

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Florence County

Paul M. Burch, Circuit Court Judge

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S.C. SUPREME COURT

ONTANEY VENTRELL JACKSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001412

APPENDIX

TAYLOR D GILLIAM
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

LINDSEY MCCALLISTER
Assistant Attorney General
Attorney General Office
P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 2 COUNTY OF FLORENCE) No. 2010 GS 21 00673

3

4 STATE OF SOUTH CAROLINA)

5)

6 versus)

TRANSCRIPT OF RECORD

7)

8 ONTANEY V. JACKSON)

9)

Defendant)

9

10

Florence, South Carolina
 August 10, 2010

11

12 B E F O R E :

13

HONORABLE MICHAEL G. NETTLES, Judge, and a Jury

14

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

15

For the State:

FITZLEE McEACHIN, Esq.
 Assistant Solicitor

16

17

For the Defendant:

CARRINGTON WINGARD, Esq.
 Assistant Public
 Defender

18

19

Reporter:

KESHIA REED

20

21

22

HARRIET P. BENNETT
 Reporter, South Carolina Court Admin.

23

P. O. Box 86
 Ladson, S. C. 29456

24

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1 (The within matter came before the Court on August
2 10, 2010)

3 THE COURT: Mr. McEachin, you may call your next
4 case.

5 SOLICITOR: Your Honor, the State of South Carolina
6 calls the case of State versus Ontaney Ventrell Jackson,
7 Number 2010 GS 21 673.

8 THE COURT: All right. Before we proceed, the
9 Clerk is still in the process of scanning in the jurors,
10 and we'll give her an opportunity to finish scanning.

11 (Brief pause in proceeding)

12 THE COURT: Ladies and gentlemen of the jury panel,
13 you have heard the motion that was made prior to the
14 voir dire here today, and I would emphasize the neces-
15 sity that you pay very close attention to the questions
16 that you hear today.

17 I remind you that you are indeed under oath, and
18 listen to the questions and answer them truthfully.

19 Again, this is the trial of the case of the State
20 versus Ontaney Ventrell Jackson, and the allegations and
21 accusations in this case are possession with intent to
22 distribute crack cocaine, and this alleged offense hap-
23 pened on or about November 26, 2009; possession with
24 intent to distribute cocaine cocaine and possession of
25 marijuana; all of which were alleged events that the

1 State maintains -- all of which arise out of alleged
2 events the State maintains transpired on or about Novem-
3 ber 26, 2009.

4 I hold in my hand this piece of paper entitled an
5 Indictment. This is a written document that started the
6 process. However, the fact that Mr. Jackson has been
7 accused has no evidentiary value whatsoever.

8 In the United States of America an individual is
9 presumed to be innocent. To this charge, Mr. Jackson
10 has pled not guilty, and therefore the burden is shifted
11 to the State to prove his guilt beyond a reasonable
12 doubt.

13 As we proceed forward with this trial, Mr. Jackson
14 is presumed to be just as innocent as me or you, the
15 State or the Defendant -- anybody in this Courtroom.

16 That is the frame of reference that we start from.
17 The questions that I'm going to ask are focused on whe-
18 ther or not you can be fair and impartial with regards
19 to the trial of this case.

20 So pay very close attention. The Defendant's name,
21 once again, is Ontaney Ventrell Jackson. Does anyone
22 know Mr. Jackson? You know, close, social, business or
23 personal relationship with Mr. Jackson? If so, please
24 stand.

25 (No audible response)

1 Let the record reflect there is no response. There
2 is no response.

3 Potential witnesses in this case are Jack -- Jake
4 Chamberlain of the Florence County Sheriff's Office;
5 Larry Quick with the Florence County Sheriff's Office;
6 Adam Moore with the Florence County Sheriff's Office;
7 Doris Yarborough with SLED, the South Carolina Law En-
8 forcement Division; Doug Robinson with SLED.

9 Is anyone related to these witnesses? Do you have
10 a close, social, business or personal relationship with
11 any of these witnesses? If so, please stand.

12 (Juror responding)

13 THE COURT: Yes, sir. If you could come up, I'd
14 like to talk with you up here, if I could.

15 (Juror coming to the bench with counsel)

16 THE COURT: Counsel, feel free to come forward.

17 (Colloquy at the bench not audible to the balance
18 of jurors)

19 THE COURT: Yes, sir, your full name.

20 JUROR: Elijah Baker, Number 4.

21 THE COURT: Juror Number 4, Elijah Baker.

22 JUROR: Okay, the witness, Jake Chamberlain. I
23 kind of socialize with him and talk with him.

24 THE COURT: He's going to be a witness in this case.
25 Could you set aside that relationship and give both the

1 State and the Defendant a fair and impartial trial?

2 JUROR: Yes, sir.

3 THE COURT: All right.

4 JUROR: I just talk to him in passing.

5 THE COURT: So you speak to him in passing?

6 JUROR: Yes, sir.

7 THE COURT: And if called upon to serve on this
8 jury, could you make a decision on the evidence that is
9 presented in this case or the lack thereof and on the
10 law as I charge it to you, and give both the State and
11 Defendant a fair and impartial trial?

12 JUROR: Yes, sir.

13 THE COURT: And could you give . .

14 JUROR: Not Chamberlain. I know him as Jake. I
15 always call him Jake.

16 THE COURT: By virtue of the fact that you know
17 Jake, whose last name is Chamberlain, do you feel as
18 though you would give greater enlightenment to his tes-
19 timony by virtue of the fact that you speak to him on a
20 regular basis; or would you evaluate his testimony just
21 like anybody else's?

22 JUROR: I could evaluate it just like everybody
23 else's.

24 THE COURT: All right, sir. You are qualified to
25 serve. Thank you.

1 (Juror returning to seat in Courtroom)

2 (Another juror coming forward)

3 THE COURT: Yes, maam.

4 JUROR: I go to -- I just attend church with Larry
5 Quick. I also had a family member prosecuted by them.

6 THE COURT: And your name?

7 JUROR: Carrie Young.

8 THE COURT: That's Number 165. Carrie Young, 165.

9 You don't visit in his house or invite him to your
10 house?

11 JUROR: No, sir.

12 THE COURT: If you were called upon to sit on this
13 jury, could you sit and listen to the evidence that is
14 presented in this case or the lack of evidence presented
15 and give to the State and to the Defendant a fair and
16 impartial trial based on that?

17 JUROR: Yes, sir.

18 THE COURT: Just by virtue of the fact that you
19 know Larry Quick and you all go to the same church, and
20 the fact that you know him from church, do you feel
21 like you would give his testimony greater weight than
22 other witnesses?

23 JUROR: No, sir.

24 THE COURT: Would you evaluate it just like you 'd
25 do any other witness?

1 JUROR: I would evaluate it just like any other
2 witness.

3 THE COURT: Could you give to the State and the
4 Defendant a fair and impartial trial?

5 JUROR: Yes, sir.

6 THE COURT: You're qualified to serve.

7 MS. WINGARD: Judge, . .

8 THE COURT: Yes, maam.

9 (Discussion between counsel and the Court not aud-
10 ible on the record)

11 THE COURT: We will get to the issue or question
12 that talks about bias. She indicated a family member
13 was prosecuted by the Solicitor's Office, this same
14 Solicitor's Office that is on trial in this case, but
15 could you set that aside and give the State and the
16 Defendant a fair and impartial trial?

17 JUROR: Yes, sir.

18 THE COURT: You're qualified to serve.

19 (Juror returning to seat in Courtroom)

20 MS. WINGARD: Thank you.

21 THE COURT: She will stay with us.

22 (Another juror coming forward)

23 THE COURT: Yes, maam.

24 JUROR: Julie Harrell, Number 69.

25 THE COURT: Yes, maam.

1 JUROR: I know Jake Chamberlain. His son graduated
2 in . .

3 THE COURT: Has he come to your house or has he
4 visited in your home?

5 JUROR: No, sir. We had a close relationship when
6 his son and my daughter were in the same class in high
7 school and they graduated. When she eventually went to
8 college, he attended the same college for a year.

9 And then on occasion when I worked as a nurse in
10 the emergency room on occasion I may have come in con-
11 tact with him in the emergency room on a case.

12 THE COURT: Okay. Then the operative question then
13 becomes if you are chosen to serve on this jury could
14 you set that relationship aside and give both the State
15 and the Defendant a fair and impartial trial?

16 JUROR: Yes, sir.

17 THE COURT: All right, and could you just by virtue
18 of the fact that you know Jake Chamberlain, do you feel
19 that you would give his testimony greater weight than
20 the other witnesses, or would you give his testimony the
21 same weight you would give to that of other witnesses?

22 JUROR: The same.

23 THE COURT: Thank you very much. You are qualified
24 to serve.

25 MS. WINGARD: I would object to her being qualified

1 as she described their relationship as being a close
2 relationship, and that his son had a close relationship
3 with her daughter. I think she said it was a close
4 relationship.

5 THE COURT: I asked her whether she could be fair
6 and impartial, and she answered that she could.

7 MS. WINGARD: Yes, sir.

8 (Juror returning to seat in Courtroom)

9 THE COURT: Mr. McEachin, I would ask that you
10 stand and identify yourself and the members of your of-
11 fice.

12 SOLICITOR: Ladies and gentlemen, my name is Fitzlee
13 McEachin. I'm an Assistant Solicitor here in Florence
14 and Marion Counties.

15 The other members of our office are Solicitor Ed
16 Clements, Deputy Solicitor John Jeperfinger, Bob Wells,
17 Mike Carr, Dave Richardson, Steven Hill, Steven
18 DeBerry, Barbara Heyward and Catherine Waters.

19 THE COURT: All right. Is anyone related by blood
20 or marriage, or do you have a close, social, business
21 or personal relationship with any of those lawyers?

22 Some of these lawyers may have been engaged in pri-
23 vate practice, and if you have been represented by them
24 in the past or have any of these individuals prosecuted
25 you or any of your family in the past? If so, please

1 stand.

2 (Juror standing)

3 THE COURT: Come on forward.

4 (Juror coming forward)

5 THE COURT: Yes, maam.

6 (Inaudible reply from juror)

7 THE COURT: Stand over here so I can hear you,
8 please. This is Juror 177.

9 (Inaudible response)

10 THE COURT: You were a victim of a crime where
11 John Jeperfinger prosecuted or represented the State,
12 is that right?

13 (Inaudible response)

14 THE COURT: What was the charge?

15 (Inaudible response)

16 THE COURT: If called upon to serve on this jury,
17 could you give both the State and Defendant a fair and
18 impartial trial?

19 (Inaudible response)

20 THE COURT: All right, maam. I am going to excuse
21 you from jury service on this trial. Just remain seated,
22 please.

23 (Juror returning to seat in Courtroom)

24 (Another juror coming forward)

25 THE COURT: Yes, maam.

1 JUROR: Carrie Young, Number 165.

2 My son was prosecuted by the Prosecutor and was
3 represented by the Public Defender.

4 THE COURT: Maam, if you were called upon to serve
5 on this jury in this trial, could you set that aside
6 and give both the State and the Defendant a fair and
7 impartial trial?

8 JUROR: Yes, sir.

9 THE COURT: You are qualified to serve.

10 JUROR: Thank you.

11 (Juror returning to seat in Courtroom)

12 THE COURT: Ladies and gentlemen of the jury panel,
13 has any member of the jury panel formed or expressed
14 an opinion about any issue or matter in this case? If
15 so, please stand.

16 THE COURT: No response.

17 (No response from jurors)

18 Any member of the jury panel aware of any bias or
19 prejudice toward either the State or the Defendant in
20 this case? If so, please stand.

21 (No response from jurors)

22 THE COURT: No response.

23 Is any member of the jury panel a former law en-
24 forcement officer or has a family member who is a law
25 enforcement officer? If so, please stand.

1 (Juror standing)

2 THE COURT: Come forward.

3 (Juror coming forward)

4 THE COURT: Yes, maam.

5 JUROR: Margurite Bidwell, Number 175.

6 My son is a police officer (balance of statement
7 not audible)

8 THE COURT: If called upon to serve on this jury,
9 could you set aside the fact that your son is with law
10 enforcement, and give to the State and to the Defendant
11 a fair and impartial trial?

12 JUROR: Yes.

13 THE COURT: Just by virtue of the fact that your
14 son is in law enforcement, do you feel as though you
15 would favor the State or could you listen to the evidence
16 and the law as I charge it to you and give to the State
17 and Defendant a fair and impartial trial?

18 JUROR: Yes, sir.

19 (Juror returning to seat in Courtroom)

20 (Another juror coming forward)

21 (Inaudible colloquy between counsel and the Court)

22 THE COURT: She's staying with us.

23 (Other jurors coming forward; colloquy not audible
24 on the tape.)

25 THE COURT: Has any member of the jury panel read

1 or heard or seen anything about this particular matter?

2 If so, please stand.

3 (No response)

4 There are a number of different law enforcement
5 organizations -- I think various Sheriff's Departments
6 throughout the State have associations. The Highway
7 Patrol has an association, I think. There are a number
8 of organizations that are set up primarily for the pro-
9 motion of law enforcement.

10 Mothers Against Drunk Driving, CAVE -- Citizens
11 Against Violent Crime -- there are a number of such
12 associations.

13 So any member of the jury panel a member of one of
14 these organizations, or do you contribute to one? If
15 so, please stand.

16 If you would come forward?

17 (Jurors coming forward individually for colloquy
18 with the Court which is not audible on tape)

19 THE COURT: Is there any member of the jury panel
20 who knows of any reason whatsoever that you could not
21 serve as a juror on this case, with particular emphasis
22 being placed on your ability to give both the State
23 and the Defendant a fair and impartial trial, and being
24 fair and impartial to both the State and Defendant? If
25 so, please stand.

1 (Juror standing)

2 THE COURT: Yes, maam, you can come forward.

3 (Juror coming forward)

4 THE COURT: Yes, maam.

5 JUROR: Juror Number 24. I am a sexual abuse

6 counselor and a teacher in legal studies at Tech.

7 I thought you should know that.

8 THE COURT: Can you be fair and impartial?

9 JUROR: Yes, but I thought you might need to know

10 that.

11 THE COURT: It is good that you let us know that,

12 but if you would be called upon to serve on this case

13 you would be called upon to deliberate upon what the

14 State has been able to prove in deciding if the Defen-

15 dant is guilty beyond a reasonable doubt.

16 If you were called upon to serve on this case, can

17 you give both the State and the Defendant a fair and

18 impartial trial?

19 JUROR: I think I could, yes.

20 THE COURT: When you say you think you can, but

21 these are matters where we have to deal in absolutes,

22 and my question to you is could you be fair and impar-

23 tial?

24 JUROR: Yes.

25 THE COURT: You are qualified to serve, so please

stay with us.

1 (Juror returning to seat in Courtroom)

2 THE COURT: Ms. Wingard, I would ask that you stand
3 up and identify the members of the Public Defender's Of-
4 fice.

5 MS. WINGARD: I am Carrington Wingard, and I am an
6 Assistant Public Defender. The Circuit Public Defender
7 is Jack Lawson. The County Public Defender is Michael
8 Bell.

9 Other assistants are Scott Floyd, Karen Parrott,
10 Vick Meetze, Grayson Smith, and Scott Suggs.

11 THE COURT: Is anyone related to any of these law-
12 yers, or have a close or business or personal relation-
13 ship with them, or have you ever been represented by
14 them in the past or presently? If so, please stand.

15 (Jurors standing)

16 If you all would come forward.

17 (Jurors coming forward to speak with the Court.
18 Colloquy not audible on the record)

19 THE COURT: Any additional questions from the
20 State?

21 SOLICITOR: Just one, Your Honor. Hank Anderson
22 is an Assistant Public Defender. If you would inquire
23 as to whether anyone has been represented by him?

24 THE COURT: Okay. Is anyone related by blood or
25 marriage or have a close social, business or personal

1 relationship with Hank Anderson? If so, please stand.

2 (Juror stand)

3 Yes, maam, if you would come forward.

4 (Colloquy with juror not audible on tape)

5 THE COURT: Any additional questions by the
6 Defense?

7 MS. WINGARD: No, sir.

8 THE COURT: Strikes are five and five. Is that
9 your understanding, Mr. McEachin?

10 SOLICITOR: Yes, Your Honor.

11 THE COURT: Ms. Wingard?

12 MS. WINGARD: Yes, sir.

13 THE COURT: Strikes are five and five. Please
14 give us a jury.

15 (Whereupon, the jury was selected as follows:)

16 THE COURT: Ladies and gentlemen, you have seen
17 the procedure. When your name is called, come and
18 stand between the State's table and the Defense table,
19 face the back of the Courtroom, and we'll begin the se-
20 lection process.

21 Madam Clerk, you may select the jury.

22 CLERK: Number 11, Helen Blue. What say you for
23 the State?

24 SOLICITOR: Please present Ms. Blue.

25 CLERK: What says the Defendant?

1 MS. WINGARD: Please swear Ms. Blue.

2 CLERK: Please have a seat in the jury box.

3 (Juror seated)

4 CLERK: Number 54, Janice Franks. What says the
5 State?

6 SOLICITOR: Please present Ms. Franks.

7 CLERK: What says Defendant?

8 MS. WINGARD: Please seat Ms. Franks.

9 CLERK: Please have a seat in the jury box.

10 (Juror seated)

11 CLERK: One thirty-six, Neal Singletary.

12 What says the State?

13 SOLICITOR: Please excuse Mr. Singletary for the
14 purpose of this trial only.

15 CLERK: You're excused for this trial only, sir.
16 Return to your seat.

17 (Juror excused)

18 CLERK: Number 239, Michael Zahar. What says
19 the State?

20 SOLICITOR: Please present Mr. Zahar.

21 CLERK: What says the Defendant?

22 MS. WINGARD: Please seat Mr. Zahar.

23 CLERK: Please have a seat in the jury box.

24 (Juror seated)

25 CLERK: Eighty-seven, Sheila Langnecker. What

1 says the State?

2 SOLICITOR: Please present Ms. Langnecker.

3 CLERK: What says the Defendant?

4 MS. WINGARD: Please excuse Ms. Langnecker.

5 CLERK: You've been excused from this case.

6 (Juror excused)

7 CLERK: One twenty-six, Alva Prosser. What says
8 the State?

9 SOLICITOR: Court's indulgence for a moment?

10 THE COURT: Yes, sir.

11 (Brief pause in proceeding)

12 SOLICITOR: Please excuse Mr. Prosser for purposes
13 of this trial only.

14 CLERK: You're excused for this trial only, sir.
15 You may return to your seat.

16 (Juror excused)

17 CLERK: Number 2, Laurin Ard. What says the
18 State?

19 SOLICITOR: Please present Mr. Ard.

20 THE COURT: What says the Defendant?

21 MS. WINGARD: Please seat Mr. Ard.

22 CLERK: Please be seated in the jury box.

23 (Juror seated)

24 CLERK: Ninety-five, Betty Matthews. What says
25 the State?

1 SOLICITOR: Please present Ms. Matthews.

2 CLERK: What says the Defendant?

3 MS. WINGARD: Please excuse Ms. Matthews.

4 THE CLERK: You've been excused for this trial
5 only.

6 (Juror excused)

7 CLERK: Number 175, Margurite Bidwell. What
8 says the State?

9 SOLICITOR: Please present Ms. Bidwell.

10 CLERK: What says the Defendant?

11 MS. WINGARD: Please excuse Ms. Bidwell.

12 CLERK: You've been excused for this trial only.

13 Please return to your seat.

14 (Juror excused)

15 CLERK: Eighty-three, Heyward Jones. What says
16 the State?

17 SOLICITOR: Please present the juror.

18 CLERK: What says the Defendant?

19 MS. WINGARD: Please seat Mr. Jones.

20 THE CLERK: Please have a seat in the jury box.

21 (Juror seated)

22 CLERK: Number 241, Sammie Mccall. What says the
23 State?

24 SOLICITOR: Please present Mr. Mccall.

25 CLERK: What says the Defendant?

1 MS. WINGARD: Please seat Mr. McCall.

2 CLERK: Please have a seat in the jury box.

3 (Juror seated)

4 CLERK: One fifty-five, Isiah Williams. What says
5 the State?

6 SOLICITOR: Court's indulgence for just a moment?

7 THE COURT: Yes, sir.

8 SOLICITOR: Please excuse Mr. Williams for purposes
9 of this trial only.

10 CLERK: You are excused for this trial. Please
11 return to your seat.

12 (Juror excused)

13 CLERK: Number 231, Elizabeth M. Stokes. What says
14 the State?

15 SOLICITOR: Please present the juror.

16 CLERK: What says the Defendant?

17 MS. WINGARD: Please excuse Ms. Stokes.

18 CLERK: You're excused for this trial.

19 (Juror excused)

20 CLERK: One forty-eight, Roger Touchberry. What
21 says the State?

22 SOLICITOR: Please present Mr. Touchberry.

23 CLERK: What says the Defendant?

24 MS. WINGARD: Please seat Mr. Touchberry.

25 CLERK: Please have a seat in the jury box.

1 (Juror seated)

2 CLERK: Seventy, Julie Harrell. What says the
3 State?

4 SOLICITOR: Please present Ms. Harrell.

5 CLERK: What says the Defendant?

6 MS. WINGARD: Please swear Ms. Harrell.

7 CLERK: Please have a seat in the jury box.

8 (Juror seated)

9 CLERK: One ninety-seven, Annette Graham. What
10 says the State?

11 SOLICITOR: Please present Ms. Denmark-Graham.

12 CLERK: What says the Defendant?

13 MS. WINGARD: Please swear Ms. Denmark-Graham.

14 CLERK: Please have a seat in the jury box.

15 (Juror seated)

16 CLERK: One sixty-five, Carrie Young. What says
17 the State?

18 SOLICITOR: Please excuse Ms. Young for tthis case
19 only.

20 CLERK: You are excused for this trial.

21 (Juror excused)

22 CLERK: One eighty-seven, Thomas Duncan. What
23 says the State?

24 SOLICITOR: Please present Mr. Duncan.

25 CLERK: What says the Defendant?

1 MS. WINGARD: Please seat Mr. Duncan.

2 CLERK: Please have a seat in the jury box.

3 (Juror seated)

4 CLERK: Thirty-three, Marvin Covar. What says the
5 State?

6 SOLICITOR: Court's indulgence for a moment.
7 Please excuse Mr. Covar for this trial only.

8 CLERK: You are excused for this trial only.

9 (Juror excused)

10 CLERK: One forty-two, Gale Supreme. What says the
11 State? Do the State wish to challenge this juror for cause?

12 SOLICITOR: Please present Ms. Supreme.

13 CLERK: What says the Defendant?

14 MS. WINGARD: Please seat Ms. Supreme.

15 CLERK: Please have a seat in the jury box.

16 (Juror seated)

17 CLERK: Number 172, Rodney Barbour. What says the
18 State? Does the State wish to challenge this juror for
19 cause?

20 SOLICITOR: Please present Mr. Barbour.

21 CLERK: What says the Defendant?

22 MS. WINGARD: Please excuse Mr. Barbour.

23 CLERK: You are excused for this trial only.

24 (Juror excused)

25 CLERK: Seventy-eight, Gerard Jebaily. Does the

1 State wish to challenge this juror for cause?

2 SOLICITOR: Please present Mr. Jebaily.

3 CLERK: What says the -- does the Defendant wish
4 to challenge this juror for cause?

5 MS. WINGARD: Please seat Mr. Jebaily.

6 (Juror seated)

7 THE COURT: Strikes are one and two on the alternate
8 jurors each.

9 (Whereupon, alternate jurors were seated as fol-
10 lows:

11 Juror 41, Mark Davis, excused by State.

12 Juror 206, Megan Johnson, seated.

13 Juror 122, Charles Parnell, seated.)

14 THE COURT: Are there any objections with regard to
15 the jury selection process, from the State?

16 SOLICITOR: None from the State, Your Honor.

17 THE COURT: Any from the Defense?

18 MS. WINGARD: None from the Defense.

19 THE COURT: All right, ladies and gentlemen who
20 are still in the jury pool who have not been selected
21 for the case today, I will ask that you call back and
22 follow the instructions on the answering machine. Let's
23 just say to call after six.

24 (Jurors not selected for this trial excused by the
25 Court)

1 THE COURT: Ladies and gentlemen of the jury, we
2 are going to take a brief recess as we have to take up
3 some legal matters outside of your presence.

4 You all haven't heard anything about the case, but
5 do not discuss the case in any way, shape or form. You
6 can talk about the weather or anything else, but do not
7 talk about the case.

8 Everyone remain seated while the jury exits the
9 Courtroom.

10 (Jury excused to jury room)

11 THE COURT: I'll be happy to entertain motions at
12 this time.

13 MS. WINGARD: I would move to have the matter con-
14 tinued. Mr. Jackson is not here. He had been coming
15 to Court previously but he has not come today. He was
16 not down on the docket yesterday for the trial or for
17 disposition. I did speak with him by phone yesterday,
18 and I got no indication that he would not be able to be
19 here today.

20 THE COURT: Did you tell him that the case was going
21 to be tried today?

22 MS. WINGARD: I told him it was scheduled to be
23 tried today. In fact, he was told to come yesterday
24 but he told me he could not get a ride up here. It was
25 not on for yesterday and so he had no obligation to

1 appear yesterday.

2 He does live out of town and so he could not get
3 here yesterday. I did ask someone to check with my of-
4 fice to see if he had called the office or if we had
5 heard from him this morning, and I am assuming we have
6 not heard from him.

7 Judge, it is a fairly new case. The docket appear-
8 ance was back on April 30th, and, given the case manage-
9 ment system, I believe the Solicitor's Office still does
10 control the docket. Certainly the spirit of case man-
11 agement is that all older cases should be disposed of
12 quicker than the newer cases. This is a fairly new case.

13 It is on the trial docket for this term of Court,
14 Judge, but by my count I believe there was a hundred
15 and seventy-five cases on the docket or approximately
16 that many on that docket. The majority of those cases
17 were not 2010 indictments. There were even some 2007,
18 2008 cases -- over a hundred, I would say, for 2009.

19 So this is not an old case. It is less than a
20 year old. Mr. Jackson is facing very, very serious
21 felony charges.

22 I believe it's the State's position that this would
23 be his third offense, so he is looking at fifteen to
24 thirty years if the Court agrees with their interpreta-
25 tion of his record.

1 So obviously this is not some simple possession of
2 marijuana case that they are bringing, but a case with
3 grave consequences for Mr. Jackson.

4 I know he has come before during this term of
5 Court, and I would ask the Court to continue the matter
6 to give us an opportunity to locate him. Certainly, we
7 would not oppose a bench warrant, but we would ask Your
8 Honor not to have him tried in his absence in the case.

9 THE COURT: Mr. McEachin, you are recognized.

10 SOLICITOR: Thank you, Your Honor. First, with
11 regard to the motion for continuance, the Defendant was
12 put on the trial list not only for this term but for the
13 term before.

14 As an officer of the Court, I know that I spoke to
15 Ms. Bailey with the Public Defender's Office yesterday,
16 and she told me she had spoken with him and told him
17 to be here this morning. As Ms. Wingard stated, she did
18 also speak with the Defendant yesterday and told him to
19 be here this morning.

20 Obviously, this is a case we called where the De-
21 fendant didn't show up for Court to be tried.

22 With regard to the nature of the case, Your Honor,
23 I believe I've got -- I do have some cases older than
24 this one. However, I would tell the Court the first
25 week of this term I let Ms. Wingard know that if the

1 matter wasn't disposed of it would be coming to trial
2 this week.

3 It's a short case and won't take but half a day to
4 try. We typically set this type of case for the third
5 week of Court because, as Your Honor is well aware, if
6 the early pleas somewhat dry up the trial roster can
7 also dry up.

8 In addition to that, Your Honor, in South Carolina
9 the Solicitor's Office does still run the docket, and
10 we have chosen to call the case this day and we believe
11 with adequate notice.

12 We thus believe the motion for continuance should
13 be denied, Your Honor.

14 THE COURT: Anything further, Ms. Wingard?

15 MS. WINGARD: Judge, I do want to say that I was
16 told it would possibly be called. I certainly was not
17 told it was a kind of day certain case. I was told it
18 was a possibility.

19 THE COURT: Ms. Wingard, one thing we can't do is
20 let the Defendants determine when we try a case. You
21 clearly communicated with him that this potentially was
22 going to be tried this week several weeks ago. Is that
23 right?

24 MS. WINGARD: Judge, yes. He was -- he came to
25 Court, and actually, I believe, Mr. McEachin excused him

1 that first week prior to my being able to actually talk
2 to him, but it is my understanding that Mr. McEachin
3 talked to him the first week of the term.

4 MR. McEACHIN: That's correct, Your Honor. There
5 was a member of the Public Defender's Office present
6 when -- it might not have been known to Ms. Wingard,
7 but there was a member of the Public Defender's Office
8 present when I told the Defendant that he was free to
9 go; that he wouldn't have to be back in Court during
10 that week.

11 THE COURT: So he knew potentially, and you knew
12 at some point in time this potentially would be called
13 for . .

14 MS. WINGARD: Yes, sir. I knew there was a possi-
15 bility it would be called.

16 THE COURT: And you spoke with him yesterday and
17 someone else from your office spoke with him as well on
18 yesterday?

19 MS. WINGARD: Judge, I have to say had it been on
20 for yesterday I would have contacted him last Friday and
21 started this thing in motion.

22 He wasn't on the list to come to Court yesterday..

23 THE COURT: Okay. So taking everything into con-
24 sideration, and you are protected on the record -- your
25 motion is noted but denied.

1 We're going to take a brief recess and give the
2 Court Reporter a break. We'll come back and have the
3 hearing with regard to the motions.

4 Well, let me hear from you. Yes, Ms. Wingard.

5 MS. WINGARD: Judge Nettles, it would be a Jackson
6 versus Deno. We'd have a motion to suppress the drugs
7 as well as the notice motion. There are a number of
8 motions.

9 THE COURT: Okay.

10 MS. WINGARD: That jury room is so small, I hate
11 for them to sit back there, but I don't know -- is it
12 too early for them to go to lunch?

13 THE COURT: Okay, I'll tell you what we're going to
14 do. We're going to take about a five minute recess
15 to give the Court Reporter a break and then come back
16 and call the first witness.

17 How long do you anticipate -- if he is too long,
18 we may go to lunch. Let's take about a five minutes
19 recess.

20 (Whereupon, the Court took a brief recess, and the
21 matter was resumed.)

22 THE COURT: All right, Solicitor.

23 SOLICITOR: Doris O'Hara.

24 DORIS O'HARA, being duly
25 sworn, testified as follows, out of the presence of the

1 jury:

2 THE COURT: Have a seat, get close to that micro-
3 phone and speak loud and slowly for me.

4 DIRECT EXAMINATION

5 BY SOLICITOR:

6 Q. Please state your name for the record.

7 A. Doris O'Hara.

8 Q. What do you do, maam?

9 A. I'm a Deputy Clerk of Court. I supervise General
10 Sessions.

11 Q. Here in Florence County?

12 A. Yes.

13 Q. Okay, and as Deputy Clerk of Court, do you have
14 occasion to keep the records for General Sessions?

15 A. I keep all records for General Sessions.

16 Q. Okay, and in this case, State versus Ontaney
17 Jackson, Case Number 2010 GS 21 673, do you have the
18 records from his bail proceeding and his bond proceed-
19 ing?

20 A. I do.

21 Q. And if you would -- do you have those in front of
22 you?

23 A. I do.

24 Q. If you would, please, turn to bail proceeding form
25 two, and in the box at the bottom of the page, could

MS. O'HARA IN CAMERA

1 you please read into the record what -- I guess that's
2 number three -- what it states?

3 A. That the Defendant shall appear for a term of Court
4 of General Sessions beginning February 17, 2010, at
5 nine o'clock A.M. at General Sessions Court, 180 North
6 Irby Street, Florence, South Carolina, and remain there
7 throughout the term of Court. If no disposition is
8 made in that term, the Defendant shall appear the re-
9 mainder of each succeeding term of Court until disposi-
10 tion is made of this case or otherwise ordered by the
11 Court,-- unless otherwise ordered by the Court.

12 Q. Who signed at the bottom of that page?

13 A. Judge Jim Harwell, November 27, 2009.

14 Q. Do you also have with you the -- I guess the in-
15 formation that lists the Judges at the top?

16 A. I do.

17 Q. And, if you could, please look under Section two
18 and read subsection B.

19 A. His right and obligation to be present at trial.
20 The trial will proceed in his absence if he fails to
21 attend.

22 Q. Does it signify that that section was gone over
23 with the Defendant?

24 A. There is a check-mark beside it, yes.

25 Q. And who signed at the bottom of that page?

MS. O'HARA IN CAMERA

1 A. Judge Jim Harwell, November 27, 2009.

2 Q. Thank you. Please answer any questions Ms. Wingard
3 may have.

4 MS. WINGARD: I have no questions.

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

6 (Witness excused from stand)

7 THE COURT: Anything further, Mr. McEachin?

8 SOLICITOR: One further witness, Your Honor. Ms.
9 Michelle Tindal.

10 MICHELLE TINDAL, being duly
11 sworn, testified as follows, out of the presence of
12 the jury:

13 CLERK: Please be seated and state your full name.

14 WITNESS: Michelle Tindal.

15 DIRECT EXAMINATION out of the presence of the jury

16 BY SOLICITOR:

17 Q. Ms. Tindal, where are you employed?

18 A. Florence County Solicitor's Office.

19 Q. And in what capacity?

20 A. Administrative assistant for three Assistant Soli-
21 citors.

22 Q. Okay, and is one of your job functions for those
23 Assistant Solicitors to prepare a trial list or assist
24 them in preparing a trial list?

25 A. Yes, sir.

MS. TINDAL IN CAMERA

1 Q. And once you prepare that trial list, what do you
2 do with it?

3 A. It is Emailed to each attorney, defense attorney,
4 whose name is on that trial list, to notify them that
5 their case is to be called for trial.

6 Q. Is the Public Defender's Office also Emailed that
7 list?

8 A. Yes, it is.

9 Q. And particularly with regard to the Defendant in
10 this case, Ontaney Jackson, Indictment Number 2010 GS
11 10 673, was the Defendant in that Indictment placed on
12 the trial list for this term?

13 A. Yes, it is.

14 Q. And was that trial list forwarded to the Public
15 Defender's Office?

16 A. It was.

17 Q. Thank you. No further questions.

18 CROSS EXAMINATION out of jury's presence

19 BY MS. WINGARD:

20 Q. How many cases are on that trial list?

21 A. I cannot speak for each individual prosecutor. I
22 only know the three prosecutors that I deal with.

23 There are probably twenty-five for the three pro-
24 secutors that I do the trial list for.

25 Q. Twenty-five each?

MS. TINDAL IN CAMERA

1 A. Twenty-five total.

2 Q. So how many prosecutors are there?

3 A. I believe there is nine.

4 Q. So you would think it would be about seventy-five
5 cases on the trial list?

6 A. No. I have no idea how many cases. I can't answer
7 as to how many cases are on the trial list. I just
8 know the prosecutors that I work for, the cases that
9 they put on the trial list.

10 Q. So you don't see the final trial list?

11 A. No, I don't.

12 Q. So you don't know that this case got on the trial
13 list?

14 A. I know that it was Emailed to Christine for her to
15 send it to the trial list and then she Emailed it out
16 to the defense attorneys.

17 Then after that was done, she prints out a total
18 list that she gives to each prosecutor.

19 Q. Did you send that list out?

20 A. . .

21 SOLICITOR: Objection, Your Honor. I don't know
22 what that has to do with . .

23 THE COURT: She can answer.

24 A. I did not send it out to the defense bar. No, I
25 did not.

MS. TINDAL IN CAMERA

1 Q. Are you in charge of bench warrants?

2 A. I am.

3 Q. If a Defendant fails to come to Court then a bench
4 warrant is issued for his arrest. Is that correct?

5 A. Yes, if the prosecutor chooses to do that.

6 Q. No bench warrant has been issued for Mr. Jackson,
7 is that correct?

8 A. Not to my knowledge as of this date.

9 Q. And you would be the one who would know that, be-
10 cause that is the one area for everybody that you're in
11 charge of?

12 A. That's correct.

13 Q. So that then would suggest to you this is the first
14 day he has missed Court. Is that right?

15 A. I don't know that but they only ask me to issue the
16 bench warrants, and just because they haven't asked me
17 to issue a bench warrant doesn't mean that he did not
18 show up on a date.

19 Q. If a defendant doesn't come to Court though, you
20 are asked to issue a bench warrant for that defendant?

21 A. Correct.

22 Q. And you have not had a bench warrant issued for Mr.
23 Jackson, nor been asked to have one issued. Is that
24 correct?

25 A. No, I haven't.

MS. TINDAL IN CAMERA

1 Q. Thank you.

2 THE COURT: Do you have any Redirect?

3 SOLICITOR: No, sir.

4 THE COURT: You may step down.

5 (Witness excused from stand)

6 THE COURT: All right. I am going to issue a bench
7 warrant for this Defendant, Mr. Jackson.

8 Anything further?

9 SOLICITOR: That's it for the State, Your Honor.

10 THE COURT: I do find there was adequate notice
11 given the Defendant; that he has failed to appear, we
12 will try him in his absence.

13 I understand there are other motions?

14 MS. WINGARD: Yes, sir, there are a number of them.
15 First I need to review my Rule Five and Brady Motions
16 to make sure I've been disclosed everything.

17 THE COURT: Okay, very good. Mr. McEachin, you
18 may address the issue with regard to Rule Five and ex-
19 culpatory material requested.

20 SOLICITOR: Certainly, Your Honor. As far as I know
21 we have disclosed everything to Assistant Public De-
22 fender Wingard in this case. I have the Rule Five ac-
23 knowledgments and most recently as of yesterday, I
24 believe. It must have been yesterday.

25 She didn't have a copy of the marijuana analysis,

1 and I provided a copy of that analysis to her on yester-
2 day.

3 MS. WINGARD: There is one thing I would inquire
4 about specifically, if I may. I note from your report
5 -- it is a report from Deputy Chamberlain -- he indi-
6 cates officers present in the parking lot, and I only
7 received Mr. Chamberlain's report. I am just wondering
8 if there are any other reports of other officers who
9 were there.

10 THE COURT: Okay, is there another -- I think Rule
11 Five would require that you disclose any other reports.
12 Do you have another report?

13 SOLICITOR: No, sir. I spoke with Deputy Chamberlain,
14 and he was the only one to write a report in that par-
15 ticular case.

16 THE COURT: Okay. I don't think it is typically
17 required under Rule Five, but she says were there any
18 other officers, and I'm going to ask that you disclose
19 that.

20 SOLICITOR: Your Honor, the only other officer
21 there was Officer or Deputy Anderson.

22 THE COURT: And you don't have any notes or writ-
23 ten reports that have been done by him?

24 SOLICITOR: No, sir.

25 THE COURT: Anything further?

1 MS. WINGARD: No, sir, not if he's given me every-
2 thing they have.

3 THE COURT: All right.

4 MS. WINGARD: Let me say that the only report that
5 I have is a two page summary report.

6 THE COURT: All right. Anything further from the
7 Defense? Any other motions?

8 MS. WINGARD: Judge, we would move to suppress the
9 drugs.

10 THE COURT: All right. In response to the motion
11 to suppress the drugs, Mr. McEachin, you are recognized.

12 SOLICITOR: Yes, sir. I would call Deputy
13 Chamberlain at this time.

14 THE COURT: Deputy Chamberlain, I'm going to ask
15 that you come forward and place your left hand on the
16 Bible and raise your right hand as the Clerk administers
17 the oath.

18 JAKE CHAMBERLAIN, being
19 duly sworn, testified as follows, out of the presence of
20 the jury:

21 CLERK: Please be seated and state your full name.
22 for the record.

23 WITNESS: Jake Chamberlain.

24 DIRECT EXAMINATION In Camera

25 By Solicitor:

DEP. CHAMBERLAIN IN CAMERA

1 Q. Mr. Chamberlain, what's your occupation?

2 A. Florence County Deputy.

3 Q. And how long have you been with the Florence County
4 Sheriff's Office?

5 A. About two and a half years.

6 Q. In what capacity are you employed with the Sher-
7 iff's Office?

8 A. I'm a Deputy on the Pace Team.

9 Q. How long have you been on the Pace Team?

10 A. Almost one year -- just shy of one year.

11 Q. All right, and Deputy Chamberlain, I want to go
12 into events that transpired back on November 26th of
13 2009. Were you working on that particular day?

