

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable G. Thomas Cooper, Jr., Circuit Court Judge

DEVIN JAMAHL SIMS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000648

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,
PLAINTIFF,
VS.
DEVIN JAMAHL SIMS,
DEFENDANT.

TRANSCRIPT
OF
RECORD
2015-GS-42-2663

December 16th, 2015
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE ROGER L. COUCH, Judge, and a jury.

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

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JOSHUA SCHULTZ
ESQ.
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P R O C E E D I N G S

THE COURT: All right. We're on the record in the case of the State of South Carolina versus Devin Jamahl Sims.

I have received an indictment from the State. Case Number 15-GS-42-2663. That indictment is for the offense of trafficking in cocaine. That indictment was true billed by the Grand Jury on May 29th of 2015.

The defendant is present with his attorney, Mr. Schultz. The State is present represented by Mr. Hunter.

I have received, from the State, a list of potential witnesses and a request for voir dire.

Does the defense have any additions that you would like to make to the list of witnesses?

MR. SCHULTZ: Not at this time, Your Honor.

THE COURT: All right. And do you have any specific request for voir dire of the jury?

MR. SCHULTZ: Your Honor, if I could check the State's request briefly?

THE COURT: Okay. Have you provided him a copy, Mr. Hunter?

SOLICITOR HUNTER: Yes, I'm getting a copy made right now.

THE CLERK: Can I have---

THE COURT: You can have this one and let him look at

1 it.

2 THE CLERK: You just need one copy.

3 SOLICITOR HUNTER: Thank you.

4 THE COURT: Thank you.

5 I'll give you a minute to look at it, Mr. Schultz. Let
6 me know---

7 MR. SCHULTZ: Yes, sir.

8 THE COURT: ---when you're ready.

9 MR. SCHULTZ: Thank you, Your Honor.

10 THE COURT: Yes, sir.

11 (Pause.)

12 MR. SCHULTZ: Your Honor, if I may, I believe these are
13 sufficient.

14 THE COURT: Okay. All right. Thank you.

15 Now, Mr. Schultz, your -- I'm not -- do not know
16 whether or not your client has been arraigned on the charge,
17 charge.

18 Has he were arraigned on the charge?

19 MR. SCHULTZ: Your Honor, his, his original attorney in
20 this case was Roger Poole with the Public Defender's Office.

21 THE COURT: Uh-huh. (Affirmative).

22 MR. SCHULTZ: I, I actually did not ask him.

23 THE COURT: Okay. Well, why don't we just go ahead and
24 do that right now so that we'll be sure he's aware of the
25 charge?

1 SOLICITOR HUNTER: And just for the record, the
2 indictment is based off warrants that he was served. So he
3 should of been arraigned.

4 THE COURT: So they were served at the time of his
5 arrest?

6 SOLICITOR HUNTER: Correct, Your Honor.

7 THE COURT: Okay. So he would of probably been
8 arraigned before the magistrate.

9 SOLICITOR HUNTER: Probably, but it doesn't hurt to go
10 ahead and do it again.

11 THE COURT: That's right. So I'm gonna, I'm gonna
12 cover this again.

13 All right. Please place Mr. Sims under oath for me.

14 THE CLERK: Yes, sir.

15 (WHEREUPON, the defendant was placed under oath at this
16 time.)

17 THE COURT: All right. Mr. Sims, I, at this time, I'm
18 going to go over with you the indictment that's been
19 presented to me. I've already indicated that it was true
20 billed by the Grand Jury. That means it was passed and sent
21 to this Court by the Grand Jury on May 29th of 2015.

22 When I finish going over the indictment or the charge
23 with you, I'll be asking you as to whether you're pleading
24 guilty or not guilty at this time, and if you are pleading
25 not guilty, I'll ask how you wish to be tried, either by the

1 Court or by a jury. So I'll be going over those things with
2 you.

3 Do you understand what I'm doing at this time?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. And are you -- do you have any
6 conditions that would prevent you from being able to
7 understand what we're doing this morning?

8 THE DEFENDANT: No, sir.

9 THE COURT: Have you taken any drugs or any other
10 substances that would affect your reasoning abilities today?

11 THE DEFENDANT: No, sir.

12 THE COURT: All right. Now, Mr. Sims, the indictment
13 says that Devin Jamahl Sims did, in Spartanburg County, on
14 or about December the 9th of 2014, knowingly sell,
15 manufacture, deliver, purchase, or bring into the State or
16 did provide financial assistance or did otherwise aid, abet,
17 attempt, or conspire to sell, manufacture, deliver,
18 purchase, or bring into this state or did knowingly,
19 actually, or constructively possess or did knowingly attempt
20 to actually or constructively possess more than 28 grams of
21 cocaine, a Schedule II controlled substance, in violation of
22 Code Section 44-53-370 of the Code of Laws of South
23 Carolina, 1976 as amended, against the peace and dignity of
24 the State and contrary to the statute in such case made and
25 provided.

1 Now, Mr. Sims, did you understand the indictment that I
2 just went over with you?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Are you pleading guilty or not guilty to
5 that indictment?

6 THE DEFENDANT: Not guilty.

7 THE COURT: And how do you wish to be tried, sir?

8 THE DEFENDANT: By God and country.

9 THE COURT: All right. God grant you a speedy
10 delivery, Mr. Sims. We'll be beginning a jury trial
11 shortly. You can be seated.

12 (Defendant complies.)

13 THE COURT: Thank you, sir.

14 MR. SCHULTZ: Thank you, Your Honor.

15 THE COURT: All right. Now, I understand that there
16 may be some pretrial matters that we need to go over. I'll
17 hear from the State.

18 Is there anything the State would like to have the
19 Court be involved in before we pick the jury?

20 SOLICITOR HUNTER: Your Honor, the State would just
21 like to go over the plea negotiations in this case.

22 THE COURT: All right. You may put that on the record.

23 SOLICITOR HUNTER: Previous to Mr. Schultz's
24 representation, Mr. Sims was represented by Roger Poole of
25 the Public Defender's Office. An offer of seven to

1 twenty-five years was given to Mr. Sims.

2 At that point Mr. Sims and Mr. Poole were on a --
3 excuse me. They then appeared on a trial docket. Mr. Poole
4 called it out as I believe a plea, but then it possibly
5 could also be a trial. On the date that this case was to be
6 called in front of Judge Cole, Mr. Sims and Mr. Poole showed
7 up at court, talked about the offer. At that point, when
8 Judge Cole asked us all to come in there and figure out if
9 we were gonna go to trial or plea, Mr. Sims did not come
10 back into the courtroom and a bench warrant was issued. At
11 that point we withdrew any offer on this case.

