NINA L. SAVAS
Assistant Solicitor
Ninth Judicial Circuit

Date:

11/29/17

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BY 

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

DARELL ONEIL BOSTON,
DEFENDANT,

STATE OF SOUTH CAROLINA

vs.

WILLIAM HOLMES,
DEFENDANT.

IN THE COURT OF GENERAL SESSIONS

NINTH JUDICIAL CIRCUIT

**SUPPRESSION HEARING
ORDER**

Arrest Warrant #2015A1010201114
Arrest Warrant #2015A1010201116
Arrest Warrant #2015A1010201119

Indictment #2015-GS-10-06082
Indictment #2015-GS-10-06086
Indictment #2015-GS-10-06087

Arrest Warrant #2015A1010201122
Arrest Warrant #2015A1010201123
Arrest Warrant #2015A1010201124
Arrest Warrant #2015A1010201125

Indictment #2015-GS-10-06088
Indictment #2015-GS-10-06089
Indictment #2015-GS-10-06090
Indictment #2015-GS-10-06091

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SC Court of Appeals

On November 30, 2017 this Court heard Defendant Holmes' and Defendant Boston's ("Defendants") Motion to Suppress Drug Evidence in the above captioned cases. The State was represented by Assistant Solicitor Nina Savas and Assistant Solicitor Truc Tran from the Ninth Circuit Solicitor's Office. Defendants were present for the hearing. Defendant Boston was represented by Taylor Seman and Theresa Norris and Defendant Holmes was represented by Ben Lewis and Nicholas Smit.

At the hearing, Sergeant Sherwood with the North Charleston Police Department testified that on March 6, 2015, he was patrolling the area around 1815 Clements Avenue, which consisted of low income apartments. During that time period, there were complaints about ongoing drug

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CHARLESTON, SC

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activity at the complex and officers were assigned patrol of that area. On that date, Sergeant Sherwood noticed Defendants exiting a taxi and walking to Apartment 2. Sergeant Sherwood was familiar with Defendants through prior interactions involving drug activity. Sergeant Sherwood also knew the tenant, Denise Holman, as the sole occupant of the apartment and that she had a history of drug use. He was also aware of her vulnerable mental state. As such, he performed a knock and talk at Apartment 2. Denise Holman opened the door and gave officers consent to enter her apartment. Sergeant Sherwood testified that once inside, he observed in plain view clear plastic baggies on the kitchen counter containing cocaine residue. Officers performed a protective sweep of the apartment and found in plain view items used to manufacture crack cocaine and saw the Defendants actively manufacturing crack cocaine. Officers then executed a search warrant and collected the drug evidence.

Defendants assert that Sergeant Sherwood did not have reasonable suspicion to perform the knock and talk. Thus, Defendants argue that all evidence collected is inadmissible and should be suppressed. However, the State's position is that Defendants lack standing to contest the search because they do not have a reasonable expectation of privacy in a third person's home when conducting a drug transaction. Minnesota v. Carter, 525 U.S. 83 (1998). Even if there is standing, the State argues that Sergeant Sherwood's actions were lawful and were not violative of the Defendants' rights based on the United States Supreme Court ruling that a knock-and-talk is a constitutionally permissible investigative tactic. Florida v. Jardines, U.S. 133 S.Ct. 1409 (2013). Furthermore, the South Carolina Supreme Court articulated that knock and talks do not violate an individual's constitutional rights when law enforcement can articulate reasonable suspicion of illegal activity at the targeted residence. State v. Counts, 413 S.C. 153, 776 S.E.2d 59 (2015).

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JULIA A. BROWN
CLERK OF COURT

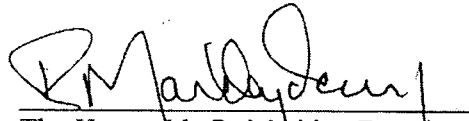
Page 2

After hearing testimony from witnesses, arguments, and reviewing case law, this Court finds that:

- (1) Pursuant to the S.C. Constitution, Defendants do have standing to contest the admissibility of any evidence collected by Sergeant Sherwood and the North Charleston Police Department.
- (2) Taking into consideration the totality of the circumstances, Sergeant Sherwood of the North Charleston Police Department had reasonable suspicion to conduct a knock and talk at the home of Denise Holman. Furthermore, Denise Holman, freely and voluntarily gave officers consent to enter her apartment and the officers' actions inside the apartment were lawful and not violative of the Defendants' rights.

As such, Defendants' Motion to Suppress Drug Evidence is DENIED.

IT IS SO ORDERED!



The Honorable R. Markley Dennis
Chief Administrative Judge, General Sessions
Ninth Judicial Circuit Court

January 10, 2018
Charleston, SC

Page 3

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