14 A. Yes.

15 Q. And did you have occasion to make an arrest on that
16 particular day?

17 A. Yes, sir.

18 Q. And what was that in reference to?

19 A. It was in reference to multiple narcotics viola-
20 tions. Possession with intent to distribute crack co-
21 caine; possession with intent to distribute cocaine;
22 simple possession of marijuana.

23 Q. Okay. Would you please tell me how you came about
24 -- well, let's take a step back.

25 On that particular evening, where were you on

DEP. CHAMBERLAIN IN CAMERA

1 patrol?

2 A. The area of Piney Grove Road and Pinehurst Road.

3 Q. And is that in Florence County?

4 A. Yes, sir, it is.

5 Q. And is there any type of structure or building at
6 that location?

7 A. Yes, sir, there is a building called the Club
8 Ponderosa.

9 Q. And did you -- what were you doing in that particu-
10 lar area that evening?

11 A. Being a member of the Pace Team, we were assigned
12 to work high crime areas, known drug areas, complaint
13 areas where we receive complaints at the Sheriff's Of-
14 fice.

15 Q. Is the Club Ponderosa one of those places?

16 A. Yes, sir.

17 Q. Okay, and upon approaching Club Ponderosa, what
18 did you observe?

19 A. I was approaching the Club and observed someone
20 standing near the back corner of the Club, leaning up
21 against the wall.

22 Q. Okay, and what did that individual do?

23 A. When he recognized my vehicle as a patrol car, he
24 then began to run around the building.

25 Q. And what did you do?

DEP. CHAMBERLAIN IN CAMERA

1 A. I followed him in my patrol vehicle.

2 Q. And what did you witness as he was running?

3 A. When he rounded the corner of the building, I was
4 behind him in my patrol vehicle. He reached into his
5 right front jacket pocket and grabbed multiple clear
6 bags and threw them out of his jacket pocket onto the
7 ground.

8 Q. Okay, and you witnessed that?

9 A. Yes, sir.

10 Q. Once that happened, what did you do?

11 A. I stopped my patrol vehicle where the -- on the
12 right side where the drugs were thrown -- where the bags
13 were thrown.

14 Then I jumped out of my patrol vehicle and told
15 the subject to stop and get on the ground. He did so,
16 and he was then detained at this time.

17 Q. Okay, and once you detained him, what did you
18 do?

19 A. I then read him his Miranda Rights.

20 Q. Did you ask him -- did he agree to speak to you?

21 A. Yes, sir.

22 Q. And did you ask him anything?

23 A. I then asked him if he had any weapons or anything
24 on his person that would harm me.

25 Q. And what did he state?

DEP, CHAMBERLAIN IN CAMERA

1 A. He stated, no, you can search me.

2 Q. And did you search him?

3 A. Yes, sir.

4 Q. Did you find anything?

5 A. In the right front jacket pocket, the same pocket
6 the drugs were thrown out of, he had a small clear plas-
7 tic bag of cocaine.

8 Q. Okay, anything else on him?

9 A. No, sir, just some ID -- an identification card.

10 Q. Okay, and prior to seeing him throw the drugs, did
11 you ever make a verbal statement to him? Prior to see-
12 ing him run and throw the bags?

13 A. No, sir.

14 Q. Okay, thank you. Please answer any questions the
15 Defense Attorney may have.

16 CROSS EXAMINATION, out of the jury's presence

17 BY MS. WINGARD:

18 Q. As I understand your testimony, the only
19 thing this young man was doing was standing in the park-
20 ing lot?

21 A. Yes.

22 Q. And what time of day or night was that?

23 A. Around ten o'clock, P.M.

24 Q. Was the club open or closed?

25 A. It was open.

DEP. CHAMBERLAIN IN CAMERA

1 Q. Were there cars in the parking lot?

2 A. Yes. The east side of the parking lot. Yes,
3 maam.

4 Q. And how about lighting? Were there lights out
5 there?

6 A. Yes, maam.

7 Q. Where were those lights?

8 A. One located on the east side and there's one lo-
9 cated on the west side.

10 Q. Have you done a diagram of the parking lot?

11 A. No, maam, I have not.

12 Q. So the only thing Mr. Jackson was doing was stand-
13 ing in the parking lot?

14 A. He was standing in the back of the building by
15 himself, yes, maam.

16 Q. And do you know Mr. Jackson?

17 A. No, maam, I do not.

18 Q. And do you have a video in your car?

19 A. I do, but not in this incident. My blue lights
20 were never activated.

21 Q. So your video only comes on when you activate the
22 blue lights?

23 A. Yes, maam.

24 Q. And you never put the blue lights on?

25 A. No, maam.

DEP. CHAMBERLAIN IN CAMERA

1 Q. You just followed this man around the back of the
2 building?

3 A. Yes, maam, I did.

4 Q. Is your car a marked car or an unmarked car?

5 A. At the time it was a semi-marked car. It had the
6 stripings on the side. So it is marked, yes, maam.

7 Q. Let me understand then how the car is marked. Did
8 it have the Florence County Sheriff's Department emblem
9 on it?

10 A. Yes, maam, it does.

11 Q. But it does not have lights on the top?

12 A. On the very top, no, maam.

13 Q. So if you had activated the blue lights, those
14 would be the ones behind the grill?

15 A. No, maam. They are in the top of the windshield.

16 Q. When you approached this -- how did you approach?

17 A. I came down Piney Grove Road.

18 Q. Could you come up to the chalk board so I can un-
19 derstand and do me a little diagram? That might make
20 it easier for us to understand.

21 A. Yes, maam.

22 Q. Thank you.

23 A. This is Piney Grove Road. This would be the Club
24 Ponderosa here.

25 Q. Does Pinehurt dead-end into it?

DEP. CHAMBERLAIN IN CAMERA

1 A. No, maam. (completing diagram)

2 Q. Thank you. Now, show me the direction you were
3 coming from?

4 A. I was coming from here.

5 Q. And where was he when you first saw him?

6 A. I was heading in this direction, and he was stand-
7 ing here.

8 Q. And this . .

9 A. This is the front door of the club.

10 Q. And so then where did he go?

11 A. When he seen my patrol vehicle, he ran here. I
12 turned in here and followed him. He ran around here on
13 the side of the club. I was here and he was here.

14 I was in my patrol vehicle here and that's when
15 I saw him throw the bags out of his pocket.

16 Q. You said there were other cars. Where were those
17 cars?

18 A. The other cars were parked in the parking spots
19 here.

20 Q. So you would have been near where cars were parked?

21 A. No, maam. Not -- where he ran was where the cars
22 were parked.

23 Q. When you first saw him, where were the cars?

24 A. Cars were parked in the front here, and he was
25 standing in the back of the club by himself.

DEP. CHAMBERLAIN IN CAMERA

1 Q. And what is over on that side where you say he
2 ran?

3 A. Dirt and grass.

4 Q. And what kind of lights are over there?

5 A. There's a street light here by the club and a
6 street light here. It lights up the whole . .

7 Q. So it's only street lights? It's no additional
8 lights on the club?

9 A. I'm really not sure. I don't know if it's a
10 street light or some kind of light that are there
11 for the club. I'm not sure.

12 Q. Looking straight onto your car, you don't see blue
13 lights on there?

14 A. Yes, maam, you would. Yes, maam, you would.
15 My blue lights were never activated.

16 Q. I understand that, but you said that it was a semi-
17 marked car, and in describing that you indicated that
18 it didn't have a rack of blue lights?

19 A. Yes, maam, it has a rack of blue lights on the top
20 of the windshield. There are no blue lights on top of
21 the vehicle.

22 Q. That's what I meant. That's what I meant.

23 A. Okay.

24 Q. You wouldn't see -- when you look at the profile of
25 your car, you wouldn't see a rack of lights like you do

DEP. CHAMBERLAIN IN CAMERA

1 in a . .

2 A. If there were no lights turned on, no, maam. No
3 light on the top, if that's what you're asking me.

4 MS. WINGARD: Judge, from the suppression hearing
5 we would go on into Jackson versus Deno.

6 BY MS. WINGARD:

7 Q. What did he have on? Describe what Mr. Jackson
8 was wearing that night?

9 A. He had on a black tennis-style jacket and, if I re-
10 call correctly, dark colored blue jeans. I believe dark
11 colored blue jeans.

12 Q. You were following behind him?

13 A. Yes, maam, I was.

14 Q. Did you find any wrappings on him?

15 A. No, maam, I didn't.

16 Q. Did you find any money on him?

17 A. No, maam, I didn't.

18 Q. The only thing that you found on his person was
19 the small bag of powder cocaine?

20 A. And his driver's license, yes, maam.

21 Q. Thank you.

22 REDIRECT EXAMINATION out of the presence of the jury

23 BY SOLICITOR:

24 Q. Just one follow-up. The headlights on your vehicle
25 were on, correct?

DEP. CHAMBERLAIN IN CAMERA

1 A. Yes, sir.

2 Q. And they were pointed at the Defendant as he was
3 running away from you?

4 A. Yes, sir.

5 Q. No further questions.

6 THE COURT: Any further testimony from the State
7 from this witness?

8 SOLICITOR: No, Your Honor.

9 THE COURT: All right, sir. Anything further from
10 the State?

11 SOLICITOR: No, sir.

12 THE COURT: All right. Ms. Wingard, I'll be glad
13 to hear argument with regard to the suppression.

14 MS. WINGARD: I would move to suppress the evidence
15 as there is simply no probable cause. All this man was
16 doing at ten o'clock at night -- not even an unusual
17 time -- all he was doing was standing in the parking lot
18 of a club loafing.

19 THE COURT: It sounds to me from the testimony he
20 was running.

21 MS. WINGARD: Well, but he didn't have any obliga-
22 tion to stay there. He did run but . .

23 THE COURT: Well, there is that articulable suspic-
24 ion when you see a police officer and run.

25 MS. WINGARD: But he didn't have any blue lights on,

1 and the car was only semi-marked. If you have a silhou-
2 ette of this car you would have no reason to think it
3 was law enforcement.

4 THE COURT: Then why was he running?

5 MS. WINGARD: Maybe it was time to go home.

6 THE COURT: All right.

7 MS. WINGARD: Maybe . .

8 THE COURT: Do you agree with that?

9 SOLICITOR: No, sir.

10 MS. WINGARD: Maybe he was jogging. I mean, I do
11 not think you can get a suspicion from everybody who
12 runs down the street. Get an articulable suspicion.

13 THE COURT: All right, I'll be glad to hear Mr.
14 McEachin with regard to that there was no proximate
15 cause.

16 SOLICITOR: Thank you, Your Honor. I have handed
17 up to the Court and delivered a copy to Ms. Wingard of
18 California versus ~~Mondorrrery~~ Dean, which is a United
19 States Supreme Court case of April 23rd, 1991. This
20 case is directly on point. The facts are similar in
21 nature.

22 In this case, officers approached in an unmarked
23 police car, and a group of individuals saw them and
24 started running.

25 One of the officers got out and had on a jumper

1 that said police and began to give chase. An officer
2 noticed that the defendant threw something on the ground
3 which was later termed to be crack cocaine.

4 The officer then placed the defendant under arrest.

5 In writing the Opinion for the majority in this case
6 it was noted, Your Honor, by Justice Scalia that the
7 fact that the defendant was running away from the police
8 did not constitute a seizure; that in order to suppress
9 anything in a case you have to prove fruit of the poison-
10 ous tree and have to have a seizure -- an unlawful search
11 and seizure.

12 The Supreme Court stated that in order to have an
13 arrest effectuated, there has to be either a touching
14 by an officer or a submission by the defendant.

15 In this case, there was neither. There was testi-
16 mony from Deputy Chamberlain that prior to him seeing
17 the Defendant throw drugs no type of order was yelled
18 out and certainly no submission because the Defendant
19 was still running after he threw the drugs.

20 Because there was no submission, there was no
21 touching in this case, we don't even get to the issue
22 of whether or not the seizure was reasonable or not as
23 there is no seizure according to the United States Su-
24 preme Court.

25 If there is no seizure, the drugs found there on

1 the ground could not viewed under a Fourth Amendment
2 analysis.

3 Now, with regard to the drugs found in the Defen-
4 dant's pocket, at the time Deputy Chamberlain was an
5 officer of the Pace Team, and he has testified that they
6 go into high crime areas, high drug areas, and he saw
7 the Defendant throw something.

8 At that time, I don't believe he had probable cause
9 or a reasonable suspicion of probable cause to stop the
10 Defendant, but the Defendant gave consent to search and
11 then was found a small bag of cocaine on the Defendant.

12 But based on case law by the United States Supreme
13 Court, with the drugs on the ground, I don't believe we
14 even get to a Fourth Amendment analysis as the Court
15 has said there is no seizure in that particular case as
16 with regard to the drugs on the individual.

17 By the time he had already thrown the drugs, an
18 articulable or reasonable suspicion had certainly been
19 established, or certainly arguably been established, by
20 the officer to detain the individual.

21 THE COURT: Ms. Wingard, I'll be glad to hear from
22 you. Any law with regard to the law that you wish me
23 to review?

24 MS. WINGARD: Judge, I don't have a particular case,
25 but I do think the cases imply that certainly to stop

1 somebody you have to have some sort of articulable sus-
2 picion.

3 THE COURT: How about the throwing of the drugs?
4 Is that an articulable suspicion?

5 MS. WINGARD: Judge, I think the State has made
6 that argument. I am not prepared to concede it.

7 THE COURT: All right. Anything further? Any ar-
8 gument further?

9 MS. WINGARD: No, sir.

10 THE COURT: I think that upon reviewing California
11 versus Hondorrery, it does appear as if this is almost
12 the exact factual scenario. The issue with regard to
13 seizure is not really an issue.

14 He was not under arrest, there had not been an order
15 for him to stop, and he was throwing the drugs, which
16 does not address the issue -- does not even bring forth
17 the issue of unreasonable search and seizure.

18 He had a right to pick up the drugs because they
19 were abandoned by the Defendant, and with regards to
20 the drugs that were found on him, I think it is clear
21 he's giving consent to the search at the time.

22 But in addition to that, it is appropriate for him
23 to search incident to the arrest.

24 So based on that, I am not going to suppress based
25 on the case of California versus Hondorrery and the facts

1 that have been related to the Court.

2 Your request to suppress the drugs are denied.

3 Anything further from the Defense with regard to
4 statements of any sort?

5 MS.. WINGARD: Yes, sir, we do have Jackson versus
6 Deno.

7 THE COURT: All right. I understand from discus-
8 sions in chambers that there is going to be -- Defense
9 is moving to suppress the statements and, of course,
10 the burden is shifted to you, Mr. McEachin.

11 SOLICITOR: Judge, you heard previously from Deputy
12 Chamberlain and we would recall him.

13 THE COURT: Deputy Chamberlain, you are still under
14 oath.

15 WITNESS: Yes, sir.

16 JAKE CHAMBERLAIN, recalled
17 to the stand, testified as follows out of the presence
18 of the jury:

19 DIRECT EXAMINATION

20 BY SOLICITOR:

21 Q. Deputy Chamberlain, . .

22 SOLICITOR: I will briefly go over his qualifica-
23 tions again.

24 THE COURT: All right.

25 Q. Deputy Chamberlain, what is your position?

DEPUTY CHAMBERLAIN IN CAMERA

1 A. Deputy with the Florence County Sheriff's Office.

2 Q. And how long have you been employed by the Sher-
3 iff's Office?

4 A. Two and a half years.

5 Q. And what is your present job with the Sheriff's
6 Office?

7 A. I'm a deputy on the Pace Team.

8 Q. What exactly is the Pace Team?

9 A. It's a community enforcement team. We work high
10 crime areas. We work areas that administration receives
11 a high number of complaints from, and we also work high
12 drug areas.

13 Q. Okay. How long have you been on the Pace Team?

14 A. Almost one year.

15 Q. Okay, were you on the Pace Team back in November
16 of 2009?

17 A. Yes, sir, I was.

18 Q. Were you working on the evening of November 26,
19 2009?

20 A. Yes, sir, I was.

21 Q. What area were you patrolling?

22 A. Piney Grove and Pinehurst Road in Timmonsville.

23 Q. And did you make an arrest that night in that area?

24 A. Yes, sir, I did.

25 Q. And what was that arrest for?

DEP. CHAMBERLAIN IN CAMERA

1 A. Possession with intent to distribute crack cocaine,
2 possession with intent to distribute cocaine, and simple
3 possession of marijuana.

4 Q. Where did that take place?

5 A. At the Club Ponderosa at Piney Grove and Pinehurst
6 in Timmonsville.

7 Q. That's in Florence County?

8 A. Yes, sir, it is.

9 Q. And if you could, just briefly relate the facts sur-
10 rounding that arrest?

11 A. Our Team was going to check the Club Ponderosa. I
12 came and approached the Club at Piney Grove Road when
13 I observed an individual standing at the back of the Club
14 by himself. There were no cars near where he was stand-
15 ing.

16 When I approached him, the subject did see my pa-
17 trol vehicle and recognized me as a police officer.
18 The subject then began to run around the back of the
19 building.

20 Q. As he ran around the back of the building, what
21 did you do?

22 A. Turned in behind where he was running and followed
23 him in my patrol vehicle.

24 Q. And about what time was this? What time of day or
25 night?

DEP. CHAMBERLAIN IN CAMERA

1 A. Ten o'clock P.M.

2 Q. And when you followed him around the building,
3 what, if anything, did you observe?

4 A. When he turned around the corner of the building,
5 I also turned around the building in my patrol vehicle
6 directly behind him. I observed the subject reach into
7 his right front jacket pocket and throw numerous bags
8 out of his pocket.

9 Q. And once you witnessed that, what did you do?

10 A. Once I witnessed it, I did stop my patrol vehicle
11 where the bags -- beside where the bags were thrown. I
12 got out of my vehicle and told the subject to stop and
13 get on the ground, which he did do so.

14 Q. Okay, and at that time what did you do once he
15 got on the ground?

16 A. I approached the subject and detained him.

17 Q. And upon detaining the subject, what did you do
18 or say to him?

19 A. He was read his Miranda Rights by me.

20 Q. All right, and did you actually read those Rights
21 or did you recite them from memory?

22 A. I read them from a Miranda card.

23 Q. Do you have that card with you today?

24 A. It's in my patrol vehicle.

25 Q. Okay, and do you keep that card in your patrol

DEP. CHAMBERLAIN IN CAMERA

1 vehicle?

2 A. Yes, sir.

3 Q. Okay.

4 A. I keep it on my person, in the pocket of my pants,
5 but I do not wear this uniform when I'm working. I keep
6 it in the pocket of my pants at all times when I'm in my
7 car or in the car.

8 Q. Okay, and once you read him his Miranda Rights,
9 what was the next thing you did?

10 A. I then asked the subject if he had any weapons or
11 anything illegal on him that would stick or harm me,
12 and he stated, no, you can search me.

13 Q. Okay, and did you search him?

14 A. Yes, sir, I did.

15 Q. What, if anything, did you find on him?

16 A. In the right front jacket pocket I found a small
17 clear plastic bag of cocaine.

18 Q. Okay, and after that -- after he was charged and
19 -- he was charged and that statement was made, were any
20 other statements made by the Defendant?

21 A. As he was being walked back to the patrol vehicle
22 he was asked what was in the bags that he threw, and he
23 did say, you can't charge me with those; you didn't find
24 them in my pocket.

25 Q. Okay, and do you have a copy of your statement

DEP. CHAMBERLAIN IN CAMERA

1 from out there with him?

2 A. Yes, sir.

3 Q. And would it help you to refresh your memory if
4 you took a look at that statement?

5 A. Yes, sir, it would.

6 Q. Okay. What was it the Defendant said upon the
7 question about what he had thrown on the ground?

8 A. He was asked what was inside the bags he had thrown
9 on the ground, and the subject replied to myself that
10 you cannot charge me with those bags because they are
11 in the parking lot and not in my pocket.

12 Q. And after he made that statement, were any other
13 statements made by the Defendant?

14 A. No, sir. He wasn't asked any more questions at
15 the time.

16 Q. Okay. What did you do with the Defendant at that
17 time?

18 A. He was placed in my patrol vehicle.

19 Q. How long do you think the conversation between you
20 and the Defendant lasted?

21 A. Approximately a minute.

22 Q. And did you speak further with the Defendant or
23 did he give another statement to you?

24 A. No, sir, he did not.

25 Q. Did you smell any alcohol or anything on his breath?

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1 A. No, sir, I did not.

2 Q. Okay. Did he appear to have any type of mental
3 defect?

4 A. No, sir.

5 Q. Thank you. Please answer any question the Defense
6 may have.

7 A. Yes, sir.

8 CROSS EXAMINATION out of the presence of the jury

9 BY MS. WINGARD:

10 Q. I'm a little confused. Did he make this statement
11 as he was running on foot or after -- when did
12 you give him his Miranda Rights?

13 A. Excuse me?

14 Q. You said the subject was asked what was inside the
15 -- your report says the subject was then asked what was
16 inside the bags that he threw to the ground when he was
17 running and Deputy Chamberlain was following him while
18 he was running . .

19 A. He was asked what he threw -- that is when I was
20 -- when I was following him, he threw the bags on the
21 ground-- while I was following him and he was running
22 on foot.

23 Q. So you are not saying that he was asked while he
24 was running on foot?

25 A. Correct.

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1 Q. You would stand by your statement that you asked
2 him what was inside the bags that was thrown while he
3 was running, not asked as he was running?

4 A. Correct.

5 Q. It's a little confusing, so let's back up then. By
6 the time -- at what point did you seize bags that were
7 thrown?

8 A. On the ground?

9 Q. Yes.

10 A. He was taken back to my patrol vehicle, placed in
11 my patrol vehicle, and the bags were picked up and placed
12 in evidence bags.

13 Q. So you detained him prior to picking up the bags?

14 A. Correct.

15 Q. So you had no idea what was in those bags? You
16 did not know what was in those bags?

17 A. Correct. That's why I asked him.

18 Q. So it could have been anything in those bags?

19 A. Yes, maam.

20 Q. So at that point, you didn't have any reason to
21 detain him?

22 A. Well, from prior experiences of being in similar
23 situations, yes. We do a lot of bar checks, not only
24 at this bar, and we have a lot of these same incidents
25 happen, and from my experience throwing clear plastic

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1 bags from your pocket -- it's usually not candy.

2 Q. So you could see they were clear plastic bags out
3 there at ten o'clock at night?

4 A. Yes. It's a well lit area and my headlights were
5 directly on him.

6 Q. You didn't have any photographs or anything of that,
7 do you?

8 A. No, maam.

9 Q. So you're saying that this was in November, and
10 you had been on this Team for what -- about three months?

11 A. Around about.

12 Q. How many bags had you seen thrown out?

13 A. Numerous bags. I can't tell you exactly. We do
14 this every weekend. We go to -- we check all the bars
15 in Florence County. We check all the high crime areas,
16 and we deal with people all the time walking on the road-
17 ways. That's our job.

18 Q. So in your three months you had seen lots of clear
19 plastic bags thrown?

20 A. I had been a deputy prior -- a year and a half
21 prior to this and seen similar incidents.

22 Q. All right. So did you see the bags on the grounds
23 you were talking about or what you talked about to him?

24 A. Yes, maam, when he was walked back to my patrol ve-
25 hicle.

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1 Q. So at that point you had not picked the bags up?

2 A. Correct.

3 Q. Did you say, see those bags on the ground, or some-
4 thing like that?

5 A. I said, there's what you threw, and he said, you
6 cannot charge me with that.

7 Q. So he didn't say, I threw them on the ground? He
8 said, you can't charge me because those are . .

9 A. They are in the parking lot and not on my person.
10 That's what he stated.

11 Q. Now, at what point did you actually pull out your
12 card and read the Miranda Rights?

13 A. He was detained. He was rolled over and sitting
14 straight up, and he was advised of his Miranda Rights at
15 this time.

16 Q. Was that before or after you searched his pockets?

17 A. Before.

18 Q. And then after that, he gave you permission?

19 A. Yes, maam. He stated I could search his person.

20 Q. Did he give you any trouble at all once you had
21 stopped him?

22 A. No, maam.

23 Q. Didn't give any trouble?

24 A. No, maam.

25 Q. Did he try to fight you?

MR. CHAMBERLAIN IN CAMERA

1 A. No, maam.

2 Q. So the statements that you say he made were that,
3 no, I don't have any weapons and you can search me, . .

4 A. Correct.

5 Q. . . and then after you pointed out the bags on the
6 ground, he said -- is this a direct quote? You cannot
7 charge me with those bags because they are in the park-
8 ing lot and not in my pocket?

9 A. And this was after I'd pointed the bags out to him,
10 while he was still sitting on the ground.

11 Q. But you just said you asked him and he . .

12 A. I said that I pointed the bags out to him -- I
13 pointed them out to him, walking him to my vehicle. He
14 was asked about the bags before he was brought back to
15 the patrol vehicle.

16 It clearly says that in the report.

17 Q. You just said -- you just told me you pointed out
18 the bags, did you not?

19 A. Correct. This was after this question -- this is
20 while I'm walking him to put him in my patrol car, which
21 was parked beside where he threw the bags onto the
22 ground.

23 Q. So the bags were visible on the ground when you
24 pointed them out?

25 A. Correct.

DEP. CHAMBERLAIN IN CAMERA

1 Q. So clearly these were visible bags, so he could have
2 seen the bags on the ground?

3 A. Yes, maam.

4 Q. So there is no misunderstanding -- let me under-
5 stand. He was-- by the time he made this statement it
6 was after you had him on the ground; he was by where the
7 bags were?

8 A. No, maam.

9 Q. Okay, so tell me what your story is now.

10 A. Maam, as it says in my report, as I explained to
11 you earlier, and I will read it word for word for you
12 if you like -- okay -- he was asked what was inside of
13 the bags that he threw while he was running on foot.
14 He then replied to this officer, you cannot charge me
15 with these bags because they are in the parking lot
16 and not in my pocket.

17 Q. It does not say anywhere in the report where he
18 was when he made that statement?

19 A. Okay, it does not say he was standing beside the
20 bags.

21 Q. And that is what I'm asking you.

22 A. No, maam. He was asked the question of what was
23 inside the bags but he was detained, was read his Miranda
24 Rights, and he was searched while he was still sitting
25 on the ground, which he did consent to.

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1 He was asked then what was in the bags he threw on
2 the ground when he was running, and he stated, you can-
3 not charge me with those; you did not find them in my
4 pocket.

5 Q. You had told him they were on the ground?

6 A. I did not tell him. I asked him what was in the
7 bags.

8 Q. You told him there were bags?

9 A. I asked him a question.

10 Q. But he didn't volunteer or first make mention of
11 the bags? You made first mention of the bags?

12 A. Correct.

13 Q. Those are the two statements that you say he
14 made?

15 A. Correct.

16 Q. Did he make any other statements that are not re-
17 flected in your report?

18 A. . . .

19 Q. Did he make any statements denying that the drugs
20 were his?

21 A. He never denied it but stated I could not charge
22 him with it because they were not in his possession.

23 Q. What, if any, conversation did you have between
24 him making that statement and . . .

25 A. I at this time had no further conversation with him.

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1 I was walking him to my patrol vehicle. Okay, and
2 Deputy Bean was also there, as we stated earlier. He
3 did not do a report but he was -- while I was walking
4 the subject to my patrol vehicle I stated to the subject
5 -- I did point out the bags. I said, that's what he
6 threw, and not specifically speaking to him.

7 He was placed in the car and the door was shut on
8 the car. He was stating -- inside the car he was upset
9 and he was stating, you can't charge me with that; you
10 can't charge me with that.

11 Q. All right. So actually who took the drugs from
12 the ground?

13 A. I did.

14 Q. What did Deputy Bean do?

15 A. He just stood by the scene; pretty much that's what
16 he did the whole time.

17 Q. So when did he get there?

18 A. He arrived there at the same time I did. He just
19 parked on Pinehurst so he could see. He was parked on
20 Pinehurst Road and he stayed in front of the club. I
21 was in back of the club, so he was not with me during
22 the incident.

23 Q. I thought you said he was with you?

24 A. He was there after he was . .

25 Q. That's what I want to know. At what point did

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1 Deputy Bean come up?

2 A. After the subject was apprehended and while on the
3 ground.

4 Q. So he would have seen you find the drugs and would
5 have heard the Miranda Rights? He would have heard the
6 comment about you can't charge me with that?

7 A. He would have heard him in my car yelling this,
8 because he was standing near where we were. Yes, maam.
9 He was -- he had not gotten out of his car by the time
10 he was placed in handcuffs.

11 Q. Okay, but -- and I'm not trying to be difficult
12 now, but I'm trying to ascertain what went on.

13 You just said he would have heard him yell this
14 from the car. Did you not say that?

15 A. Yes, maam.

16 Q. I thought you said he made this statement before
17 you got him to the car, right after he was handcuffed?

18 A. And I also stated several times that after he was
19 put in the car he was upset, and was saying, you cannot
20 charge me with that. You cannot charge me with that.

21 I stated that Deputy Bean would have heard him.

22 Q. So Deputy Bean didn't hear the first part of the
23 statement?

24 A. No, maam.

25 Q. So he was not there the whole time?

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1 A. He was not with me the whole time, no.

2 Q. What I'm trying to ascertain is at what point did
3 Deputy Bean come up?

4 A. After the subject was apprehended, searched, and
5 while I was walking him back to my car Deputy Bean ap-
6 proached.

7 Q. Before you picked up the bags?

8 A. Correct.

9 Q. So now there were two officers present, but he just
10 did not file a report?

11 A. Yes, maam.

12 Q. I have nothing further.

13 THE COURT: Any Redirect?

14 SOLICITOR: No, sir, Your Honor.

15 THE COURT: All right, Deputy Chamberlain, just
16 to make the record clear, when you read him his Miranda
17 Rights, what did you tell him?

18 WITNESS: I don't understand

19 THE COURT: You said you read him or gave him his
20 Miranda Rights.

21 WITNESS: I read him the Miranda Rights card. I
22 don't know from memory what it is but I can tell you
23 about what it is, but I always use my card. That way
24 it is always word for word.

25 THE COURT: But you did indeed read from that card?

WITNESS: Yes, sir, from that card.

DEPUTY CHAMBERLAIN IN CAMERA

1 WITNESS: Yes, sir, from that card.

2 THE COURT: I'm sure you said this, but what did
3 you find in the search of his person? What did you
4 find on him?

5 WITNESS: A small bag of cocaine in his right
6 front jacket pocket and a South Carolina driver's li-
7 cense.

8 THE COURT: All right. Mr. McEachin, anything
9 further?

10 SOLICITOR: No, Your Honor.

11 THE COURT: I'll be glad to hear arguments with
12 regard to the statements.

13 MS. WINGARD: Your Honor, I would move to exclude
14 the statements. Clearly, it is not in the record what
15 Miranda Rights he gave him. He said he read them from
16 the card, but we don't know what may or may not have
17 been on that card.

18 So I don't think the record is complete in that
19 regard. He says he read him from the card. Well, what
20 card?

21 I would move to suppress the statements.

22 THE COURT: Mr. McEachin.

23 SOLICITOR: Your Honor, the Officer testified he
24 read him from the Miranda card, and that is pretty stand-
25 ard practice with law enforcement agencies.

1 He explained that he carried the card in his pants
2 pocket while he was in the car, but he is today here
3 in his patrol uniform and the card is inside his vehicle.

4 As well, there was no testimony elicited on Cross
5 Examination which would show that the statements made
6 by the Defendant were coerced or involuntary in nature,
7 and that is, of course, what you're looking at in de-
8 termining whether the statements do come in or are ad-
9 missible; whether or not the statements are involuntary.

10 Also, I think Ms. Wingard has alluded to whether
11 -- you also look to see, as I think Ms. Wingard has al-
12 luded to, whether he gave a free and voluntary waiver
13 of the rights.

14 Deputy Chamberlain testified he read the rights
15 directly from the card. As such, Your Honor, that ends
16 up being the testimony in this case.

17 Without anything being brought out to make it inad-
18 missible on Cross Examination by Ms. Wingard, there was
19 no type of coercion or anything involuntary in the
20 statements, Your Honor.

21 We would respectfully request that the statements
22 be allowed.

23 THE COURT: Clearly the statements were subject to
24 custodial interrogation after being given the Miranda
25 Rights.

1 I do find based on the testimony given by Officer
2 Chamberlain that the statements are admissible. There
3 is no testimony with regard to any coercion. There was
4 certainly not a lengthy interrogation and certainly no
5 subterfuge or trickery involved in the ascertaining of
6 this information.

7 There was no testimony with regard to the fact that
8 the Defendant was intoxicated or had a sub-standard IQ.
9 There was no physical coercion. There was no hope of
10 reward or any promise.

11 Therefore, I do indeed find that he was in custody
12 and Miranda Warnings were indeed given; that the state-
13 ments were voluntarily given.

14 There has been no statement or testimony that he
15 did not understand his rights. Therefore, I find the
16 statements are indeed admissible.

17 Anything further from the Defense?

18 MS. WINGARD: Nothing further.

19 THE COURT: Anything further from the State?

20 SOLICITOR: No, sir, Your Honor.

21 THE COURT: All right, bring the jury out and
22 swear the jury. I'll give a little preliminary charge.
23 We'll do opening statements and then recess for lunch.

24 (Jury returned to Courtroom)

25 THE COURT: Is the State ready to proceed?

1 SOLICITOR: The State's ready, Your Honor.

2 THE COURT: Defense ready?

3 MS. WINGARD: Yes, sir.

4 THE COURT: Mr. Zajar, I'm going to ask you to sit
5 in that chair right there.

6 Ladies and gentlemen of the jury, I would ask that
7 you stand as the Clerk administers the oath.

8 (Jury sworn for the trial of the case by the Clerk)

9 THE COURT: Ladies and gentlemen, I know the jury
10 room is a small room, and I apologize for the delay,
11 but there were some legal matters that we needed to
12 tend to before we started.

13 Mr. Zahar, I'm going to ask that you serve as the
14 Foreman. You are like everyone else when it comes
15 time to deliberate. You will have one vote.

16 However, you're going to have additional responsi-
17 bilities, one of which is to preside over the delibera-
18 tions. That simply means that during the deliberation
19 process you will see that everybody's voice is heard.

20 In addition to that, you will be given the respon-
21 sibility pertaining to any questions or concerns posed
22 by the jury. Throughout the trial of the case, if there
23 are problems or questions or concerns or anything of
24 that nature, I'm going to ask that members of the jury
25 communicate that to Mr. Zajar, the Foreman, who will

1 reduce it to writing and give it to the Deputy. If it
2 is something I can help you with, I will indeed do that.

3 At this time, Mr. Zajar, I will ask that you remain
4 in this chair, and at the same time the two alternates
5 will remain in those two chairs. The rest of you can
6 sit anywhere you would like.

7 I want to talk to you a little bit about how --
8 tell you a little bit about the procedure we're going
9 to go through. I will give you a complete charge on the
10 law, of course, at the conclusion of the case, but I
11 just kind of want to give you an idea of what we're
12 talking about as kind of a preliminary charge so you
13 will know what to expect.

14 Of course, we are starting the case of the State
15 of South Carolina versus Ontaney Ventrell Jackson, 2010
16 GS 21 0673.

17 He has been indicted for numerous offenses that we
18 have already addressed in this Court, and Mr. Jackson
19 has pled not guilty to those offenses.

20 When someone is charged with an offense in the
21 United States of America and they plead not guilty,
22 certain constitutional safeguards come into play, and
23 that applies to all of us as citizens.

24 One constitutional safeguard is that anyone who
25 is charged with or accused of a crime or criminal activity

1 here in the United States is entitled to a presumption
2 of innocence. It is like a protective cloak that guards
3 all of us as American Citizens. We are presumed to be
4 innocent.

5 Mr. Jackson, as we start this trial, is presumed
6 to be just as innocent as you or me. We start from that
7 frame of reference.

8 There are certain countries where if you are accused
9 of a crime, like certain Latin American countries, you
10 are presumed to be guilty and you have to prove your in-
11 nocence.

12 In the United States of America, that isn't the
13 way it operates. Mr. Jackson is presumed to be innocent
14 and that's where we start.

15 A second constitutional safeguard is that the State
16 is the one who brought these charges, and they have
17 the burden of proof.

18 There are some practical reasons for that, because
19 they are the ones who investigated the case, and they're
20 the ones who made the accusations. They are the ones
21 who have the ability and the wherewithall to gather the
22 evidence and to bring it to you here today.

23 So as a practical reason, they are required to pro-
24 duce to you this evidence, and there are some other
25 theoretical reasons behind that.

1 Here in the United States of America, a Defendant
2 does not have to prove a thing. The burden is on the
3 State.

4 The Defendant doesn't have to testify. He doesn't
5 have to produce any evidence. He may not do a thing.
6 The burden is completely on the shoulders of the State.

7 The third element of the constitutional safeguards
8 is we are engaged in a criminal trial here today. Per-
9 haps many of you have sat on a civil jury in years past
10 where you are debating about money. A car accident is
11 a good example, or medical malpractice, or a contract
12 dispute. All those things are usually disputes about
13 money.

14 In those cases, if you are called to serve on a
15 jury, you are told that the Plaintiff has the burden of
16 proving their case and they need only tilt the scales
17 a little bit in their favor.

18 Imagine with me, if you will, the Scales of Justice
19 when a case started. In a civil case, the lady is blind-
20 folded, and as it begins the scales are even.

21 In this case, in a civil case, all the Plaintiff
22 need do is tilt the scale ever so slightly in their
23 favor for the Plaintiff to prevail, or more likely than
24 not, because in a civil case the only thing you are
25 talking about is money.

1 But in this case, this is Criminal Court, and we
2 are talking about very important civil liberties in a
3 person's life. For that reason, the State has to meet
4 the highest burden of proof known in our judicial system,
5 and that is proof beyond a reasonable doubt.

6 I will define that more in depth for you at the
7 conclusion of the case, but imagine with me, if you
8 will, the Scales of Justice in a criminal case. The
9 State needs to lock up the scales. They need to prove
10 each and every element of each and every offense they
11 are accusing in order for an individual to be found
12 guilty.

13 I remind you that the presumption of innocence is
14 with Mr. Jackson as we begin this trial. It follows
15 him throughout the trial, and on into the deliberations.

16 It is only after the State has been able to prove
17 beyond a reasonable doubt an individual is guilty of
18 something that that presumption of innocence is stripped
19 away.

20 The presumption follows him throughout this trial,
21 and let me tell you a little bit about how we're going
22 to proceed.

23 We will start with opening statements where Mr.
24 McEachin is going to have an opportunity to get up and
25 sort of summarize his position or what his case is all

1 about, talk to you a little bit about the law and what
2 to expect.

3 Then Defense Counsel, Ms. Wingard, is going to
4 have an opportunity to stand up and address you and
5 summarize what her case is about, any defenses they
6 might or might not have.

7 She's given an opportunity to give an opening
8 statement but, once again, she doesn't have to give an
9 opening statement because the Defendant need not prove
10 anything. But she is given an opportunity to do that.

11 After that, we'll begin the taking of evidence in
12 the case, and with regard to the presentation of evi-
13 dence the State goes first.

14 They will call witnesses to the witness stand, and
15 you will hear testimony about what transpired. You
16 will also see some documentary evidence or you might
17 see diagrams or photographs.

18 You might see reports that are introduced into evi-
19 dence. All of those things are going to be there for
20 you to consider.

21 At the conclusion of the presentation of the case
22 by the State, then the Defense will be given an oppor-
23 tunity to present any evidence they might have.

24 Once again, they are not required to do that be-
25 cause the burden is completely on the shoulders of the

1 State to do that.

2 Ladies and gentlemen, you are the sole and exclus-
3 ive tryers of the facts. Your job, your responsibility
4 you have taken a very solemn oath to fulfill is to lis-
5 ten to the evidence that comes from this witness stand,
6 find out what the truth is.

7 In any trial, whether it be civil or criminal or
8 anything, there is a dispute about the facts. There
9 are rare occasions where there is an agreement about
10 the facts but a disagreement with regard to the infer-
11 ence to be drawn from the facts.

12 There is always a factual dispute and you ladies
13 and gentlemen of the jury in your collective wisdom will
14 have to determine what the truth is.