12 THE COURT: All right. So, at this time, there is no
13 offer on the table as a result of the failure to remain in
14 the courthouse at that time?

15 SOLICITOR HUNTER: That's correct, Your Honor.

16 THE COURT: Okay. Mr. Schultz, as far as you know, is
17 that a correct statement of where the plea negotiations are?

18 MR. SCHULTZ: Your Honor, I -- obviously I didn't
19 represent Mr. Sims.

20 THE COURT: Oh, I understand that. I asked you if that
21 was your understanding. I didn't ask you if you knew for
22 sure that was true or not.

23 MR. SCHULTZ: Yes, sir.

24 THE COURT: Is that what you understand happened?

25 MR. SCHULTZ: My, my understanding -- that's what

1 Mr. Hunter relayed to me, and, again, I'm not sure what
2 happened with Mr. Poole and Mr. Sims. But I can tell you,
3 tell you that what I tried to do is -- I was, I was retained
4 for Mr. Sims case after he was picked up on this bench
5 warrant and visited him several times.

6 THE COURT: So when he was returned to Spartanburg
7 County or wherever---

8 MR. SCHULTZ: Yes, sir.

9 THE COURT: ---from wherever he went---

10 MR. SCHULTZ: Yes, sir.

11 THE COURT: ---you began to represent him?

12 MR. SCHULTZ: Yes, sir.

13 THE COURT: Okay.

14 MR. SCHULTZ: And I asked Mr. Hunter if he could extend
15 that offer and I guess the answer now is no.

16 THE COURT: Okay. Thank you very much.

17 MR. SCHULTZ: Thank you, Your Honor.

18 THE COURT: Any other matters the State wishes to take
19 up?

20 SOLICITOR HUNTER: Nothing from the State, Your Honor.

21 THE COURT: All right. Now from the defense
22 prospective?

23 MR. SCHULTZ: Yes, sir, Your Honor.

24 THE COURT: Uh-huh. (Affirmative).

25 MR. SCHULTZ: As far as -- if, if the court -- would

1 the Court like me to take up my motion to invalidate the
2 search right now or would that be properly done at a later
3 time?

4 THE COURT: Well, I'll probably do that after we pick
5 the jury I would suspect. The -- you had indicated there
6 was a motion concerning the drugs in our pretrial
7 conference.

8 MR. SCHULTZ: Yes, sir, Your Honor.

9 THE COURT: So I thought we'd take that up right now.

10 MR. SCHULTZ: That's fine, Your Honor. Thank you.

11 May it please the Court?

12 THE COURT: Yes, sir.

13 MR. SCHULTZ: Your Honor, the conversations that I've
14 had with my client here at the jail would indicate to me
15 that there could be an issue as far as the relative weight
16 of the cocaine that was found in this case. Therefore, I
17 would ask for a continuance in order for an independent
18 expert to analyze the drugs that were found in this case. I
19 believe this is a city case. It shouldn't essentially take
20 that long to test it if I could get an independent witness.

21 THE COURT: You want it tested for weight?

22 MR. SCHULTZ: I want to test it to see if everything in
23 there was illegal drugs.

24 THE COURT: So is it your position or suspicion that
25 the substance that was seized was not pure cocaine?

1 MR. SCHULTZ: Yes, sir, that, that would be my
2 suspicion because of the---

3 THE COURT: So it -- by using strict vernacular, you
4 would say it had been cut by something -- some agent?

5 MR. SCHULTZ: Possibly, Your Honor.

6 THE COURT: Yeah.

7 MR. SCHULTZ: Possibly.

8 THE COURT: Okay.

9 MR. SCHULTZ: But I think, in the words of the Court,
10 it would be my suspicion that this -- that these drugs could
11 indeed be a combination of possibly powder cocaine and/or
12 baking soda. If, if that turns out to be the case, there
13 could be a question of weight.

14 My understanding, in the indictment, well not, not only
15 in the indictment, but also the warrant too, is that my
16 client is charged with more than 28 grams of cocaine,
17 Schedule II controlled substance. His -- the sentencing
18 range, if he were to be convicted of this, would be
19 potentially less if it is below 28 grams or ten grams or
20 whatever it turns out to be. I do not believe a independent
21 witness would -- an independent expert witness would take
22 that long to analyze it.

23 THE COURT: Well, let's see. It was chemically
24 analyzed, was it not, Mr. Hunter?

25 SOLICITOR HUNTER: Yes, Your Honor. It -- Ms.

1 Hendricks, who will be testifying in this case, did analyze
2 this and found it to be cocaine.

3 THE COURT: And, and what did she find it to be?

4 SOLICITOR HUNTER: Cocaine, Your Honor.

5 THE COURT: Okay. Any other substances or agents---

6 SOLICITOR HUNTER: It's not listed---

7 THE COURT: ---detected?

8 SOLICITOR HUNTER: It's not listed on the report. Just
9 as controlled substance cocaine, Schedule II.

10 THE COURT: Okay. Well, if -- let's assume that it
11 were cut, as I said, with some agent.

12 What's your position then, Mr. Hunter?

13 SOLICITOR HUNTER: Your Honor, State Law is pretty
14 clear about this, that cocaine, marijuana, any of the
15 controlled substances, I don't know the exact statute
16 number, I was looking that up along with a case, recent case
17 of State v. Jason Johnson, that dealt with a meth lab. But
18 essentially State Law is clear that, if you have one gram of
19 cocaine and a hundred grams of baking soda mixed together,
20 State Law considers that as a mixture of cocaine and that
21 would be 101 grams of cocaine. It doesn't matter if it's
22 all pure. Every single piece that is mixed together would
23 be considered cocaine. And even if they were to test it and
24 they did test some to be baking soda, if any of it was
25 cocaine, then, by State Law, is all considered cocaine.

1 THE COURT: All right. Do you have any cases or
2 statutes, Mr. Hunter -- Mr. Schultz, that would indicate
3 otherwise?

4 MR. SCHULTZ: I do not, Your Honor, but I just think,
5 in the interest of fairness here, that I think there, there
6 should be some kind of exception here.

7 THE COURT: Well, I think, in the interest of fairness,
8 what I would need to see is that there was some prima facie
9 showing that there was -- that, that, if the test were
10 conducted, that it would make any difference in the charge.

11 You know, there are presumptive tests for cocaine being
12 present. I assume that was run on this at the time of the
13 arrest. There was then a chemical analysis done apparently
14 with a report that indicates that cocaine was present.

15 I don't see any shred of evidence that indicates that
16 there was no cocaine present in the mixture. So I'm gonna
17 deny the motion.

18 MR. SCHULTZ: Thank you, Your Honor.

19 THE COURT: Any other matters that you want to take up
20 before we pick the jury?

21 MR. SCHULTZ: Again, Your Honor, I would renew my
22 motion to -- motion for Rule 5 discovery. What I have in my
23 case is the indictment obviously, true bill, the incident
24 report from Officer Spurgeon and Laurent Smith. I have an
25 additional narrative. I have the warrant. I have a witness

1 interview form for Melvin Mitchell. I have the uniform
2 traffic ticket for Mr. Sims for simple possession of
3 marijuana. I have the chain of custody report and I have
4 three pictures, color pictures, of the drugs allegedly found
5 in this case. I have the lab report from Melissa Hendricks,
6 the chemist in this case. Then I have Rule 6 reports as
7 well as the defendant's past record, Your Honor.

8 On Monday I picked up a video at the Solicitor's Office
9 from Regina Wray there with not the arresting officer's dash
10 cam but another officer's dash cam for the city. It lasts
11 for about eight minutes long, but I've had a chance to
12 review that. But that's all the discovery that I have at
13 this point. Again---

14 THE COURT: Well, let me just ask.

15 Are there any other matters---

16 MR. SCHULTZ: Yes.

17 THE COURT: ---that need to be disclosed?

18 SOLICITOR HUNTER: I do not believe so. Everything
19 he's stated is what we would be using in our case in chief.

20 THE COURT: Okay.

21 SOLICITOR HUNTER: And the -- just to -- he picked up
22 that video on Monday. We called him on Friday to let him
23 know the video was---

24 THE COURT: Available.

25 SOLICITOR HUNTER: ---available. Mr. Schultz was going

1 to Charleston at that point. However, that video is only
2 gonna be used in the suppression hearing. It does not show
3 any of the arrest, does not show any of the facts leading up
4 to the arrest. All it shows is where the cars were
5 positioned and the fact that the police officers were---

6 THE COURT: You did not intend to use it in your case
7 in chief at this point?

8 SOLICITOR HUNTER: We do not intend. Only at the
9 suppression hearing if he asks -- argues that.

10 THE COURT: Okay. All right.

11 MR. SCHULTZ: And, Your Honor, just---

12 THE COURT: He's indicating that there -- that you have
13 complete discovery at this time.

14 MR. SCHULTZ: Yes, everything that, that I have I've
15 put on the record --

16 THE COURT: Uh-huh. (Affirmative).

17 MR. SCHULTZ: -- and the State, I guess, has made the
18 representation that there are, there are no more -- there's
19 no exculpatory evidence to---

20 THE COURT: That's what he said.

21 MR. SCHULTZ: ---to -- for me to, to look at there. I
22 may put that video into evidence based upon how our pretrial
23 motions go. Like I said, Your Honor, it is about a seven
24 minute long video. There's video, but there's no audio on
25 the recording and---

1 THE COURT: There's video but no audio?

2 MR. SCHULTZ: Yes, I don't -- I didn't hear anything.

3 I don't believe the officer's microphone was turned on.

4 THE COURT: Was there any, any part of the -- any audio
5 you intend to use?

6 SOLICITOR HUNTER: No, Your Honor. Again, just---

7 THE COURT: He says he was gonna use it to position the
8 cars at the scene I think.

9 SOLICITOR HUNTER: Just so that you can kind of see
10 what the scene looks like.

11 THE COURT: Okay.

12 SOLICITOR HUNTER: If he wants to admit it, I'm fine
13 giving it to the court reporter and just go ahead and
14 admitting it as part of the record for the pretrial motions
15 and --.

16 MR. SCHULTZ: I would, I would move that it be---

17 THE COURT: Okay.

18 MR. SCHULTZ: ---that it be premarked at least.

19 THE COURT: Let's go ahead and put it in for pretrial
20 motion purposes. Not for the trial in the case.

21 MR. SCHULTZ: Yes, sir.

22 SOLICITOR HUNTER: And, again, I do not plan on putting
23 it in in the trial of the case.

24 THE COURT: I understand.

25 You can have it marked.

1 That will be a State's Exhibit by agreement.

2 (WHEREUPON, the video was marked as State's Exhibit No.
3 1 and received into evidence for purposes of the pretrial
4 hearing only at this time. The drugs were marked as State's
5 Exhibit No. 2 for identification purposes only at this
6 time.)

7 THE COURT: Anything else, Mr. Schultz?

8 MR. SCHULTZ: Not at this time.

9 THE COURT: All right.

10 MR. SCHULTZ: Thank you, Your Honor.

11 THE COURT: So you're ready to go forward with the jury
12 selection?

13 MR. SCHULTZ: Yes, sir.

14 THE COURT: All right. Let's bring the jury panel
15 around for jury selection.

16 MR. SCHULTZ: Oh, Your Honor.

17 THE COURT: Yes.

18 MR. SCHULTZ: My client's family is here.

19 THE COURT: If they would like to sit up, sit down in
20 front of the bar right over there that will be fine. They
21 can do that during jury selection.

22 MR. SCHULTZ: Yes, sir, Your Honor.

23 THE COURT: Just those first three chairs right there,
24 sir. Thank you, sir.

25 SOLICITOR HUNTER: May we approach, Your Honor?

1 (WHEREUPON, a bench conference was held at this time.)

2 MR. SCHULTZ: Thank you, Your Honor.

3 (WHEREUPON, the following takes place within the
4 presence of the entire jury panel.)

5 THE COURT: Thank you, Mr. Ruth.

6 All right. Good morning, ladies and gentlemen.

7 We're about to begin the trial of the case of the State
8 of South Carolina against Devin Jamahl Sims.

9 Again, I have been presented with an indictment in this
10 case. I'll go over the indictment with you. I'm doing that
11 for the purpose of allowing you to know a little bit about
12 what the case is about so that you might be in a position to
13 more fully answer the questions I'm about to ask that
14 pertain specifically to this case.

15 The indictment is in Case Number 2015-GS-42-2663. The
16 indictment is for the offense of trafficking in cocaine.

17 The indictment states that Devin Jamahl Sims did, in
18 Spartanburg County, on or about December the 9th of 2014,
19 knowingly sell, manufacture, deliver, purchase, or bring
20 into the State or did provide financial assistance or
21 otherwise aid, abet, attempt, or conspire to sell,
22 manufacture, deliver, purchase, or bring into the State or
23 did knowingly, actually, or constructively possess or did
24 knowingly attempt to actually or constructively possess more
25 than 28 grams of cocaine, a Schedule II controlled

1 substance, in violation of Code Section 44-53-370 of the
2 Code of Laws of South Carolina, 1976 as amended, against the
3 peace and dignity of the State and contrary to the statute
4 in such case made and provided.