15 The law doesn't allow me to have an opinion about
16 the facts. That's going to be your job, to determine
17 what the truth is and what actually happened. You have
18 to be the fact-finders in your collective wisdom, and
19 you will be called upon to do that.

20 Ladies and gentlemen of the jury, I am the tryer
21 of the law. I will tell you what the law is. If you
22 have an idea of what the law is and it doesn't agree
23 with what I tell you that law is you must disregard your
24 idea because you have taken a solemn oath to accept and
25 apply the law as I give it to you.

1 But you are the sole and exclusive judges of the
2 facts. I cannot say anything about the facts. I can't
3 comment on the facts. That's your job.

4 Ladies and gentlemen, as jurors you will be called
5 upon necessarily to evaluate the credibility of witnes-
6 ses who will testify in doing that.

7 I will tell you what the law says in that regard
8 in my charge in greater detail at the conclusion of the
9 case.

10 But you can believe what one witness says in its
11 entirety. You can believe a portion of it, or none of
12 it.

13 You can ask yourself whether or not the witness
14 has any bias or prejudice. You need to apply your good
15 common sense and your everyday knowledge that you use to
16 evaluate whether or not someone is telling the truth.
17 Use your common sense in that regard.

18 You are also allowed -- the law allows you to take
19 into consideration the witness' demeanor, how they act
20 on the witness stand.

21 Some of you have teenage children, and sometimes
22 it is as important to hear what they say but it is just
23 as important to hear the manner in which they say it.
24 The law allows you to take that into consideration, the
25 demeanor of the witness.

1 You can do that. Use your good common sense to
2 evaluate the testimony.

3 At the conclusion of the State's presentation of
4 the evidence, the Defense will be given an opportunity
5 to do so, even though they are not required under our
6 legal system to do so. They are given an opportunity
7 to do so.

8 After presentation of all the evidence, the lawyers
9 will have an opportunity to present closing arguments.
10 They are very similar in form to opening statements.
11 However, they are truly argumentative in nature because
12 at that juncture the evidence will be presented and the
13 lawyers who are advocates of their particular positions
14 are going to be able to point out the evidence that sup-
15 ports their position or the lack of evidence that sup-
16 ports their position.

17 At the conclusion of the closing arguments, I will
18 charge you the law. Then you will begin your delibera-
19 tions.

20 Mr. Foreman, ladies and gentlemen of the jury, I'm
21 going to ask that you not take notes, given the nature
22 of this case. I anticipate there is a chance that we
23 can resolve this case here today.

24 It is not a very lengthy case, but it is an import-
25 ant case. It is important to the State of South

1 Carolina. It is important to the Defense.

2 So I'm going to ask that you pay very close atten-
3 tion but do not take notes.

4 I'm going to give you one admonition. If I make
5 an error with regard to the law that I charge you on the
6 evidence you hear, those errors can quite often be eas-
7 ily corrected.

8 If there is an error with regard to the findings
9 of fact, quite often those can't be corrected, so I tell
10 you it is important that you pay very close attention
11 to the evidence that is going to be presented in this
12 case.

13 At this time, I will recognize the State. Mr.
14 McEachin, you are recognized.

15 SOLICITOR: Thank you, Your Honor. May it please
16 the Court? Ms. Wingard.

17 Ladies and gentlemen of the jury, on the evening
18 of November 26, 2009, Deputy Jake Chamberlain, who is
19 seated here, with the Florence County Sheriff's Office,
20 the Pace Team, was in Timmonsville near Piney Grove and
21 Pinehurst Roads.

22 As he approached a little juke joint out there
23 known as Club Ponderosa, he saw an individual standing
24 in the shadows. When the individual saw this marked
25 Sheriff's Deputy vehicle, he took off running.

1 Deputy Chamberlain followed him around the side of
2 the building, and as he did the individual threw some-
3 thing on the ground. Deputy Chamberlain was able to get
4 out of his vehicle and detain the subject.

5 As members of this jury, there are some questions
6 you're going to have to answer. The first, who was the
7 individual that was stopped; who was the individual that
8 was detained?

9 The second question you're going to have to answer
10 is what was it he threw down on the ground.

11 Ladies and gentlemen, as I stated earlier, my name
12 is Fitzlee McEachin. I represent the State of South
13 Carolina, the County of Florence.

14 The Defendant, Ontaney Jackson, is charged with
15 three separate offenses. He is charged with possession
16 with intent to distribute cocaine base, also known as
17 crack cocaine.

18 He is charged with possession with intent to dis-
19 tribute cocaine in powder form, and he is charged with
20 possession of marijuana.

21 As the Judge has already told you, my job as the
22 State is to prove the case beyond a reasonable doubt.
23 You may sit there and ask yourselves, what exactly does
24 he mean by beyond a reasonable doubt.

25 Well, that simply means that if after hearing all

1 of the evidence in the case you are firmly convinced
2 that the Defendant is guilty of the offenses he is charged
3 with, you will find him guilty. I will have proven my
4 case to you beyond a reasonable doubt.

5 On the other hand, if I don't prove my case and you
6 are firmly convinced of his innocence, you will find him
7 not guilty.

8 There are two forms of evidence in any type of
9 criminal trial. We have the hard and tangible evidence
10 such as what we call Exhibits. Those are things you can
11 see and touch and feel.

12 The other type of evidence that is used in deter-
13 mining whether a defendant is guilty or not guilty is
14 called testimony, and that is going to come from right
15 here, the witness chair right here.

16 The witnesses in this case will tell you about what
17 happened. You will hear, as I said, from Deputy Jake
18 Chamberlain. He's the one who was there that night.
19 He's the one who saw it all go down.

20 Listen carefully to what he says. You will hear
21 from him right after lunch, so try not to eat a big lunch
22 so you will be able to remember everything he tells you.

23 After Deputy Chamberlain speaks, you're going to
24 hear from a number of witnesses, from Larry Quick with
25 the Sheriff's Office, who is seated right there; from

1 Dottie Yarborough, seated right here; and then you will
2 hear from Douglas Robinson and Adam Moore who are also
3 seated right here.

4 Pay attention to what they tell you. It is import-
5 ant that you hear everything that they say.

6 Once you hear what they say and once you see the
7 Exhibits that will be introduced into evidence, I am
8 firmly convinced that you will find the Defendant to
9 be guilty of the three offenses he is charged with.

10 As the Judge alluded to earlier, this is an import-
11 ant case. It's important to the State of South Carolina
12 and important to the County of Florence; important to
13 the Defendant, Ontaney Jackson.

14 I urge you to listen carefully. This is not a
15 complicated case. This is not a long case. It won't
16 take long at all, but just because it's not going to
17 take long does not mean it is not important.

18 If it was not important, we wouldn't have put you
19 twelve people in the box. We wouldn't have asked that
20 you be twelve fair and impartial individuals. That's
21 why we seated you to hear this case.

22 I thank you in advance for your time and the con-
23 sideration you're going to put into this matter.

24 Thank you.

25 THE COURT: Ms. Wingard, you are recognized.

1 MS. WINGARD: Yes, sir, thank you. May it please
2 the Court? Mr. McEachin.

3 Mr. Foreman and ladies and gentlemen of the jury,
4 my name is Carrington Baker Wingard. I am a Public De-
5 fender here in Florence County, and it is my pleasure
6 today to be representing Ontaney Jackson.

7 Unfortunately, Mr. Jackson has not come to Court,
8 and I tell you that up front because I do not want you
9 to think this gentleman is Mr. Jackson. He is not the
10 Defendant.

11 Mr. Frank White is one of the investigators for
12 the Public Defender's Office, and he is assisting me as
13 I try this case.

14 Mr. Jackson has been coming to Court, and I do not
15 know why he is not here today and I want to be up front
16 and honest with you.

17 He has not come to Court today, and it is the
18 State's prerogative if they want to call a case and to
19 try somebody in their absence. They can go for it, and
20 that is what is happening today.

21 But that does not lessen your burden of requiring
22 the State to prove Mr. Jackson beyond a reasonable
23 doubt.

24 There may be some reasonable doubt you find from
25 the testimony as the case develops. There may be some

1 reasonable doubt.

2 At the conclusion of the case -- I'm not going to
3 take up a lot of your time right now but at the conclus-
4 ion of the case we will talk about those reasonable
5 doubts. .

6 It is very important for you to know that my client
7 has been charged with not only possession, but with pos-
8 session to distribute. That's the main thing that I
9 ask you to look for while you are listening to the tes-
10 timony.

11 I don't believe you will be hearing a lot of tes-
12 timony about the intent to distribute the drugs, so I
13 would thank you for your time and attention. We want
14 you to give a lot of attention to the testimony that is
15 presented.

16 I believe at the end of the case there are going
17 to be a number of reasonable doubts, such that you will
18 not find this man guilty of possession with intent to
19 distribute. We will talk about those at the end of the
20 case.

21 Thank you so much. I believe we're going to let
22 you go to lunch. Have a good lunch, and we'll see you
23 after that.

24 THE COURT: Thank you, Ms. Wingard.

25 Mr. Foreman, ladies and gentlemen of the jury,

1 we're going to take a recess for lunch. I'm going to
2 ask that you come back to this Courtroom at one thirty.
3 You can go and get something to eat and come back.

4 Again, we've heard only about where this incident
5 took place, the Ponderosa Club, and you might know where
6 the Ponderosa Club is. I believe they've given where
7 this intersection is.

8 I am going to demand that you not go by there to
9 do any independent investigation. Do not discuss the
10 case amongst yourselves. I do not anticipate there
11 will be any kind of news coverage with regard to this
12 case but if, for instance, there were to be on the radio
13 or in any form -- if you hear about that, do not give
14 your attention to it or in that regard.

15 I am going to ask that you enforce the rule in the
16 jury room, and when people come back do not discuss the
17 case in any way or form. It is inappropriate to do so
18 before the case is completed.

19 There shall be no discussion about the case until
20 you are instructed to do so. Please display those
21 very attractive badges as you go out of the Courtroom,
22 and when you come back the bailiff will escort you to
23 the jury room. Do not hang around the Courthouse as
24 there might be an opportunity to hear somebody discussing
25 this case.

1 It would be inappropriate for you to hear any of
2 those conversations, and I want you to wear your badges
3 as it may be that some of these officers, some lawyers
4 or someone might be in the elevator, and they might be
5 talking about the case.

6 You can't base your decision on anything other than
7 what transpires in this Courtroom, so I'm going to ask
8 that you be mindful of that. If somebody tries to ap-
9 proach you about this case -- obviously that is inappro-
10 priate and illegal -- I would ask that you do one thing
11 and one thing only, and that is to try to identify them
12 as best you can. Then notify me and I'll deal with them
13 accordingly.

14 I don't think that will happen, but I will cer-
15 tainly need to hear from you if anyone tries to contact
16 you about the case.

17 We're going to recess until one thirty. Everyone
18 remain seated as the jury exits the Courtroom.

19 (Jury excused for the lunch recess)

20 THE COURT: Anything from the State?

21 SOLICITOR: Your Honor, we just have some things
22 to mark but we can do it right before we start back.

23 THE COURT: Okay.

24 MS. WINGARD: We have to look at the drugs and sep-
25 arate them out, but we can do that when we come back.

1 THE COURT: All right, we'll start at one thirty,
2 so you all do whatever it takes to be ready at one
3 thirty.

4 We'll stand at ease until one thirty.

5 (Whereupon, the Court stood in recess for the lunch
6 period and thereafter resumed)

7 (Jury returned to Courtroom)

8 THE COURT: Mr. Foreman and ladies and gentlemen
9 of the jury, we are now at the stage of the trial where
10 the State is going to present testimony.

11 Mr. McEachin, you are recognized and may call your
12 first witness.

13 SOLICITOR: State would call Deputy Jake Chamberlain.

14 THE COURT: Deputy Chamberlain, please come for-
15 ward and place your left hand on the Bible and raise
16 your right hand as the Clerk administers the oath.

17 JAKE CHAMBERLAIN, being duly
18 sworn, testified as follows:

19 CLERK: Please be seated and state your full name
20 for the record.

21 WITNESS: Jake Chamberlain.

22 DIRECT EXAMINATION.

23 BY SOLICITOR:

24 Q. Good afternoon, Deputy Chamberlain.

25 Please tell the members of the jury who you are

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1 employed with?

2 A. I'm a Florence County Deputy with the Sheriff's
3 Office.

4 Q. How long have you been employed as a Deputy by the
5 Florence County Sheriff's Office?

6 A. Right about two and a half years.

7 Q. And what is your current position with the Sher-
8 iff's Office?

9 A. I'm a Deputy on the Pace Team.

10 Q. You say the Pace Team. What is the Pace Team
11 exactly?

12 A. We go into areas where we get complaints from,
13 or if administration gets calls or complaints about
14 break-ins or high drug areas and high crime areas.

15 Q. Okay, and how long have you been a member of that
16 Team?

17 A. Almost for a year.

18 Q. And would you have been with that team in November
19 of last year?

20 A. Yes.

21 Q. Were you working on the evening of November 26,
22 2009?

23 A. Yes, sir.

24 Q. And where were you patrolling that night?

25 A. That night the area of Piney Grove Road and Pinehurst

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1 Road in Timmonsville.

2 Q. Okay, and do you recall what happened on that par-
3 ticular evening?

4 A. Yes, sir.

5 Q. Okay, you said Pinehurst Road and Piney Grove
6 Road. What county is that?

7 A. In Florence County.

8 Q. Okay. You said you were patrolling that particu-
9 lar area. Any place in particular?

10 A. The Club Ponderosa which is located at the inter-
11 section of Pinehurst and Piney Grove Road.

12 Q. Okay, and why were you patrolling there on that
13 evening?

14 A. We do a routine check at all the bars throughout
15 Florence County, and particular places known as a high
16 drug area. This place is known as a high drug area.

17 Q. Okay, and upon approaching the Club Ponderosa,
18 what, if anything, did you observe?

19 A. Upon passing the club, the subject was standing at
20 the back of the building as I moved my car around close
21 to him. There wasn't anyone else outside in the parking
22 lot.

23 When I got up beside the club, he noticed my patrol
24 vehicle, my patrol car ..

25 MS. WINGARD: Objection, Your Honor. I don't think

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1 he can tell us what somebody else noticed.

2 THE COURT: I would sustain your objection, and I'd
3 ask that you rephrase the question, Mr. McEachin.

4 SOLICITOR: Certainly.

5 BY SOLICITOR:

6 Q. Did you ever see the Defendant look in your direc-
7 tion?

8 A. Yes, sir.

9 Q. And once he looked in your direction, what was the
10 next thing you saw?

11 A. He was facing in my direction, and he -- once I came
12 up by the club he began to run around the back of the
13 club.

14 He ran around the back of the club. I turned in
15 to the club property in the grass area of the parking
16 lot in my patrol car and began to follow him.

17 Q. About what time of day or night was this?

18 A. This was ten o'clock P.M.

19 Q. And prior to him taking off, did you say anything
20 to him or did you activate any blue lights or anything
21 like that?

22 A. No, sir, I didn't.

23 Q. Okay, and once you followed him around, where did
24 you follow him around to?

25 A. He ran from the back rear of the club, around the

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1 back of it to the other side. I followed him.

2 Q. And once you were following him, did you have
3 your handlights on?

4 A. Yes, sir, I did.

5 Q. And once you followed him around the building, what,
6 if anything, did you notice about him?

7 A. When he got around to the other side of the build-
8 ing he -- he was wearing a black leather jacket and
9 dark colored pants. Dark colored blue jeans or blue
10 jeans -- he reached into his right jacket pocket and he
11 threw some bags to the ground.

12 When he threw the bags, I stopped my patrol car
13 where the bags were thrown. I jumped out of the car and
14 yelled for him to stop and get on the ground, which he
15 did comply at this time.

16 Q. Okay, and you actually saw him throw the bags?

17 A. Yes, sir.

18 Q. Okay, and how well lit is this area you are talk-
19 ing about?

20 A. Where the bags were thrown there is a street light
21 or power company light for the property. There is a
22 light there, and it is very well lit, enough to see any-
23 thing that is thrown.

24 Q. Okay, and were your headlights also on the indi-
25 vidual?

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1 A. Yes, sir.

2 Q. And once you stopped your vehicle and got out --
3 and stopped the subject, what did you do?

4 A. At this time I detained him and placed him in hand-
5 cuffs. He was set up where he was sitting straight up
6 on the ground. He was at this time read his Miranda
7 Rights from a Miranda card that I keep on me when I'm
8 working.

9 Q. And insofar as that card, do you have it with you
10 today?

11 A. Yes, sir.

12 Q. Deputy Chamberlain, if you don't mind, if you could,
13 read from your card?

14 A. Suspect Miranda Rights warning. You have the right
15 to remain silent. Anything you say can and will be used
16 against you in a Court of Law. You have the right to
17 talk to an attorney and have him or her present with you
18 while you are being questioned.

19 If you cannot afford to hire an attorney, one will
20 be appointed to represent you before any questioning, if
21 you want.

22 You can decide at any time to exercise these rights
23 and not answer any questions or make statements.

24 Do you understand these rights explained to you,
25 and having these rights in mind do you wish to talk to

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1 us now?

2 Q. And upon completing the recitation of his rights,
3 did he agree to speak with you?

4 A. Yes, sir, he did.

5 Q. Okay, and please tell the jury what was said be-
6 tween the two of you?

7 A. . .

8 MS. WINGARD: Your Honor, I would have a continuing
9 objection.

10 THE COURT: Yes, maam, your objection is noted.

11 BY SOLICITOR:

12 Q. You may answer.

13 A. Once he was read his Miranda Rights, I asked if he
14 had any weapons or anything illegal on his person, and
15 he stated at this time, no, you can search me.

16 . Actually word for word, he stated, no, you can
17 search my pockets if you want to.

18 Q. And did you do that?

19 A. Yes, sir.

20 Q. And what, if anything, did you find in the De-
21 fendant's pockets?

22 A. In his right front jacket pocket, I did find a
23 small bag of cocaine in a clear plastic bag.

24 Q. Okay, and was it a white substance you found?

25 A. Yes, sir, a white substance.

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1 Q. And once you found that -- did you find anything
2 else on him?

3 A. Yes, sir. In his back pocket I found his driv-
4 er's license.

5 Q. Okay, anything else?

6 A. No, sir.

7 Q. Some rolling papers or any type of crack pipe?

8 A. No, sir.

9 Q. Anything like that?

10 A. No, sir.

11 Q. So none of that was found on this individual?

12 A. No, sir.

13 Q. And once you found that bag on his person, what is
14 the next thing that happened?

15 A. He was -- once the bag was found, he was asked
16 what was in the bags that he threw to the ground while
17 I was chasing -- while I was following him, at this
18 time. I asked what he threw when he was running, and
19 he said, you cannot charge me with those because they're
20 in the parking lot and not in my pocket.

21 Q. Okay, and once he made those comments, what did you
22 do? What was the next thing you did with the Defendant?

23 A. I then walked him to my patrol vehicle which was
24 right beside where the bags were thrown. I placed him
25 in my patrol vehicle -- he was placed inside my patrol

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1 vehicle.

2 Q. At any point during your conversation with the
3 Defendant -- by the way, how long did that last?

4 A. Maybe a minute long.

5 Q. At any point during that minute or that conversa-
6 tion with the Defendant, did he appear intoxicated,
7 inebriated, high or anything like that?

8 A. No, sir.

9 Q. Okay. Did you smell any alcohol on his breath?

10 A. No, sir.

11 Q. No indicators he was under the influence of any
12 kind of -- of anything?

13 A. No, sir.

14 Q. Okay, and once you got him in the back of the car
15 -- let me take a step back.

16 Was there anyone else in that area when you detained
17 the Defendant?

18 A. When I detained him, no one close to me. Once
19 I walked him back to my patrol car there was another
20 officer.

21 Q. Did you see anyone by a vehicle or standing outside
22 the building or anything?

23 A. No, sir.

24 Q. Just you and the Defendant?

25 A. Yes, sir.

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1 Q. And once you placed him in the back of the patrol
2 car, what did you do?

3 A. I then retrieved the bags that he threw.

4 Q. And what did you do with those bags?

5 A. I placed them in an evidence ziplock bag that we
6 use at the Sheriff's Office for evidence. I then placed
7 the bags into that evidence bag.

8 Q. Okay, and when you say evidence bag, you are talk-
9 ing about an actual ziplock bag?

10 A. Yes, sir. It's a clear ziplock bag.

11 Q. And from there, where did you take the substances?

12 A. Put in the trunk of my patrol vehicle and taken to
13 the Sheriff's Office.

14 Q. Okay.

15 SOLICITOR: May I approach the witness, Your Honor?

16 THE COURT: You may.

17 BY SOLICITOR?

18 Q. Deputy Chamberlain, let me show you what's been
19 marked as State's Exhibit 1 for identification purposes.
20 Look at that for me. Do you recognize Exhibit 1 -- the
21 contents of State's Exhibit 1?

22 A. Yes, sir, I do.

23 Q. Okay, and can you tell the jury what the contents
24 are?

25 A. The black -- the whole black rock-like substance

DEP. CHAMBERLAIN ON DIRECT

1 you can see here is crack cocaine. As you can see,
2 there were two, three, four, five big rocks.

3 Q. Deputy Chamberlain, I hate to interrupt you, but
4 it is what you believe to be crack cocaine?

5 A. Correct. Correct.

6 Q. You don't have a chemistry degree or anything like
7 that?

8 A. No, sir, I do not.

9 Q. All right. As you were saying -- I apologize for
10 interrupting.

11 A. This bag here is black powder substance which I be-
12 lieve to be cocaine in powder form. There is also a same
13 size bag with a smaller amount of the same black pow-
14 der substance that I believe to be crack cocaine or rock
15 cocaine.

16 Q. And the bags the substances are in now, those were
17 not the bags that you found the substances, are they?

18 A. No, sir.

19 Q. And those aren't the bags you put the substances
20 in, are they?

21 A. No, sir.

22 Q. What type of bags were the substances in when you
23 first found them?

24 A. The small powder substance which was inside of his
25 pocket was in a small tightly wrapped clear plastic bag,

DEP. CHAMBERLAIN ON DIRECT

1 and the -- what was thrown to the ground which was what
2 was believed to be the crack and bigger bag of pow-
3 der cocaine -- bigger bag of powder cocaine was wrapped
4 in a clear plastic bag and inside of a sandwich bag.

5 What was later found to be crack cocaine substance
6 was inside a sandwich bag, a small foldable sandwich
7 bag.

8 Q. I'm going to have you look at State's Exhibit 3
9 for identification purposes. Do you recognize that?

10 A. Yes, sir, I do.

11 Q. What is that?

12 A. A green leafy substance believed to be marijuana.

13 Q. Where was that?

14 A. It was found with the rock substance and the powder
15 substance on the ground.

16 Q. Okay. With regard to all those things, with the
17 exception of the amount you said you found in his pocket,
18 how close in proximity was the green leafy substance
19 and the white powder substance and the black rock-like
20 substance?

21 A. It was within a two foot circle.

22 Q. And once you took them back -- you said you took
23 them back to the office, and once you took them back to
24 the office, what did you do with them?

25 A. The black -- the bags with the white powder

DEP. CHAMBERLAIN ON DIRECT

1 substance and the bag of the all-black rock substance
2 was logged into the SLED evidence Best Pack, which we
3 log into and do paperwork out -- it is logged into the
4 Best Pack and then logged into the evidence locker at
5 the Sheriff's Office.

6 And the green leafy substance was also logged into
7 the evidence locker.

8 Q. Once you logged those items into the locker, can
9 you get it back?

10 A. No, sir, I cannot.

11 Q. You are not able to get back to them?

12 A. No, sir. It is locked -- we lock it in a locker.

13 Q. And who has access to it?

14 A. Our forensics and SLED evidence personnel.

15 Q. Okay. One final question, Deputy Chamberlain.

16 Did you determine who the individual was who threw
17 State's Exhibit 1 and State's Exhibit 3 on the ground?

18 A. Yes, sir.

19 Q. Who is that individual?

20 A. Ontaney Ventrell Jackson.

21 Q. How were you able to ascertain his identity?

22 A. He had the driver's license in his back pocket.

23 Q. Thank you. Please answer any questions the De-
24 fense may have for you.

25 THE COURT: Ms. Wingard.

DEP. CHAMBERLAIN ON CROSS

1 MS. WINGARD: Thank you, Your Honor.

2 CROSS EXAMINATION

3 BY MS. WINGARD:

4 Q. Deputy Chamberlain, you approached this area from
5 what road?

6 A. Piney Grove Road.

7 Q. And when did you first notice this individual?
8 How far away were you?

9 A. I'm not exactly sure. It could be twenty-five feet.

10 Q. You just don't know, and, of course, you were ap-
11 proaching and he was in front of you. Is that correct?

12 A. No, maam. He was beside me. Cati-cornered from
13 me.

14 Q. You would have had to come down the road. Correct?
15 And as you were reaching him he was looking toward you,
16 is that right?

17 A. He wasn't looking at the front of my car, no, maam.
18 He could see --if he looked at me, he would have been
19 able to see the side of my car.

20 Q. How far down road -- is there a straight road?

21 A. Where the club sits, Piney Grove Road is maybe a
22 seventy-five foot distance on the road, and before that
23 is covered by woods. You cannot see until you get up
24 to the Club, right to the Club.

25 Q. So you approached him on the road and -- you've

DEP. CHAMBERLAIN ON CROSS

1 described your car earlier as semi-marked in that it
2 does not have in fact a blue light on the top?

3 A. Correct.

4 Q. Is that correct?

5 A. Yes.

6 Q. So it would appear to be a silhouette like any
7 other silhouette?

8 A. No, maam, it has a reflective stripe all the way
9 down the side of the car.

10 Q. But that would not be a silhouette. I asked you
11 if that would appear on your car to be like any other
12 silhouette because it does not have in fact a blue
13 light on top. Is that correct?

14 A. Yes, maam.

15 Q. All right. What color is your car?

16 A. Black.

17 Q. And what kind of car is it?

18 A. It's a -- at this time it was a 2008 Ford Crown
19 Victoria.

20 Q. A big black sedan, is that correct?

21 A. It has a big green and gold reflective stripes
22 down both sides of it.

23 Q. And you had been working the Pace Team for several
24 months at this time?

25 A. Yes, maam.

DEP. CHAMBERLAIN ON CROSS

1 Q. Is that correct?

2 A. Yes, maam.

3 Q. And it is your -- you all's responsibility to pa-
4 trol high crime areas and areas that you have complaints
5 about, the areas that you suspect drugs to be at and
6 that sort of thing?

7 A. Yes, maam.

8 Q. Okay, and the Ponderosa Club is one of those places
9 then?

10 A. Yes, maam.

11 Q. Now, you indicated when you came up on this suspect
12 that he ran, is that right?

13 A. Correct.

14 Q. And you did not recognize him, did you?

15 A. No, maam.

16 Q. You did not know who he was?

17 A. I did not.

18 Q. You weren't familiar with him?

19 A. No, maam.

20 Q. Had not seen him before?

21 A. No, maam.

22 Q. And you were behind him as he ran around the club?

23 A. Yes, maam, I was.

24 Q. His back was to you?

25 A. Correct.

DEP. CHAMBERLAIN ON CROSS

1 Q. And when you -- well, at what point in this chase
2 did you perceive that he was throwing items out of his
3 jacket?

4 A. When he rounded the back of the building, toward
5 -- on the other side of the building there is a partial
6 dirt and grass area. That's where I observed him reach
7 into his jacket pocket and throw the items out.

8 Q. But you were behind him, were you not?

9 A. Yes, maam, I was.

10 Q. Okay, and I believe you have testified earlier that
11 he got it out of his front jacket pocket. Is that cor-
12 rect?

13 A. I know it was a jacket pocket.

14 Q. You said earlier it was his front jacket pocket,
15 is that right?

16 A. Correct. I guess the jacket would be somewhat in
17 front. I guess you would say.

18 Q. And again you didn't know what was in the bags you
19 say were thrown out? You didn't know what, if anything,
20 was contained in that?

21 A. Correct.

22 Q. You just perceived that something was thrown out?

23 A. Yes, maam.

24 Q. So then you stopped your vehicle?

25 A. Right.

DEP. CHAMBERLAIN ON CROSS

1 Q. How far was the Defendant from you when you stopped
2 your vehicle?

3 A. Twenty feet, about. I didn't measure.

4 Q. But it was some distance?

5 A. Yes, maam, some distance.

6 Q. Was it from me to you or farther than that? Can
7 you give us an idea?

8 A. It was approximately twenty feet. Twenty to twenty-
9 five feet.

10 Q. So it would have been, say, from here to say this
11 rail?

12 A. Right about, yes, maam.

13 Q. So you were out of the car at this point, or you
14 stopped and got out?

15 A. Correct.

16 Q. And did you yell to him as you were exiting your
17 vehicle?

18 A. After I exited my vehicle I yelled, stop; get on
19 the ground.

20 Q. And that was the first contact you had with him
21 as far as any verbal command, is that correct?

22 A. Yes.

23 Q. And he stopped and got on the ground, didn't he?

24 A. Correct.

25 Q. Did he say anything?

DEP. CHAMBERLAIN ON CROSS

1 A. No.

2 Q. Didn't give you a bit of trouble, did he?

3 A. No.

4 Q. You asked him if it was all right to search him,
5 and you searched him. Is that correct? He said it was
6 all right to search him? For you to search him?

7 A. Correct.

8 Q. It was just the two of you out there?

9 A. Yes, maam.

10 Q. Other than the small amount of cocaine that was
11 found on him, and the driver's license, did he have any-
12 thing else on his person?

13 A. No, maam, not in my searching him.

14 Q. Did he have any money?

15 A. No.

16 Q. Did he have a scale?

17 A. No.

18 Q. Have a gun?

19 A. No, maam.

20 Q. Didn't have a knife?

21 A. No, maam.

22 Q. He did not have anything else on his person?

23 A. No, maam.

24 Q. Now, let me -- so it's clear, let me go into what
25 has been marked for identification as State's 1 and

DEP. CHAMBERLAIN ON CROSS

1 separate this out a little bit, just so we will under-
2 stand what was found in the pocket and what was found
3 . .

4 (Brief pause in proceeding)

5 BY MS. WINGARD:

6 Q. This is what -- one point three, is that correct?

7 A. Yes, maam.

8 Q. Okay. Now, this white powdered substance was
9 found in his container, is that right?

10 A. Correct.

11 Q. Okay, and that was actually on his person?

12 A. Correct. Yes, maam.

13 Q. Okay, all right. That's the only thing you found
14 on his person, this little bit of white powder which . .

15 A. Yes, maam.

16 Q. Now, is there any other bag or anything that was
17 just like that?

18 A. No, maam. Just this smallbag.

19 Q. Okay, let's see. This was found on the ground,
20 is that correct?

21 A. Yes, maam.

22 Q. And as it was found on the ground, what was it con-
23 tained in?

24 A. A clear plastic bag.

25 Q. Was it contained in this?

DEP. CHAMBERLAIN ON CROSS

1 A. No, maam. Smaller than that.

2 Q. Okay. Was it contained in this?

3 A. Yes, maam, inside -- what was inside . .

4 Q. So we don't get confused, this -- these little zip-
5 lock bags were not part of it?

6 A. No.

7 Q. It is what it was put in as a result of being
8 tested?

9 A. Correct.

10 Q. And then this in this little bag was in this
11 larger . .

12 A. The powder was inside this small bag and . .

13 Q. All right.

14 A. . . this small bag which was tied was inside of
15 the bigger bag.

16 Q. Okay, and then the rock-like substance was found
17 -- was in this bag?

18 A. Correct.

19 Q. Okay, and then this green leafy substance was in
20 this bag?

21 A. Correct.

22 Q. And they were found at various spots on the ground,
23 and you said within . .

24 A. In a circle . .

25 Q. Four feet?

DEP. CHAMBERLAIN ON CROSS

1 A. Two feet, maybe.

2 Q. As you searched the area, did you find anything
3 else in your search?

4 A. I didn't search the whole area, no, maam.

5 Q. But as you located these bags, you would have looked
6 around the area?

7 A. Yes, maam.

8 Q. Did you find anything else that you seized that
9 you thought would be in any way related to the drug
10 chase?

11 A. No, maam.

12 Q. Once again, in that area you found no money, no
13 scales, no weapon, nothing of that nature?

14 A. No.

15 Q. Those were the only things?

16 A. Yes.

17 Q. And you were saying that the reason -- you say you
18 saw him throw them, but the reason you connected him
19 to these is that he said, quote, you cannot charge me with
20 those things because they are on the ground and not in my
21 pocket?

22 A. That is a statement he made, yes, maam.

23 Q. That is a direct quote from him?

24 A. Yes, maam, it is.

25 Q. Those are exactly the words he used?

DEP. CHAMBERLAIN ON CROSS

1 A. Yes, maam.

2 Q. Now, when you -- did you take him back to Effingham?

3 A. Yes, maam, I did.

4 Q. And did he give you any trouble?

5 A. He did not give me any trouble. He was upset and
6 raising his voice, yelling, you cannot charge me with
7 those bags; you didn't find them on me.

8 Q. He was protesting that . . .

9 A. I couldn't charge him with the bags.

10 Q. And he was protesting that those weren't his, is
11 that right?

12 A. He never said they were not his.

13 Q. And so you charged him with those bags?

14 A. Correct.

15 Q. Now, were you the only officer out there?

16 A. At the time I was following him when he was
17 throwing the drugs down and being detained, yes, maam.

18 Q. Okay, and how about as this was happening, were
19 there other officers out there?

20 A. Not when this incident occurred, no, maam.

21 Q. As you were arresting him, why don't you want to
22 just tell me who was ...

23 SOLICITOR: Objection, Your Honor.

24 THE COURT: I sustain the objection. It seems to
25 be argumentative.

DEP. CHAMBERLAIN ON CROSS

1 I believe the question ought to be what the ques-
2 tion is, and he is required to answer yes or no, and he
3 then is allowed to explain.

4 I would ask that you rephrase the question.

5 BY MS. WINGARD:

6 Q. During the arrest procedure, from the time you saw
7 Mr. Jackson that night until you drove away in your car,
8 were there any other officers out there?

9 A. Maam, I'm not trying to mislead anybody. I am
10 just stating to you what happened and trying to answer
11 your questions.

12 And, yes, maam, there was one more officer who was
13 there after he was detained and while he was being
14 walked to the patrol car.

15 Q. And who was that?

16 A. Deputy Bean.

17 Q. Is he still with the Sheriff's Department?

18 A. Yes, maam, he is.

19 Q. Your report says that there were other officers
20 out there. Would that be correct?

21 A. No, maam. There were other officers in the gen-
22 eral area, not where this incident occurred.

23 Q. Were there any other officers at or near the Club
24 Ponderosa?

25 A. Yes, maam, there was.

DEP. CHAMBERLAIN ON CROSS

1 Q. Who were the other officers?

2 A. Deputy Renfro and Lieutenant Lukes from the Sher-
3 iff's Office. They had no involvement in this particular
4 incident. They were on the other side and never came
5 to where I was.

6 Q. What do you mean they were on the other side? The
7 other side of what?

8 A. This happened on one side, and they were on the
9 other side of the club.

10 Q. But they were at the club?

11 A. Yes, maam.

12 Q. You didn't disclose that to us earlier, did you?

13 A. They were not a part of the incident.

14 Q. So you didn't feel the need to call for any backup
15 or get any additional help?

16 A. No, maam.

17 Q. I believe you said this was about ten o'clock at
18 night?

19 A. Correct.

20 Q. The Club Ponderosa was open?

21 A. Yes, maam.

22 Q. There were various cars in the parking lot?

23 A. There were a few cars.

24 Q. There were some cars in the parking lot?

25 A. Not -- on the right side of the parking lot, yes,

DEP. CHAMBERLAIN ON CROSS

1 maam.

2 Q. Did anybody else come out of the Club?

3 A. No, maam.

4 Q. What were the other officers doing out there?

5 A. We worked -- we all go to a general area together.

6 We do not -- when we work a general area, we go to-

7 gether as a team.

8 Q. Okay, did they get out there before you did, if

9 you know?

10 A. No, maam.

11 Q. Did you take any pictures of that scene?

12 A. No, maam.

13 Q. You didn't do a video?

14 A. No, maam.

15 Q. So you don't have anything to show us what hap-

16 pened that night?

17 A. I have the narcotics.

18 Q. But you didn't feel it important to preserve pic-

19 tures of the scene, the lighting conditions, things of

20 that nature?

21 A. No.

22 Q. You obviously don't have any here with you in Court

23 today?

24 A. No, maam. I don't leave drugs laying on the ground,

25 no, maam.

DEP. CHAMBERLAIN ON CROSS

1 Q. So those things don't exist?

2 A. No, maam.

3 Q. But other officers were out there, right?

4 A. Yes, maam.

5 Q. Thank you.

6 THE COURT: Mr. McEachin?

7 SOLICITOR: Thank you, Your Honor.

8 REDIRECT EXAMINATION

9 BY SOLICITOR:

10 Q. Deputy Chamberlain, who threw the drugs down?

11 A. The Defendant.

12 Q. And who is that?

13 A. Mr. Jackson.

14 Q. And did you see him do that?

15 A. Yes, sir, I did.

16 Q. Was it light enough out there for you to see him
17 do that?

18 A. Yes, sir, it was.

19 Q. And you said you were probably about from -- about
20 from where I'm standing now to the Defendant?

21 A. About that.

22 Q. As best you recall, right?

23 A. Yes, sir.

24 Q. And there is a light in the parking lot area?

25 A. Correct.

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DEP. CHAMBERLAIN ON REDIRECT

1 Q. Is there any question in your mind about something
2 being thrown on the ground?

3 A. No sir.

4 Q. And the items in State's Exhibit 1 and 3 -- is
5 that the same stuff that was thrown on the ground?

6 A. Yes, sir.

7 Q. From the Defendant's pocket?

8 A. Yes, sir, it is.

9 Q. No further questions. Thank you.

10 MS. WINGARD: No further questions.

11 THE COURT: You may step down.

12 (Witness excused from stand)

13 THE COURT: Mr. McEachin, you may call your next
14 witness.

15 MR. McEACHIN: Your Honor, the State would call
16 Larry Quick.

17 LARRY QUICK, being duly
18 sworn, testified as follows:

19 CLERK: Please be seated and state your full name
20 for the record.

21 WITNESS: Larry Quick.

22 DIRECT EXAMINATION

23 BY SOLICITOR:

24 Q. Larry, what is your occupation?

25 A. I am the evidence technician.

MR. QUICK ON DIRECT

1 Q. Where?

2 A. At the Florence County Sheriff's Office.

3 Q. And how long have you been the evidence technician
4 out there?

5 A. Five years. In that position for one year.

6 Q. Prior to being the evidence technician out there
7 in the Sheriff's Office, what did you do?

8 A. I was a correctional officer. Six years.

9 Q. So seven total years of law enforcement experience
10 you have?

11 A. Yes, sir.

12 Q. And tell us a little bit about being an evidence
13 technician. What exactly is an evidence technician?

14 A. An evidence technician -- what I do is when I first
15 come in I go around to narcotics first to see what they
16 have in their security box, and from there I go to
17 where the deputies have their meetings like in the morn-
18 ings or in the evenings after patrol, and I check their
19 evidence boxes.

20 Q. You were talking about evidence boxes. What does
21 that mean?

22 A. An evidence box is a box that is -- once they put
23 the evidence in, it is secured with a lock, and I'm the
24 only one who has a key to it.

25 Q. So a deputy or investigator or someone will put

MR. QUICK ON DIRECT

1 something in a box, and will they be able to get back
2 in and touch it again?

3 A. No, sir.

4 Q. Who will be able to get in?

5 A. I'm the only one, and the forensics officers.

6 Q. Okay. How many forensic officers do you all have
7 at the Sheriff's Office?

8 A. We have three forensics and one Lieutenant.

9 Q. Okay, and who will ordinarily collect evidence
10 from the evidence boxes?

11 A. That is my role.

12 Q. And a little bit earlier there was mentioned an
13 evidence locker. Is an evidence locker . .

14 A. The same thing. Yes, sir.

15 Q. Okay. How often do you check an evidence box?

16 A. I usually check them once a day.

17 Q. Okay, and once you check it, what do you do with
18 any evidence that is found inside of it?

19 A. Any evidence there that is found -- the first thing
20 I do is they have a certain box where they have what is
21 called an evidence log sheet. I retain those first and
22 then I place them on the desk, and there I enter the
23 boxes.