5 Now, again, an indictment is not evidence in a case and
6 can't be used by a jury as evidence of any matters involved
7 in the trial. It is simply the informational document that
8 informs us of the charge to be tried. It informs the
9 defendant of the charge lodged against him and, again, I've
10 gone over it with you at this time so that you'll know a
11 little bit about what this case is about and be able to more
12 fully answer my questions.

13 Now, before I begin to ask you those questions, I'm
14 going to ask that the attorneys involved in this trial
15 introduce themselves and, in the case of the defense, I'll
16 ask that the defense attorney introduce the defendant to
17 you.

18 First of all for the State.

19 SOLICITOR HUNTER: My name is Eddie Hunter and I'm a
20 narcotics prosecutor here in Spartanburg County.

21 THE COURT: Thank you, sir.

22 For the defense.

23 MR. SCHULTZ: Thank you, Your Honor.

24 May it please the court?

25 THE COURT: Yes, sir.

1 MR. SCHULTZ: My name is Attorney Joshua Schultz and I
2 represent Mr. Sims in this case.

3 THE COURT: Sir, if you'll stand.

4 (Defendant complies.)

5 THE COURT: Turn around so they can see your face.

6 (Defendant complies.)

7 THE COURT: Thank you very much. You can be seated.

8 (Defendant complies.)

9 MR. SCHULTZ: Thank you, Your Honor.

10 THE COURT: Thank you.

11 Now, ladies and gentlemen, again, we're going to go
12 through the process of me asking questions. If you have a
13 response, I'll be asking that you stand. I'll need your
14 name and juror number on the record before I discuss your
15 response to my questions.

16 It is important, again, that the information that you
17 provide to the Court is truthful and honest and complete.
18 For that reason, in each case where I question you, it's
19 necessary that you be placed under oath concerning the
20 responses you're about to give.

21 At this time, Madam Clerk, Madam Clerk, place the jury
22 panel under oath for me.

23 THE CLERK: Yes, sir.

24 (WHEREUPON, the jury panel was placed under oath at
25 this time.)

1 THE COURT: Now, if any member of the jury panel either
2 failed or refused to take the oath just administered by the
3 clerk, please stand.

4 (No response.)

5 THE COURT: All right. The record will reflect that
6 all jurors have been sworn concerning the responses they're
7 about to give to this Court.

8 My first question to you.

9 Has any member of this jury panel ever been related by
10 marriage or are you related by blood to the defendant, Devin
11 Jamahl Sims, if that's true, please stand.

12 (No response.)

13 THE COURT: Has any member of this jury panel ever had
14 a close personal or a social relationship or a business
15 relationship with the defendant, Devin Jamahl Sims, if
16 that's true, please stand.

17 (No response.)

18 THE COURT: Now, concerning the attorneys that are
19 involved in this case, has any member of the jury panel ever
20 been represented by either of the attorneys that are
21 involved in this case or have they ever appeared on the
22 other side of a legal matter from you, if that's true,
23 please stand.

24 (Juror responds.)

25 THE COURT: Sir, I need your name and number.

1 THE JUROR: David McNeely, Juror Number 113.

2 THE COURT: Yes, sir.

3 THE JUROR: I've been represented by Mr. Schultz at his
4 law firm.

5 THE COURT: All right. And does -- has that
6 representation now ended or does he still represent you now?

7 THE JUROR: His firm's actually still representing me.

8 THE COURT: I see.

9 Now, would that fact affect your ability, if you were
10 on this jury, to be fair and impartial to both sides of this
11 case?

12 THE JUROR: No, sir.

13 THE COURT: Okay. Thank you. You can be seated.
14 Anyone else?

15 (No response.)

16 THE COURT: Now, has any member of the jury panel ever
17 had a close social, personal, or business relationship with
18 either of the attorneys that are involved in this trial, if
19 that's true, please stand.

20 (Juror responds.)

21 THE COURT: Yes, sir, name and number.

22 THE JUROR: Easton Burnette, 33.

23 THE COURT: Your situation, sir?

24 THE JUROR: I was an intern for the solicitor's office
25 and Eddie was one of the attorneys that I interned for.

1 THE COURT: I see.

2 You were interning with that office for sometime?

3 THE JUROR: Yes.

4 THE COURT: Okay. Would that fact though affect your
5 ability to be impartial if you were seated on the jury?

6 THE JUROR: No, sir.

7 THE COURT: Thank you, sir.

8 Anyone else?

9 (No response.)

10 THE COURT: I'm going to read a list of potential
11 witnesses in the case. Listen carefully to their names.
12 I'll be asking you about them once I've completed going over
13 the list with you.

14 The first potential witness is someone named Laurent
15 Smith, L-A-U-R-E-N-T. He's with the Spartanburg County
16 Sheriff's Office.

17 Reginald Spurgeon.

18 (Witness stands.)

19 THE COURT: He is with the Spartanburg Police
20 Department. That's what we refer to -- thank you,
21 Mr. Spurgeon.

22 THE WITNESS: Yes, sir.

23 THE COURT: That, that's what we refer to as our city
24 police here.

25 Mr. Mylnor Beach with the Spartanburg Police

1 Department.

2 Mr. Beach, if you'll stand and let the jury see who you
3 are.

4 (Witness complies.)

5 THE COURT: Thank you.

6 Melissa Hendricks with the Spartanburg County Sheriff's
7 office. I don't believe she's present.

8 John Burgess with the Spartanburg County Sheriff's
9 office.

10 Mr. Burgess, if you'll stand and face the jury.

11 (Witness complies.)

12 THE COURT: Thank you.

13 And an individual by the name of Melvin Mitchell.

14 Now, as to the people that I just named as possible
15 witnesses in this case, has any member of this jury panel
16 ever been related by marriage or are you related by blood or
17 have you ever had a close social, personal, or business
18 relationship with any of the people I've identified as
19 possible witnesses in the case?

20 If that is true, please stand.

21 (Juror responds.)

22 THE COURT: Yes, ma'am, I need your name and number.

23 THE JUROR: Ruth Hillman, 58.

24 THE COURT: Okay.

25 THE JUROR: Reginald Spurgeon was my neighbor for five

1 or six years.