24 For each evidence log sheet, I'm checking the stuff

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MR. QUICK ON DIRECT

1 that's in that box with what's on the log sheet. I
2 sign for it, and I place it into a basket which I carry
3 to the evidence room.

4 Q. And specifically with regards to items submitted
5 from November 26, 2009, did you collect anything from
6 Deputy Chamberlain's box connected with that incident?

7 A. Yes, sir, I did.

8 Q. I'm going to show you what's been marked as State
9 Exhibits 1 and 3 for identification purposes.

10 Let me make sure everything is together, and I'll
11 sit this up here. This is State's Exhibit 1 and that's
12 State's Exhibit 3.

13 Do you recognize those items?

14 A. I do, yes, sir.

15 Q. And what are they?

16 A. The evidence that's here on my right -- this is
17 what we call -- it was put into what's called a Bestbag,
18 and BEST stands for best evidence sample testing, and
19 when it's placed in this bag and sealed -- the officer
20 seals it himself -- the only way I could get into it is
21 to cut it open and I don't want to have to go through
22 that.

23 This is stored in this package until I carry it to
24 SLED.

25 The other package . .

MR. QUICK ON DIRECT

1 Q. State's Exhibit 1 is the Best bag?

2 A. Yes, sir, it is.

3 Q. How about State's Exhibit Number 3?

4 A. Okay. I checked it on the evidence log sheet, and
5 once I check it I carry it inside and log it in. I have
6 a different place that I put this.

7 The substance was put into what we call a lab box
8 and from there -- you take it at times to be tested.
9 I mean, you can have anywhere from ten packages up to
10 like forty packs in a box that they have to test.

11 Q. And how are you able to determine the difference
12 in them?

13 A. Well, anything like that is always tested by our
14 forensic technicians.

15 Q. Okay.

16 A. Stuff that is put in the Best bags, that is some-
17 thing I would log in and have to take to SLED.

18 Q. Okay.

19 A. I usually do this about once a week.

20 Q. So once you took the items out of Deputy Chamberlain's
21 locker, what did you do with them?

22 A. From there I took it to the evidence room, and
23 once in the evidence room I take and start logging it in
24 on the computer. I'm using the evidence log sheet to
25 go by, and which I'm checking each thing off and making

MR. QUICK ON DIRECT

1 sure it is put in the right place.

2 This with the Best pack, all of it was put in one
3 place, which I carried to SLED.

4 This other was put into what we call a lab box.

5 Q. And once you log those in, does anyone else have
6 access to it?

7 A. No, sir.

8 Q. Okay, and with regard to State's Exhibit Number
9 3, the green leafy substance, was that ever taken from
10 the evidence room?

11 A. Yes, sir, it was carried to our lab which is where
12 the forensic technicians are.

13 Q. Do you know who tested that particular item?

14 A. Yes, sir. Adam Moore was the one that tested it.

15 Q. Okay, and with regard to State's Exhibit 1, did
16 that ever leave the evidence room?

17 A. Yes, sir, when I carried it to SLED.

18 Q. When did you carry it to SLED?

19 A. The date that I carried it to SLED was 11 30 of
20 2009.

21 Q. Okay.

22 A. And it came back on January 15, 2010.

23 Q. Now, once you took it to SLED, what other involve-
24 ment did you have in the case?

25 A. When I carried it to SLED, I -- we usually have

MR. QUICK ON DIRECT

1 like four SLED personnel that are there to log every-
2 thing in. This was logged in by Ms. Dottie Yarborough,
3 this one particular item, and after it's logged in they
4 are responsible for it. It is placed in their secured
5 places, and after that from there I usually pick up
6 what's to come back.

7 Q. Did you pick this up?

8 A. Yes, sir, on January 15, 2010.

9 Q. Now, when you dropped this off, you gave it to Ms.
10 Dottie Yarborough?

11 A. Yes, sir.

12 Q. Thank you. Please answer any questions the Defense
13 may have.

14 THE COURT: Ms. Wingard, you're recognized for
15 Cross Examination.

16 MS. WINGARD: I don't have any questions.

17 THE COURT: All right, sir, you can step down.

18 (Witness excused from stand)

19 THE COURT: You may call your next witness.

20 SOLICITOR: Thank you. The State would call Ms.
21 Dottie Yarborough to the stand.

22 DOTTIE YARBOROUGH, being duly
23 sworn, testified as follows:

24 CLERK: Please have a seat and state your name for
25 the record.

1 THE COURT: Pull up real close to that microphone.
2 Speak loudly, clearly and slowly for me. We need to
3 hear everything you've got to say.

4 WITNESS: My full name is Doris Yarborough, Y A R
5 B O R O U G H, and I'm also known as Dottie.

6 THE COURT: Okay.

7 DIRECT EXAMINATION

8 BY SOLICITOR:

9 Q. Hello, Ms. Yarborough, how are you doing today?

10 A. Fine, thank you.

11 Q. Good, and what is your occupation?

12 A. I'm forensic technician in the Forensics Building
13 of SLED, which is also known as the South Carolina Law
14 Enforcement Division, in Columbia.

15 Q. How long have you been at SLED?

16 A. I have been at SLED for twenty-six months.

17 Q. And during that whole time, have you been an evi-
18 dence technician?

19 A. I have.

20 Q. And tell us what an evidence technician does.
21 What does that job entail?

22 A. I'm a technician in the evidence control log-in
23 department, and what we do is we take the evidence from
24 throughout the State from any agency that wants to sub-
25 mit something to be forensically analyzed.

MS. YARBOROUGH ON DIRECT

1 We log it into our system, and it is tracked by
2 that particular number.

3 Q. So you all don't actually go to the crime scenes?

4 A. No, sir, we do not.

5 Q. Once you got them in, do you all do any testing
6 or anything at SLED?

7 A. No, sir.

8 Q. Okay, and if you don't mind tell the jury a little
9 bit about the process. What all is involved with that?

10 A. Okay. The agency putting in the item, they have
11 their paperwork with them, and we take their paperwork
12 and the items they are bringing. We take it on a said
13 to contain basis, but I don't always see what's in the
14 package that they bring. The paperwork states what
15 they have in there, and it is logged in.

16 Once we log it in on our computer -- once it is
17 logged in and everything is finished the person or the
18 submitting officer -- we have him then sign and then we
19 generate the lab number which is placed on the paper-
20 work and item they have submitted.

21 Q. Okay, and at that time they have relinquished con-
22 trol of whatever they've brought to you?

23 A. Correct.

24 Q. And when you all have logged it into evidence,
25 what is the next step in the process?

MS. YARBOROUGH ON DIRECT

1 A. The next step is for us to scan it into the secured
2 evidence room for the area it is going to be going to.

3 Q. Okay, and were you working on the day of December
4 the 9th of 2009?

5 A. I was.

6 Q. And do you recall receiving any evidence from a
7 Larry Quick with the Florence County Sheriff's Office?

8 A. Referring to my paperwork, yes.

9 SOLICITOR: Begging the Court's indulgence.

10 (Brief pause in proceeding)

11 BY SOLICITOR:

12 Q. Ms. Yarborough, I show you State's Exhibit 1. Can
13 you identify this item?

14 A. I can identify it by our lab number, and I can
15 identify it by the number that is on this pack and this
16 pack as to what was on the paperwork when they brought
17 it in.

18 Q. Okay, and what date was that brought in?

19 A. It was brought in on December 9th of 2009.

20 Q. So it wasn't November 30?

21 A. No, I think he was looking at the time.

22 Q. Okay. What time was it dropped off?

23 A. I accepted it from Larry at twelve twenty-six P.M.

24 Q. Okay, and once you logged that in, where did it
25 go from your hands?

MS. YARBOROUGH ON DIRECT

1 A. It goes from my hands to the evidence room where
2 the drug box or drug drop is.

3 Q. Okay, and according to your record who is the next
4 person who touched that piece of evidence?

5 A. That would have been the next forensic technician,
6 Amy Stevens.

7 Q. Okay, and what did Ms. Stevens do with it?

8 A. She transferred it to Douglas Robinson who is the
9 forensic analyst.

10 Q. The forensic analyst for testing materials?

11 A. Yes, sir.

12 Q. Other than receiving State's Exhibit 1 from Larry
13 Quick, did you have any other involvement with this
14 case?

15 A. No, sir.

16 Q. Thank you very much. Please answer any questions
17 the Defense may have.

18 THE COURT: Ms. Wingard, you are recognized for
19 Cross Examination.

20 CROSS EXAMINATION

21 BY MS. WINGARD:

22 Q. Ms. Yarborough, let me understand. It arrived in
23 pack together, is that correct?

24 A. Yes, maam.

25 Q. And so it was then handled by Amy Stevens?

MS. YARBOROUGH ON CROSS

1 A. I logged it in and placed it in our secure evidence
2 room, and when the forensic analyst wanted it for test-
3 ing he sent an Email, and we all get the same Emails.
4 Whoever is available at the time to go to the evidence
5 room and pull these items, they transfer it to the ana-
6 lyst.

7 Q. You didn't transfer it to the analyst? Amy
8 Stevens transferred it to the analyst?

9 A. Yes.

10 Q. And then did the analyst separate it out into the
11 various packets?

12 A. I don't . .

13 SOLICITOR: Objection, Your Honor.

14 THE COURT: Would counsel approach the bench for
15 a moment?

16 (Conference at the bench between counsel and the
17 Court off the record)

18 THE COURT: Objection sustained.

19 BY MS. WINGARD:

20 Q. All right. According to the records, these drugs
21 were handled by Amy Stevens?

22 A. Right.

23 Q. You do not know what Ms. Stevens did with the
24 drugs?

25 A. I . .

Q. Were you there?

MS. YARBOROUGH ON CROSS

1 Q. Were you there?

2 A. Possibly. I can't say for sure.

3 Q. Why would your name not appear on there as the
4 person who transferred these things?

5 A. I'm a logging technician, and I log in the items
6 and put them in our secure evidence room in the area
7 for which they need to be analyzed.

8 When the analyst requests it, whether it be drugs
9 or DNA or toxicology, all of those areas are in our
10 secure evidence room.

11 When the analyst requests them, he sends an Email
12 with those lab numbers that we have generated and say
13 they'd like to pick those items, whichever person, which-
14 ever one of the four of us, is available, then we go
15 back and we have the ability to log it in, to regain
16 custody, because when we transfer it to the area it's
17 going to that is where it's going to.

18 Once I transfer it, it has to come back into my
19 person and then be transferred to the analyst.

20 So whichever person is available at the time to
21 pull those items, that is the person who will go and
22 get them and transfer them to the analyst.

23 Q. So if Ms. Stevens' name is on the chain of custody
24 document, then she was the one who would have transferred
25 it?

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MS. YARBOROUGH ON CROSS

1 A. Yes.

2 Q. How about Patricia Crooks? Is she -- does she
3 have the same job you have at SLED?

4 A. She is our evidence room person. She is part-time,
5 and she will -- because there are so many days when we
6 are busy -- she is able to accept returns from the ana-
7 lyst so it may be returned to the agency, or she can
8 hand it off to the analyst for analysis. That's the
9 only job she has. She is not able to log them in.

10 Q. So if her name is on the SLED chain of custody
11 document, then the drugs would have been in her posses-
12 sion?

13 A. Correct. She could have had them transferred to
14 that analyst or received it from the analyst to be re-
15 turned to the agency.

16 Q. Thank you so much.

17 THE COURT: Redirect, Mr. McEachin?

18 SOLICITOR: Just briefly.

19 REDIRECT EXAMINATION

20 BY SOLICITOR:

21 Q. Can you tell us how long Amy Stevens was in pos-
22 session of the drugs?

23 A. Approximately one minute.

24 Q. Thank you. No further questions.

25 THE COURT: You may step down, thank you.

1 MS. WINGARD: May I . .

2 THE COURT: Some Judges handle it differently.

3 There is Direct, Cross and Redirect. Anything that is
4 brought up new on his part in Redirect, you have an ob-
5 ligation to object to.

6 MS. WINGARD: Note my objection, Judge. I think
7 he brought up some matters that I should be allowed to
8 go into.

9 THE COURT: Then it was incumbent upon you to ob-
10 ject to that before the answer is given to the question,
11 so your objection is overruled.

12 You may step down.

13 (Witness excused from stand)

14 THE COURT: You may call your next witness.

15 SOLICITOR: The State would call Douglas Robinson.

16 DOUGLAS ROBINSON, being duly
17 sworn, testified as follows:

18 CLERK: Please be seated and state your name for
19 the record.

20 WITNESS: Douglas Robinson.

21 DIRECT EXAMINATION

22 BY SOLICITOR:

23 Q. Mr. Robinson, where are you employed?

24 A. The South Carolina Law Enforcement Division, also
25 known as SLED.

MR. ROBINSON ON DIRECT

1 Q. And how long have you been employed with SLED?

2 A. Just short of two and a half years.

3 Q. What is your function or what is your job at SLED?

4 A. I'm a forensic scientist. I am assigned to the
5 drug analysis department.

6 Q. Okay. Just briefly, what are some of your roles?

7 What do you do as a forensic scientist at SLED?

8 A. My main function is the analysis and identifica-
9 tion with respect to controlled substances that are sub-
10 mitted to our lab for analysis.

11 Q. And if you don't mind, tell the jury what your edu-
12 cational background is?

13 A. Yes, sir. I graduated from the University of
14 South Carolina with a Bachelor of Science in chemistry.

15 Q. And to become a forensic scientist, is there any
16 type of special training or certification that you have
17 to go through?

18 A. There is. Upon coming to SLED, I received my legal
19 training from the South Carolina Criminal Justice Academy
20 as well as job-specific in-house training in the analy-
21 sis and identification of controlled substances through
22 my department.

23 Q. Okay, and then you were certified, I guess,
24 through your employment with the South Carolina Law En-
25 forcement Division?

MR. ROBINSON ON DIRECT

1 A. Yes, sir.

2 Q. Okay. Have you ever had occasion while you have
3 been at SLED to review different chemical compounds or
4 components to determine what they are comprised of?

5 A. Yes, sir.

6 Q. Okay. Specifically, have you had an opportunity
7 to review things and determine whether or not they had
8 a narcotic or narcotic-like drug in them?

9 A. Yes, sir.

10 Q. And how many times would you say you have done
11 that in the past two and a half years?

12 A. It would be probably in the thousands.

13 Q. And in a particular week how many analysis would
14 you say you do?

15 A. Anywhere from twenty to fifty probably in a week.

16 Q. Okay, and during the course of that, where do most
17 of the substances come from that you test?

18 A. I'm sorry. I don't understand the question.

19 Q. Sure. The substances you receive to be tested,
20 where do they come from?

21 A. All the cases I receive are from specific counties
22 within South Carolina. I receive cases specifically
23 from the Counties of Marion and Florence County, so
24 any cases I analyze would come from those counties, from
25 various departments within those jurisdictions.

MR. ROBINSON ON DIRECT

1 Q. And have you had occasion to testify in Court be-
2 fore?

3 A. I have.

4 Q. And during those occasions, were you qualified as
5 an expert witness?

6 A. Yes, sir, I was.

7 Q. And approximately how many times have you been
8 qualified as an expert?

9 A. Four.

10 Q. Okay.

11 SOLICITOR: Your Honor, at this time I would move
12 to have Mr. Robinson qualified as an expert in narcotic
13 analysis.

14 THE COURT: Any voir dire or objection with regard
15 to his qualifications?

16 MS. WINGARD: No objection.

17 THE COURT: All right, just one second.

18 Mr. Foreman and ladies and gentlemen, normally a
19 person cannot give opinion testimony. Normally when
20 a person testifies they must testify as to what they
21 either saw, heard or sensed by smell.

22 However, there is an exception when someone is
23 qualified because of education or experience and are
24 permitted to give their opinion in certain areas if
25 the Court qualifies them that way.

MR. ROBINSON ON DIRECT

1 This witness is qualified in the area of chemical
2 or drug analysis and may give an opinion in that area.

3 That does not mean that you must accept it, but it
4 is evidence for you to use in any way you see fit.

5 Mr. McEachin.

6 SOLICITOR: Thank you.

7 BY SOLICITOR:

8 Q. Mr. Robinson, let me show you what has been marked
9 State's Exhibit 1 for ID only at this time. There is
10 actually a bunch of different pieces here, but can you
11 identify this?

12 A. May I look at my notes, please.

13 Q. Certainly.

14 A. Yes, I can.

15 Q. And what is that?

16 A. As you stated, there are several pieces up here.
17 This outer bag is referred to as a K-pack. It is a
18 heat sealed bag. In a lot of cases you can actually see
19 that there are two heat seals at the bottom of this pack.
20 In that way, the only way to get into it would be to
21 actually tear the bag.

22 This would be what I would use to seal up every-
23 thing after my analysis is complete.

24 The other large bag is what's been referred to as
25 a Best kit, a sample testing kit. This is a tamper

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1 evidence bag that is designed for the officers to seal
2 the top of the bag across this green strip.

3 As you can see, there are also uniform spirals on
4 the other three sides, and this is what is referred to
5 as tamper evident. If this bag were to -- if someone
6 would attempt to get into this bag, these would lose
7 shape and it would be evident that someone tried to
8 tamper with the bag.

9 The only way to get into it otherwise is to cut
10 it which is standard protocol that I do before my analy-
11 sis.

12 The other items were items that were either in-
13 cluded in the Best kit or items that were added to re-
14 package the items after analysis.

15 Q. Okay, and the small bags the substances are in now,
16 would you have been the ones to put in those bags?

17 A. Yes, I was.

18 Q. And there are some markings on those particular
19 bags. Can you please explain to the jury what those
20 markings are?

21 A. On the ziplock bags, what we have is the case --
22 the lab case number at the top, and directly underneath
23 those are sub item numbers that I assign it during my
24 analysis.

25 My initials are on this bag as well as the

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1 statement bag added. The bag added statement denotes
2 that I was the one who added this to the case. It was
3 not in the original case.

4 Q. Okay, and, Mr. Robinson, if you don't mind, who
5 did you receive these materials from?

6 A. I received the Best kit from Amy Stevens.

7 Q. And do you recall what day that was?

8 A. December 11th, 2009.

9 Q. Okay. Once you received those from Ms. Stevens,
10 what was the next step in the process as far as you are
11 concerned?

12 A. Once I retrieved this item from evidence control,
13 I would bring it and store it in a secure location
14 within our department until the time of analysis.

15 Once that time comes, I would open up the Best kit,
16 take it out, separate the items and test each item indi-
17 vidually.

18 Once the testing begun, I would take all packaging
19 off of the substance, get a weight, and then do a presump-
20 tive and a confirmatory test on the substance.

21 Q. Okay. When you received State's Exhibit 1, the
22 Best kit, did it appear to have been tampered with?

23 A. It did not.

24 Q. And just to explain to the jury a little bit, what
25 exactly is a Best kit?

MR. ROBINSON ON DIRECT

1 A. A system that is utilized by SLED for agencies
2 throughout the State. As I stated earlier, it is tam-
3 per evident.

4 An officer would be able to seal it up and we have
5 confidence that in the process no one is able to get
6 to the actual evidence without our knowing about it.

7 It is sealed by the department that is submitting
8 it before it comes to SLED. It stays in this container
9 until I open it, and then as soon as my analysis is
10 complete it goes in a K pack that is also for all in-
11 tents and purposes tamper evident.

12 Q. Okay, and the K pack is what was marked State's
13 Exhibit Number 1?

14 A. Yes, that's correct.

15 Q. And once you took the items out of the Best pack,
16 did you have an opportunity to analyze those items?

17 A. I did.

18 Q. In analyzing them, do you weigh the items?

19 A. The first thing I would do with each item is to re-
20 move all packaging so it is substance only, and then I
21 weigh the item before any analysis is performed. I
22 then take a final weight after the analysis is com-
23 pleted.

24 Q. So if the substance comes in a plastic bag, for
25 instance, you would take it out of the plastic bag to

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1 weigh the substance itself?

2 A. Correct.

3 Q. Okay.

4 A. No packaging is included in the weight.

5 Q. And once you weigh the items, what do you do next?

6 A. Once I get the weight of the item, I take a small
7 portion to do a presumptive test. This test gives us
8 an idea of the classification we're looking at.

9 It gives me a better idea of how to proceed to the
10 confirmatory test that I mentioned earlier.

11 After looking at the results of that, I do a chem-
12 ical extraction analysis by instrumentation to confirm
13 what the substance is, exclusive to any other compound.

14 Q. And what type of instruments did you use to do the
15 analysis?

16 A. The presumptive test is actually a chemical color-
17 change spot test. The instrumentation that was used
18 was gas chromatography, mass spectrometry.

19 Q. And if it's not too tough, could you explain to
20 the jury how exactly that works?

21 A. Once the extraction is done, it yields us with
22 a liquid solvent, and the solvent is used and the out-
23 line is extracted.

24 The instrumentation is actually two part. You
25 have your gas chromatography or GC and your mass

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1 spectrometry, MS. So GC and MS for short.

2 The GC will actually use -- when the substance
3 goes in, it will separate itself out based on chemical
4 reaction to the column we use as it moves through the
5 column.

6 The compound will then release and eventually end
7 up in the same spot but at a different time, what we
8 call retention time.

9 It is basically -- if you think of a mall and a
10 long hallway, and if you've got a family that starts on
11 one end. As they move in, they move in together but
12 then the father heads to the sporting goods store, the
13 mother goes to the boutique, and the kids go to various
14 stores.

15 And the father finishes first and goes down and he
16 comes out the other end of the mall. Then he waits,
17 and he waits on the other various people, and they all
18 end up in the same place but because they all have an
19 affinity for different stores it took them a little
20 longer to get there.

21 That's the GC side of it, and it gives us a unique
22 peek at a certain retention time. After that happens,
23 it goes into a second phase, and the compound is bombarded
24 by electrons. This will actually shatter the compound
25 and create what we call a mass spectrum.

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1 This will give us basically a unique fingerprint
2 of the compound, and this will be used to identify it
3 exclusively to anything else.

4 It is much like a human fingerprint would exclude
5 one person from another.

6 Q. Okay, and if you talk about the unique fingerprint,
7 in essence if you have crack cocaine and powder cocaine
8 they will be two separate fingerprints?

9 A. Actually in this case because they are two forms
10 of the same compound, it will actually give us the same
11 spectrum.

12 The unique factor here is that there are two sep-
13 arate extractions. We do what we call a physical test.
14 That same extraction will be used for crack cocaine or
15 cocaine base analysis.

16 If we were to try to use that hexate extraction on
17 a powder substance, a hydrochloride or powder cocaine,
18 it won't give us any results. It would not extract the
19 sample.

20 The only way using that solvent to see anything is
21 if it was indeed cocaine base.

22 Q. And once you do these tests, do you compile all
23 your data into a report?

24 A. Yes. My results are issued on a report.

25 Q. At this time I'm going to show you what's been

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1 marked as State's Exhibit Number 2 for identification
2 purposes only. Do you recognize that document?

3 A. Yes, I do.

4 Q. And what is that document?

5 A. A copy of the report that I issued for this case.

6 Q. And whose signature is that at the bottom?

7 A. . .

8 Q. I guess it would be the top of the second page of
9 the report.

10 A. That is my signature.

11 Q. Okay, and does that report accurately relate the
12 findings in this particular case?

13 A. Yes, it does.

14 SOLICITOR: Your Honor, at this time we would move
15 State's Exhibit 2 into evidence.

16 THE COURT: Any objection from the Defense?

17 MS. WINGARD: We would object until the drugs are
18 introduced.

19 THE COURT: I sustain the objection.

20 BY SOLICITOR:

21 Q. Mr. Robinson, as a result of your tests, did you
22 determine what the substances in the bags were?

23 A. I did.

24 Q. Were you able to form an opinion to a reasonable
25 degree of chemical analytical certainty as to what the

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1 particular substances were?

2 A. Yes, sir.

3 Q. Would you please relate to the ladies and gentle-
4 men of the jury what those substances in State's Ex-
5 hibit Number 1 were?

6 A. Item number one, which was labeled as sub-item one
7 point one, was a plastic sandwich bag containing a rock
8 substance. Cocaine base crack found, point three two
9 grams, twenty point three seven grains. C two.

10 Item one point two, plastic sandwich bag containing
11 plastic quarter bag containing powder substance. Co-
12 caine found, two point zero ^{seven}grams, thirty-one point
13 nine four grains. C two.

14 Item one point three, plastic quarter bag contain-
15 ing powder substance. Cocaine found, zero point four
16 grams, six point nine four grains. C two.

17 Q. And what does C two stand for?

18 A. It is a reference to the State law that controls
19 the control status of the drug.

20 Q. Okay, so C two would be schedule two?

21 A. Schedule two.

22 Q. Okay, and I'm glad you brought that up. You were
23 talking about grains and grams -- grams and grains. Can
24 you tell the jury what the difference is in the two?

25 A. Yes. We report out in grams but we are also

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1 obligated to convert to grains, due to the fact that
2 our initial laws or most of them were based on English
3 common law. English common law commonly used grains as
4 a unit of weight. Therefore, we have to convert some-
5 times between them because there are still portions of
6 law that make reference to that.

7 SOLICITOR: Your Honor, at this time I would move
8 State's Exhibit 2 into evidence.

9 MS. WINGARD: Judge, I think there are some matters
10 we need to take up out of the presence of the jury.

11 THE COURT: Very good. Mr. Foreman and ladies
12 and gentlemen of the jury, I'm going to ask that you re-
13 tire to the jury room but do not discuss the case.

14 (Jury excused from Courtroom)

15 THE COURT: All right, Ms. Wingard. You are recog-
16 nized.

17 MS. WINGARD: Judge, I believe it is incumbent on
18 me to have an objection continuing as far as the suppres-
19 sion of the drugs.

20 I don't believe they were properly seized or con-
21 stitutionally seized, and so I would have that continu-
22 ing objection.

23 Moreover, Your Honor, the State has not proven --
24 there are holes in the chain. I mean, I believe the
25 Florence Tech said he took them to SLED -- I believe on
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1 November 30, and according to my SLED report and accord-
2 ing to the lady's testimony, they were received there
3 December 9th.

4 So there is a huge defect in the chain in that re-
5 gard, and there are missing individuals in the chain I
6 would need to ask this witness about, so I would object
7 in that the chain was not properly connected.

8 THE COURT: Mr. McEachin, you're recognized.

9 SOLICITOR: Thank you, Your Honor.

10 With regard to the chain, I believe that the case
11 on point is State versus Ballentine, and that case holds
12 that you are not required to produce everybody that's in
13 the chain of custody; that you are simply required to
14 establish their identity.

15 The State has done that to this point. We have
16 established that the drugs were taken by Deputy
17 Chamberlain; from Deputy Chamberlain they went to the
18 evidence locker; from the evidence locker they went to
19 Larry Quick; from Larry Quick they went to Dottie
20 Yarborough; from Ms. Yarborough, in her testimony, they
21 went to Amy Stevens, and from -- and then went from
22 Ms. Stevens to Doug Robinson.

23 Once the drugs were tested by Doug Robinson --
24 our argument is that once the drugs were tested by Doug
25 Robinson there is no need to establish any further chain

1 because at that point I don't believe the fungibility
2 issue still surrounds the particular substances.

3 However, Patricia Crooks then got the evidence
4 after that, and Larry Quick testified he went back and
5 picked up the drugs from the State Law Enforcement
6 Division.

7 THE COURT: Anything further, Ms. Wingard?

8 MS. WINGARD: Judge, please note my continuing ob-
9 jection. I am particularly interested and concerned
10 about this nine day lapse, and I don't think I misun-
11 derstood him saying they were delivered on November 30.
12 I remember writing it down specifically.

13 THE COURT: Okay.

14 SOLICITOR: Beg the Court's indulgence.

15 THE COURT: Yes.

16 (Brief pause in the proceeding)

17 THE COURT: All right, Mr. McEachin, you're recog-
18 nized.

19 SOLICITOR: Thank you, Your Honor. I've spoken
20 to Mr. Quick and he explained to me the discrepancy.

21 Your Honor, I recognize the Defense will probably
22 object, but I'll be happy to call him back to the wit-
23 ness stand with regard to that exclusive issue.

24 In order to submit something you have to pre-log
25 them in, and his pre-log date was November 30 as opposed

1 to the actual date of log-in when he physically took
2 them to SLED, December the 9th.

3 THE COURT: All right. Well, there is certainly
4 nothing wrong with you recalling him, and the objection
5 is noted with regard to the chain of custody.

6 I think I'm going to hold my ruling in obedience.
7 I'm going to allow you to clarify that issue, but I am
8 -- even if you were not here or were gone, to me it
9 would seem as though the general proposition of law as
10 the cases have cited is that the chain of custody does
11 not have to be absolute.

12 That there has to be enough to let the Court be
13 confident that the drugs were not tampered with, and
14 the discrepancy with regard to the logging I think is
15 a discrepancy that is easily explained.

16 It really doesn't change the fact that it was in a
17 tamper proof bag and in my mind it would seem to indi-
18 cate that although the items were fungible they were
19 certainly being delivered to the chemist.

20 Nonetheless, I'm going to allow -- first of all,
21 for the record, you are correct and you have made the
22 necessary motion to suppress the evidence; you have
23 made contemporaneous objection with regard to the offer-
24 ing, so you are protected on the record.

25 I am going to hold in obedience the introduction of

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1 the evidence until such time as the record is made clear
2 in this regard.

3 We're ready for the jury.

4 (Jury returned to Courtroom)

5 THE COURT: Mr. McEachin, you're recognized.

6 SOLICITOR: Thank you, Your Honor.

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR:

9 Q. Before the break, Mr. Robinson, you were talking
10 about grains and grams. What is the conversion of grams
11 to grains?

12 A. One gram is equal to fifteen point four three two
13 grains.

14 Q. Okay. Please answer any questions the Defense
15 Attorney may have.

16 THE COURT: Ms. Wingard, you're recognized. Cross
17 Examination.

18 CROSS EXAMINATION

19 BY MS. WINGARD:

20 Q. Mr. Robinson, you are familiar with your chain of
21 custody document, are you not?

22 A. Yes, maam.

23 Q. I show that you received these drugs from Amy
24 Stevens on December 11th. Is that correct?

25 A. Yes, maam.

MR. ROBINSON ON CROSS

1 Q. And then they were -- there is shown a submission
2 on December 7 when they were individually broken down.
3 What happened to the drugs during those six days?

4 A. What I received it on the 11th, it was -- one item
5 which was item number one -- typically it would be --
6 well, it would be the first thing on the chain of cus-
7 tody from the submitting agency.

8 As you see on the Best kit I believe there is our
9 lab number, and there is a number one, item one, which
10 is the first thing that would be part of our chain of
11 custody.

12 When I do my analysis, as I referred to earlier, I
13 can sub-item so it is no longer just one item. I can
14 sub out the various bags or submissions, if you will,
15 as items one point one, one point two, one point three.

16 These items do not exist when it's logged in be-
17 cause I don't know yet what is contained. I create the
18 items in our system to reflect the contents of the Best
19 kit.

20 Q. So during that period of time, the drugs are in
21 your physical custody and you are separating them out?

22 A. They are either in my physical custody or secured
23 in a vault that we have within our department. The only
24 time they are outside of the tamper evident container
25 is when I am physically doing an analysis for a brief

MR. ROBINSON ON CROSS

1 period of time.

2 They are never unsecured outside of the tamper evi-
3 dent container outside of my physical possession.

4 Q. And how many drugs do you analyze, say, in a month
5 or on a monthly basis?

6 A. Anywhere from sixty to a hundred cases a month.

7 Q. And are most of the drugs that you analyze cocaine
8 and crack cocaine?

9 A. I would say that is the vast majority of the
10 cases, yes.

11 Q. And do you find the usual way these drugs are pack-
12 aged are in these little plastic bags, similar to the
13 ones here today?

14 A. It's very common, yes.

15 Q. Would you say that's the most common?

16 A. It would be hard for me to say but it is very com-
17 mon. It is a very common packaging.

18 Q. Thank you so much.

19 THE COURT: Would counsel approach the bench for
20 one moment?

21 (Conference at the bench between counsel and the
22 Court off the record)

23 SOLICITOR: The State has no further questions,
24 Your Honor.

25 THE COURT: You may step down.

1 (Witness excused from stand)

2 THE COURT: Mr. McEachin, you may call your next
3 witness.

4 SOLICITOR: We would recall Larry Quick to the
5 stand.

6 MS. WINGARD: We have no objection.

7 THE COURT: Very good. You are still under oath,
8 and I'm going to ask you to have a seat. I remind you
9 that you are still under oath.

10 LARRY QUICK, recalled to the
11 witness stand, testified as follows:

12 DIRECT EXAMINATION

13 BY SOLICITOR:

14 Q. Larry, I apologize. Earlier I missed this. When
15 did you say originally that you turned these drugs into
16 SLED?

17 A. The original date I turned them into SLED -- I
18 have the schedule here and this was given to me by SLED
19 to say the exact date, and the date I turned it in was
20 -- okay, 12 9 2009 at twelve twenty-six.

21 Q. Okay, you testified that it was, I believe, on 11
22 30. Do you recall that?

23 A. Yes, sir. That was my mistake because I had to do
24 a thing that is called pre-log. Everything we carry to
25 SLED has to be pre-logged, and what it does is speed up

MR. QUICK ON DIRECT

1 the being able to get it checked in quicker and stuff,
2 and I was looking at my sheet on the date of the pre-
3 logging.

4 Q. What date did you actually physically take those
5 items to SLED?

6 A. The day I actually took it was December the 9th of
7 2009.

8 Q. Thank you.

9 THE COURT: Any questions, Ms. Wingard?

10 MS. WINGARD: Briefly.

11 CROSS EXAMINATION

12 BY MS. WINGARD:

13 Q. Tell us what you mean by pre-log?

14 A. Pre-log is a form that we use with SLED. You have
15 to log onto the computer to SLED and, I mean, I do it
16 only by my password. I'm the only one that has the
17 password. No one else can go in and be able to log
18 something in in my name without my password.

19 And by pre-logging, what you do is you actually put
20 the items, what you're sending -- type the information
21 there.

22 Q. And so you had these drugs then on 11 30?

23 A. Yes, maam.

24 Q. Thank you.

25 THE COURT: Any Redirect?

1 SOLICITOR: No, sir.

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

3 (Witness excused from stand)

4 THE COURT: Mr. McEachin, you're recognized.

5 SOLICITOR: Your Honor, the State would recall

6 Douglas Robinson.

7 THE COURT: I would remind you that you are still
8 under oath.

9 DOUGLAS ROBINSON, having been
10 recalled, testified as follows:

11 DIRECT EXAMINATION

12 BY SOLICITOR:

13 Q. Mr. Robinson, you are the one who tested the evi-
14 dence in State's Exhibit 1?

15 A. Yes, sir.

16 SOLICITOR: Your Honor, at this time I would move
17 State's Exhibits 1 and 2 into evidence.

18 THE COURT: Any objection?

19 MS. WINGARD: A continuing objection.

20 THE COURT: Your objections are noted and over-
21 ruled. They're in evidence as State's Exhibits 1 and 2.
22 They are in evidence.

23 (State's Exhibit 1, drugs, and State's Exhibit 2,
24 SLED report, admitted in evidence over objection)

25 SOLICITOR: No further questions.

1 THE COURT: You may step down. Well, are there
2 any additional questions from Defense?

3 MS. WINGARD: No, sir.

4 THE COURT: You are excused.

5 (Witnesses Robinson and Yarborough excused without
6 objection)

7 THE COURT: You may call your next witness, Mr.
8 McEachin.

9 MR. McEACHIN: Thank you. Your Honor, the State
10 would call Adam Moore to the stand.

11 ADAM MOORE, being duly sworn,
12 testified as follows:

13 CLERK: Please be seated and state your full name
14 for the record.

15 WITNESS: Adam Thomas Moore.

16 DIRECT EXAMINATION

17 BY SOLICITOR:

18 Q. Please tell the jury what your occupation is?

19 A. I'm employed by the Florence County Sheriff's Of-
20 fice. I am a forensic technician.

21 Q. What exactly is a forensic technician?

22 A. I'm essentially a crime scene investigator. My
23 job is to go out and process, collect and document crime
24 scenes.

25 In addition to those duties, we also are certified

MR. MOORE ON DIRECT

1 as a marijuana analyst through SLED. We also do some
2 lab work at our office pertaining to items and stuff,
3 like that.

4 Q. Mr. Moore, if you don't mind, just tell the jury a
5 little bit about your educational background?

6 A. Well, I have a Bachelor's Degree in political
7 science, and I went through legal training at the South
8 Carolina Criminal Justice Academy.

9 I have had numerous on the job training and classes
10 throughout the four years I've been a crime scene in-
11 vestigator involving crime scenes and bloodstain analy-
12 sis, that sort of thing.

13 Q. You said one of your functions is marijuana analy-
14 sis?

15 A. Yes.

16 Q. Do you have to have any type of special certifica-
17 tion or training to do marijuana analysis?

18 A. We do. We go through a two day training class
19 through SLED's chemistry department. It is a pretty much
20 -- is pretty much an eight hour . .

21 MS. WINGARD: We will stipulate to the marijuana.
22 He doesn't have to go through all of that.

23 THE COURT: Very good.

24 SOLICITOR: Your Honor, at this time the State
25 would move State's Exhibits 2 and 3 into evidence.

MR. MOORE ON DIRECT

1 THE COURT: Very good. Any objection?

2 MS. WINGARD: Just to note a continuing objection
3 as far as the suppression matters.

4 THE COURT: All right, very good. State's Exhibits
5 . . .

6 SOLICITOR: I apologize, State's 3 and 4.

7 THE COURT: State's Exhibits 3 and 4 are introduced
8 in evidence with the objection noted by the Defense.

9 (State's Exhibit 3, drugs, and State's Exhibit 4,
10 which was not identified, were admitted into evidence
11 over objection of Defense.)

12 BY SOLICITOR:

13 Q. Mr. Moore, very briefly, when you do your marijuana
14 analysis, how do you weigh the marijuana?

15 A. The marijuana is taken -- there's a plastic bag
16 the marijuana actually comes in. We take it out of the
17 plastic bag and weigh just the green plant material and
18 then we test it.

19 Q. So when you weigh it, you weigh the plant material
20 by itself?

21 A. Yes.

22 Q. Thank you. No further questions.

23 THE COURT: Any Cross Examination?

24 MS. WINGARD: No questions.

25 THE COURT: You may step down.

1 (Witness excused from stand)

2 THE COURT: You may call your next witness, Mr.
3 McEachin.

4 SOLICITOR: That would be the State's case, Your
5 Honor.

6 THE COURT: All right. Mr. Foreman, ladies and
7 gentlemen of the jury, we are at the stage of the trial
8 where we are required to take up matters of law out of
9 your presence.

10 Once again, I'm going to ask you to retire to the
11 jury room. Do not discuss the case. Do not discuss
12 the case.

13 Everyone remain seated as the jury exits the Court-
14 room.

15 (Jury excused from Courtroom)

16 THE COURT: All right, I'll hear motions at this
17 time.

18 MS. WINGARD: Judge, of course, renewing all prior
19 motions, as well as I would move for a directed verdict
20 of not guilty on each count based on insufficiency of
21 the evidence, and most particularly possession with in-
22 tent.

23 There is just simply no evidence of any intent to
24 distribute either the cocaine or the cocaine base. I am
25 certainly aware of the inference. However, the burden

1 still remains on the State, and to require us to refute
2 the inference would be shifting the burden of proof,
3 which, of course, is unconstitutional.

4 So I would ask for a directed verdict on all cases
5 but most especially on the with intent to distribute
6 charges.

7 THE COURT: Mr. McEachin, be glad to hear from you.

8 SOLICITOR: Thank you, Your Honor. As you know,
9 our Legislature has put it within the statutes, parti-
10 cularly 44 53 375 B, and also 44 53 370 -- I believe
11 it's B -- that if a certain amount of a drug is possessed
12 by an individual it is prima facie evidence that it is
13 possessed with intent to distribute.

14 That being said, there are also other indicators
15 in this particular case that the Defendant didn't have
16 any material that could be used to smoke the drugs or
17 use the drugs.