2 THE COURT: Okay. You said he was.

3 He no longer is?

4 THE JUROR: No.

5 THE COURT: All right. Now, would that fact, if he
6 were a witness in this case, would the fact that you had
7 known him from then, would that affect your ability to be
8 fair and impartial?

9 THE JUROR: No, sir.

10 THE COURT: All right. Thank you, ma'am.

11 Anyone else?

12 (No response.)

13 THE COURT: Has any member of the jury panel or a
14 member of your immediate family ever been prosecuted by the
15 Seventh Circuit solicitor's office for any offense, if
16 that's true, please stand.

17 (No response.)

18 THE COURT: Has any member of the jury panel or a
19 member of your immediate family ever been arrested for,
20 charged with, or convicted of any crime involving or
21 relating to illegal drugs, if that's true, please stand.

22 (Jurors respond.)

23 THE COURT: All right. I'll start over here.

24 Ma'am, your name and number.

25 THE JUROR: Lisa Martin, 107.

1 THE COURT: All right.

2 THE JUROR: My brothers---

3 THE COURT: Can you tell me---

4 THE JUROR: My brother, he was arrested with
5 possession.

6 THE COURT: I see.

7 Now, is that case still going on or is it over?

8 THE JUROR: It's still going on. He's still---

9 THE COURT: Okay. Would that fact affect your ability
10 to be fair and impartial if you were placed on this jury?

11 THE JUROR: No, sir.

12 THE COURT: Okay. Thank you very much. I'll start
13 over here.

14 Yes, ma'am, your name and number.

15 THE JUROR: Amanda Gaston, Number 66.

16 THE COURT: Yes, ma'am.

17 THE JUROR: I have a cousin on my mom's side who went
18 to prison.

19 THE COURT: I see.

20 THE JUROR: A drug charge.

21 THE COURT: Over a drug charge?

22 THE JUROR: Yes, sir.

23 THE COURT: Okay. Would that fact affect your ability
24 to be fair and impartial in this case?

25 THE JUROR: No, sir.

1 THE COURT: Thank you very much.

2 Ma'am, name and number.

3 THE JUROR: Jean Hammel, Number 96.

4 THE COURT: Uh-huh. (Affirmative).

5 You want to be sure?

6 THE JUROR: Yeah.

7 THE COURT: Okay.

8 THE JUROR: My son was arrested for drug charges.

9 THE COURT: All right. Now, would that fact affect
10 your impartiality in this matter?

11 THE JUROR: No, sir.

12 THE COURT: Thank you, ma'am.

13 Over here, ma'am, on, on the -- right there. You.
14 Name and number.

15 THE JUROR: Sylvia McEntire, 112.

16 THE COURT: Yes, ma'am.

17 THE JUROR: My son was arrested for marijuana.

18 THE COURT: Now, would that affect your impartiality if
19 you were on the jury?

20 THE JUROR: No, sir.

21 THE COURT: Thank you, ma'am.

22 Name and number please, ma'am.

23 THE JUROR: Tiffany Wood, 179. I have a couple of
24 family members that were charged with a drug charge.

25 THE COURT: All right. Would those factors affect your

1 ability to be fair and impartial if you were on the jury?

2 THE JUROR: No, sir.

3 THE COURT: Thank you, ma'am.

4 Name and number please.

5 THE JUROR: Deanna Jergin, 54.

6 THE COURT: Uh-huh. (Affirmative).

7 THE JUROR: My brother was charged with possession of
8 marijuana.

9 THE COURT: I see.

10 Would that affect your impartiality if you were
11 selected?

12 THE JUROR: No, sir.

13 THE COURT: Thank you.

14 Name and number please, ma'am.

15 THE JUROR: Tasha Chandler, 38. I have possession of a
16 controlled substance.

17 THE COURT: All right. Would that fact affect your
18 impartiality if you were on the jury?

19 THE JUROR: No, Your Honor.

20 THE COURT: Thank you, ma'am.

21 Anyone else?

22 (No response.)

23 THE COURT: Has any member of the jury panel ever had
24 any experience with a police officer, a state trooper, a
25 federal agent, or a state or federal law enforcement agency

1 that that, that might affect your ability to be fair and
2 impartial in this case?

3 So if you had such an experience, please stand.

4 (No response.)

5 THE COURT: Does any member of the jury panel have any
6 opinion concerning the use of marijuana, cocaine,
7 methamphetamine, heroin, crack cocaine, or other illegal
8 drugs such that it would affect your ability to be fair and
9 impartial to both the State and the defense in this matter,
10 if that's true, please stand.

11 THE JUROR: I do.

12 THE COURT: All right. Name and number please, ma'am.

13 THE JUROR: Tracy Radkins.

14 THE COURT: All right. Number.

15 THE JUROR: 22.

16 THE COURT: Thank you.

17 Yes, ma'am.

18 THE JUROR: We had an experience in our neighborhood
19 with a family that came in and sold cocaine and kind of put
20 the children at risk.

21 THE COURT: So that would affect your impartiality,
22 ma'am?

23 THE JUROR: It definitely might.

24 THE COURT: I'm gonna excuse you then from the trial of
25 the case. You no longer have to answer -- no, ma'am, wait a

1 second.

2 THE JUROR: Oh.

3 THE COURT: You just sit down. You no longer have to
4 answer my questions, but you're still on the jury panel. So
5 you can stay with me. Thank you, ma'am.

6 All right. Is there any member of the jury panel who
7 is a member of an organization, that means you're a member
8 of that organization, whose goal is the legalization of
9 illegal drugs such as marijuana, such groups would include a
10 group called NORML, N-O-R-M-L, or anyone have a belief that
11 marijuana or other illegal drugs should, in fact, be
12 legalized?

13 If that applies to you, please stand.

14 (Jurors respond.)

15 THE COURT: Name and number, sir.

16 THE JUROR: Andrew Sigmond, 152.

17 THE COURT: Now, are you a member of any such
18 organization?

19 THE JUROR: No, sir, but I have a belief.

20 THE COURT: But you have a belief that some illegal
21 drug should be legalized?

22 THE JUROR: Absolutely.

23 THE COURT: Now, would that fact affect your ability to
24 be fair and impartial in this case?

25 THE JUROR: I can't say for sure.

1 THE COURT: Then I'm gonna excuse you from the trial of
2 the case. You no longer have to answer my questions but be
3 seated.