18 The testimony was there was no lighter, crack pipe,
19 no rolling papers at the time he was stopped. He was at
20 a nightclub, standing outside the nightclub, and there
21 are a number of different indicators, Your Honor, that
22 would indicate possession with intent to distribute.

23 Most importantly would be the actual weight of the
24 drugs involved in this case.

25 Of course, with regard to the marijuana, that is a

1 possession case, but with regard to the crack cocaine,
2 the powder cocaine, those would exceed the inference
3 level set forth in the statute.

4 THE COURT: I'm going to deny the motion for di-
5 rected verdict with regard to the distribution aspect
6 in this case, and we will revisit that at the conclusion
7 of the case.

8 Anything further from the Defense?

9 MS. WINGARD: Nothing further.

10 THE COURT: Anything further from the State?

11 SOLICITOR: Not from the State, Your Honor.

12 THE COURT: Does the Defense intend on introducing
13 any evidence?

14 MS. WINGARD: No, sir.

15 THE COURT: Then what I'm going to do is I'm
16 going to call the jury out -- under these circumstances
17 obviously the State goes first, and we are ready to pro-
18 ceed forward.

19 MS. WINGARD: Yes, sir, I'm ready to proceed, but
20 we would like to discuss the charge.

21 THE COURT: We can do that, if you like. I mean,
22 it is fairly obvious what the charge is that I'm going to
23 go through.

24 I'll charge the law with regard to charge, arrest,
25 indictment is not evidence.

1 I will charge how to handle multiple charges --
2 they each need to be considered separately and distinctly.
3 I will charge presumption of innocence. I'm going to
4 charge reasonable doubt; charge it's the kind of doubt
5 that would cause a reasonable person to hesitate to act.
6 I will charge the reasonable doubt charge used in about
7 every case that goes on to talk about firmly convinced.

8 Duties of the jury and the trial judge -- the law
9 of that. Direct and circumstantial evidence, credibil-
10 ity of witnesses; expert witness. I believe you have
11 one expert witness.

12 Failure of the Defendant to testify. An instruc-
13 tion they are not to discuss that in any way, shape or
14 form.

15 I have seen lawyers request that not be charged.
16 What is your wish?

17 MS. WINGARD: I would ask you to charge it, and I
18 would also charge that they cannot infer anything from
19 the Defendant not coming to Court.

20 THE COURT: Okay. What's the State's position on
21 that?

22 SOLICITOR: Your Honor, it certainly would be
23 proper to charge that.

24 THE COURT: Okay, I will do that. I'm going to
25 charge the law with regard to the statement of the ..

1 Defendant and the things they have to find in order to
2 consider the statement.

3 I will charge the fact that the Defendant is being
4 charged with possession with intent to distribute co-
5 caine base, powder cocaine, and within that I will
6 charge about the concept of possession, actual posses-
7 sion, constructive possession, and the fact that the State
8 has to prove beyond a reasonable doubt the Defendant in-
9 tended to distribute the cocaine base and powder cocaine.

10 It goes on to say they have to prove beyond a rea-
11 sonable doubt that he did not intend to use it for his
12 own use. That's within the charge.

13 They have to prove that he intended to sell it.

14 You must find that the Defendant did not intend
15 to have the cocaine and crack cocaine for his own use.
16 It's an affirmative thing they have to prove.

17 I'm going to go on to charge that ten grams of co-
18 caine and one or more grams of crack cocaine creates an
19 inference that the Defendant possessed the cocaine base
20 or powder cocaine with intent to distribute it.

21 SOLICITOR: Excuse me, Your Honor. Did you say
22 ten grams of cocaine?

23 THE COURT: I said grains -- if I did not, I meant
24 to say grains -- ten grains of cocaine, one gram of
25 crack cocaine creates an inference that the Defendant

1 possessed the cocaine base and powder cocaine.

2 I'm going to charge simple possession with regard
3 to marijuana, and once again it goes over actual and
4 constructive.

5 It charges about the mere presence, and the last
6 charge is going to be a charge that mere presence at the
7 scene is not sufficient to prove someone guilty, and
8 it goes on in some detail.

9 MS. WINGARD: Are you going to give them a verdict
10 with possession with intent and possession?

11 THE COURT: I've got the verdict form here.

12 SOLICITOR: Your Honor, the State would object to
13 the mere presence charge, understanding also that -- I
14 don't think there has been any evidence of constructive
15 possession but only evidence of actual possession.

16 THE COURT: How about the dope that was found on
17 the ground?

18 SOLICITOR: Your Honor, Deputy Chamberlain testi-
19 fied it was in his hand.

20 THE COURT: Well, you have the factual controversy
21 there, as to whether or not they believe he could have
22 seen that.

23 I mean, clearly -- again, if there is anything I am
24 more certain about it is that the facts of this case
25 warrant a constructive possession charge.

1 All right, this is the verdict form. (Reading ver-
2 dict form)

3 The verdict form is going to charge possession with
4 intent to distribute cocaine -- we, the jury, unanimously
5 find Ontaney Ventrell Jackson guilty or not guilty.

6 If you find the Defendant guilty of possession with in-
7 tent to distribute, proceed to Roman Numeral Two.

8 If you find the Defendant not guilty of possession
9 with intent to distribute cocaine base, you must con-
10 sider the lesser included, possession of cocaine base,
11 and a place for them to sign guilty or not guilty.

12 The same form with regard to possession with intent
13 to distribute cocaine and possession of marijuana.

14 You all can come look at the verdict form itself.

15 (Brief pause in the proceeding)

16 (Conference at the bench off the record between
17 counsel and the Court)

18 THE COURT: Let's take about five minutes.

19 (Court stood in recess for brief period and the
20 matter was then resumed)

21 THE COURT: All right, any questions or objection
22 to the preliminary summary of my charge from the State?

23 SOLICITOR: Just an objection, Your Honor, to the
24 mere presence charge.

25 MS. WINGARD: No objection, just with addition of

1 not coming to Court.

2 THE COURT: I will add that. All right, we're
3 ready for the jury.

4 (Jury returned to Courtroom)

5 THE COURT: Mr. Foreman and ladies and gentlemen
6 of the jury, the State has rested. They have concluded
7 their presentation of the evidence.

8 At this time, the Defense is recognized.

9 MS. WINGARD: The Defendant would rest.

10 THE COURT: The Defense rests. Very good.

11 All right, under these circumstances the State is
12 required to go first with regard to arguments. As I
13 mentioned to you earlier, in the beginning of this case,
14 opening statements were in summary form, but these clos-
15 ing arguments are truly arguments.

16 These lawyers have had an opportunity to study the
17 case. They know all the facts. What they say is not
18 evidence, but it will aid you immensely in your deliber-
19 ation process.

20 So pay very close attention to these lawyers. Mr.
21 McEachin, you are recognized.

22 SOLICITOR: Thank you, Your Honor. May it please
23 the Court? Ms. Wingard.

24 Ladies and gentlemen of the jury, bear with me for
25 a moment.

1 Ms. Wingard once stated that this is the stuff
2 dreams are made of. Ladies and gentlemen, I'm here to
3 tell you today this is stuff nightmares are made of.

4 The person dealing in these nightmares, Ontaney
5 Jackson. Don't confuse the Defendant in this case with
6 A drug user. A drug user is an individual who posses-
7 ses drugs. A drug dealer is the individual who posses-
8 ses drugs with the intent to distribute them.

9 A drug user is the person who has to feed his demons
10 with these drugs. Ontaney Jackson is the one who is
11 ringing that dinner bell.

12 Now, how do we know he is not a user? How do we
13 know that he possessed those drugs with the intent to
14 distribute them, because that is what this case is all
15 about?

16 Deputy Chamberlain told you that he saw him with
17 these bags in his hand, throwing them to the ground.
18 He was an eye-witness. It's not like he ran around
19 the corner and the bags were there and the Defendant is
20 running up.

21 He saw him take the bags from his pocket and throw
22 them on the ground.

23 If that is not evidence enough, he was found with
24 drugs on his person. He searched him after he detained
25 him and he found another bag of cocaine in his pocket.

1 So how do we know that the Defendant not only po-
2 sessed the drugs but that he possessed them with intent
3 to distribute? You will hear the statutes that are
4 most important in this case. Right here is the cocaine
5 base, like I told you earlier -- crack cocaine.

6 This statute right here -- the top is cocaine, and
7 the bottom one is marijuana; middle one crack cocaine.

8 The evidence we have in this case is that the De-
9 fendant was not merely possessing the drugs but posses-
10 sing with intent to distribute. The evidence suggests
11 the Defendant was not merely possessing but possession
12 with intent to distribute.

13 I have come up with a number of different reasons
14 throughout the course of this trial, throughout the tes-
15 timony that we've heard.

16 First, he was standing behind a nightclub. He
17 wasn't in the nightclub but he was out there in the back
18 corner, hiding in the shadows.

19 He saw the officer pull up, the deputy pull up,
20 and he ran. Ontaney Jackson fled that night when he
21 saw the officer coming. He fled that night.

22 The club -- this is a club and he was outside the
23 club. Inside the club you have a number of different
24 people who could purchase drugs from him. It's full
25 of people who could be customers.

1 Deputy Chamberlain was asked was he high, did he
2 look high; was he drunk? If he was a drug user and he
3 had drugs on him, certainly he'd be high. Deputy
4 Chamberlain said he didn't look like he was impaired at
5 all. He didn't look like he was impaired one bit.

6 Well, what all did you find on him? The Defense
7 pointed out he didn't find money and didn't find scales.
8 That is true. It's ten o'clock at night, fairly early
9 in the evening, and you're at a juke joint -- fairly
10 early in the evening for a juke joint, and two or three
11 hours later we don't know what they would have found.

12 He said he didn't find scales, and she continued
13 asking him that, but what else did he find on the Defen-
14 dant? What else did he find on the Defendant? No, he
15 didn't find a crack pipe. That's something to smoke the
16 crack with. He didn't have a pipe. You usually have
17 a crack pipe.

18 He didn't have any rolling papers or anything of
19 that nature. If you're a marijuana user, you've got
20 rolling papers. Without rolling papers or anything
21 along those lines, how can you smoke the marijuana?

22 He didn't have a lighter, didn't have a lighter.
23 What drug user doesn't have a lighter? He didn't have
24 those things, but what he did have was a lot of drugs.
25 He had a lot of drugs.

1 You noticed that when Deputy Chamberlain arrested him
2 and said, what was in those bags back there, he didn't
3 say, those aren't my bags. He didn't say that.

4 He said, you can't charge me with those because
5 they weren't on me. I don't know, but if those were my
6 drugs and I was out there, I would be saying those
7 aren't mine. I don't know whose they are but they're
8 not mine. They're not mine.

9 Other things. How many different kinds of drugs
10 did he have? He had three different kinds of drugs. He
11 had more choices than a Chinese menu, and he had all of
12 these drugs. He couldn't be using all of those.

13 The final thing I want you all to remember, and
14 that's six things -- six different reasons that would
15 give you an inference that he possessed those drugs with
16 the intent to distribute, with the intent to distribute.

17 There is one thing the State Legislature is going
18 to add, and that's the weight of the drugs because of
19 the permissive inference -- if somebody has enough or a
20 particular amount of drugs, there is a permissive infer-
21 ence that they possessed the drugs with the intent to
22 distribute them.

23 With crack cocaine, if they possess one gram or
24 more of crack cocaine, there is a permissive inference
25 that they possessed that amount of drugs with intent to

1 distribute.

2 With cocaine, it's ten grains. Remember now that
3 you have grams and grains. Remember that Doug Robinson
4 told you it was all about English common law and all of
5 that, but the most important thing that I would ask you
6 to take away from that is that one gram equals fifteen
7 -- I think it was fifteen point something grains. Fif-
8 teen point four three two grains.

9 Now, I've done a little chart here to help you to
10 better understand. I have a little chart here because,
11 like I said before, the Legislature has said that if
12 an individual has more than this amount of drugs there
13 is an inference that they possessed it with intent to
14 distribute. Not just possessed them but possessed them
15 with intent to distribute.

16 Again, our Legislature said if they have a gram of
17 crack or more, there is an inference, PWID. That is
18 possession with intent to distribute.

19 Ten grains of more of cocaine -- grains is the dis-
20 tinction. These other two are in grams. This is grains.

21 Finally, marijuana is twenty-eight grams.

22 In our case, what Mr. Jackson had -- cocaine base,
23 inference level one gram; actual weight, he had one
24 point three two. That's a thirty percent increase. An
25 inference of PWID.

1 What about cocaine? How many grains of cocaine did
2 he have? Well, you all are going to be able to look at
3 this yourselves. This is State's Exhibit 2, the report
4 that Doug Robinson from SLED did. You will look at it
5 yourselves.

6 I'm just reading off a portion of it. How many
7 grains of cocaine did he have? Remember there were two
8 bags. The one bag he threw down on the ground and one
9 bag he had in his pocket.

10 The combined total weight of those two bags was
11 thirty-eight point eight eight grains. Thirty-eight
12 point eighty eight -- the inference is ten. So almost
13 four times the inference.

14 Is there a permissive inference? You bet.

15 Finally, the marijuana was tested by Investigator
16 Moore of the Sheriff's Office. The amount of marijuana
17 found was two point six two, not even close to the per-
18 missive inference there. No permissive inference there.

19 But there is with the crack cocaine and with the
20 cocaine.

21 The amount of drugs speak for themselves, I submit.
22 That's a lot of drugs for a guy who uses. A lot of drugs
23 for a guy to use.

24 You're going to have all this evidence in the jury
25 room. You'll have State's Exhibits 1, 2, 3 and 4 all

1 in evidence.

2 Think about the testimony you heard, and I know,
3 you heard a lot in a short period of time. Again, he
4 didn't say those aren't my drugs. He said you can't
5 charge me with those; they weren't in my possession.

6 But they were in his possession. They were in his
7 possession.

8 The Judge will charge the law about possession and
9 control of these drugs. He's going to charge you the
10 law on that.

11 Ladies and gentlemen, if you take anything back
12 there with you, if you take anything at all back there
13 with you, take your common sense.

14 Was the Defendant out -- hanging out behind a juke
15 joint at ten o'clock at night, with all these drugs in
16 his pocket -- he wasn't even inside but he was outside
17 with all these drugs in his pocket -- just hanging out
18 outside the club, without any type of implement to be
19 able to use the drugs?

20 No instrumentality to smoke the weed or smoke the
21 crack, snort the cocaine -- he didn't have any of that
22 on him.

23 What does your common sense tell you about that?
24 What does your common sense tell you? Use your common
25 sense.

1 Take that evidence back ~~there~~ and take the testimony
2 you heard. You are going to be firmly convinced, and
3 you are not going to hesitate to act, that the Defendant
4 is guilty of possession with intent to distribute co-
5 caine base, crack, and cocaine. He is not guilty of
6 possession with intent to distribute marijuana -- no
7 where close to that, not even charged with that. He's
8 charged with possession of marijuana.

9 All I'm going to ask is that you use your common
10 sense. Ontaney Jackson wasn't out there that night just
11 possessing drugs. He was out there that night looking
12 for someone to distribute them to.

13 Because he was doing that, a verdict of guilty
14 should be returned on possession with intent to distri-
15 bute cocaine base, possession with intent to distribute
16 cocaine, and possession of marijuana.

17 Thank you for your time, the effort and considera-
18 tion you put in. I know we've gone through a lot in a
19 short period of time, and I appreciate it. The defense
20 appreciates it.

21 THE COURT: Thank you, Mr. McEachin. Ms.
22 Wingard, you're recognized.

23 MS. WINGARD: May it please the Court? Mr.
24 McEachin. Ladies and gentlemen of the jury.

25 Let's first start with a discussion on reasonable

1 doubt because this is an extremely important case and
2 these are very, very serious charges, with enormous con-
3 sequences to Mr. Jackson.

4 The State is saying that out at a country juke
5 joint -- it's dark out there and Mr. Jackson is only
6 hanging out when up comes this officer.

7 He was hesitant to talk about this car but finally
8 we got out of him that his isn't the kind of car with a
9 big light on the top, but the silhouette of this car
10 looks like a regular car silhouette.

11 He approaches and for whatever reason Mr. Jackson
12 decides to leave. Maybe he did figure out that this is
13 a cop car. I don't know.

14 Anyway, just because he was leaving his location
15 doesn't mean he is a drug dealer. No. He had a lit-
16 tle cocaine on his person, and there is no reason to sit
17 up here and try to tell you otherwise. No question the
18 man had a small bit of cocaine on his person.

19 So he was going to get out of there. Here's a po-
20 lice officer coming by.

21 But how can you consider the testimony of this
22 officer who was so quick to say he threw out green
23 plant material, cocaine, crack? He was so close that
24 he stopped right when he saw that man standing out
25 there who was leaving.

1 The officer knew he was somebody who was going to
2 have drugs on him. He was on the Pace Team or whatever
3 team it is, and he patrols tough crime areas.

4 Well, that's another interesting thing, because he
5 said he has patrolled all these areas but he has never
6 seen this man. He didn't know who he was, didn't recog-
7 nize him, but he knew that he was this tough, horrible
8 drug dealer who was wreaking havoc on society with all
9 these drugs he's going to sell.

10 If this was an experienced officer, as he said he
11 was, and this was a drug dealer, he would have known
12 who he was.

13 Yet he would have you believe that he saw these
14 bags being thrown away by this man who was trying to
15 get rid of them as he was running away from him.

16 Sure he was running away from him. He had cocaine
17 in his pocket.

18 A dark parking lot, ten o'clock at night, in a high
19 crime area. Lots of drugs out there, folks. Isn't
20 that a reasonable doubt, to think those drugs could have
21 been put out there by somebody else?

22 A high crime area -- that's what he said; that's
23 why he was patrolling there. Yet he would have you
24 believe that Mr. Jackson possessed all of these drugs,
25 when what he really possessed was a little bit of cocaine.

1 He was guilty of possessing that little bit of co-
2 caine, and we're not arguing that. Certainly that was
3 an absolutely reasonable move by him, to try to get
4 away from this officer.

5 Is it reasonable for him to have you believe that
6 this was a horrible drug dealer and he didn't have any
7 of the other officers -- I finally pulled out of him
8 they were out there -- he didn't have them document the
9 scene. He did not take one picture to show that it was
10 a lighted area. Nothing.

11 He didn't even call for back up from other officers
12 out there. If I'm going to jail for all these years
13 for all this horrible drug dealing, I would have wanted
14 all those officers to come see what they had to say
15 about this.

16 I mean, these are very serious charges. But he
17 goes, well, yeah, there was one out there and some
18 others who were back around the other side of the
19 building -- doesn't even bother to have them come in
20 and tell you what went on.

21 Another reasonable doubt that concerns me -- I've
22 still not exactly sure what happened to these drugs
23 between November 30th and December 9th.

24 Talking about pre-logging them -- well, if I'm
25 looking at going to jail for all of these years, I will

1 want to know with certainty where these drugs were all
2 that time.

3 Did he pre-file them with SLED and then put them
4 in his car and ride around with them in his car for nine
5 days?

6 He gets up on the swears -- swears on the Bible --
7 I took those drugs to SLED on November 30th, and all of
8 a sudden he changes his mind and says they were pre-
9 marked then. Reasonable doubt.

10 Now, let's also talk about why this is a possession
11 case. The biggest thing I'm going to talk about is no
12 no sales with no money. That's important. That's
13 real important.

14 Does that create in your mind a reasonable doubt?
15 I mean, here he's supposed to be a drug dealer. At ten
16 o'clock at night he doesn't have any money on him. If
17 what they say is true, then he came out to deal those
18 drugs the instant this officer came up.

19 That explains it. Oh, it was early in the evening
20 and that's why he doesn't have any money. No money, no
21 scales. He has some drugs because he's this horrible
22 drug dealer.

23 Well, you can see how little an amount of drugs this
24 really is. I mean, we are not talking about a large
25 amount of drugs here. This little bag right here is

1 what I'm talking about, this tiny little bag he actu-
2 ally had on him.

3 Now, if he is so savy that he's going to be throw-
4 ing all these drugs, I think he would have gotten every-
5 thing. If he's such a smart drug dealer, he would be
6 getting everything out there. Why would he leave that
7 one baggy in his pocket?

8 This is his bag right here. This is what he had,
9 and there could be no question about a verdict in that
10 regard.

11 Law enforcement was over-reaching, I think, and
12 what I thought was particularly interesting was that he
13 was so certain he said he was quoting Mr. Jackson's
14 exact words. You cannot charge me with those drugs be-
15 cause they are in the parking lot and not in my pocket.

16 Do you think some drug dealer in the middle of
17 the night would say that? He might say something else
18 but he's not going to say you cannot charge me with
19 those drugs; they are in the parking lot and they are
20 not in my pocket.

21 Is law enforcement stretching here? What do you
22 think?

23 You know, the testimony either has a ring of the
24 truth or it doesn't, and I know that law enforcement
25 has a hard time, and sometimes they forget to write down

1 things and forget to do things they are supposed to do,
2 and nobody faults them for that because they do have a
3 hard job, but when you've got somebody's life and lib-
4 erty depending on you to be precise and particular, I
5 think we need to hold them to that.

6 There are many reasonable doubts in this case, and
7 any one could argue for the fact that he is not guilty
8 of possession with intent to distribute. One could cer-
9 tainly argue that he is guilty of possession of cocaine,
10 and that is an understandable verdict, even with the
11 questions about the chain and where the drugs were and
12 that kind of thing.

13 That would be a reasonable verdict. I thank you
14 for your time and attention. It is always hard to have
15 to determine someone's guilt or innocence when they are
16 not here, but I appreciate it and I know Mr. Jackson
17 appreciates it. He has been coming to Court. I have
18 no idea why he is not here today.

19 But I do thank you, and I ask you when you go back
20 there to ask yourselves if this man, without money, with-
21 out scales, without wrappings, with law enforcement
22 twenty-five feet away -- if this man who stopped when
23 told to stop; didn't put up a fight; didn't give him a
24 hard time; did exactly what he was told to do -- is Mr.
25 Jackson a big time drug dealer?

1 He had a pinch of cocaine on him, and I would ask
2 you to return that appropriate verdict. I thank you
3 so much for your time.

4 THE COURT: Thank you, Ms. Wingard.

5 Mr. Foreman, ladies and gentlemen of the jury,
6 you've heard the evidence, you've heard the closing
7 arguments, and now it is my duty and responsibility to
8 charge you the law.

9 You all paid close attention to the evidence, and
10 from that you will arrive at the truth and exercise
11 your responsibility of being finders of the facts.

12 One thing you need to understand is that that is
13 only a part of it, understanding what the facts are.
14 You also need to listen to the law and apply the law.

15 There is no easy way to charge the law, so you are
16 going to have to sit there and listen. I know it's late
17 in the evening, but this is an important case. It's
18 important to the State and important to the Defendant.

19 So I want you to perk up a little bit and sit up
20 and pay very close attention as I explain the law.

21 The Defendant is charged with possession with intent
22 to distribute cocaine base, possession with intent to
23 distribute powder cocaine, simple possession of marijuana.

24 I remind you that the fact that the Defendant was
25 arrested, charged and indicted is not evidence and it

1 cannot be considered by you as evidence of guilt, nor
2 does it create any presumption or inference of guilt.

3 This document is simply the formal written instru-
4 ment which contains the charges made against the Defen-
5 dant. It is a formal document which brings this case
6 to Court.

7 The indictments in this case allege the offenses
8 I have previously enumerated, and each indictment is a
9 separate and distinct offense. You must decide each in-
10 dictment separately on the evidence and the law applica-
11 ble to it, uninfluenced by his decision as to other
12 indictments.

13 The Defendant may be convicted or acquitted on any
14 or all of the offenses charged. You will be asked to
15 write a separate verdict of guilty or not guilty on
16 each indictment.

17 The Defendant pled not guilty to this indictment.
18 That puts the burden on the State to prove the Defendant
19 guilty.

20 A person charged with committing a criminal of-
21 fense in the State of South Carolina is never required
22 to prove himself innocent.

23 I charge you that it is an important rule of the
24 law that the Defendant in a criminal trial, no matter
25 what the seriousness of the charge may be, will always

1 be presumed to be innocent of the charge for which the
2 indictment was issued unless guilt has been proven by
3 evidence satisfying you of that guilt beyond a reason-
4 able doubt.

5 The presumption of innocence does not end when you
6 begin your deliberations, but it accompanies the Defen-
7 dant throughout the trial and until a verdict of guilt
8 based on the evidence satisfying you of that guilt beyond
9 a reasonable doubt.

10 The presumption of innocence is like a robe of
11 righteousness placed about the shoulders of the Defendant,
12 and it remains with the Defendant until it is stripped
13 from the Defendant by evidence satisfying you of the
14 Defendant's guilt beyond a reasonable doubt.

15 The presumption of innocence is not a mere legal
16 theory. It is not just a legal phrase. It is an essen-
17 tial right to which every Defendant is entitled unless
18 you, the jury, find from evidence the Defendant's guilt
19 beyond a reasonable doubt.

20 What is a reasonable doubt in the law? A reason-
21 able doubt is the kind of doubt that would cause a rea-
22 sonable person to hesitate to act. The State has the
23 burden of proving the Defendant guilty beyond a reason-
24 able doubt.

25 Some of you may have served as jurors in a civil

1 case where you were told that it is only necessary to
2 prove that a act is more likely true than not true, such
3 as by a greater weight or preponderance of the evidence.

4 In criminal cases the State's proof must be more
5 powerful than that. It must be beyond a reasonable
6 doubt.

7 Proof beyond a reasonable doubt is proof that leaves
8 you firmly convinced of the Defendant's guilt.

9 There are very few things in this world that we
10 know with absolutely certainty. In a criminal case, the
11 law does not require proof that overcomes every possible
12 doubt. If, based on your consideration of the evidence,
13 you are firmly convinced the Defendant is guilty of the
14 crime charged, you must find the Defendant guilty.

15 If, on the other hand, you think there is a real
16 possibility the Defendant is not guilty, you must give
17 the Defendant the benefit of a doubt and find him to be
18 not guilty.

19 I remind you that during this trial you and I have
20 certain duties to perform. As the trial judge, it is
21 my responsibility to preside over this trial. I also
22 have the duty to rule on admissibility of the evidence
23 that is offered during this trial.

24 You are to consider only the competent evidence
25 before you. You are to consider all of the testimony

1 presented from the witness stand, any exhibits which
2 have been made a part of the record, or any stipulation
3 of counsel.

4 I have the additional duty to charge you on the
5 law that is applicable to this case. As the presiding
6 judge, I am the sole judge of the law on this case, and
7 it is your duty, jurors, to take the law as I now state
8 it to you.

9 If you have an idea as to what the law is or what
10 the law ought to be, and it does not agree with what I
11 now tell you the law is, you must abandon this idea be-
12 cause you are sworn to accept and apply the law as I
13 state it to you.

14 In every case tried in this Court before a jury,
15 the jury becomes the sole and exclusive judge of the
16 facts. The trial judge cannot intimate, state, comment
17 upon or make any statement to a trial jury about the
18 facts in a case.

19 You, the jury, are the sole judges of the facts of
20 the case, and you are not to infer from anything I have
21 said during the progress of this trial weighing on the
22 admissibility of evidence or otherwise, as well as
23 from anything I say now during the course of this in-
24 struction to you, that I have any opinion about the
25 facts in this case.

1 The law simply does not allow me to have an opinion
2 about the facts in this case. This is a matter solely
3 for you, the jury, to determine.

4 As jurors, it is your duty to determine the effect,
5 value, weight and truth of the evidence presented in
6 this trial.

7 There are two types of evidence which have been
8 presented during the trial, direct evidence and circum-
9 stantial evidence.

10 Direct evidence is the testimony of a person who
11 claims to have actual knowledge of a fact, such as an
12 eye-witness. It is evidence which immediately estab-
13 lishes the main facts to be proved.

14 Circumstantial evidence is proof of a chain of
15 facts or circumstances that indicate the existence of
16 a fact. It is evidence which immediately establishes
17 facts from which the main fact may be inferred.

18 Circumstantial evidence is based on inference and
19 not on personal knowledge or observation.

20 The law makes absolutely no distinction in the
21 weight or value to be given to direct or circumstantial
22 evidence, nor is a greater degree of certainty required
23 for circumstantial evidence than for direct evidence.

24 You should weigh all the evidence in this case and,
25 after weighing all the evidence, if you are not convinced

1 of the guilt of the Defendant beyond a reasonable doubt
2 then you must find the Defendant not guilty.

3 Necessarily, you must determine the credibility of
4 witnesses who have testified in this case. Credibility
5 simply means believability.

6 It is your duty as jurors to analyze and evaluate
7 the evidence and determine which evidence convinces you
8 of its truth.

9 In determining the believability of witnesses who
10 testified in this case, you may believe one witness over
11 several witnesses or several witnesses over one wit-
12 ness.

13 You may believe a part of the testimony of a wit-
14 ness and reject the remaining part of the testimony of
15 that witness.

16 You may believe the testimony of a witness in its
17 entirety or disbelieve the testimony of a witness in
18 its entirety.

19 You may consider whether a witness has exhibited
20 any interest, bias, prejudice or other motive in this
21 case. You may also consider the appearance and manner
22 of the witness while on the witness stand.

23 Rules of evidence ordinarily do not permit witnes-
24 ses to testify to opinions or conclusions. An excep-
25 tion to this rule exists in witness we called expert

1 witnesses, a witness who becomes by education or exper-
2 ience an expert in some art, science or profession or
3 calling. They may state an opinion as to a material
4 matter in which the witness claims to be an expert, and
5 may state reasons for the opinion.

6 You should consider any expert opinion received in
7 evidence in this case like any other evidence and give
8 it the weight you think it deserves.

9 If you decide an opinion of an expert witness is
10 not based on sufficient education and experience, or if
11 you conclude the reasons given to support an opinion are
12 not sound, or if that opinion is outweighed by other
13 evidence, then you ^{may} disregard the opinion entirely.

14 An expert witness' opinion should be given no
15 greater weight as that of other witnesses simply because
16 the witness is an expert. Further, you are not required
17 to accept an expert's opinion even though it is not
18 contradicted.

19 I instruct you and emphasize the fact that the De-
20 fendant did not testify is not a factor to be considered
21 by you in any way in your deliberations and in your
22 consideration of the question of guilt or innocence of
23 the Defendant. It must not be considered by you in any
24 manner whatsoever.

25 The Defendant has a constitutional right to remain

1 silent, and an assertion of this right cannot be consid-
2 ered by you in your deliberations.

3 I repeat that under your oath you are to draw no
4 conclusion whatsoever from the fact that the Defendant
5 in this case did not appear or did not testify. The
6 fact that the Defendant did not appear or testify may
7 not be discussed in the jury room.

8 Mr. Foreman, I'm going to ask that you enforce
9 that rule. There will be no discussion about the fact
10 that the Defendant did not appear nor that he did not
11 testify.

12 The burden of proof, as I have stated to you, is
13 on the State. The Defendant is not required to prove
14 his innocence. The burden of proof remains on the State
15 to prove its case beyond a reasonable doubt.

16 The statement alleged to have made by the Defendant
17 has been admitted into evidence in this case. While
18 the Court has determined that the statement is admissi-
19 ble, I instruct you that you are to make the ultimate
20 decision of whether or not the Defendant made the state-
21 ment.

22 If the Defendant did make the statement, you must
23 determine whether the statement was made by the Defen-
24 dant voluntarily and of his own free will. This means
25 that the statement was not caused by pressure, force,

1 fear, threats, coercion, intimidation or by promise of
2 leniency, or hope or promise of reward of any kind.

3 In determining whether the statement was voluntary,
4 you should consider both the characteristics of the De-
5 fendant, the details of the questioning. Some factors
6 you must consider are the age of the Defendant, his
7 education or lack thereof, the Defendant's mental abil-
8 ity and capacity, his IQ or intelligence, his background
9 and environment, place and length of detention, nature
10 of the questioning, advice or right thereof of the De-
11 fendant of his constitutional rights, including, but
12 not limited to, his right to remain silent; that any
13 statement could be used against him in a Court of Law;
14 the right to have a lawyer present; that if he could
15 not afford a lawyer one would be appointed to represent
16 him without any cost; and that he could stop making a
17 statement at any time.

18 You must consider all of the surrounding circum-
19 stances before you give any weight to an alleged state-
20 ment.

21 The State has the burden of proving beyond a reason-
22 able doubt that the alleged statement was voluntary.
23 If you determine it was, you may give the statement any
24 further consideration you deem proper.

25 You must decide what weight, if any, should be

1 given the alleged statement.

2 If you decide the statement was not the free and
3 voluntary statement of the Defendant, you should not
4 consider the statement at all.

5 The Defendant is charged with possession with in-
6 tent to distribute cocaine base and powder cocaine,
7 what we refer to as cocaine.

8 The State must prove beyond a reasonable doubt
9 that the Defendant possessed cocaine base and powder
10 cocaine with intent to distribute.

11 To prove possession with intent to distribute, the
12 State must prove beyond a reasonable doubt that the
13 Defendant had both the power and intent to control the
14 disposition and use of the cocaine and/or powder cocaine.

15 Possession may be either actual or constructive,
16 and I will explain what actual possession is.

17 Actual possession means that the cocaine base or
18 powder cocaine were in the actual physical custody of
19 the Defendant.

20 Constructive possession means the Defendant had
21 dominion and control or the right to exercise dominion
22 and control of the cocaine base and/or powder cocaine
23 himself or the property on which the cocaine base or
24 powder cocaine was found.

25 The mere presence at the scene where the drugs

1 were found is not enough to prove possession. Actual
2 knowledge of the presence of the powder cocaine or co-
3 caine base is strong evidence of the Defendant's intent
4 to control its disposition or use.

5 The Defendant's knowledge or possession may be in-
6 ferred when a substance is found on property under the
7 Defendant's control. However, this inference is simply
8 an evidentiary fact to be taken into consideration by
9 you along with other evidence in the case and to be
10 given the weight you decide it should have.

11 The State must also prove beyond a reasonable
12 doubt that the Defendant intended to distribute the co-
13 caine base or powder cocaine. Distribution means to de-
14 liver other than by administering or dispensing of the
15 drug.

16 Intent may be shown by acts and conduct of the
17 Defendant and other circumstances from which you may
18 reasonably and naturally infer intent.

19 To determine whether the Defendant had the intent
20 to distribute cocaine base and/or powder cocaine, you
21 may consider the circumstances surrounding the Defen-
22 dant's alleged possession. You may consider the amount
23 of the substance alleged to have been possessed, the
24 place it was allegedly possessed, and other factors
25 which you consider to be important.

1 You must find that the Defendant did not intend to
2 have the powder cocaine or the cocaine base solely for
3 his own use.

4 Ten grains of cocaine or one or more grams of crack
5 cocaine is an inference the Defendant possessed the
6 cocaine base or powder cocaine with intent to distri-
7 bute.

8 This inference does not relieve the State of prov-
9 ing beyond a reasonable doubt that the Defendant had an
10 intent to distribute. It is simply an evidentiary fact
11 to be taken into consideration by you along with other
12 evidence in the case, given the weight you decide it
13 should have.

14 The Defendant is charged with possession of mari-
15 juana, and the State must prove beyond a reasonable
16 doubt that the Defendant knowingly and intentionally
17 possessed marijuana.

18 Knowingly means with knowledge consciously and not
19 accidentally.

20 Intentionally means wilfully, intending the result
21 which actually occurs, not accidentally or involuntar-
22 ily. Intent may be shown by acts or conduct of the
23 Defendant and other circumstances from which you may
24 naturally and reasonably infer intent.

25 To prove possession, the State must prove beyond

1 a reasonable doubt that the Defendant had both the power
2 and intent to control the disposition or use of the
3 marijuana. Possession may be either actual or construc-
4 tive.

5 Actual possession means that the marijuana was in
6 actual possession and custody of the Defendant. Con-
7 structive possession means that the Defendant had domin-
8 ion and control or ability to exercise dominion and
9 control over the marijuana itself or the property on
10 which the marijuana was found.

11 Mere presence at the scene where the drugs were
12 found is not enough to prove possession. Actual know-
13 ledge of the presence of the marijuana is strong evidence
14 of the Defendant's intent to control its disposition or
15 use.

16 Defendant's knowledge of possession may be inferred
17 when a substance is found on the property under the
18 Defendant's control. This inference is simply an evi-
19 dentiary fact to be taken in consideration by you along
20 with other evidence in this case, and is to be given
21 the weight you decide it should have.

22 Possession of marijuana is a crime unless the mari-
23 juana was obtained directly from or through a valid
24 prescription from a practitioner acting in the course
25 of professional practice.

1 Mere presence at the scene is not sufficient to
2 prove someone guilty of a crime. A Defendant's presence
3 where a crime is being committed or mere association
4 with a person that commits a crime does not make the De-
5 fendant an accomplice or aider or abettor to the person
6 committing the crime.

7 The burden is on the State to prove every element
8 of the crime charged. If you find after reviewing all
9 of the evidence that the State has proved that the De-
10 fendant was only present at the scene of the crime, and
11 they have not proven beyond a reasonable doubt any other
12 participation in the crime, then you must find the Defen-
13 dant not guilty.

14 It is the law that proof of one being at the scene
15 of a crime is not sufficient to find someone guilty.

16 Now I will share with you the verdict form. Mr.
17 Foreman, I will ask you to stand as I go over the ver-
18 dict form with you.

19 As you see, it says the State of South Carolina,
20 County of Florence. State of South Carolina versus
21 Ontaney Ventrell Jackson, Indictment Number 2010 GS 21
22 0673. That is at the top of the verdict form.

23 As we have gone over in great detail during my
24 charge, the State has charged possession with intent to
25 distribute cocaine base, with a place for you all to

1 mark down the result of your deliberations.

2 It says we, the jury, unanimously find the Defen-
3 dant Ontaney Ventrell Jackson guilty or not guilty.

4 Of course, there is no significance to be attached
5 to which one is first. One has to be first. One arbi-
6 trarily has to go first, guilty or not guilty.

7 If you find the Defendant guilty of possession
8 with intent to distribute cocaine base you'd proceed for-
9 ward to Roman Numeral two. However, if you find the
10 Defendant not guilty of possession with intent to dis-
11 tribute cocaine base you must consider the lesser in-
12 cluded offense of possession of cocaine base.

13 Then possession of cocaine base and a place for you
14 to mark guilty or not guilty.

15 You cannot find the Defendant guilty of both pos-
16 session of cocaine base with intent to distribute and
17 of possession of cocaine base. They are mutually ex-
18 clusive. You can find him not guilty of both but you
19 cannot find him guilty of both. It's got to be one or
20 both.

21 Do you understand?

22 FOREMAN: Yes, sir.

23 THE COURT: All right. The same applies with the
24 -- the Defendant has been charged with possession with
25 intent to distribute cocaine, commonly called powder.

1 cocaine.

2 Clearly the same provisions apply. Guilty or not
3 guilty on that, and if you find him not guilty then you
4 would have to consider possession of powder concaine --
5 guilty or not guilty.

6 Then as to marijuana, he has only been charged with
7 possession of marijuana. No allegation of any intent to
8 distribute that.

9 So you will need to make a determination as to the
10 marijuana whether or not the State has proved beyond a
11 reasonable doubt each and every element of the possession
12 of marijuana.

13 Then there is a place for you to sign as Foreman.
14 You can have a seat.

15 I do want to advise that the verdict must be unan-
16 imous. You can't have ten to two, eight to four. It has
17 to be unanimous. Everyone has to agree.

18 It says on the bottom here, Mr. Foreman, knock on
19 the door to alert the bailiff when you have reached a
20 verdict.

21 I hear tell in Greenville one time they stayed back
22 there three days before they knocked on the door. I'm
23 sure that's not going to happen. When you reach a ver-
24 dict, knock on the door.

25 I do have this admonition for you. Do not begin

1 your deliberations if all members of the jury were not
2 present. If someone were to get out of their seat you
3 must stop the deliberations because everybody needs to
4 participate.

5 Your job as the Foreman of the jury is to ensure
6 that everybody's voice is heard.

7 If there are questions that come up throughout the
8 deliberations, I would tell you from the very outset I
9 don't think there are going to be any questions. You
10 all have listened to the facts and you all have heard
11 the witnesses testify. You all paid attention.