4 THE JUROR: Thank you.

5 THE COURT: Name and number, sir.

6 THE JUROR: Marcus Gouls, 68.

7 THE COURT: Yes, sir.

8 THE JUROR: I believe marijuana should be legal.

9 THE COURT: Okay. Now, would that affect your
10 impartiality in this matter?

11 THE JUROR: Yeah.

12 THE COURT: All right. I'll excuse you, sir. Have you
13 a seat.

14 Name and number please, ma'am.

15 THE JUROR: Tasha Chandler, Number 38.

16 THE COURT: Yes, ma'am.

17 THE JUROR: I believe that marijuana should be legal.

18 THE COURT: All right. Would that affect your
19 impartiality if you served on the jury?

20 THE JUROR: It may.

21 THE COURT: Okay. Then I'm gonna excuse you from the
22 trial of the case. Thank you, ma'am.

23 Now, has any member of the jury panel gathered any
24 information from any source whatsoever such that it would
25 have caused you to either form or express an opinion about

1 the issues involved in this trial, if that's true, please
2 stand.

3 (No response.)

4 THE COURT: Is any member of the jury panel aware of
5 any bias or prejudice either for or against the State or the
6 defendant in this case?

7 If you're aware of such a bias or prejudice, please
8 stand.

9 (No response.)

10 THE COURT: Is there any member of this jury panel who
11 is a member of or a contributor to any group which has as
12 its primary concern the promotion of law enforcement and/or
13 victim's rights?

14 The groups would include, but not be limited to, such
15 groups as Mothers Against Drunk Driving, Students Against
16 Drunk Driving, Citizens Against Violent Crime, the SAFE
17 Homes Council, or other similarly, similarly oriented
18 organizations.

19 If you're a member of or a contributor to such a group,
20 please stand.

21 (Juror responds.)

22 THE COURT: Name and number please, ma'am.

23 THE JUROR: Ashley Hair, Number 76.

24 THE COURT: Yes, ma'am.

25 THE JUROR: I work for a therapy clinic who works very

1 closely with---

2 THE COURT: All right.

3 THE JUROR: ---SAFE Homes.

4 THE COURT: Would that fact affect your impartiality in
5 the matter?

6 THE JUROR: No, sir.

7 THE COURT: Thank you, ma'am.

8 Anyone else?

9 (No response.)

10 THE COURT: Is there any member of the jury panel, as
11 it's now constituted, who knows of any reason whatsoever why
12 he or she should not serve as a juror in this case with
13 particular emphasis being placed upon your ability to be
14 both fair and impartial to both the State and the defense?

15 If you know of such a reason, please stand.

16 (No response.)

17 THE COURT: Does the State request any additional
18 questions?

19 SOLICITOR HUNTER: Nothing from the State, Your Honor.

20 THE COURT: Defense request any additional questions?

21 MR. SCHULTZ: No, sir.

22 THE COURT: All right. The remaining members of the
23 jury panel now are declared to be qualified to serve as
24 jurors in this case.

25 I'm going to ask that the clerk prepare the list of

1 potential jurors and provide that to the Court.

2 Just as a little matter of digression while she's doing
3 that, when I first started this practicing law some 40 years
4 ago now, the -- we'd pick juries by using a wooden barrel
5 and we'd put everybody's name in a capsule and we had to --
6 the State Law required that a blind person had to come and
7 pull the capsules out of the barrel, and that lady that use
8 to do it -- what's her name, Mr. Bishop?

9 MR. BISHOP: Mrs. Weeks.

10 THE COURT: And she's still living.
11 How old is she?

12 MR. BISHOP: Ninety-six.

13 THE COURT: She's 96 years old and Doug saw her at
14 lunch the other day and she said she was still willing to
15 come back and help us pull juries if we wanted her to do so.
16 I guess we believe computers are blind. So we let a
17 computer pull it now.

18 (Pause.)

19 THE COURT: All right. At this time the State will
20 have five strikes. The defense will have five strikes.
21 We're going to pick one alternate. State having one strike.
22 Defense having two strikes.

23 Madam Clerk, Clerk, you can begin the jury selection
24 process.

25 Again, when your name is called, come forward to the

1 clerk, face the back-door of the courtroom, and, at that
2 point in time, the attorneys will exercise their strikes.

3 You may proceed, ma'am.

4 THE CLERK: Yes, sir.

5 (WHEREUPON, a jury panel was selected at this time.)

6 THE COURT: I'll ask the attorneys to approach briefly.

7 (WHEREUPON, a bench conference was held out of the
8 hearing of the jury at this time.)

9 THE COURT: All right. Is there any objection to the
10 jury selection process from the State?

11 SOLICITOR HUNTER: Nothing from the State, Your Honor.

12 THE COURT: Any from the defense?

13 MR. SCHULTZ: Outside of the presence, Your Honor.

14 THE COURT: All right. Ladies and gentlemen, those of
15 you who are in the jury that have not been selected in this
16 case, the bailiffs are going to show you back to the
17 assembly room. There's some matters I have to take up with
18 the attorneys about jury selection.

19 And for the jury that's seated in the box, we're going
20 to ask you to step back to the jury room. Don't discuss
21 anything about this case during this break in the jury room.
22 Talk about anything but this case.

23 You may retire to the jury room and you may retire to
24 the assembly room.

25 (WHEREUPON, the following takes place outside the

1 presence of the entire jury panel.)

2 THE COURT: All right. Mr. Schultz, be happy to hear
3 from you.

4 MR. SCHULTZ: Thank you, Your Honor.

5 May it please the Court.

6 Your Honor, for the purpose of the record, I'd like to
7 make a motion under Batson, Supreme Court case. The State
8 excused or struck Juror 112, black female, Juror Number 69,
9 black female, and Juror Number 179, black female. All three
10 obviously are black females. I would ask the state if they
11 have a race neutral reason for that.

12 THE COURT: All right. Mr. Hunter, you are required to
13 present a race neutral reason for those strikes.

14 SOLICITOR HUNTER: If I may just come to the bench,
15 Your Honor?

16 THE COURT: Yes, sir. you may.

17 SOLICITOR HUNTER: Your Honor, Number 112 which he
18 mentioned, her son was arrested for drugs.

19 Number 69, I believe they're all gonna be similar,
20 they're either family members arrested for drugs or they
21 have records themselves.

22 Number 69 actually has a record, Your Honor. She's
23 been arrested here in Spartanburg County.

24 Number 179, again, had a family member arrested on
25 drugs.

1 And if I might juxtapose that with Number 96, the last
2 juror that I struck, was a white female for the same exact
3 reason, Your Honor. So I'm not striking them because of
4 their color. I'm striking them because of their connection,
5 their family members' connection to drugs as well.