12 So if you want to ask a question about the facts of
13 the case, I can't answer them. You all are the sole and
14 exclusive judges of the facts.

15 If you have a question on the law, certainly I can
16 recharge the law in that regard, but I don't anticipate
17 there will be any questions as to the facts of the case.

18 If there is a question in your mind, whether there
19 is a question of law or fact, write it down. If I can
20 answer it, I will.

21 As I have told you throughout the trial of this
22 case, you are the judges of the facts.

23 I would ask you now to return to your jury room.
24 Do not begin deliberations because I have to talk to
25 these two fine lawyers about the manner in which I have

1 charged the law. If there are exceptions, objections
2 or additions to the law we need to address those before
3 you begin deliberations. So I'm going to ask you to go
4 to your jury room with your verdict form but do not be-
5 gin your deliberations.

6 If there are no objections we will gather up the
7 items of evidence and bring those to you in the jury
8 room, the Exhibits in this case. We will tell you when
9 to begin your deliberations but do not yet do so since
10 it might be necessary for me to bring you back out for
11 an additional charge.

12 Thank you so much, and I will ask you at this time
13 to return to your jury room. Everyone else remain
14 seated as the jury returns to the jury room.

15 (Jury excused from Courtroom)

16 THE COURT: All right, the alternates need to remain
17 in the Courtroom. I apologize for that. You need to
18 remain in the Courtroom.

19 (Alternates staying in Courtroom)

20 THE COURT: I want to speak to my alternates before
21 we do anything else.

22 Thank you all for being here. Even with a trial
23 as short as this was, sometimes conflicts develop be-
24 tween jurors and they discover they have some problem
25 with the case or something they didn't understand earlier.

1 Sometimes they get sick or someone may get into a
2 wreck over lunch, and you are our insurance policies,
3 sort of. In the short period of time I've been on the
4 bench we have utilized alternate jurors quite often, so
5 with the amount of time and preparation that has been
6 involved in the presentation of this case, if we were to
7 have less than twelve jurors we'd have to start it all
8 over again.

9 I want to thank you for your service, and I wish I
10 could excuse you for the week. I'm going to ask you to
11 call back this afternoon after five thirty and follow
12 the instructions that are on the answering machine.

13 Do you all have any questions about what has tran-
14 spired so far?

15 (No response from alternates)

16 All right, I'm going to allow you to retire home
17 at this time and call back to see if you need to be
18 back. Thank you so much.

19 (Two alternates excused)

20 THE COURT: Any objections with regard to the
21 charge from the State?

22 SOLICITOR: None from the State, Your Honor.

23 THE COURT: Any from the Defense?

24 MS. WINGARD: None from the Defense.

25 THE COURT: I'm going to ask you all to come forward

1 and place every item that's in evidence in this box.

2 Mr. McEachin, is everything that's in that box in
3 evidence?

4 SOLICITOR: Yes, sir.

5 THE COURT: Anything in that box that is not in evi-
6 dence?

7 SOLICITOR: No, sir, Your Honor.

8 THE COURT: Ms. Wingard, is everything in that box
9 in evidence?

10 MS. WINGARD: I believe so.

11 THE COURT: Anything in that box not in evidence?

12 MS. WINGARD: No.

13 THE COURT: All right, I'm going to ask that you
14 give them some blank sheets of paper and writing utensils
15 and ask them to begin deliberations.

16 (Jury taken evidence and requested to begin delib-
17 erations at 4:11 P.M.)

18 (Court took up other matters until 4:39 P.M.)

19 THE COURT: All right, let's have order. We're
20 ready for the jury.

21 (Jury returned to Courtroom)

22 THE COURT: Mr. Foreman, have you reached a verdict?

23 FOREMAN: We have, Your Honor.

24 THE COURT: Is it unanimous?

25 FOREMAN: Yes, sir, it is.

1 (The Court examining verdict form)

2 THE COURT: The verdict form seems to be in order.

3 I ask that the Clerk publish the verdict.

4 CLERK: State of South Carolina versus Ontaney

5 Ventrell Jackson, Indictment 2010 GS 21 673.

6 Count one, possession with intent to distribute co-

7 caine base. We, the jury, unanimously find the Defen-

8 dant Ontaney Ventrell Jackson guilty.

9 Count two, possession with intent to distribute

10 cocaine. We, the jury, find the Defendant guilty.

11 Count three, possession of marijuana. We, the

12 jury, unanimously find the Defendant guilty.

13 I can't read this writing, Judge. The Foreperson

14 is Michael Zazar, August 10, 2010.

15 Members of the jury, if this is your verdict,

16 please raise your right hands. (Jurors raising hands)

17 That's all of them.

18 THE COURT: Any additional request for polling from

19 the Defense?

20 MS. WINGARD: I would ask that the jury be polled.

21 (Whereupon, the jurors individually were questioned as

22 to whether that was their verdict and whether it is still

23 their verdict. All jurors indicated in the affirmative)

24 CLERK: That's all.

25 THE COURT: Mr. Foreman and ladies and gentlemen

1 of the jury, you have discharged your duty, and I thank
2 you for your time and attention to this matter.

3 I wish I could excuse you for the week but there
4 is a potential we might try another case toward the end
5 of the week. I understand we will not need your ser-
6 vices tomorrow but I will ask you to call tomorrow af-
7 ternoon after six o'clock to determine whether or not
8 you'll need to come back.

9 (Jurors excused by the Court)

10 THE COURT: I will be happy to entertain motions at
11 this time.

12 MS. WINGARD: Just to renew all previous motions
13 that were made, and a motion for a new trial.

14 THE COURT: Be glad to hear from you.

15 SOLICITOR: Thank you, Your Honor. We certainly
16 believe there is ample evidence in the record to support
17 the jury's verdict in this case.

18 In addition to the discussion of inference levels,
19 there is other evidence in the record which was consid-
20 ered by the jury to determine there was in fact an intent
21 to distribute the cocaine base and the powder cocaine
22 both, as well as the individual possession of marijuana.

23 THE COURT: All right. I'm going to speak with
24 counsel in chambers for a moment and come back and make
25 a ruling.

1 (Whereupon, there was a brief recess and the matter
2 then continued in the Courtroom)

3 THE COURT: All right, I'll be glad to hear from
4 the State with regard to sentencing.

5 The motions for directed verdict are denied.

6 MS. WINGARD: Also we have moved for a new trial.

7 THE COURT: The motions for directed verdict, for a
8 new trial and all previous motions are denied.

9 MS. WINGARD: Judge, I would also move to reduce
10 the verdicts from guilty of possession with intent to
11 distribute to possession on the cocaine base and cocaine
12 charges, as I think that is what the evidence has shown.

13 THE COURT: My only problem with that is that the
14 law -- there might be something I feel ought to be done,
15 but the law doesn't allow me to do that because clearly
16 the law indicates otherwise.

17 If it is above a certain weight then it creates an
18 inference, a permissive inference, which the jury can
19 find, and I am not ready to disturb the jury's verdict
20 in that regard.

21 I'll be glad to hear from the State. I understand
22 there is some movement on the part of the State to en-
23 hance the penalties, and I'll be glad to hear from the
24 State.

25 SOLICITOR: That's correct, Your Honor.

1 For the record, we have two certified copies of
2 the Defendant's prior drug convictions. We ask that
3 these be made a part of the record, Your Honor.

4 Both of these are offenses of possession with in-
5 tent to distribute, one stemming from 2003, and the other
6 stemming from 2000.

7 In addition to those charges, the Defendant has a
8 possession of marijuana in 2002, and he was convicted of
9 armed robbery in 1994.

10 THE COURT: All right. Be glad to hear from the
11 Defense with regard to the record.

12 MS. WINGARD: I would have nothing to dispute that
13 record. I assume from these certified copies that it
14 is correct.

15 I would have no way to dispute that.

16 THE COURT: Okay. All right, is there anything
17 that you have to offer from the Defense with regard to
18 sentencing?

19 MS. WINGARD: No, Your Honor. I know there is a
20 high mandatory minimum and I would ask that you impose
21 the minimum on him.

22 As I understand it, whatever he gets is an eighty-
23 five percent, so he's going to be looking at a lot of
24 time.

25 I would also ask that any sentence you give him run

1 concurrent.

2 THE COURT: Anything further from the State?

3 SOLICITOR: Nothing further, Your Honor.

4 THE COURT: From the Defense?

5 MS. WINGARD: Nothing from the Defense.

6 THE COURT: All right. Thank you.

7 (Sentence was sealed and handed to the Clerk)

8 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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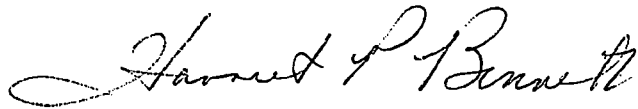
25

CERTIFICATE

I, HARRIET P. BENNETT, Official Court Reporter for South Carolina Court Administration, do hereby certify that the foregoing Transcript was prepared to the best of my ability from the records of Keshia Reed, having been heard in the Court of General Sessions for Florence County on August 10, 2010.

FURTHER, I certify that I am neither of kin nor counsel to any party to this matter, nor do I have any interest in the same.

October 18, 2012

A handwritten signature in cursive script that reads "Harriet P. Bennett". The signature is written in dark ink and is positioned to the right of the typed name "Harriet P. Bennett" which appears on line 13 of the document.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE } GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

STATE,)

v.)

TRANSCRIPT OF RECORD
10-GS-21-673

ONTANEY V. JACKSON,)

DEFENDANT.)

January 31, 2012
Florence, South Carolina

B E F O R E :

THE HONORABLE MICHAEL G. NETTLES, JUDGE

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

MATTHEW OZMENT, ESQ.
Assistant Solicitor

VICK MEETZE, ESQ.
Attorney for Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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1 MR. OZMENT: Your Honor, we are here on --
2 how do you say your first name?

3 THE DEFENDANT: Ontaney.

4 MR. OZMENT: Ontaney Jackson. Mr. Jackson
5 has a sealed sentence that was a result of a jury
6 trial that conclu-- he was found guilty on
7 August 10th, 2010 of PWID crack third, PWID cocaine
8 third, and possession of marijuana second or
9 greater. Your Honor heard the trial, and it is my
10 understanding we're here to unseal his sentence.

11 THE COURT: All right. I hold in my hand
12 a document that's dated 8/10/10 and was sealed
13 8/10/10. All right, there are three sentencing
14 sheets: Possession with intent to distribute
15 cocaine third; possession with intent to distribute
16 cocaine third; and subsequent offense, a separate
17 and distinct offense; and a possession of less than
18 an ounce of marijuana for which he could receive up
19 to one year. All right.

20 MR. MEETZE: Is that two cocaines or is it
21 a cocaine base and a cocaine?

22 THE COURT: Possession with intent to
23 distribute cocaine and a cocaine base, it sure is.
24 The penalties are the same, but that distinction is
25 there.

1 MR. OZMENT: Is what the understanding
2 'cause my secretary put a hold on I believe from the
3 Solicitor's office had no idea he was picked up
4 until I think yesterday, and she for all he knew was
5 still out on the street. And when she checked for
6 the jail it was the family court bench warrant that
7 he was originally booked on, and then once he was
8 booked in the jail he -- the general sessions bench
9 warrants were dealt with. But like I said, that
10 comes from my secretary. I certainly haven't done
11 independent investigation.

12 THE COURT: Okay. Well, how can we insure
13 that he be held here at least to the balance of the
14 week for us to make this determination?

15 MR. MEETZE: I think -- I think Mr. Ozment
16 --

17 MR. OZMENT: I think we can handle that.

18 MR. MEETZE: --can call the jail and
19 request that.

20 THE COURT: Well, let's keep him here till
21 Friday, and if we're able to make that
22 determination -- what I'm gonna do is based on
23 whenever the hold was made effective, I'm willing to
24 give him credit from that point forward. What I
25 want you to do, Mr. Ozment, and you, Mr. Meetze, to

1 see if y'all can reach an agreement as to when that
2 date is and to issue an order to that effect and
3 then I will modify the sentencing sheet accordingly.
4 I'm gonna go ahead and — clearly at some point in
5 time he's entitled to some amount of credit so I'm
6 gonna go ahead and give him credit for the time for
7 time served, and I'm gonna ask that both you and
8 Mr. Meetze see if you can reach an agreement as to
9 when the effective date is. If you can't do that
10 then we need to bring him back before me sometime
11 this week, and we'll resolve it if there's a
12 question of fact in that regard.

13 MR. MEETZE: Sure.

14 THE COURT: Does that sound fair?

15 MR. MEETZE: Yes, sir.

16 MR. OZMENT: We'll hold him here.

17 THE COURT: Well, let's hold him here
18 until that time. Anything further, Mr. Jackson?

19 THE DEFENDANT: (Shakes head.)

20 THE COURT: Is that a no?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay, very good. Very good.

23
24 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
25

1 Mr. Meetze, I'll be -- he's already been
2 sentenced, but I'll be glad to hear anything on
3 behalf of Mr. Jackson. But before I do that,
4 Mr. Ozment, anything that you would have to offer?

5 MR. OZMENT: Nothing, Your Honor.

6 THE COURT: All right. Mr. Meetze, you're
7 recognized.

8 MR. MEETZE: Thank you, Your Honor, may it
9 please the Court. Your Honor, Carrington Wingard in
10 our office represented Mr. Jackson on his trial, and
11 Mr. Jackson obviously was tried in his absence back
12 in August of 2010. I think under the law any rights
13 with regards to appeals and all of that would start
14 from today as well as any post-trial motions or
15 anything like that as well and so I would reserve my
16 ten days to make any kind of post-trial motion in
17 that regard. And you know, it's my understanding at
18 least from looking at the file that these were
19 treated as third offenses for purposes of the
20 charge, and that's what the file looks like. I
21 don't know for sure because I wasn't here for it.
22 And under the way the law was back then the least
23 that he could get on the two cocaine and the two
24 possession with intent to distributes would be 15
25 years so he certainly is expecting something

1 substantial but. In any event, Your Honor, I
2 believe we're ready to hear the sentence.

3 THE COURT: All right. Mr. Jackson, would
4 you like to say anything on your behalf?

5 THE DEFENDANT: No, sir.

6 THE COURT: All right. I might ask, I
7 have a question too. Why didn't you show up for
8 your trial?

9 THE DEFENDANT: She didn't get in touch
10 with me, sir. I know he said she got it in a note
11 but the last time I talked with her I told her I
12 didn't -- she said they offered me ten. I told her
13 I didn't want to take that because the drugs they
14 were trying to charge me with they wasn't mine. I
15 told her I wanted to take a trial on it, and she
16 said she'll get back in touch with me.

17 THE COURT: Okay, very good. Well,
18 bearing that in mind with that explanation, of
19 course, really all I'm doing is publishing the
20 sentence. And the sentence with regard to
21 indictment 2010-GS-21-0673, possession with intent
22 to distribute cocaine base third or subsequent
23 offense -- or actually cocaine, not cocaine base,
24 cocaine, third offense, the sentence of the Court is
25 you be committed to the State Department of

1 Corrections for a period of 15 years. Sentence to
2 run concurrent. With regard to indictment
3 2010-GS-21-0673, possession with intent to
4 distribute cocaine base third or subsequent offense,
5 the sentence of the Court is you be committed to the
6 State Department of Corrections for a period of 15
7 years. That sentence is to run concurrent. With
8 regard to indictment 2010-GS-21-0673, possession of
9 less than an ounce of marijuana, the sentence of the
10 Court is you be committed to the State Department of
11 Corrections for a period of one year. The sentence
12 is to run concurrent.

13 With regard to these cocaine and cocaine base
14 offenses, they are indeed serious offenses and your
15 lawyer will explain the collateral consequences
16 therefrom.

17 MR. MEETZE: Your Honor, one thing I did
18 want to say is that he indicates to me when I spoke
19 to him up here, hasn't had opportunity to check this
20 out. I don't know when any hold would have been
21 placed on him, but he has been incarcerated in
22 Darlington County since December 31st of 2010. And
23 you know, if a hold was placed on him from this
24 county sometime during that incarceration, then if
25 the Court — I think the Court would have the

1 discretion to give him credit for whenever the hold
2 was placed, wouldn't have to because he was also
3 being held on other charges, and that's something
4 that I would like to have up an opportunity to look
5 into to see ---

6 THE COURT: What are the days that he
7 would be entitled to credit for?

8 MR. MEETZE: It would depend on when and
9 if any, a hold from this county was placed.
10 Apparently it was because they sent him straight
11 from Darlington to here, but I think -- he was in
12 jail in Darlington, and I think once the hold was
13 placed on him from the time of the hold he would be
14 entitled to credit if the Court wanted to give him
15 that credit. The Court does not -- under those
16 circumstances I don't think the Court has to give
17 that credit but I think the Court can give ---

18 THE COURT: Given the minimum mandatory
19 nature of it and the amount of it, I'm inclined to
20 give him credit if you can represent to the Court as
21 an officer of the court there was a hold placed on
22 him. I will be willing to give him credit for that
23 and modify the sentencing sheet to that effect.

24 THE CLERK OF COURT: Judge, there was a
25 bench warrant issued August 10th, 2010, and it was

1 served January 27th of this year. So I mean, that
2 would be the hold, August the 10th of 2010. I mean,
3 bench warrant was issued would it not ---

4 MR. MEETZE: Well, if they sent a copy of
5 that bench warrant to Darlington County ---

6 THE CLERK OF COURT: Darlington County.

7 MR. MEETZE: Then that would serve as the
8 hold, and it would be when they sent that bench
9 warrant to the Darlington County Detention Center.

10 THE CLERK OF COURT: I don't know who --
11 all I have is that it was served.

12 MR. MEETZE: He was brought to our jail
13 last Friday which would have been the 27th so and
14 that's when I guess it was served on him officially.
15 But if it was sent to Darlington County so that they
16 knew there was that hold on him then to bring him
17 over. I mean, apparently it was done at some point
18 in time, I just don't know when.

19 THE COURT: Do you have any objection --
20 would you like to have another hearing with regard
21 to this particular matter?

22 MR. OZMENT: No objection, Your Honor, but
23 my understanding is the hold from Darlington is a
24 result of the family court warrant.

25 THE COURT: Okay.

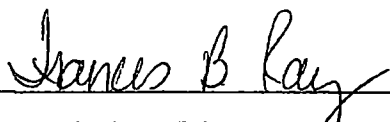
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE }

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 27th day of March, 2012.


FRANCES BAKIS-RAY, RPR

FILED

STATE OF SOUTH CAROLINA 2014 JUL -7 PM 4:17

COUNTY OF Florence

CONNIE REEL SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

IN THE COURT OF COMMON PLEAS

2014 CP 21-1889

Full name and prison number (if any) of Applicant.

Ontaney V. Jackson #210570

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broadriver Correctional Institution
2. Name and location of Court which imposed sentence Florence County General Sessions Court
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 2010-GS-21-0673
 - (a) 44-53-0375 (B)(3) P.W. I. D. Cocaine base 3rd
 - (b) 44-53-0370 (B)(1) P.W. I. D. Cocaine 3rd
 - (c) 44-53-0370 (D)(4) Poss. marijuana 2nd
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Aug. 08, 2010 15yrs Concurrent
 - (b) Aug. 08, 2010 15yrs Concurrent

Revised 3/2003

- (c) Aug. 08, 2010 1yr Concurrent
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Submitted Nov. 01, 2013 — Filed Dec. 11, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion No. 2013-UP-453
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) see Attachment
 (b) see Attachment
 (c) see Attachment
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see Attachment
 (b) see Attachment
 (c) see Attachment
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
 (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
 ii. _____
 iii. _____
 iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
 ii. _____
 iii. _____
 iv. _____
- (c) the disposition thereof:
- i. _____
 ii. _____
 iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____ first bite of the Apple of justice

(b) _____ first bite of the Apple of justice

(c) _____ first bite of the Apple of justice

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? ____
 - (b) your trial, if any? ✓ yes
 - (c) your sentencing? ✓ yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ✓ yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? ____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. ____ Carrington Wingard - Florence County Public Defense
 - ii. ____ Vick Meetz - Florence County Public Defender's Office
 - iii. ____ LaNelle Cantey DuRant - Appellate Defender of Columbia
 - (b) the proceedings at which each such attorney represented you:
 - i. ____ trial (absentia)
 - ii. ____ unsealed sentence
 - iii. ____ Appeal
19. State clearly the relief you seek in filing this application:
 ____ Remanded Reversal; Vacate
20. Are you now under sentence from any other court that you have not challenged?
no

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION)

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

at y f k

SWORN to and subscribed before me this 2nd
day of July, 2014.

Susan H. Frye (L.S.)
Notary Public

My Commission Expires
March 5, 2018

My Commission Expires: _____

FILED
2014 JUL -7 PM 4:17
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Connie Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

aty Jh
Applicant

SWORN or affirmed to and subscribed before me this
2nd day of July, 2014.

Susan H. Frye
Notary Public

My Commission Expires: _____

My Commission Expires
March 5, 2018

FILED
2014 JUL -7 PM 4:17
CONNIE REEL-SHEARIN
CCJP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
Connie Reel-Shearin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, SC.

Attachment to page 3 of Post-Conviction Relief Application - Form 5 pursuant to the uniform Post-Conviction procedure act: 17-27-10 to 160 (2014), to questions 10 and 11

10(a): Applicant was denied the right to effective assistance of counsel — guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution — during the guilt-or-innocence phase of his trial.

11(a): Supporting facts: Trial Counsel's performance during the guilt-or-innocence phase was both unreasonable and prejudicial. See Strickland v. Washington, 466 U.S. 668 (1984). Counsel's acts or omissions included, but are not limited to, the following:

1) Counsel's failure to be present denied Applicant's right to counsel at a critical stage of criminal prosecution.

Had counsel been present the first week of court term, Counsel would not have denied Applicant an opportunity to negotiate a plea bargain instead of

being tried in absentia.

The Sixth Amendment right to counsel attaches upon initiation of adversarial judicial proceedings and at all critical stages of a criminal trial. State v. Sterling 661 S.E.2d 99, 101 (2008)

The Sixth Amendment guarantee of the assistance of counsel also provides the right to counsel at post-arraignment interrogations. The arraignment signals "the initiation of adversary judicial proceedings" and thus the attachment of the Sixth Amendment, United States v. Gouveia 476 U.S. 180, 104 S.Ct 2292 (1984), therefore, government efforts elicit information from the accused, including interrogation, represent "critical stages" at which the Sixth Amendment applies.

In Michigan v. Jackson 475 U.S. 625 (1986), the state concedes that the arraignment represented the initiation of formal legal proceedings, and that the Sixth Amendment attached at that point. Brewer v. Williams 430 U.S. 387, 97 S.Ct. 1232 (1977) "A person is entitled to help of a lawyer at or after

the time that judicial proceedings have been initiated against him — 'whether by way of formal charge, preliminary hearing, indictment, information, or arraignment.' "see also, quoting Kirby v. Illinois 406 U.S. 682, 92 S.Ct. 1877 (1972) cf. Powell v. Alabama 287 U.S. 45, 53 S.Ct 55 (1932) ("The most critical period of proceedings against a defendant "is" from the time of their arraignment until the beginning of their trial.") (emphasis added),

In the instant case, prosecutor stated, which is supported by record, that he advised the defense trial attorney that if this case was not disposed of the first week of court term, it would potentially go to trial. That statement made by the prosecuting attorney is enough to infer that the State was willing and prepared to negotiate a plea bargain that could have been favorable to the defendant, thus preventing Applicant from being tried in his absence. Counsel's failure to be present resulted in the Applicant being tried in his absence.

Counsel's absence the first week of Court term denied Applicant of a right to counsel at a critical stage of criminal trial proceedings, which resulted with Applicant being tried in absentia. Had Counsel been present the first week of Court term applicant would not have been tried in absentia which prejudiced the outcome of Applicant's criminal trial proceedings.

2) Counsel was ineffective for failing to ascertain the term and day of court in which petitioner was to be tried, which is amply supported by record.

In Frett v. State 378 S.E. 2d 249 (1988), petitioner argues that counsel's deficient performance is evidenced by counsel's failure to ascertain the term of court in which petitioner was to be tried, lack of preparedness, failure to request a preliminary hearing, and being unaware of all pending charges. It is not necessary that the court examine each of petitioner's allegations in ascertaining whether trial counsel was deficient. Trial Counsel admitted his own ineffectiveness by affidavit, which is supported by record. We conclude that petitioner's trial Counsel was deficient as well as derelict in his duties.

The prejudice requirement is satisfied by demonstrating that but for counsel's ineffectiveness, a defendant's trial, but not necessarily its outcome, would have been altered in a way helpful to him. See, e.g., Praylow v. Martin 761 F.2d 179 (4th cir. 1985)

Accordingly, we reversed the decision of trial court and remand this case for a

new trial.

The instant case is equivalent to Frett. Counsel provided ineffective assistance by failing to ascertain the term of court in which petitioner was to be tried, thus causing petitioner to be tried in his absence. Had counsel been aware of the actual day and term of court in which petitioner's case was to commence, she could have contacted petitioner and given him adequate notice of such trial in a timely fashion and not the same morning trial was to commence when petitioner was out of town working. Counsel was aware that petitioner worked out of town Monday thru Thursday and return home on Friday. As stated in the record, petitioner was previously coming to court when it was required of him to be present. When petitioner was aware of his court appearance, petitioner would then absent himself from work that week to attend the court proceedings. The prosecuting attorney for the state told petitioner he was free to go the first week of the Court term when Counsel was not present, reason unknown to client, which is the petitioner in the case. The

State's prosecutor told petitioner he was free to go, but failed to mention that his trial would commence the third week of the court term. Petitioner did not have any bench warrants issued on him prior to trial in his absence. These in itself are indications that petitioner was in attendance to court proceedings when given adequate notice. Counsel stated, "Judge, I certainly was not told it was a kind of day certain case, I have to say had it been on for yesterday I would have contacted him last Friday and started this thing in motion. He wasn't on the list to come to court yesterday."

Due to counsel not knowing ahead of time when trial was to commence, petitioner was tried and convicted in his absence. Petitioner's trial counsel was deficient as well as derelict in his duties. Therefore, reversal is required.

3) Counsel was ineffective for lack of preparedness which prejudiced the petitioner's trial. see Frett v. State 378 S.E.2d 249. Counsel's lack of preparedness did not meet the requirement in which a criminal defense

attorney is obligated to uphold to render effective assistance of counsel.

In Lounds v. State 670 S.E.2d 646 (2008) petitioner argued that trial counsel was ineffective for failing to prepare for petitioner's trial.

A defense attorney has a duty to perform a reasonable investigation. Ard v. Catoe 642 S.E.2d 597. Counsel has the duty to make an INDEPENDENT investigation of the facts and circumstances of the case.

In the instant case, trial counsel made numerous statements, which is supported by record, that would infer that counsel was not prepared for trial. Counsel failed to make an independent investigation to the facts and circumstances of the petitioner's case. Counsel presented no case law that was helpful to petitioner or the outcome of his trial.

Due to counsel's lack of preparedness, counsel's deficient performance fell below an objective standard of reasonableness that is required to render counsel effective.

see Strickland supra. While a defendant must ordinarily show that counsel's ineffective assistance resulted in actual prejudice such a showing may be exempted where counsel's ineffectiveness is so pervasive as to render a particularized prejudice inquiry unnecessary. See House v. Balkcom 725 F.2d 608 (1984)

4) Trial Counsel was ineffective for failing to object on all possible grounds to preserve issues for Appellate review. Counsel's failure to object timely and contemporaneously denied Applicant an opportunity to have issues ruled upon in the South Carolina Court of Appeals.

South Carolina has a contemporaneous objection rule. see Pike v. South Carolina Dept. of Transportation 506 S.E. 2d 516, 521 (1988) ("For an issue to be preserved for appeal, it must have been raised to and ruled upon by the trial Court.") see Wilder Corp v. Wilke 497 S.E. 2d 731 (1998) ("It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised and ruled on by the trial Judge to be preserved for Appellate review.")

Jackson v. Speed 486 S.E. 2d 750, It is responsibility of trial counsel to preserve issues for appellate review, and only limited exceptions to this rule are recognized. It is a fundamental principle that a contemporaneous objection is required at trial to properly preserve an error for

appellate review. State v. Hoffman 440 S.E.2d 869 (1994) (to preserve error for appellate review, defendant must make contemporaneous objection on specific ground); State v. Black 462 S.E.2d 311 (1995) The proper course to be pursued when counsel makes an improper argument is for opposing counsel to immediately object and to have a record made of the statements or language complained of and ask the court for a distinct ruling thereon.

In Toyota of Florence v. Lynch 442 S.E.2d 611 (1994), the trial judge ruled S.E. T. had waived any objection to the posters because the objection came too late, and denied a new ^{trial} motion on this ground. The general rule is that the lack of a contemporaneous objection to an improper argument acts as a waiver Vannadore v. Nationwide Mutual Ins. Co. 345 S.E.2d 711 (1986) This Court has held, however, that even in the absence of a contemporaneous objection, a new trial motion should be granted in flagrant cases where a vicious, inflammatory argument results in clear prejudice. South Carolina Highway

Dept. v. Nasim 179 S.E.2d 211 (1977)

In the instant case, counsel failed to object timely and adequately on numerous occasions throughout duration of Court proceedings, motion hearings and guilt-or-innocence phase of the Applicant's trial. Counsel failed to object contemporaneously during trial. Counsel failed to object on all possible grounds to inflammatory, contradictory, and irrelevant evidence / testimony presented by the prosecution. Counsel failed to object to prosecutor's closing remarks. Counsel's failure to object was incorrect and prejudicial. Had Counsel adequately objected these issues could have been preserved and ruled on in the S.C. Court of Appeals.

Counsel's performance fell below standards to render Counsel provided effective assistance upheld by the 6th and 14th Amendment of the U. S. Constitution. As a result of Counsel's failure to make all appropriate objections, Applicant's sentence is unreliable and reversal is required.

Applicant leaves this Section to be
Amended upon appointment of
Counsel. .

10(b): Applicant was denied the right to effective assistance of counsel — guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution — during Sentencing phase of his trial.

11(b): Supporting facts: Trial Counsel's performance during sentencing phase both unreasonable and prejudicial. See Strickland v. Washington, 466 U.S. 668 (1984). Counsel's acts or omissions included, but are not limited to, the following:

1) Counsel was ineffective for failing to adequately inform the defendant of the nature of the State's initial plea offer, see Davie v. State, 675 S.E. 2d 416 (S.C. 2009). In Hinson v. State, 377 S.E. 2d 338 (S.C. 1989), Trial Counsel in murder case was found ineffective for advising client that he would be eligible for parole in ten years if he plead guilty when in fact he would not be eligible for parole until twenty years had pass. Defendant plead guilty on erroneous advise of Trial Counsel.

In the instant case it is distinguishable from Hinson. Here defendant rejected the initial plea offer by the State due to counsel's erroneous

advise that he would not be eligible for parole and would indeed have to max the sentence out if he accepted the plea offer, when in fact defendant would have been eligible for parole after a third of his sentence was served. Had counsel adequately inform the defendant of the parole eligibility, defendant would have accepted the State's plea offer and not been tried in his absence.

In LaFler v. Cooper 132 S.Ct. 1376 and it's companion case, Missouri v. Frye 132 S.Ct. 1399 (2012) held defense counsel has the duty to communicate formal plea offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused, and Counsel was deficient in failing to communicate to the defendant prosecutor's written plea offer before it expired. See Criminal Law ^{key} 1731 and 1920, The Sixth Amendment right to effective assistance of counsel extends to the consideration of plea offers that lapse or are rejected. That right applies to "all 'critical' stages of the criminal proceedings." Montejo v. Louisiana, 556 U.S. 778, 786, 129 S.Ct. 2079. Hill v. Lockhart 474 U.S. 52, 106 S.Ct. 366, established that Strickland's two-part test governs ineffective — assistance claims in the plea bargain

context. There the defendant had alleged that his counsel had given him inadequate advise about his plea.

In Padilla v. Kentucky 559 U.S. —, 130 S. Ct. 1473 where a plea was set aside because Counsel had misinformed the defendant of it's immigration consequences, this court made clear that "the negotiation of a plea bargain is a critical" stage for ineffective assistance purposes. Ninety - seven percent (97%) of Federal convictions and ninety - four (94%) percent of state convictions are the result of guilty pleas. Plea bargains have become so central to todays criminal justice system that the defense Counsel must meet responsibilities in the plea bargain process to render the adequate assistance of counsel that the Sixth Amendment requires at critical stages of the Criminal process.

Counsel's failure to adequately inform applicant of the nature of the State's initial plea offer was unduly prejudicial and reversal is required.

2) Due to defense Counsel's failure to be present the first week of General Sessions term of Court, Applicant was denied Sixth Amendment right to counsel that extend to the plea bargaining process, including pre-trial stages.

The negotiation of a plea bargain is a critical phase of litigation for purpose of the Sixth Amendment right to effective assistance of counsel. The right to the effective assistance of counsel applies to certain steps before trial, see Frye v. Missouri 132 S.Ct.1399 (2012).

Plea bargains have become so central to the administration of the criminal justice system that defense counsels have a responsibility in the plea bargain process, responsibilities that must be met to render the adequate assistance of counsel that the Sixth Amendment requires in the criminal process at critical stages.

Because ours "is for the most part a system of pleas, not a system of trials," Lafler v. Cooper 132 S.Ct.1376, it is insufficient simply to point to the guarantee of a fair trial as a backstop that inoculates any errors in pretrial process. "To a large extent... horse trading [between prosecutor and defense counsel]"

determines who goes to jail and for how long. That is what plea bargaining is. It is not some adjunct to the criminal justice system; It is the criminal justice system."

Scott³ Stuntz, Plea bargaining as contact, 101 Yale L.J. 1909, 1912 (1992)

As a general rule defense counsel has duty to communicate formal prosecution offers to accept a plea on terms and conditions that may be favorable to the accused. Standards for prompt communication and consultation recommended by the American Bar Association and adopted by numerous state and federal courts, though not determinative, serve as important guides. The prosecution and trial courts may adopt measures to help ensure against late, frivolous, or fabricated claims. First, a formal offer's terms and processing can be documented. Second, states may require that all offers be in writing. Third, formal offers can be made part of the record at any subsequent plea proceeding or before trial to ensure that a defendant has been fully advised before the later proceedings commence. Here as the result of Counsel's deficient performance, the offer lapsed. Under Strickland the question then

becomes what, if any, prejudice resulted from the breach of duty.

Counsel's failure to be present at pretrial stage, which extends to plea bargaining process, was deficient and cause Applicant to be tried in his absence, and thus prejudice applicant of plea in his favor. Reversal is required.

10(c) Applicant was denied a fair trial due to Prosecutorial Misconduct as a matter of Due Process the Confrontation Clause of the Sixth Amendment of the United States Constitution — applicable to the States by reason of the Fourteenth Amendment.

11(c) Supporting facts: Prosecutorial Misconduct at Applicant's trial violated due process guaranteed by the Bill of Rights. Applicant's trial was unreasonable and unduly prejudicial. See Berger v. United States 295 U.S. 78, 55 S.Ct. 629

A conviction obtained through use of false testimony, known to be such by representatives of the State, is a denial of due process. When the state, though not soliciting false evidence allows it to go uncorrected when it appears, is also a denial of due process. U.S.C.A. Amend. 14.

Principle that a state may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply, merely because the false liberty, goes only to the credibility of the witness. See Napue v. People of State of Illinois 360 U.S. 264, 79 S.Ct. 1173

1) Prosecutor's remarks during guilt-or-

innocence phase and closing argument of trial were inflammatory and inconclusive to the evidence presented, and misleading the jury to infer that defendant possessed drugs with the intent to distribute when evidence reflects that, if any conclusion is to be determined, defendant only possess drugs for his personal use. The prosecutor is not a witness and should not be permitted to add to the record either by subtle or gross improprieties. It is quite "improper" for a prosecutor to insinuate to the jury the existence of evidence not in the record.

In State v. Durden 264 S.C. 86, 212 S.Ct. 587 (1975), we set forth the parameters of permissible prosecutorial argument. So long as the prosecutor stays within the record and it's reasonable inferences, he may legitimately appeal to the jury to do their full duty.

In the instant case, prosecutor made numerous insinuating remarks that were not within the record.

It is guaranteed by the Constitution, it is a built-in restraint both State and federal. It is a restraint on prosecutors who are officers of the court. Their tendencies should not promote law and order but Constitutional law and order.

Prosecutors are often eager to take almost any shortcut to win, yet they represent not an ordinary people but "We the People." Their duty is as much "to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one." see Berger v. United States 295 U.S. at 88, 55 S.Ct. at 633.

In Berger the United States Supreme Court condemned the prosecutor's argument as "undignified and intemperate, containing improper insinuations and assertions calculated to mislead the jury."

In Moore v. Morton 255 F.3d 95, 119 (3rd Circuit 2001), we read U.S. Supreme Court precedent as establishing the principle that the stronger the evidence against the defendant, the more likely that improper arguments or conduct have not rendered the trial unfair, whereas prosecutorial misconduct is more likely to violate due process when evidence is weaker.

We cannot condone the prosecutor's conduct, which amounted to repeated, deliberate misconduct; to have rendered a trial unfair.

The "consistent and repeated misrepresentation" of a dramatic exhibit in evidence may

profoundly impress a jury and may have a significant impact on the jury's deliberations.

The function(s) of the prosecutor under Federal Constitution is not to tack as many skins of victims as possible to the wall. His function is to vindicate the right of people as express in the laws and give those accused of crime a fair trial as stated in Berger v. U.S. 295 U.S. 78, 55 S.Ct. 629 (Justice Douglas dissenting).

Prosecutor's inflammatory and insinuating remarks denied applicant due process of a fair trial guaranteed by the U.S. Constitution's fourteenth amendment, therefore reversal is required.

2) Prosecutor failed to correct numerous inconsistent and false statements made by the State's primary witness.

The issue is not why the witness failed to tell the truth: rather, it is why the prosecutor failed to correct it, see Riddle v. Ozmint, 631 S.E. 2d. 70 (S.C. 2006).

Due Process is denied when the state allows false witness to go uncorrected

when it appears. The State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness, see Napue v. People of State of Illinois 360 U.S. 264, 79 S.Ct. 1173 U.S.C.A. Amend. 14.

Reversal is required because "the failure to correct false evidence is as reprehensible as it's presentation."

3) Prosecutor improperly bolstered Deputy Chambelain's testimony thereby impermissibly vouching for Deputy's credibility.

The prosecutor's line of questioning and closing argument bolstered Deputy Chamberlain's testimony by placing the prestige of the government behind Deputy's testimony. Deputy's statements of the incident were inconclusive and contradictory throughout the entire trial. By the prosecutor's bolstering and vouching for the deputy, the jurors assumed the deputy's testimony to be true,

When in fact, he has made inconsistent statements from the beginning of trial.

In State v. Kelly 343 S.C. 350, 540 S.E.2d. 851 (2001), Kelly argues that state improperly bolstered Matthew McCormack's credibility. Supreme Court of South Carolina agreed.

In United States v. Walker 155 F.3d. 180 (1998), the Court of Appeals for the Third Circuit discussed generally the concept of vouching:

Vouching constitutes an assurance by the prosecuting attorney of the credibility of a Government witness through personal knowledge or by other information outside the testimony before the jury..... A prosecutor's vouching for the credibility of a government witness raises two concerns: (1) such comments can convey the impression that evidence not presented to the jury but known to the prosecutor, supports the charges against the defendant's right to be tried solely on the basis of the evidence presented to the jury, (2) the prosecutor's opinion carries with it the imprimatur of the Government and may induce the jury to trust the Government's judgement rather than

its own view of the evidence.

Id. at 184 (citation omitted)

In Kelly, our opinion, the state's questions served to improperly bolster McCormack's Credibility. *Id.* Although perhaps not technically vouching, the manner of questioning by the State raises the second concern outlined in Walker court: The jury could have perceived that the assistant solicitor held the opinion that McCormack was, in fact, telling the truth. Thus, McCormack's testimony carried with the imprimatur of the government, and this bolstering may have induced the jury to trust the State's judgement about McCormack. Because a jury must make its own assessment on the credibility of witnesses, it is inappropriate for the State to assure the jury of a government witness's Credibility.

Reversal is required because a prosecutor cannot vouch for the credibility of a witness by placing the government's prestige behind a witness's testimony or the manner of improperly questioning the witness.

4) Prosecutor improperly attacked the character of defendant to arouse passion, emotion, and personal bias from the jury.

In the instant case, statements from prosecutor in closing argument were made to prejudice the defendant with jurors to draw their minds away from the real issue, and to create the impression that the defendant is of no value to the community. Prosecutor also ask jurors or placed jurors in evidence by asking jurors their opinion as to what they would have done or what they would have had had they been the defendant in the case.

The defendant was prejudiced by the language used, as the result of which he did not have a fair trial, it would be the duty of this Court to reverse the case and remand for a new trial.

In State v. White 246 S.C. 502, 144 S.E.2d. 481 (1965), this court on numerous occasions, has held that the duty of a prosecutor is not to convict a defendant, but to see justice done. We have found closing arguments improper when they appeal to personal bias, or when calculated to arouse passion or prejudice.

In a criminal case, the state cannot attack the character of the defendant unless the defendant himself first places his character in issue. see State v. McElveen 280 S.C. 325, 313 S.E.2d 298 (1984); State v. Gamble 247 S.C. 214, 146 S.E.2d 709 (1966) State v. Bigham 133 S.C. 491, 131 S.E. 603; State v. Bolin 177 S.C. 57, 180 S.E. 809; State v. Anderson 181 S.C. 527, 188 S.E. 186; State v. Britt 235 S.C. 395, 111 S.E.2d 669

Jurors are sworn to be governed by the evidence and it is their duty to regard the facts of a case impersonally. We have no idea that the able prosecutor intended to arouse passion or prejudice, but statements of this character are well calculated to bring about this result.

Reversal is required.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	TWELFTH JUDICIAL CIRCUIT
	)	
Ontaney Ventrell Jackson, #210570,	)	2014-CP-21-1889
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed on July 7, 2014, the Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the June 2010 term of the Florence County Grand Jury for one count of Possession with Intent to Distribute Cocaine Base, one count of Possession with Intent to Distribute Cocaine, and one count of Possession of Marijuana (2010-GS-21-0673). Applicant was represented by Carrington Wingard, Esquire and Vick Meetz, Esquire. After a trial by jury, Applicant was found guilty of all three charges and was sentenced by the Honorable Michael D. Nettles to one year for Possession of Marijuana and fifteen years for each count of Possession with Intent to Distribute Cocaine, third or subsequent offense and fifteen years for Possession with Intent to Distribute Cocaine Base, third offense, to be served concurrently.

Applicant filed a timely notice of appeal. An appeal was perfected by LaNelle Cantey Durant,

Esquire, of the South Carolina Office of Appellate Defense, who submitted an Anders¹ brief. The South Carolina Court of Appeals affirmed Applicant's conviction on January 16, 2014. State v. Jackson, Op. No. 2013-UP-453 (S.C. Ct. App. 2013). The Remittitur was returned on January 8, 2014.

II.

In his application for post conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. "Trial Counsel failed to be present denied Applicant's right to counsel at a critical stage of criminal prosecution;"
 - b. "Counsel was ineffective for failing to a-certain(sic) the term and day of court in which petition was to be tried, which is amply supported by record;"
 - c. "Counsel was ineffective for lack of preparedness which prejudiced the petitioner's trial;"
 - d. "Trial counsel was ineffective for failing to object on all possible grounds to preserve issues for Appellate review."
 - e. "Trial counsels performance during sentencing phase both unreasonable and prejudicial. . . Counsel failure to adequately inform applicant of the nature of the State's initial plea offer"
 - f. "Counsel's failure to be present at pretrial stage, which extends to plea bargaining process, was deficient and cause[d] applicant to be tried in his absence"
2. Due Process Violation
 - a. "Prosecutor's remarks during guilt-or-innocence phase and closing argument of trial were inflammatory and inconclusive to the evidence presented, and misleading to the jury . . . ;"
 - b. "Prosecutor failed to correct numerous inconsistent and false statements made by the State's primary witness;"
 - c. "Prosecutor improperly bolstered Deputy Chambelain's(sic) testimony thereby impermissibly vouching for Deputy's credibility;"
 - d. "Prosecutor improperly attacked the character of defendant to arouse passion, emotion, and personal bias from the jury."

¹ Anders v. California, 386 U.S. 738 (1967).

Attached herewith and incorporated herein by reference are the records of the Florence County Clerk of Court regarding the subject convictions, Applicant's records from the Department of Corrections, Applicant's appellate records, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

For purposes of this Return, Respondent interprets Applicant's allegations as claims of ineffective assistance of counsel. Respondent submits that Applicant's claim of ineffective assistance of trial counsel is without merit. In a PCR action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, the applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process" that the plea proceedings "cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

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

IV.

Respondent further submits Applicant's allegation of due process violations is without merit. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that an Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be

dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised these issues on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

VI.

Each and every allegation contained within the application not hereinbefore, either expressly admitted, qualified or explained is hereby denied.

Signatures on following page

VII.

WHEREFORE, Respondent requests an evidentiary hearing solely for the purpose of determining whether Applicant's trial counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

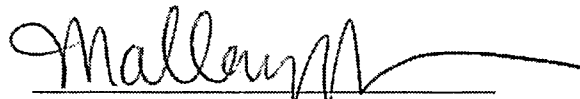
October 15th, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
	)	2014-CP-21-1889
OTANEY V. JACKSON, #210570,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Jonathan D. Waller, Esquire
Giese Law Firm
1315 Blanding Street
Columbia, SC 29201

DATED this 15th day of October, 2016.


 Mallory Morris, Legal Assistant
 For Respondent

State of South Carolina	)	In the Circuit Court
	)	Twelfth Judicial Circuit
County of Florence	)	2014-CP-21-01889

THE STATE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Transcript of Record
	)	
ONTANEY VENTRELL JACKSON,	)	
	)	
Defendant.	)	
	)	
_____	)	

Florence, South Carolina
March 15, 2017

B E F O R E:

The Honorable Paul M. Burch

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

Mr. Jonathan D. Waller, Esquire
Attorney for Plaintiff

Mr. Lindsey A. McCallister, Esquire
Attorney for Defendant

LISA CARTER
CIRCUIT COURT REPORTER

I N D E X

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EXHIBITSNO.DESCRIPTIONEV.

(NO EXHIBITS WERE INTRODUCED DURING THIS HEARING)

1 MS. McCALLISTER: Your Honor, this is Ontaney
2 Ventrell Jackson versus the State of South Carolina, 2014-
3 CP-21-01889. We're here today on an application of a post-
4 conviction relief filed by Mr. Jackson on July 7, 2014. He
5 is currently incarcerated with the South Carolina
6 Department of Corrections. He was indicted at the June
7 2010 term of the Florence County grand jury for one count
8 of possession with intent to distribute cocaine base, one
9 count of possession with intent to distribute cocaine, and
10 one count of possession of marijuana. He was represented
11 on those charges by Carrington Wingard.

12 After proceeding to trial he was found guilty on all
13 three charges and sentence by Judge Nettles to one year for
14 possession of the marijuana and fifteen (15) years for each
15 count of possession with intent to distribute and those
16 sentences were to be served concurrently.

17 He did file a timely notice of appeal. An appeal was
18 perfected by the Office of appellant Defense and the South
19 Carolina Court of Appeals ultimately affirmed his
20 conviction and sentences on January 16, 2014. In his
21 application he alleges ineffective assistance of counsel
22 and various due process violations. He is present in the
23 courtroom today and he is represented by Mr. Waller.

24 THE COURT: Mr. Waller?

25 MR. WALLER: I beg the Court's indulgence just one

Ontaney Jackson- Direct Examination by Mr. Waller:

5

1 second. Your Honor, I'm sorry, one of our witnesses just
2 stepped out.

3 THE COURT: While we are waiting on -- like I said
4 a few minutes ago, I was looking at this return on here,
5 you've discuss with Mr. Jackson the pitfalls of PCR's are
6 limited relief that the Court can give.

7 MR. WALLER: I have, Your Honor, and this was a
8 trial in his absence so I think those pitfalls are
9 different than some of those who have pled guilty.

10 THE COURT: I was just looking and if my
11 calculations are right, he's got an exposure of thirty-one
12 (31) years.

13 MR. WALLER: He does, Your Honor.

14 THE COURT: Okay. All right, sir.

15 MR. WALLER: And he understands and we discussed
16 that he did receive the minimum on each of those and they
17 were to run concurrently. So he understands. the Court, if
18 successful today, would not be bound by that. The future
19 is the case is full exposure if he were to go forward.
20 Your Honor, the applicant would call Ontancy Jackson.

21 THE COURT: Come around. You know, I was wrong
22 about my calculations. It's going to be a lot more than
23 that. I didn't catch that third offense.

24 MR. WALLER: Yes, sir, Your Honor.

25 THE COURT: Okay. Well, I need a calculator to

Ontaney Jackson- Direct Examination by Mr. Waller:

6

1 figure all that up.

2 MR. WALLER: I think it would be sixty-one (61)
3 years. I think it sixty-one (61).

4 THE COURT: Sixty-one (61).

5 THE CLERK: Raise your right hand as best you can.
6 Do you swear to tell the truth, the whole truth, and
7 nothing but the truth so help you God?

8 MR. JACKSON: Yes, ma'am.

9 THE CLERK: Thank you.

10 ONTANEY JACKSON, first being
11 duly sworn, testified as follows:

12 **Direct Examination by Mr. Waller:**

13 Q. Good morning, Mr. Jackson, how are you today?

14 A. All right. How are you doing?

15 Q. I'm doing well. Mr. Jackson, I want to -- where are
16 you from?

17 A. Timmonsville.

18 Q. Timmonsville. And in what ---

19 A. South Carolina.

20 Q. Florence County?

21 A. Yes, ma'am -- yes, sir.

22 Q. Did you grow up here?

23 A. Yes, sir.

24 Q. Okay. Lived here all of your life. All right. I
25 want to take you back, you were arrested on two different

Ontaney Jackson- Direct Examination by Mr. Waller:

7

1 drug charges, is that correct?

2 A. Yes, sir.

3 Q. Okay. And who was your attorney?

4 A. Mrs. Wingard.

5 Q. Do you remember her first name?

6 A. Carrington.

7 Q. Okay. How did she get to be your attorney?

8 A. Through the public defender's office.

9 Q. Okay. Can you speak up just a little bit so the judge
10 and the court reporter can hear you?

11 A. Through the public defender's office.

12 Q. Okay. And about how long after you got arrested, do
13 you recall, did she become to be your attorney?

14 A. A few months, maybe.

15 Q. Okay.

16 A. Three, four months, maybe.

17 Q. Okay. Were you -- were you locked up the whole time
18 or did you bond out?

19 A. No, I bonded out.

20 Q. Okay. Tell me a little bit about -- were you working
21 when you bonded out?

22 A. Yes.

23 Q. Okay. Where were you working?

24 A. Up on the other side of Greenwood, Greenwood, South
25 Carolina.

1 Q. Okay. How did that work, you were from Florence and
2 you are out on bond, how did you get back and forth to
3 Greenwood?

4 A. On a work van. At the -- we'd leave out either four
5 day, Monday morning or late Sunday night, go out of town,
6 come back in Thursday evening, Friday morning.

7 Q. Okay. So you didn't drive yourself?

8 A. No, sir.

9 Q. You got on a van with other guys?

10 A. Yes, sir.

11 Q. And somebody drove y'all to Greenwood?

12 A. Yes, sir.

13 Q. And y'all worked all week and then came back?

14 A. Yes, sir.

15 Q. What happened when you had to come to roll call or
16 something for court?

17 A. I would just miss work for that week.

18 Q. Okay. Would you know in advance?

19 A. Yes. I would call the hotline number and if my name
20 -- they tell me if my name wasn't called then I didn't have
21 to show up.

22 Q. Okay. So that's like for an appearance?

23 A. Mmm, hmm.

24 Q. Okay. How would you meet with your lawyer?

25 A. I guess when she contact me.

Ontaney Jackson- Direct Examination by Mr. Waller:

9

1 Q. Okay. Well, let me ask you this, how many times did
2 you meet with your lawyer?

3 A. Twice, maybe.

4 Q. Okay. What did y'all talk about when you met?

5 A. Well, she just, basically, tell me that she's going to
6 be representing me and, you know, what charges I was
7 charged with and, you know, basically, you know, just
8 formality.

9 Q. Okay. Did y'all discuss your constitutional rights?

10 A. I can't be sure but I can't -- I'm not sure.

11 Q. Okay. Did y'all discuss the potential penalties these
12 charges had, each charge carried?

13 A. Yeah.

14 Q. Okay. And you had prior drug convictions before, is
15 that right?

16 A. Yes, sir.

17 Q. Okay. Did y'all discuss that these were not your
18 first offense?

19 A. Yes, sir.

20 Q. Not your second offense?

21 A. Mmm, hmm.

22 Q. Okay. So you knew that you were ---

23 COURT REPORTER: You have to say yes or no for me,
24 okay?

25 MR. JACKSON: I will.

Ontaney Jackson- Direct Examination by Mr. Waller: 10

1 Q. You knew that you were looking at serious charges and
2 not your first offense for those charges?

3 A. Yes, I knew.

4 Q. Okay. How many times have you, if you can recall or
5 if not just estimate, how many times did you have to miss
6 work to come to roll call or some sort of court appearance?

7 A. I can't really -- I know at least twice.

8 Q. Okay.

9 A. And so I really can't remember exactly but I think it
10 was twice, maybe.

11 Q. Okay. Did you ever miss a court appearance?

12 A. No.

13 Q. Only one, they tried in my absence.

14 Q. Only one was the trial?

15 A. Mmm, hmm.

16 Q. Did you ever have a bench warrant or anything like
17 that issued for you ---

18 A. Yes, sir.

19 Q. --- prior to trial?

20 A. No, sir.

21 Q. Okay. Did you and Mrs. Wingard ever discuss any plea
22 offers in your case?

23 A. Well, she did mention something about a plea and we
24 was just trying to get the details of the plea.

25 Q. Okay.

Ontaney Jackson- Direct Examination by Mr. Waller:

11

1 A. But she never got back in touch with me to, you know,
2 for us to rectify, you know, but, I don't know ---

3 Q. Okay. What do ---

4 A. --- she never got back in touch with me.

5 Q. What do you mean? So you knew there was a plea offer
6 but you didn't know the details?

7 A. Yeah. She mentioned something about a ten (10) year
8 plea and I ask her was the plea going to be a sixty-five or
9 eighty-five. She said she didn't know. She would find out
10 and get back in touch with me. But I never -- she never
11 got back in touch with me.

12 Q. Okay. So you didn't -- you never got clarification
13 on that issue?

14 A. No, sir.

15 Q. Okay. And the charge you were indicted for was not
16 eligible for ten years?

17 A. No, sir.

18 Q. Okay. So you knew it wasn't a charge you were
19 indicted for?

20 A. Yes, sir.

21 Q. It was something different or lesser or something?

22 A. Yes, sir.

23 Q. Okay. I want to fast-forward to the term of court
24 where your trial took place?

25 A. Mmm, hmm.

Ontaney Jackson- Direct Examination by Mr. Waller: 12

1 Q. Do you -- what you know about that term of court? Was
2 it more than one week?

3 A. The initial appearance or the actual day of my trial?

4 Q. The whole -- how long was Florence County holding
5 court that term, do you know?

6 A. Well, I appeared the first week of roll call. I met
7 with the solicitor. My attorney wasn't here. He told me I
8 was free to go just listen for my name and if, you know, if
9 they needed me my attorney would contact me.

10 Q. Okay. Why -- why did you meet with the solicitor?

11 A. She was not here.

12 Q. Okay. Did you -- did you go down to her office and
13 try to find her after that?

14 A. No. I was -- I was in here. It was general sessions.

15 Q. Okay. After you left, after you are released by the
16 solicitor, did you then go try to find her and say, "hey,
17 why weren't you here this morning?"

18 A. Well, I called. I didn't -- I called and I didn't get
19 no answer. I didn't, you know, I wasn't persistent, you
20 know, but I did call maybe one or two times.

21 Q. Okay. So that was the first week?

22 A. Yes, sir.

23 Q. Okay. And then what happened next week?

24 A. I called and my name wasn't on the list come to court
25 so I went to work for that week.

Ontaney Jackson- Direct Examination by Mr. Waller:

13

1 Q. Tell me -- describe for me when you say you called?
2 Describe for me what that is?

3 A. I don't know if they still do it now but back then
4 there was this hotline number you would call and if your
5 name was on that list, you were supposed to appear for
6 court.

7 Q. Okay. So you called -- what day did you call?

8 A. Sunday.

9 Q. Okay. You called Sunday?

10 A. Yeah.

11 Q. And your name wasn't on the list?

12 A. No.

13 Q. And so you got on the work van on Monday?

14 A. Yes, sir.

15 Q. Okay. What happened during that week?

16 A. She called me maybe the next week saying that I was
17 supposed to be going to trial that day, but I was already
18 out of town. I was already at work.

19 Q. Okay.

20 A. I told her there was no way I could get back.

21 Q. Okay. And you didn't drive to Greenwood?

22 A. No, sir. No, sir.

23 Q. Okay. Did you have a car at the time?

24 A. No, sir.

25 Q. So even if you had -- you didn't have a car to drive

1 to Greenwood even if you wanted to?

2 A. No, sir.

3 Q. Did you have any way to get back?

4 A. Not without everybody coming back.

5 Q. Not until Thursday afternoon or Friday?

6 A. Yes, sir.

7 Q. So you were tried in your absence?

8 A. Yes, sir.

9 Q. Okay. At some point, you were picked up or did you
10 turn yourself in or were you picked up?

11 A. Yeah, I was picked up.

12 Q. Okay. And then you were sentenced at a later time?

13 A. Yes, sir.

14 Q. Did you talk to Ms. Wingard anymore after that?

15 A. No, sir.

16 Q. When was the last time you talk to her?

17 A. Then, I guess.

18 Q. The -- what you mean?

19 A. The initial week -- the initial -- when they first
20 appointed me to her, I met with her then and like, I think,
21 the next month one time and that was it.

22 Q. Okay. Did you talk to her the week before your case
23 went to trial?

24 A. No, sir.

25 Q. Did you know your case was going to trial?

Ontaney Jackson- Direct Examination by Mr. Waller:

15

1 A. No, sir.

2 Q. Had she, to the best of your knowledge, attempted to
3 contact you?

4 A. Not that I know of.

5 Q. Did you -- where were you living?

6 A. In Florence.

7 Q. And did you -- I mean, was it a house?

8 A. Sir?

9 Q. Was it a house?

10 A. Oh, no, it was a trailer.

11 Q. Okay.

12 A. A trailer. Mobile home.

13 Q. Did you have that address?

14 A. I -- yeah, she should have.

15 Q. Okay.

16 A. It was with her office.

17 Q. Okay. She have a good phone number for you?

18 A. Yes.

19 Q. Okay. But you didn't talk to her that week before
20 your case went to trial?

21 A. No, sir.

22 Q. Okay. Have you ever got an answer on the plea offer
23 that was extended to you?

24 A. No, sir.

25 Q. Okay.

1 A. And I asked the solicitor about it and he was like he
2 couldn't discuss that with me because my attorney wasn't
3 present.

4 Q. Okay.

5 A. So I ---

6 Q. When was that? Was that the day you checked in with
7 them?

8 A. Yeah, the day he told me I could leave.

9 Q. Okay. So the week prior to your case going to trial?

10 A. Mmm, hmm. The first week of general sessions.

11 Q. You asked him about the plea offer but he couldn't
12 discuss it with you?

13 A. Yes.

14 Q. He said he had discussed it with your attorney and you
15 talk to your attorney?

16 A. Yes, sir.

17 Q. Did you ever talk to her after that?

18 A. No, sir.

19 Q. Did you try?

20 A. No, sir.

21 Q. You testified a minute ago you tried to call?

22 A. Yeah, I try to call but I never get no answer.

23 Q. You never got an answer?

24 A. No, sir. So I couldn't ask her about it.

25 Q. Okay. After you were picked up, you had a different

Ontaney Jackson- Direct Examination by Mr. Waller:

17

1 attorney for the sentencing, is that right?

2 A. Yes, sir.

3 Q. Do you remember who that was?

4 A. Mr. Vic Meetz.

5 Q. Okay. Did -- what did you and Mr. Meetz talk about?

6 A. Well, basically, nothing. He was just like it really
7 wasn't nothing he could do. It was just, you know,
8 representing me because I was already sentenced. It was
9 just reading my sentence to me.

10 Q. Okay. Did y'all discuss him filing any post-trial
11 motions or any appeal or anything like that?

12 A. Yeah. I ask him, you know, to file a motion for an
13 appeal.

14 Q. Okay.

15 A. He did that for me.

16 Q. Okay. Have you talked to Ms. Wingard since?

17 A. No, sir.

18 Q. When you were -- after you were tried in your absence,
19 before you got picked up and sentenced here in Florence,
20 were you incarcerated somewhere else?

21 A. Yes, in Darlington County.

22 Q. Okay. You were in Darlington. How long were you in
23 Darlington?

24 A. From December 10th -- December 31, 2010 to January,
25 2012.

Ontaney Jackson- Cross Examination by Ms. McCallister: 18

1 Q. Okay. Did you and Mr. Meetz talk about that time you
2 had been serving over there?

3 A. Yes.

4 Q. Why were you in over there?

5 A. I got picked up on other charges.

6 Q. Okay. Did y'all talk about seeing if you can get
7 credit for that time?

8 A. Yes.

9 Q. Okay. Do you know if you got credit for all that
10 time?

11 A. No, they gave me like four months.

12 Q. Did y'all discuss a bench warrant or a hold from your
13 conviction here in Florence County?

14 A. No. Well, he asked me did I have a bench warrant on
15 me, I told him I didn't think so.

16 Q. Okay. I want to go back to the plea offer, what
17 information did you have about that plea offer?

18 A. Only that it was, that they offered, you know, ten
19 (10) years and based on the evidence they had on me and
20 what they took off me I felt that it wasn't appropriate.
21 But I would like -- I know I had a record so I would like
22 if he could be fifty-one or sixty-five percent then I would
23 plea because I know I would have to do but a little, five
24 (5) years.

25 Q. Okay. And you ask your attorney to clarify that for

Ontaney Jackson- Cross Examination by Ms. McCallister: 19

1 you?

2 A. Mmm, hmm.

3 Q. And you never got an answer?

4 A. No, sir.

5 Q. And they seen where you had been convicted?

6 A. Yes, sir.

7 MR. WALLER: No further questions. Please answer
8 any questions Mr. McCallister has.

9 A. All right.

10 **Cross Examination by Ms. McCallister:**

11 Q. Mr. Jackson, how many times did you say you had met
12 with Mrs. Wingard?

13 A. Twice.

14 Q. Twice. Do you recall when those meetings were?

15 A. Not exactly.

16 Q. Can you give me an approximate, I mean, did you meet
17 with her a couple of weeks before you came to the court
18 time or months or

19 A. A couple of months.

20 Q. A couple of months. Did you have any contact with her
21 in terms of letters or phone calls that maybe wasn't a
22 face-to-face meeting?

23 A. No, sir -- no, ma'am.

24 Q. No. You never wrote her any letters or try to call
25 her before your trial?

Ontaney Jackson- Cross Examination by Ms. McCallister: 20

1 A. Yes.

2 Q. You did?

3 A. Yes.

4 Q. When did you try to do that?

5 A. Ah, the second time we met. After the second time we
6 met.

7 Q. And what did you do?

8 A. What she told me to do.

9 Q. No, I mean, what did you -- you're saying after the
10 second time you met, you made some other attempt to contact
11 her?

12 A. Yes, I called.

13 Q. You called?

14 A. Yes, ma'am.

15 Q. You called her office?

16 A. Yes, ma'am.

17 Q. And did you speak with her?

18 A. No, ma'am.

19 Q. Okay. Did you leave a message?

20 A. Ma'am -- yes, ma'am.

21 Q. But you never -- but you never actually spoke to her
22 after that second meeting?

23 A. No, ma'am.

24 Q. Okay. What did you discuss in those meetings with
25 Mrs. Wingard?

Ontaney Jackson- Cross Examination by Ms. McCallister: 21

1 A. Basically, the plea that was supposed to have been
2 offered.

3 Q. Did you discuss what would happen if your case went to
4 trial?

5 A. Meaning?

6 Q. In terms of, like, did she talk to you about
7 presenting a defense and any witnesses that you might call
8 or what might happen ---

9 A. No.

10 Q. --- if you had a trial?

11 A. Uh, uh.

12 Q. Did she discuss the evidence that the State had with
13 you?

14 A. No.

15 Q. So your testimony is that the only thing you ever
16 discuss with Mrs. Wingard was a plea?

17 A. She said that they offered ten (10) years.

18 Q. Okay. But you just didn't want just ten (10) years,
19 you wanted to know if you are going to have to do sixty-
20 five or eighty-five?

21 A. Yeah, I wanted to know exactly, you know, the exact
22 amount of time that I would have to do off the ten (10)
23 years.

24 Q. So you didn't accept that plea offer at that time?

25 A. I didn't reject it, either.

C. Wingard- Direct Examination by Ms. McCallister:

22

1 Q. Okay. You just wanted more information?

2 A. Yes, ma'am.

3 Q. Did you -- did you, in the course of your discussion
4 with Mrs. Wingard tell her, you know, hey, there is a
5 witness I want you to talk to or here is somebody who might
6 be able to help me out on these charges, did you give her
7 anything to investigate?

8 A. I can't remember. It was so long ago. I can't.

9 Q. And you said regarding the post-trial motions and your
10 meeting with Mr. Meetz you ask him to file an appeal, is
11 that correct?

12 A. Yes, ma'am.

13 Q. And he did do so, did he not?

14 A. Yes, ma'am.

15 Q. He did. Okay.

16 MS. MCCALLISTER: Thank you. That's all the
17 questions.

18 THE COURT: Mr. Waller?

19 MR. WALLER: Nothing further, Your Honor.

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

21 MR. WALLER: Nothing further from the applicant.

22 MS. MCCALLISTER: Your Honor, we would call Carrington
23 Wingard.

24 THE COURT: Come around and be sworn please.

25 THE CLERK: Raise your right hand. Place you left

C. Wingard- Direct Examination by Ms. McCallister:

23

1 on the Bible. Do you swear or affirm that the testimony
2 you give will be the truth, the whole truth, and nothing
3 but the truth so help you God?

4 MR. WINGARD: I do.

5 THE CLERK: Thank you. Have a seat and state your
6 name for the record.

7 MR. WINGARD: Carrington Salley Baker Wingard.

8 CARRINGTON WINGARD, first being
9 duly sworn, testified as follows:

10 **Direct Examination by Ms. McCallister:**

11 Q. Mrs. Wingard, how long have you been practicing law?

12 A. I graduated from law school, this May it will be
13 forty-five years and I was admitted to the bar in
14 September, following graduation.

15 Q. Okay. And at the time of this trial, where were you
16 working?

17 A. I was a part-time public defender and had my own law
18 practice.

19 Q. Okay. And how much of your time would you say was
20 spent doing criminal work?

21 A. Probably, half of my time.

22 Q. And had you been in that situation of part-time PD and
23 law clerk for several years and how long had you been doing
24 criminal work at that point?

25 A. I had been -- the first job I had was actually

C. Wingard- Direct Examination by Ms. McCallister: 24

1 teaching prosecution clinic at the law school. Then I was
2 in private practice and worked for the state legislature in
3 1977. I moved to Florence and was an assistant solicitor,
4 a full-time city judge, on and off until approximately '98.
5 In 1998 I remarried. Did not work for about a year and a
6 half as my husband was a staff at the Army War College. I
7 came back to Florence in January of 2000, open my law
8 office doing primarily domestic work but also a few other
9 things. And in July of 2000, I became a part-time public
10 defender.

11 Q. Okay. So by the time of this trial, you had been the
12 part-time public defender for ten years or so, is that
13 about right?

14 A. Yes. Now, let me say that some of that time I had
15 been a public defender in family court. It had not always
16 been in general sessions.

17 Q. Okay. And so were you appointed on this case or were
18 you retain as part of your private practice?

19 A. No. This was through the public defender's office.

20 Q. And do you recall the representation of Mr. Jackson?

21 A. I recall Mr. Jackson's name. I recall that I was very
22 mad at Fitzlee, the prosecutor, for calling it because it
23 was not that old of a case and there were a lot of cases on
24 the docket, a lot older, and I thought it was not right
25 that he had called it to trial. But that's the system and

C. Wingard- Direct Examination by Ms. McCallister:

25

1 he gets to call them when he wants to.

2 Q. Okay. Have you had a chance to review your file or
3 transcript or anything like that in preparation for today?

4 A. I have reviewed it. I have not reviewed it in any
5 great detail but I have reviewed it.

6 Q. Do you recall enough about the representation to
7 remember how many times you would've met with Mr. Jackson?

8 A. I can tell you what my notes reflect. Of course, as
9 all cases in the public defender's office generally start
10 with the investigator and so I have the investigators notes
11 from his initial contact. My first note of contact with
12 Mr. Jackson would have been at the docket appearance which
13 was April 30, 2010 and these are notes in my handwriting.
14 We discussed the offer and the offer was good only for that
15 day. Fitzlee frequently put a very close time frame on his
16 offers. And my note reflects that he, that is Mr. Jackson,
17 well not plea to ten (10) years. So he on that day refused
18 the ten (10) year offer.

19 Q. Okay. So that was the ten (10) year offer that you
20 heard Mr. Jackson testify about?

21 A. Yes.

22 Q. Okay. And that offer according to your notes was only
23 good for that one day?

24 A. Correct.

25 Q. And did you convey that to Mr. Jackson?

C. Wingard- Direct Examination by Ms. McCallister:

26

1 A. Yes, I did.

2 Q. Okay. You recall him asking you any questions about
3 sixty-five versus eighty-five percent?

4 A. I do not recall that.

5 Q. Do you recall the next time you met with him?

6 A. The next contact that he had with the office was in
7 June 9th and he called the office saying that he did not
8 receive the court letter. He confirmed that the address
9 was correct and that he was given the court number and
10 instructions. That was June 9th.

11 Q. When you say instructions, do you know -- do you know
12 what that means? What does that mean to you?

13 A. Yes. There was a system where you called in to see if
14 your name was on the docket and if you had to come to
15 court.

16 Q. Okay. So he called your office in June and that's
17 when he was given the instructions about this calling in
18 system?

19 A. That's correct.

20 Q. Okay.

21 A. We would have discussed that with him earlier but,
22 apparently, the administrative assistant, this is her
23 handwriting here, went over those again with him when he
24 called in.

25 Q. Okay. And confirmed an address, is that correct?

C. Wingard- Direct Examination by Ms. McCallister:

27

1 A. That's correct.

2 Q. What address was that, do you know?

3 A. I have [REDACTED], Florence, South Carolina.
4 Now, that is what he gave initially to the investigator. I
5 can see if we have another address but I believe that is
6 the address that we have.

7 Q. Okay. So that's the -- he gave that address during
8 some conversation with you investigator and then again
9 sometime later to administrative assistant?

10 A. He -- the note says the address is correct.

11 Q. Okay.

12 A. But I am not looking at the letter that was sent, I am
13 looking at the initial notes.

14 Q. Okay. Did you meet -- so that wasn't really a meeting
15 with Mr. Jackson, that was just him calling your office,
16 correct?

17 A. That's correct.

18 Q. Okay. Did he call your office or what was the next
19 contact that you or your office had with him?

20 A. I don't have any other notes on him until the first
21 week of the term of court when he was tried, I believe it
22 was a three week term. July 27th, Fitzlee, excuse him and
23 he was told that it would probably, his case would probably
24 be tried or possibly be tried the third week of the term.

25 Q. Okay. And you were not -- you were not -- you didn't

C. Wingard- Direct Examination by Ms. McCallister:

28

1 see him that day when he checked in with the solicitor?

2 A. I believe I did see him that day but Fitzlee actually
3 excused him. I would not be able to excuse him, of course.

4 Q. That's a function of the solicitor?

5 A. Exactly.

6 Q. Okay. So that's the reason why the solicitor was
7 speaking with him ---

8 A. Right.

9 Q. --- that day? Okay. But you believe you recall
10 seeing Mr. Jackson?

11 A. Yes. I don't think we had any lengthy conversation
12 but I was aware that he was here and had been excused.

13 Q. Okay. And you -- and your understanding is that he
14 was told, that his case if it was called, would be called
15 in the third week?

16 A. That's correct.

17 Q. Okay. Did you attempt to contact Mr. Jackson again
18 after that day?

19 A. The next contact I had with him was when his case was
20 being tried and a have to be very candid with you and tell
21 you that I don't recall except for what the notes reflect
22 and that was on "August 9th" he was not on docket for today
23 but Fitzlee is calling. Defendant cannot come to court. He
24 will be here tomorrow at 8:30. I told him that he would be
25 tried tomorrow." So that suggest to me that I had a

C. Wingard- Direct Examination by Ms. McCallister:

29

1 conversation with him on that day.

2 Q. Okay.

3 A. The next day he, obviously, was not in court. That
4 was August 10th, my note says, "Not here at 8:30. I called
5 the number [REDACTED], I'm sorry, [REDACTED] at 9:00. No answer.
6 Went to voicemail. I told him in the voicemail to get to
7 the fourth floor of the courtroom ASAP." And, of course,
8 that is what I had told him the day before that he was
9 going to be tried in his absence the next day.

10 Q. Okay. So that was kind of my next question. You did
11 explain to him that if he didn't show up he could be, he
12 would be tried in his absence?

13 A. Yes.

14 Q. Okay.

15 A. I had told him that the day before when I actually
16 spoke with him according to these notes on the 9th and I
17 told him he would be tried tomorrow and he would have to
18 come to court.

19 Q. Okay. When you spoke with him any of these days
20 either on the 9th or on the phone or when he showed up for
21 court, do you recall the substance of those discussions and
22 what you would've discussed in terms of, you know, like the
23 States case against him or defenses or anything like that?

24 A. I cannot tell you with any certainty what I would have
25 discussed with him other than to tell you that when I look

C. Wingard- Direct Examination by Ms. McCallister:

30

1 at this file, we have the incident report, the incident
2 report is highlighted. His record is highlighted with
3 convictions and such. So it would be my conclusion from
4 looking at this file that I would have gone over this
5 information with him, would have verified what his prior
6 convictions were because, of course, that's very important
7 in drug cases. And so I feel certain that, that was
8 discussed with him as I look at the notations on the report
9 and the sled rap sheet.

10 Q. What was your usual practice? What did you -- what
11 was your habit of discussing with your clients when you
12 represented them during the course of your representation,
13 what do you usually talk about?

14 A. Well, I talk about the evidence that the State has.
15 The burden of proof that the State has. And what record
16 they have and how that would impact on their case. And
17 then I find out, you know, what they want to do. Do they
18 want to try to work out something? Do they want to go to
19 trial? And Mr. Jackson, at the docket appearance, rejected
20 the ten (10) year offer. Now, having said that, you know,
21 he may have wanted to plea later on. It's not unusual at a
22 docket appearance for a defendant to reject the plea offer
23 and then want to work out something but he never expressed
24 any interest in trying to work out anything.

25 Q. So he rejected that ten (10) year offer and you never

C. Wingard- Direct Examination by Ms. McCallister: 31

1 heard from him again saying, hey, work on another plea ---

2 A. No.

3 Q. --- I'll plea if you get me to X number of years?

4 A. No.

5 Q. Okay.

6 A. We never had that discussion.

7 Q. And I believe you mentioned some investigators notes
8 in there, how does that work in your office? What's the
9 usual practice?

10 A. The investigators would go out to the jail and I can't
11 tell whether this was while he was incarcerated or not
12 because the date on the investigators notes are 12/7/09 but
13 then it says he was released 11/28/09. So I'm not sure if
14 he came by the office, but the initial intake is done
15 generally by an investigator.

16 Q. Okay. And what is -- and what is that initial intake?
17 What does that entail?

18 A. It gets information from him. Details of what
19 happened. Contact information. And it's interesting
20 because it says here, "request a jury trial", so apparently
21 he was at the outs always saying that he wanted a jury
22 trial.

23 Q. Okay. Do you have any notes from an investigator --
24 how many sets of notes do you have? Was there one
25 investigator assigned to a case or....

C. Wingard- Direct Examination by Ms. McCallister:

32

1 A. I just have his initial notes and then I have, of
2 course, the Rule 5 information that we get. The incident
3 report. The sled report. The indictment. I have copies
4 of law that I have pulled in terms of search and seizure
5 and then notes from the trial.

6 Q. Okay. Anything -- is there anything in those
7 investigator notes or in the Rule 5 that indicates that
8 there was any kind of defense or some witnesses that should
9 be tracked down on Mr. Jackson's behalf?

10 A. We do not have any witnesses listed, no.

11 Q. And in his conversations with you, did he ever talk to
12 you about possible defenses or witnesses or ask you to
13 investigate anything in particular?

14 A. What he said was that the small bag of cocaine in his
15 pocket was his. He denied ownership of the drugs. It was,
16 essentially, a throw down case. But then when he was
17 caught he had a small amount of drugs on his person. But
18 it was a very small amount on his person.

19 Q. Okay. And in denying ownership, did he give you a
20 name of somebody, of anybody else, or did he just say they
21 weren't mine?

22 A. They just weren't his.

23 Q. Okay. So there wasn't some other person you could've
24 investigated or contacted?

25 A. We do not have any information of that.

C. Wingard- Direct Examination by Ms. McCallister:

33

1 Q. And so what was the State's evidence then in the case
2 against him?

3 A. They had -- he was at a nightclub in the Timmons ville
4 area. And they had come to that nightclub. They had seen
5 him. He had ran. The officer testified that he saw him
6 throw down some items. They retrieve those items. Caught
7 him. And had the small amount of drugs on him. Now, the
8 sled report says that, that there was in a plastic sandwich
9 bag 1.32 grams of cocaine base or crack. In a plastic
10 sandwich bag, cocaine 2.07 grams. And then in a plastic
11 corner bag cocaine found, .45 grams and as I recall the
12 small amount of cocaine was on his person, but the other
13 two items were throw down's.

14 Q. Okay. So it was, essentially, the police officer was
15 the eyewitness ---

16 A. Yes.

17 Q. --- in this case, essentially? Okay. Did you have
18 any kind of -- what was your overall theory or strategy for
19 the case going into the trial?

20 A. That, I think, probably and the transcript was speak
21 for itself, but, you know, that he, we admitted that what
22 was on him was he is but that, you know, it was dark and
23 the usual kind of throw down defense.

24 Q. Okay. So you admitted that the small amount was his,
25 but try to cast some doubt on whether ---

C. Wingard- Direct Examination by Ms. McCallister:

34

1 A. Right.

2 Q. --- the stuff that was thrown was his?

3 A. Exactly.

4 Q. Okay. What did you do, you talked about it briefly,
5 but to secure his absence once you realized he wasn't
6 coming, was there anything you could do?

7 A. Well, I mean, I knew that he knew that he was going to
8 be tried during that term. I mean, I had a conversation
9 with him and told him he had to come to court.

10 Q. Did you make a motion for a continuance, do you
11 recall?

12 A. I don't recall that.

13 MS. McCALLISTER: Your Honor, I would just call your
14 attention to page 27 of the transcript and I'll let that
15 speak for itself.

16 Q. And do you recall if you objected to trying him in his
17 absence?

18 A. I don't recall.

19 Q. Okay.

20 MS. McCALLISTER: I believe that's also on page 27,
21 Your Honor. I believe that's where it's at.

22 Q. Do you recall any evidence or being introduced on the
23 issuance of notification of Mr. Jackson?

24 A. I don't.

25 MS. McCALLISTER: Your Honor, I would just call

C. Wingard- Direct Examination by Ms. McCallister:

35

1 attention to transcript pages 32 to 38. It has what was
2 discussed about notice to applicant at the trial.

3 THE COURT: Okay.

4 MR. WALLER: And, Your Honor, we can stipulate that
5 everything procedurally was done correct for him to be
6 tried in his absence.

7 MS. McCALLISTER: Okay.

8 Q. What did you -- what did you do at trial in terms of
9 cross-examining witnesses? Did you make any motions, do
10 you recall?