6 THE COURT: Or their own record.

7 All right. That would appear to be a race neutral
8 reason for exercising the strikes.

9 Mr. Schultz, you, at this time, have a right to attempt
10 to demonstrate that those race neutral reasons were or are
11 not valid given other strikes that the State may have
12 exercised or not exercised.

13 MR. SCHULTZ: No, Your Honor. I believe that is -- the
14 State is made that sufficient under Batson.

15 THE COURT: Okay. Any other objections then to the
16 jury selection process?

17 MR. SCHULTZ: None from the defense.

18 (Pause.)

19 THE COURT: All right. While he's doing that, I
20 believe there were some other matters that the defense
21 wanted to take up before the jury was sworn.

22 MR. SCHULTZ: That's correct, Your Honor.

23 THE COURT: Be happy to hear from you.

24 MR. SCHULTZ: All right. May it please the Court.

25 THE COURT: Yes, sir.

John Burgess - Direct examination
by Solicitor Hunter

1 MR. SCHULTZ: Your Honor, I am making a motion to
2 invalidate the search and seizure of these drugs found on my
3 client there based upon the stop. I do not believe there
4 was probable cause or reasonable articulable suspicion to
5 not only stop the car, nor for the seizure of the drugs
6 found.

7 THE COURT: All right. Mr. Hunter.

8 SOLICITOR HUNTER: Your Honor, if I may have one
9 moment?

10 One of the officers had to get a babysitter and should
11 be here. I just wanted to make sure.

12 THE COURT: All right. You can step outside and check
13 on him.

14 MR. SCHULTZ: Your Honor, could I be excused as well?

15 THE COURT: Sure. Let's take a -- I'll just sit on the
16 bench. Anybody that needs to go, go.

17 MR. SCHULTZ: Yes, sir.

18 THE COURT: You can step out.

19 (WHEREUPON, a short recess was taken at this time.)

20 THE COURT: All right. The defense has made a motion
21 to suppress the drugs that were seized in this case. I
22 believe the basis of the motion is that you believe that the
23 stop that was conducted was not supported by sufficient
24 evidence to justify the stop.

25 Is that correct?

John Burgess - Direct examination
by Solicitor Hunter

1 MR. SCHULTZ: Yes, sir.

2 THE COURT: All right. Mr. Burgess, Officer Burgess
3 has been called as a witness. If you'll step up and be
4 sworn, sir.

5 JOHN BURGESS, being first duly
6 sworn, testified as follows:

7 THE COURT: And, sir, once seated, state your name
8 please.

9 THE WITNESS: John Burgess.

10 THE COURT: Thank you.

11 Mr. Hunter, your witness.

12 SOLICITOR HUNTER: Thank you.

13 DIRECT EXAMINATION

14 BY SOLICITOR HUNTER:

15 Q Officer Burgess, you're currently in a Spartanburg
16 County Sheriff's Office uniform.

17 A Yes, sir.

18 Q How long have you been there?

19 A March of 2015.

20 Q Okay. Where were you working on December of 2014?

21 A I worked for the City of Spartanburg.

22 Q Okay. And do you remember a case in which you came
23 over to the Highland area of Spartanburg on December or
24 December 9th of 2014?

25 A Yes.

John Burgess - Direct examination
by Solicitor Hunter

1 Q Okay. And was that a case involving this suspect
2 sitting next to the defense attorney at the defendant's
3 table?

4 A Yes, sir.

5 Q The defendant's table?

6 A Yes, sir.

7 Q Okay. Is your car equipped with an in-car camera
8 system?

9 A It was.

10 Q Okay.

11 A Yes.

12 Q And this is your in-car video State's -- marked State's
13 Exhibit 1?

14 A It should be a copy of it, yes.

15 Q And you didn't show up during the initial arrest or the
16 initial stop by Officer Spurgeon, did you?

17 A No.

18 Q When did you show up?

19 A It was a couple minutes after, after they got out. I
20 think they got out with three subjects. I was called after
21 that.

22 Q Okay. And what was your purpose there?

23 A They had multiple people with the vehicle and I was
24 simply there to help them assist with any type of -- with
25 all three subjects.

John Burgess - Direct examination
by Solicitor Hunter

1 Q Did you assist with any investigation?

2 A Not that I recall.

3 Q What was your -- would you say you were mainly there
4 for security purposes?

5 A Yeah, they were in the back seat of my car or at least
6 one of them was and that's all I did.

7 SOLICITOR HUNTER: Okay. Your Honor, at this time the
8 State would offer State's Exhibit 1 into evidence.

9 THE COURT: Any objection?

10 MR. SCHULTZ: No objection.

11 THE COURT: Without objection it will be received as
12 marked.

13 You may proceed.

14 SOLICITOR HUNTER: Your Honor, that's all we have for
15 this witness.

16 THE COURT: All right, sir. You may step down.

17 SOLICITOR HUNTER: And, Your Honor, I will intend---

18 THE COURT: Well, let me ask. Just one second.

19 I -- do you wish to cross-examine him?

20 MR. SCHULTZ: Yes, Your Honor.

21 THE COURT: Okay. I'm sorry. Go ahead..

22 MR. SCHULTZ: Beg the Court's patience, Your Honor.

23 (Pause.)

24 CROSS-EXAMINATION

25 BY MR. SCHULTZ:

John Burgess - Cross-examination
by Mr. Schultz

1 Q Officer Burgess, how long have you been with the
2 county?

3 A March of 2015 I started.

4 Q All right. But in -- last year you worked for the
5 city, correct?

6 A That's correct.

7 Q All right. Did you file an incident report in this
8 matter?

9 A No. No, sir.

10 Q Okay. Now, your observation there in this incident
11 consisted of about how many minutes or was it an hour or
12 what, what -- how long you were -- were you at the scene of
13 this?

14 A I couldn't tell you.

15 Q You just don't remember?

16 A I just don't remember.

17 Q Okay.

18 A I had no investigative duties. I didn't question
19 anybody. I was simply there at the request of other
20 officers. So I couldn't tell you how long I was there.

21 Q So that's why you were called, you -- at the request of
22 others?

23 A Yes.

24 Q Okay. Did you arrest my client?

25 A He was already being detained when I got there.

John Burgess - Cross-examination
by Mr. Schultz

1 Q Okay. Did you seize any drugs or any evidence in the
2 case?

3 A Again, no. I had no investigative duties whatsoever.

4 Q All right.

5 A I did not seize anything.

6 Q You did not seize anything?

7 A No, sir.

8 Q Okay. And, and why, again, were you, were you called?

9 what, what, what were you specifically doing on that
10 date that this happened?