11 A. The transcript will just have to speak for itself.

12 Q. Okay.

13 A. I have -- I have glanced at it. I have not fully read
14 it but, you know, that was six years ago.

15 Q. Okay.

16 A. So I simply cannot remember.

17 Q. But I believe you testified earlier, the State did
18 recover actual bags that had a substance in them, correct?

19 A. Oh, yes.

20 Q. Okay.

21 A. I was reading from the sled report.

22 Q. Okay. And so in that case in a drug case like this,
23 do you usually move to suppress that evidence?

24 A. We had, as I recall, we had a suppression hearing.

25 Q. Okay.

C. Wingard- Direct Examination by Ms. McCallister: 36

1 A. We had an in camera suppression hearing.

2 Q. Okay. And what else -- do you recall a statement a
3 by the applicant?

4 A. I do not.

5 Q. Okay.

6 MS. McCALLISTER: Your Honor, I think that starts on
7 page 52 of the transcript.

8 Q. What did you do in terms of, in terms of the charge,
9 do you recall that? Do you recall asking or do you recall
10 if he was charged on the issue of him for not being present
11 and not testifying, do you recall that?

12 A. I don't recall anything unusual about the charge.

13 Q. Okay. Is it your usual practice to ask for a charge
14 on those issues if your defendant is not present?

15 A. I would think so, yes.

16 Q. Okay.

17 MS. McCALLISTER: I believe that's on page 163, Your
18 Honor.

19 Q. And at the conclusion of the State's case, do you
20 recall if you made any motions?

21 A. I'm sure I would've made a motion for a directed
22 verdict.

23 Q. Okay. Did you see any basis to object to any
24 statements or comments by the prosecutor in the opening or
25 closing, do you recall?

C. Wingard- Cross Examination by Mr. Waller:

37

1 A. I don't recall. I don't think I made any objections.

2 Q. And you would not have made any post-trial motions, is
3 that correct?

4 A. No. I have left the public defender's office by the
5 time he was arrested.

6 Q. Okay. So anything in terms post-trial and appeal that
7 was not, you did not handle out?

8 A. I do not.

9 Q. Okay.

10 MS. McCALLISTER: Thank you.

11 **Cross Examination by Mr. Waller:**

12 Q. Good morning, Mrs. Wingard, how are you today?

13 A. I'm fine. How are you?

14 Q. I'm doing well. Do you have a copy of the transcript?

15 A. I do.

16 MR. WALLER: I'm going to have her to refer to it a
17 few times. I know it does speak for itself but I'm going
18 to have to ask you some questions just about it.

19 Q. And I've got a couple questions before we get to it.
20 Do you -- you said you have a copy of your file and you
21 have some notes in there?

22 A. Mmm, hmm.

23 Q. You have a copy of any notes you have about the
24 specifics of the plea offer other than the ten (10) years
25 as far as the charge or anything like that?

C. Wingard- Cross Examination by Mr. Waller:

38

1 A. No, I don't.

2 Q. You just know it was a ten (10) year offer?

3 A. Right.

4 Q. And he wasn't eligible to get ten (10) years all of
5 what he was indicted for, though?

6 A. Right. That's correct.

7 Q. Okay.

8 A. But that's not unusual if, you know, we can find
9 something for him to plea to ---

10 Q. Okay.

11 A. --- to get to that point.

12 Q. Sure. But there would have been something other than
13 the third offense on the indictment?

14 A. Yeah, you know, it's not unusual to let people plea to
15 a second offense or something.

16 Q. Okay.

17 A. That didn't concern me.

18 Q. Okay.

19 A. I mean, we could've gotten to that point.

20 Q. Okay. Was he, you testified earlier that he was
21 informed or you were informed that he would likely be tried
22 on the third week of the term?

23 A. Mmm, hmm.

24 Q. Was he tried on the third week of the term or the
25 second week?

C. Wingard- Cross Examination by Mr. Waller:

39

1 A. It was the third week because, let's see, that
2 conversation was July 27th and he, so that would've been
3 the first week. The second week would've been something
4 like August 1st or 2nd. And then the third week was August
5 9th. He was tried August 10th.

6 Q. Okay. If I -- bear with me -- if I can get you to
7 refer to page 86 of your transcript, this is the
8 solicitor's opening statement.

9 A. Mmm, hmm.

10 Q. Beginning on Line 5 it's a one sentence paragraph.
11 The solicitor makes the comment that if the jury is firmly
12 convinced, though, of Mr. Jackson's innocence, they are to
13 find him not guilty, is that an accurate statement of the
14 law?

15 A. Probably not.

16 Q. Okay. What was the strategy behind of not objecting
17 to that comment?

18 A. I cannot recall anything other than what is in the
19 transcript so I don't know.

20 Q. Okay. And I apologize in advance but I'm going to
21 have to ask you that question several times, it's just what
22 I have to do.

23 A. Okay.

24 Q. If I can get you to turn to page 88, this is your
25 opening statement, beginning on line 7, I think you're

1 describing your investigator sitting there with you but
2 your opening statement says, "unfortunately Mr. Jackson has
3 not come to court." What was the strategy behind using the
4 term, "unfortunately" or by telling the jury,
5 "unfortunately, he hasn't come to court"?

6 A. Well, I, obviously, if you read down there was an
7 investigator seated with me and I didn't want the jury to
8 think I was trying to be deceptive's or in any way
9 deceiving them.

10 Q. Correct. But Mr. Jackson didn't, he doesn't have to
11 appear, is that right?

12 A. Well, he does have to appear. I mean, he is required
13 pursuant to his bond to appear.

14 Q. Correct. But he doesn't -- the jury can't take the
15 fact that he is not ---

16 A. They cannot hold that against him.

17 Q. Okay.

18 A. No. And I think that was probably made further clear
19 down.

20 Q. If I can get you again to fast-forward to page 102,
21 Deputy Chamberlain, I guess the arresting officer, on line
22 11, he testifies that, "he believes the powder, the black
23 powder substance which he believed to be cocaine", was he
24 qualified to give his opinion as to the, as to what the
25 substance was?

C. Wingard- Cross Examination by Mr. Waller:

41

1 A. Well, he says, "I believe it to be cocaine", but, you
2 know, we had a sled report so we knew it it had been
3 analyzed.

4 Q. Okay. Was the analysis done by Deputy Chamberlain,
5 though?

6 A. No. But what difference does that make if you've got,
7 if you got somebody testifying when you know that there is
8 a sled report you know there's analysis, you know that,
9 that person is going to testify.

10 Q. Well, that's going to bring me to my next question, if
11 I can get you to turn to page 153. At this point the drug
12 analysis has not been entered into evidence. The State has
13 called Larry Quick and Douglas Robinson and neither one
14 has, the evidence has not been admitted. The State recalls
15 on page 153, Larry Quick and on page 155, Douglas Robinson
16 and again on page 155 offers States exhibit's one and two
17 which is the sled analysis. What was the strategy behind
18 not objecting to them being recalled?

19 A. Well, I believe I said, "a continuing objection."

20 Q. To the drugs being admitted, not to either ---

21 A. Right.

22 Q. --- one of them be recalled.

23 A. Well, the Court would have allowed it so why object to
24 something that you know the Court is going to allow.

25 Q. How did you know the Court was going to allow it?

C. Wingard- Cross Examination by Mr. Waller:

42

1 A. I just knew that the Court would. I mean, why....

2 Q. Okay.

3 A. I mean, I don't think there's any question that,
4 that's clearly discretionary with the Court and the Court
5 would allow it.

6 Q. But you would agree with me, though, that the State
7 has the burden of proof ---

8 A. Of course.

9 Q. --- in this case?

10 A. Yes.

11 Q. And if they have not proved their case, then that's
12 not on Mr. Jackson to prove?

13 A. I agree with that, yes..

14 Q. If you can turn to page 157, what was the strategy
15 behind stipulating to the marijuana?

16 A. Once again we knew that, we had the results and we
17 knew what it was going to be so, I mean, why, you know, you
18 pick your arguments. So, I mean, why if you want to argue
19 trial strategy, I mean, why say, what was on him was his.
20 Well, you try to pick your fights.

21 Q. Okay. Mrs. Wingert, where, if you can, point me to,
22 I've asked you about the trial strategy and you, it was six
23 years ago and I understand that, that's what I'm trying to
24 establish so Judge Burch has the opportunity to determine
25 the trial strategy. If you could turn to page 170, to the

C. Wingard- Cross Examination by Mr. Waller:

43

1 solicitor's closing argument on line, beginning on line 5,
2 with the sentence beginning, "I don't know", Mr. Jackson
3 had made a statement when he was first arrested that he
4 can't be charged with the drugs that were not found on his
5 person, is that your recollection?

6 A. I don't recall.

7 Q. Okay. Is the solicitor commenting on something that
8 he didn't say that the solicitor thinks he would've said if
9 the drugs weren't in his, is that something that you did
10 not feel was objectionable?

11 A. He, apparently, said you can't charge me with those
12 because they aren't owe me. I mean, I think he's kind of
13 repeating what he had said perhaps in different language.

14 Q. Mrs. Wingard, the statement he made says, "I don't
15 know but if those were my drugs," Fitzlee McEachin, the
16 solicitor, "and I was out there I would be saying those
17 aren't mine." He's saying the opposite of what Mr. Jackson
18 had made the statement already to law enforcement. If I
19 can get you to turn to page 180, this is your closing
20 argument. Beginning on line 14, you again comment on him
21 not being here and saying, "it's hard to determine
22 someone's guilt or innocence when they're not there", what
23 was the strategy behind making that comment?

24 A. Well, again, I think I went on to explain that he had
25 been coming to court and it is hard to try case when, you

C. Wingard- Redirect Examination by Ms. McCallister: 44

1 know, the jury is there and the defendant isn't and
2 sometimes you just have to try to be honest and upfront
3 with them.

4 Q. Okay. But the judge is going to inform them that they
5 can't ---

6 A. Hold that against him.

7 Q. Correct.

8 A. Exactly.

9 Q. He can't refer to that in any, in their deliberations
10 in any way. Their absence. Their right to remain silent -
11 --

12 A. Right.

13 Q. --- any of those things?

14 A. Right.

15 Q. All right. Last thing, if you could turn the page 204
16 for me, beginning on line 9, you make a motion to reduce
17 the verdict from guilty with possession with intent to
18 distribute to just possession. What was the legal
19 authority that you relied on to do that?

20 A. Well, it was just as I recall a straight quantity
21 issue. There was no basis that he had actually tried to
22 distribute it.

23 Q. Is that something the judge is able to do after the
24 verdict has already been rendered by the jury?

25 A. I don't know. But I didn't think it would hurt to

C. Wingard- Redirect Examination by Ms. McCallister: 45

1 ask.

2 Q. Okay. And I have to ask my question again, what legal
3 authority did you rely on when making that motion?

4 A. I made it because the evidence suggested that it was
5 just a matter of the quantity that he had had, no action on
6 his part to try to distribute it.

7 MR. WALLER: I beg the Court's indulgence please.
8 Nothing further. Thank you, Mrs. Wingard.

9 **Redirect Examination by Ms. McCallister:**

10 Q. Mrs. Wingard, how many cases would you say you've
11 tried over the course of your career?

12 A. I don't know.

13 Q. Is it ten, a hundred?

14 A. I really don't know. I mean, I've, obviously, handled
15 hundreds but as far as actually going to a verdict maybe a
16 hundred.

17 Q. Okay.

18 A. But that's just a guess. I don't know.

19 Q. But you have done -- you have done a trial to a
20 verdict more than one time?

21 A. Yes.

22 Q. Okay. More than five or six times?

23 A. Yes.

24 Q. Okay. Do you always object even if there might be a
25 basis for an objection?

C. Wingard- Redirect Examination by Ms. McCallister: 46

1 A. No.

2 Q. And why is that?

3 A. Well, you pick your fights.

4 Q. Okay. And can you elaborate on that a little bit
5 more, is that because you pick your fights because you have
6 a jury sitting right there or what you mean by that?

7 A. Particularly -- particularly, with closing arguments
8 and objections if you've got, if you have the last argument
9 you would tend not to object because you're going to be
10 able to respond in your argument.

11 Q. Okay. And did you have the last argument in this
12 case?

13 A. I did.

14 Q. Okay. And this issue, I think you said your strategy
15 in terms of stipulating to the marijuana was, a pick your
16 arguments strategy, is that correct?

17 A. Yeah. That's correct.

18 Q. And can you explain in that situation what you feel
19 like you're doing by stipulating to that? How does that
20 help in your defense?

21 A. You know, when you know that what the testimony is
22 going to be, you know the person is going to be, say it's
23 marijuana, you know, there's a jury there. You want to
24 appear to be not obstreperous. I mean, you do your job but
25 you, as I say, you pick your fights. You decide what's

C. Wingard- Redirect Examination by Ms. McCallister: 47

1 important to try to object to.

2 Q. Okay. And your opinion of this case, do you feel like
3 you had better arguments on the other charges instead of
4 whatever was found on him?

5 A. Well, -- well, yeah, clearly, I mean, what was found
6 on him was a nominal amount and so what he was looking at
7 the significant time as I recall was what was thrown down.

8 Q. So you felt maybe it would help him to just take
9 responsibility for what was found on him?

10 A. Yes. And he had taken, you know, in the initial notes
11 he had taken responsibility for what he had own him. He
12 just said what was thrown down wasn't his.

13 Q. And he had -- and he had admitted that to you at some
14 point during your conversations that, that was his?

15 A. He had admitted it to the investigator.

16 Q. To the investigator. Okay. The issue of recalling
17 the State's witnesses, I believe you said that you didn't
18 object because you knew the Court was going to allow it?

19 A. Yeah.

20 Q. Can you explain that a little more? Had you been in
21 that situation before or what made you feel that the Court
22 would allow it?

23 A. Well, as a practical matter, the Court is -- the Court
24 will allow it. I mean, he just would have.

25 Q. Okay. So that's just something you felt based on your

C. Wingard- Redirect Examination by Ms. McCallister: 48

1 experience the Court was going to allow that?

2 A. Yes.

3 Q. And so you didn't object because you felt like it was
4 ---

5 A. It was fruitless to object.

6 Q. It was a fruitless objection? Okay.

7 A. Mmm, hmm.

8 Q. Okay. Were you concerned about how that would look to
9 the jury?

10 A. I suppose, but truth be told the bottom line was it
11 was just again you pick your fights.

12 Q. Okay.

13 MS. McCALLISTER: I beg the Court's indulgence, Your
14 Honor.

15 Q. I think he ask you about acknowledging that Mr.
16 Jackson was not present in your closing, did you feel that
17 there was any prejudice to Mr. Jackson acknowledging his
18 absence?

19 A. No. I mean, he wasn't there. He clearly was not
20 there.

21 Q. Right. And everyone can see that?

22 A. Yes.

23 Q. Okay. And you did request a jury instruction on the
24 issue of his absence and how they could ---

25 A. Yes.

C. Wingard- Re-cross Examination by Ms. Waller:

49

1 Q. --- use that in their deliberations?

2 A. Yes.

3 MS. McCALLISTER: Thank you.

4 MR. WALLER: Just very briefly.

5 **Re-cross Examination by Mr. Waller:**

6 Q. Mrs. Wingard, you mentioned several times picking your
7 battles and picking your fights.

8 A. Mmm, hmm.

9 Q. You had picked the fight and picked the battle of the
10 drug evidence not coming into evidence by investigator
11 Robinson from sled prior to him being recalled, do you
12 remember that, you objected twice? The judge sustained
13 your objection both times. So the ---

14 A. I ---

15 Q. The drugs were not ---

16 MS. McCALLISTER: Object. What is -- can you ask that
17 question again -- what question are you asking her?

18 Q. Okay. You testified that you wanted to pick your
19 battles ---

20 A. Mmm, hmm.

21 Q. --- and you had already picked this battle, why did
22 you not continue to fight the battle that you had already
23 picked?

24 A. I don't know.

25 Q. You testified a minute ago that you had tried probably

C. Wingard- Re-cross Examination by Ms. Waller:

50

1 hundred trials in your career?

2 A. That is a pure guess.

3 Q. Sure. I'm not trying to hold you to that. Have you
4 tried anything in front of Judge Nettles to a verdict
5 before that you recall?

6 A. I've been -- I had been before him a good bit, but I
7 can't remember what were trials, you know.

8 MR. WALLER: Nothing further. Thank you.

9 MS. McCALLISTER: Nothing further.

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

11 MS. McCALLISTER: May we have just a moment, Your
12 Honor.

13 (Whereupon, the State took a few moments)

14 MS. McCALLISTER: Okay. That's all from the State,
15 Your Honor. Thank you.

16 THE COURT: Anything else?

17 MR. WALLER: Your Honor, I have a brief argument.
18 Your Honor, I would -- the drugs were not in, they weren't
19 allowed to be in. Judge Nettles had sustained two
20 objections, Your Honor. There was no objection to the
21 officers being recalled. There was no objection to
22 misstatements of the law in opening statements. There was
23 no objection during closing arguments. There were several
24 things, Your Honor, which I think are unduly prejudiced.
25 Mr. Jackson, quite possibly, could have changed the outcome

1 of the case. Mr. McEachin was certainly not a new
2 prosecutor at that time, he had been doing it for several
3 years. He did not successfully move the drugs into
4 evidence and there's no indication that he would've been
5 able to get them into evidence and that the judge would
6 allow them to get into evidence through some other, through
7 some other witness. Particularly, with Mr. Jackson being
8 here or not being here, I think it was a incumbent on his
9 attorney to establish a clean record and to make the
10 objections.

11 Your Honor, while certainly the judge would've
12 informed the jury that they can't read anything into him
13 not being here and him exercising his right to remain
14 silent and the burden being on the State, that was not, it
15 was called to their attention.

16 Your Honor, additionally, there was, there was no
17 reason -- strike that last part, Your Honor -- I have
18 nothing further.

19 MS. McCALLISTER: Your Honor, I think the transcript
20 reflects that Mrs. Wingard did make objections. She did
21 make a motion to suppress the drugs and Judge Nettles
22 denied that motion. I think she clearly articulated why
23 she did not object to the recall that she felt like the
24 judge was going to allow them to be recalled and there was
25 no reason to make, what she saw, a fruitless objection and

1 that, that was part of her strategy of picking the battles.
2 And I believe, Your Honor, the appeal also dealt with the
3 issue of suppression of the drugs so that issue has been
4 raised. It was ruled on at trial and it was clear to Mrs.
5 Wingard that Judge Nettles was going to let those drugs in.

6 THE COURT: All right. I've got to read the
7 transcript so I'll be back in touch with both of you about
8 that.

9 MR. WALLER: Thank you, Your Honor.

10 MS. McCALLISTER: Thank you, Your Honor.

11 (CONCLUSION OF THE HEARING ON JULY 22, 2016)

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CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Circuit Court of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Twelfth Circuit Court for Florence County, South Carolina, on the 15th day of March, 2017.

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

Lisa S. Carter

Lisa S. Carter

Circuit Court Reporter

September 23, 2017

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Ontaney Ventrell Jackson, #210570,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Case No. 2014-CP-21-1889

ORDER OF DISMISSAL

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Trial Counsel:
Date of Hearing:
Court Reporter:

Paul M. Burch, Jr.
Jonathan Waller, Esquire
Lindsey A. McCallister, Esquire
Carrington Wingard, Esquire
March 15, 2017
Lisa S. Carter

FILED
JUL 12 PM 3:33
CLERK OF COURT
FLORENCE COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 7, 2014. Respondent made its return on October 15, 2016. An evidentiary hearing on the matter was convened on March 15, 2017, at the Florence County Courthouse. Applicant was present at the hearing and represented by Jonathan Waller, Esquire. Lindsey A. McCallister, Esquire, of the South Carolina Office of the Attorney General represented Respondent.

Applicant testified on his own behalf. Carrington Wingard, Esquire, also testified. The Court had before it the trial transcript, the Florence County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, Applicant's application, Respondent's return, and Applicant's appellate records.

CERTIFIED: A TRUE COPY
Don Paul Ottana
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

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PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Florence County Clerk of Court's orders of commitment. Applicant was indicted at the June 2010 term of the Florence County Grand Jury for one count of possession with intent to distribute (PWID) cocaine base, third or subsequent offense; one count of PWID cocaine, third or subsequent offense; and one count of possession of marijuana (2010-GS-21-0673). Applicant was represented by Carrington Wingard, Esquire (Trial Counsel), and Vick Meetze, Esquire (Sentencing Counsel). Following Applicant's trial *in absentia* on August 10, 2010, the jury found Applicant guilty as indicted. He was sentenced by the Honorable Michael D. Nettles to fifteen years for each count of PWID cocaine and PWID cocaine base, and one year for possession of marijuana, to be served concurrently.

Applicant filed a timely notice of appeal. An appeal was perfected by LaNelle Cantey Durant, Esquire, of the South Carolina Office of Appellate Defense, who submitted an Anders¹ brief on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction on December 11, 2013. State v. Jackson, Op. No. 2013-UP-453 (S.C. Ct. App. 2013). The Remittitur was returned on January 8, 2014.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. "Trial Counsel failed to be present denied Applicant's right to counsel at a critical stage of criminal prosecution;"
 - b. "Counsel was ineffective for failing to ascertain the term and day of court in which petition was to be tried, which is amply supported by record;"
 - c. "Counsel was ineffective for lack of preparedness which prejudiced the petitioner's trial;"

¹ Anders v. California, 386 U.S. 738 (1967).

- d. "Trial counsel was ineffective for failing to object on all possible grounds to preserve issues for Appellate review."
 - e. "Trial counsel's performance during sentencing phase [was] both unreasonable and prejudicial. . . . [Counsel failed] to adequately inform applicant of the nature of the State's initial plea offer."
 - f. "Counsel's failure to be present at pretrial stage, which extends to plea bargaining process, was deficient and cause[d] applicant to be tried in his absence"
2. Due Process Violation
- a. "Prosecutor's remarks during guilt-or-innocence phase and closing argument of trial were inflammatory and inconclusive to the evidence presented, and misleading to the jury . . . ;"
 - b. "Prosecutor failed to correct numerous inconsistent and false statements made by the State's primary witness;"
 - c. "Prosecutor improperly bolstered Deputy Chamberlain's testimony thereby impermissibly vouching for Deputy's credibility;"
3. "Prosecutor improperly attacked the character of defendant to arouse passion, emotion, and personal bias from the jury."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant

pmb

decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 300 S.C. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688 (1984)). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

A. Ineffective Assistance of Counsel

1. Trial in Absentia

Applicant alleges Trial Counsel was ineffective for allowing him to be tried in his absence. This Court finds Applicant has failed to prove either deficiency or prejudice regarding this allegation. It is well established that, although the Sixth Amendment of the United States Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived, and a defendant may be tried in his absence. State v. Fairey, 374 S.C. 92, 99, 646 S.E.2d 445, 448 (Ct. App. 2007). In order to claim the protection afforded by the rule of law that a criminal defendant may be tried in his absence only upon a trial court's finding (1) the defendant has received notice of his right to be present, and (2) he was advised the trial would proceed in his absence if he failed to attend. State v. Williams, 292 S.C. 231, 232, 355 S.E.2d

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861, 862 (1987). Notice of the term of court in which a defendant will be tried is sufficient notice to enable the defendant to make an effective waiver of his right to be present at his trial. Ellis v. State, 267 S.C. 257, 261, 227 S.E.2d 304, 306 (1976); Fairey, 374 S.C. at 99, 646 S.E.2d at 448. Further, a bond form that provides notice that a defendant can be tried in absentia may serve as the requisite warning that he may be tried in his absence should he fail to appear. Fairey, 374 S.C. at 101, 646 S.E.2d at 449.

Applicant testified he met with Trial Counsel twice and discussed the charges and possible sentences. Applicant stated he knew the offenses were classified as "serious" and that this was not a first offense. Applicant further stated Trial Counsel discussed plea offers generally, but did not give him details. Applicant testified Trial Counsel conveyed an offer for ten years, but Applicant wanted to know if he would have to serve 65% or 85% of his sentence before becoming eligible for parole, and he expected Trial Counsel to get back in touch with him. Applicant testified Trial Counsel never provided him with an answer, and when he asked the solicitor about it, the solicitor told him he needed to speak with Trial Counsel. Applicant testified he never accepted nor rejected the offer because he wanted more information. Applicant stated he tried to call Trial Counsel, but never spoke with her. Applicant further testified he did not want to accept a ten-year sentence, but he would have pleaded guilty if he only had to serve 65% of it.

Applicant testified he was released on bond shortly after his arrest on these charges, and at the time of trial, he was working in Greenwood. He testified he would take a work van with his coworkers, and they would stay the entire week. Applicant further testified he would call the court hotline number to find out if his case was scheduled, and if he did not hear his name, he

would get on the van to work in Greenwood. Applicant stated if he knew he had a court appearance, he would miss that week of work, which happened at least twice.

According to Applicant, he appeared during the first week of his trial term, and the solicitor told him his case would not be called that week, and he was free to go. Applicant testified he did not see Trial Counsel at that time, but he called Trial Counsel's office "once or twice" after that and got no answer. Applicant stated he called the court hotline before the second week of the trial term, and his name was not on the list, so he got on the work van and went to Greenwood for the week. Applicant offered conflicting testimony as to when he was notified of his trial date. Applicant testified Trial Counsel called to tell him his case was being called for trial the following day, but because he was out of town without a car, he had no way to get back to Florence. Applicant testified he was tried in his absence and was later picked up. Applicant also testified he was not aware his case was going to trial that day, and he did not speak with Trial Counsel either the week leading up to trial or afterward.

Trial Counsel testified she has been practicing law for approximately forty-five years, with approximately half of that time spent on criminal work. Trial Counsel explained she has a private practice and has also been a part-time public defender since 2000. Trial Counsel was appointed to represent Applicant through the Public Defender's Office.

Trial Counsel testified her notes indicate her first meeting with Applicant was April 30, 2010, at his docket appearance. Trial Counsel testified she discussed a ten-year plea offer with Applicant at that time, but the plea offer expired at the end of that day. Trial Counsel further testified Applicant refused the plea offer, and she did not recall him asking any questions regarding what percentage of the sentence he would be required to serve before becoming eligible for parole. Trial Counsel further testified the mandatory minimum sentence Applicant

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faced was greater than ten years on the charges as indicted, but the State was offering to allow Applicant to plead to a lesser-included offense with a reduced sentence. Trial Counsel testified Applicant never indicated to her that maximum term he would accept.

Trial Counsel stated investigators from the Public Defender's Office met with Applicant on December 9, 2009, to go over the details of the incident and obtain contact information. Trial Counsel's file reflects Applicant requested a jury trial at that time. Trial Counsel testified she obtained discovery pursuant to Rule 5, SCRCrimP. She also testified Applicant contacted her office on June 9, 2010, inquiring about a letter regarding the upcoming court term, at which time she confirmed his address was the same as the one given to the investigator.

Trial Counsel further testified the first week of the court term was July 27, 2010, at which time Applicant was excused by the solicitor and told his case would be called during the third week of the term. Trial Counsel testified she did see and speak with Applicant when he was present on the first day of the term. Further, she testified, based on her notes, she called Applicant on August 9, 2010, to inform him his case was being called for trial the next day. Trial Counsel stated Applicant told her he would be present for trial, but he did not appear by 8:30 am the next day, at which time she called him again. Trial Counsel testified Applicant did not answer, but she left him a voice message asking him to come to the fourth floor courtroom as soon as possible and explained he would be tried in his absence if he did not appear.

Trial Counsel further testified she could not recall the specifics of what she discussed with Applicant when she reached him by phone on August 9, 2010, but her file reflects they reviewed the incident report, and she verified his prior convictions. She explained her usual practice is to discuss the State's evidence and burden of proof, review the client's criminal record and explain the impact that will have, and try to ascertain the client's wishes for how to proceed.



Trial Counsel stated Applicant denied ownership of the drugs, although he had a small amount of marijuana on his person when he was arrested. Trial Counsel further testified the State's primary evidence was the eyewitness testimony of the police officer who saw Applicant throw several bags, which turned out to have cocaine in them.

This Court finds Trial Counsel's performance with respect to Applicant's trial, in absentia was not deficient. This Court finds Trial Counsel's testimony on this issue to be credible, while also finding Applicant's testimony not credible. Trial Counsel conferred with Applicant on multiple occasions, during which they discussed the pending charges, Applicant's constitutional rights, the State's evidence, and possible defenses. This Court finds Trial Counsel conveyed the plea offer to Applicant, who chose not to accept it because he did not like the offer. Trial Counsel made reasonable efforts to locate Applicant once she knew his case was being called for trial, including speaking with him by telephone to inform him of the trial date and explaining that he would be tried in his absence if he failed to appear. The record reflects Counsel made a motion for a continuance, requested a bench warrant be issued, and objected to Applicant being tried in his absence. Transcript, p. 29. The trial court found Applicant was given adequate notice of the court date and that he would be tried in his absence if he failed to appear. Transcript, p. 33-39. Based on the foregoing, this Court finds Trial Counsel's performance was not deficient based on professional norms.

Additionally, this Court finds Applicant has not met his burden of establishing the requisite prejudice for relief because he did not present any evidence at the PCR hearing to show he was prejudiced as a result of being tried in his absence. See Davis v. State, 326 S.C. 283, 486 S.E.2d 747 (1997) (finding where Applicant presented no witnesses or any specific testimony establishing he would have had a defense if he had had additional time to prepare for trial that he

failed to prove prejudice as required by Strickland). Applicant did not call any witnesses or introduce any evidence that he was unable to present at trial due to his absence. The Court finds there is no reasonable probability the result of his trial would have been different but for his absence at trial.

Accordingly, this Court finds Trial Counsel's performance was not deficient, nor was Applicant prejudiced by any alleged deficiency. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The allegation is therefore denied and dismissed.

2. Trial Strategy

Applicant alleges Trial Counsel was ineffective for failing to object to the solicitor's opening statement, for failing to object to the recall of the State's lab witness, and for stipulating that the marijuana found on Applicant was his. This Court finds Trial Counsel rendered effective assistance because she articulated a valid trial strategy for those decisions. The Court further finds Applicant presented no evidence that he was prejudiced in any way by Counsel's alleged deficiency.

"Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" Strickland, 466 U.S. at 690. There is a strong presumption that counsel's decisions are based on tactical strategy rather than neglect. Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (quoting Massaro v. United States, 538 U.S. 500 (2003)). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). See also Stokes v. State, 308 S.C. 546, 419 S.E.2d 778

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(1992) (holding where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel); Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (holding counsel may avoid a finding of ineffectiveness if he articulates a valid reason for using a certain strategy). “Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel.” Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) (citing Goodson v. United States, 564 F.2d 1071 (4th Cir. 1977)). Trial counsel’s strategy is reviewed under “an objective standard of reasonableness.” Magazine v. State, 361 S.C. 610, 617, 606 S.E.2d 761, 764 (2004).

Trial Counsel testified extensively regarding the strategic choices she made during trial. She stated her general strategy of the case was to admit to the small amount of marijuana found on Applicant’s person, but contest the charges arising from the bags of cocaine found on the ground, which she did in a suppression hearing. Trial Counsel explained she felt it would help Applicant to take responsibility for the marijuana possession, and she didn’t want to appear to be contesting something simply for the sake of it when she knew there was no way to refute the testimony on that charge. Trial Counsel further testified she believes sometimes it is best to acknowledge bad facts up front. She also testified she did not object to the State’s lab witness being recalled because she knew the court would allow it, and she instead made a continuing objection to the admission of the drug evidence, which she renewed when the witness was recalled. Transcript, p. 155.

In his opening statement, the solicitor told the jury, “[I]f I don’t prove my case, and you are firmly convinced of his innocence, you will find him not guilty.” Transcript, p. 86. Trial Counsel stated she generally does not object to opening or closing arguments because she gets a

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chance to respond in her own argument. She stated her strategy in her opening statement was to be honest with the jury as to Applicant's absence, but she also made sure to explain that the State's burden and to stress that the burden did not change because of Applicant's absence. Trial Counsel explained her philosophy is to "pick your battles" in trial and not make every possible objection, especially on issues that won't make a difference in the outcome of the trial.

This Court finds Trial Counsel was not deficient. She is a trial practitioner who has extensive experience trying criminal offenses, and she articulated a valid trial strategy in support of her performance. See Underwood v. State, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992) ("Where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective."). This Court will not second guess her trial tactics, especially in light of the Court's finding Applicant has not met his burden of proving he was prejudiced by Trial Counsel's performance. "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691, 104. To establish prejudice, Applicant is required to show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. Applicant did not present any evidence he was prejudiced by Counsel's performance at trial. Applicant did not call any witnesses or present any defense that he was unable to present at trial due to Trial Counsel's alleged deficiencies. See, e.g., Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) ("This Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. . . .").

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Therefore, this Court finds Counsel's performance was not deficient, nor was Applicant prejudiced by any alleged deficiency. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The allegation is therefore denied and dismissed.

3. Sentencing

Applicant's trial was concluded on August 10, 2010, and Judge Nettles sealed the sentence. Applicant was not sentenced until January 31, 2012, by which time Trial Counsel was no longer with the Public Defender's Office. Applicant was represented at sentencing by Vick Meetze, Esquire. This Court finds Sentencing Counsel also provided effective assistance in this case, as he conferred with Applicant prior to the pronouncement of Applicant's sentence, ensured Applicant received time-served credit against his sentence, and filed a timely notice of appeal at Applicant's request. Further, this Court finds Applicant's testimony failed to articulate any deficiency or prejudice he suffered as a result of Sentencing Counsel's performance.

Applicant testified he was represented at sentencing by Vick Meetze, Esquire. Applicant stated the trial judge had already decided the sentence, but Mr. Meetze was present with him when the sentence was unsealed and read into the record. Applicant further testified he asked Mr. Meetze to file a notice of appeal, which Mr. Meetze did. Applicant stated after his trial in Florence, he was incarcerated in Darlington from December 31, 2010, until sometime in January 2012. According to Applicant, he talked to Mr. Meetze about the time he had served on other charges, and, ultimately, Applicant received time-served credit of 140 days against his sentence.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Sentencing Counsel failed to render reasonably effective assistance under prevailing professional norms. Applicant failed to present specific and compelling evidence that Sentencing Counsel committed either errors or omissions in his representation of Applicant.

This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Sentencing Counsel’s performance. Applicant received concurrent sentences of fifteen years for each PWID charge and one year for possession of marijuana, which is well within the sentencing range. Further, the sentences were sealed at the end of Applicant’s trial, and there was nothing Sentencing Counsel could do to influence the length of the sentence at the time it was read into the record. This Court finds Sentencing Counsel’s performance was not deficient, nor was Applicant prejudiced by any alleged deficiency. Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The allegation is therefore denied and dismissed.

4. Prosecutorial Misconduct

As to any and all allegations that were raised in the application or at the hearing on this matter and not addressed in this Order, specifically Applicant’s allegations regarding prosecutorial misconduct, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed with prejudice.

CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Neither Trial nor Sentencing Counsel was deficient, nor was Applicant prejudiced by either counsel’s representation. Therefore, this PCR application must be denied and dismissed with prejudice. This Court also finds, as to all other allegations, Applicant failed to present evidence of such claims, and thus, this Court deems them abandoned.

The Court notes Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

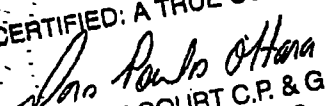
1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 31st day of May, 2017.


 Paul M. Burch, Jr.
 Presiding Judge
 Twelfth Judicial Circuit

Page land, South Carolina.

FILED
 2017 JUN 12 PM 3:33
 CLERK OF COURT
 FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY

 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, S.C.

WITNESSES

Jake Chamberlain

Florence County Sheriff

FITZLEE H MCEACHIN

ARREST WARRANT NUMBER

M270955

M270956

97378EZ

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-21-0673

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JUNE

TERM

2010

THE STATE

vs.

ONTANEY VENTRELL JACKSON

Indictment for

UNLAWFUL DRUGS

CERTIFIED: A TRUE COPY
Clerk of Court C.P. & G.S.
FLORENCE COUNTY, S.C.
Myra J. Spivey

2010 JUN -3 PM 12:46
GONNIE REEL SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF FLORENCE)

UNLAWFUL DRUGS

At a Court of General Sessions, convened on JUNE 3, 2010 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE

That ONTANEY VENTRELL JACKSON did in Florence County on or about November 26, 2009, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Cocaine Base, a controlled substance under the provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-375(B), S. C. Code of Laws, 1976, as amended.

COUNT TWO- POSSESSION WITH INTENT TO DISTRIBUTE COCAINE

That ONTANEY VENTRELL JACKSON did in Florence County on or about November 26, 2009, possess with intent to distribute, dispense or deliver, or did aid, abet, attempt or conspire to distribute, dispense or deliver a quantity of Cocaine, a controlled substance under the provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina, 1976, as amended, such distribution not having been authorized by law, and being in violation of Section 44-53-370(B), S. C. Code of Laws, 1976, as amended.

COUNT THREE - POSSESSION OF MARIJUANA

That ONTANEY VENTRELL JACKSON did in Florence County, on or about November 26, 2009, knowingly and intentionally possess a quantity of Marijuana of more than one ounce, a controlled substance under provisions of Section 44-53-110, et. seq., S. C. Code of Laws, 1976, as amended, such possession not having been authorized by law, in violation of Section 44-53-0370(d), S. C. Code of Laws, 1976, as amended.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

MARK SANFORD
Governor



REGINALD I. LLOYD
Director

Ev. Tech Larry Quick
Florence County Sheriff's Office
6719 Friendfield Road
Effingham, SC 29541

DRUG ANALYSIS

December 18, 2009
SLED LAB: L09-14512
Your Case No: 2009110862
Incident Date: 11/26/2009
[S] Ontaney Jackson

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

Reginald I. Lloyd, Director
South Carolina Law Enforcement Division

ITEMS OF EVIDENCE:

- Sub # 1 On December 09, 2009, items were received in B206317 from Ev. Tech Larry Quick of the Florence County Sheriff's Office.
- Item: 1.1 Plastic sandwich bag containing rock substance.
RESULTS:
Cocaine Base (Crack) found, 1.32 grams (20.37 grains), C-II.
- Item: 1.2 Plastic sandwich bag containing plastic corner bag containing powder substance.
RESULTS:
Cocaine found, 2.07 grams (31.94 grains), C-II.
- Item: 1.3 Plastic corner bag containing powder substance.
RESULTS:
Cocaine found, 0.45 grams (6.94 grains), C-II.



December 18, 2009
L09-14512

Page 2

Chemical Analyst



Douglas Robinson

cc: Florence County Solicitor's Office



FORM A

REPORT OF ANALYSIS FOR
CONTROLLED DANGEROUS SUBSTANCES
(Substance Found)

I, Douglas R. Robinson, am a Chemical Analyst employed by the South Carolina State Law Enforcement Division (SLED), certified by SLED as a chemist or analyst qualified to perform testing and analysis for controlled dangerous substances prohibited by law in this State by Title 44, Chapter 53 of the Code of Laws and Rule 61-4 of the Department of Health and Environmental Control.

I have 1 years and 9 months experience as a Chemical Analyst. During that period, I have been qualified as an expert witness and testified in court no less than 1 times. I have received the following training as a chemical analyst.

B.S. Chemistry, University of South Carolina, Columbia, SC 2003
Environmental Chemical Analyst, GEL Laboratories, Charleston, SC 2005-2008
Marijuana Analyst Certification, South Carolina Law Enforcement Division 2008
South Carolina Law and Legal Training, South Carolina Criminal Justice Academy, 2008
Training in Forensic Drug Analysis, South Carolina Law Enforcement Division, 2008
Drug Enforcement Administration, Forensic Chemist Seminar, 2009

Sub # 1 On December 09, 2009, items were received in B206317 from Ev. Tech Larry Quick of the Florence County Sheriff's Office.

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

☒ Chemical Test

☐ Microscopic Exam

☐ Infrared Spectroscopy

☐ Ultraviolet Spectroscopy

☐ Visual Examination

☒ Gas Chromatography

☒ Mass Spectroscopy

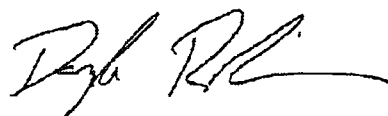
☐ Liquid Chromatography

☒ Physical Test

☐ Published Literature

See Drug Analysis Report L09-14512 for Results.

Chemical Analyst



Douglas Robinson

Date: December 18, 2009