11 A I was most likely just on patrol and got called because
12 somebody had requested another unit.

13 Q How close in proximity were you to my client, Mr. Sims?

14 A When, when I got there?

15 Q Yeah.

16 A Well, I was probably standing at my car and he was in
17 the back seat.

18 Q Okay. So he, he was in the back seat of your car,
19 right?

20 A Yes.

21 Q Okay. And did you take him to Spartanburg County Jail?

22 A I couldn't tell you.

23 Q Okay. All right. So, how -- to your recollection, how
24 long was he in the back seat of your car?

25 A I couldn't tell you.

John Burgess - Cross-examination
by Mr. Schultz

1 Q Okay. Your camera was on, correct?

2 A Yes.

3 Q Okay. When a blue light goes on -- well, was your blue
4 light on?

5 A I couldn't tell you.

6 Q All right. Okay. And I know this is a while ago.
7 It's about a year ago.

8 To your best estimate, how long were you in the
9 presence of my client that day?

10 A Probably 15, 20 minutes.

11 Q All right. Did he talk to you at all?

12 A He, he spoke to me.

13 Q Okay. Do you remember -- did, did he -- you, you never
14 wrote an incident report for this, right?

15 A No, sir.

16 Q Okay. Did he have a distinctive smell?

17 A Not that I recall.

18 MR. SCHULTZ: All right. That's all I have, Your
19 Honor.

20 THE COURT: Anything further from the witness,
21 Mr. Hunter?

22 SOLICITOR HUNTER: Nothing further from the witness.

23 THE COURT: All right, sir. You may step down. Thank
24 you very much.

25 THE WITNESS: Thank you, Your Honor.

Reginald Spurgeon - Direct examination
by Solicitor Hunter

1 SOLICITOR HUNTER: May he be excused, Your Honor?

2 THE COURT: Any objection to his being excused?

3 MR. SCHULTZ: No objection, Your Honor.

4 THE COURT: All right. You're free to go, Officer
5 Burgess.

6 MR. SCHULTZ: Thank you.

7 THE COURT: Thank you.

8 You may call your next witness, Mr. Hunter.

9 SOLICITOR HUNTER: State would offer, offer Officer
10 Spurgeon.

11 THE COURT: Sir, if you'll come forward and be sworn
12 please, sir.

13 REGINALD SPURGEON, being first duly
14 sworn, testified as follows:

15 THE COURT: Have a seat please, and once seated, state
16 your name please.

17 THE WITNESS: Thank you, Your Honor.

18 May name is Reginald Spurgeon.

19 THE COURT: Thank you.

20 Your witness, Mr. Hunter.

21 DIRECT EXAMINATION

22 BY SOLICITOR HUNTER:

23 Q All right. Officer Spurgeon, can you briefly go over
24 your law enforcement experience?

25 A Yes, sir, I'm MPO Spurgeon with the City of

Reginald Spurgeon - Direct examination
by Solicitor Hunter

1 Spartanburg. I've been there 19 years. Prior to that I was
2 with Greenville County Sheriff's Office for six years.

3 Through my tenure at the city I've been in investigations,
4 the gang investigator, housing complex, and now I work with
5 juveniles.

6 Q Okay. And what were your duties on December 9th,
7 2014?

8 A That day I was -- Officer Smith and I were housing
9 officers. That's what we -- we mainly patrolled the housing
10 complexes.

11 Q What type of housing complexes?

12 A Norris Ridge, Northside Apartments, Prince Hall
13 Apartments, Camp Croft Apartments.

14 Q Are those places that give you trouble?

15 A Yes, sir, they are low income housing. So that's where
16 we concentrate our efforts, yes, sir.

17 Q Okay. What type of trouble do they give you?

18 A Most times we have fights, narcotics, trespassers,
19 things that are such that the apartment managers want us to
20 address.

21 Q Okay. And where were you on December 9th, 2014?

22 A On that particular day we were patrolling towards
23 Norris Ridge Apartments and the trouble spots were those
24 duplexes in and around Norris Street. So we were patrolling
25 that area -- in that area.

Reginald Spurgeon - Direct examination
by Solicitor Hunter

1 Q Okay. And in the City and County of Spartanburg?

2 A That's in the City of Spartanburg, sir.

3 Q That's right behind the Beacon, correct?

4 A Right behind the Beacon but the location in which I'm
5 speaking of it's a little up from the Beacon. Norris Ridge
6 is right behind the Beacon, and then there's Norris Street.

7 Q Okay.

8 A Norris Street and the Bethlehem Drive, that's where a
9 lot of our activity comes from.

10 Q Okay. But about a half mile -- less than a half mile
11 from the Beacon?

12 A Less than a half mile, yes, sir.

13 Q Just to kind of give everybody an area where this is
14 --.

15 A Well, it's right across the street from the new Stewart
16 Park that was built there.

17 Q Okay. What did you see that day?

18 A On that particular day, we were, Laurent and I, Officer
19 Smith and I, I'm sorry, we were patrolling in the area. Saw
20 a truck up in the driveway. Thought it was sort of odd
21 early that morning because---

22 Q And what, what time was this?

23 A It was approximately 12:07. Correction. 12:07.
24 Activity only usually get started around there until in the
25 afternoon. So it was a little odd for us to see a truck

Reginald Spurgeon - Direct examination
by Solicitor Hunter

1 pull up that early in the morning. So we just observed the
2 truck and I, I'm pretty familiar with all the people in that
3 area and what they basically do. So I didn't recognize the
4 gentleman in the truck. So I just pulled behind the truck.

5 Q And how long have you been patrolling that area?

6 A Oh, a number of years, sir. Probably maybe 10, 12
7 years in that particular area, but I've been all over the
8 city. So I'm familiar with all of the areas.

9 Q So you didn't recognize the truck that, that was there?

10 A I didn't recognize that truck at that time, no, sir.

11 Q Okay. And ultimately whose truck was that?

12 A It was an older gentleman.

13 Q Was that Melvin Mitchell's truck?

14 A Mr. Mitchell, that's correct. An older gentleman by
15 the name of Mr. Mitchell from -- yes, sir.

16 Q So where were you going when you viewed that truck?

17 A Actually we was pulling around past the Bethlehem
18 Center and just pulled up, pulled up right next to the truck
19 at the stop sign and that's when we smelled---

20 Q Well, did you observe anybody getting in that truck?

21 A Yes, sir, I observed Mr. Sims get into the truck from
22 the duplexes.

23 Q And that's when the truck was in the driveway?

24 A The truck was in the driveway, yes, sir.

25 Q Where were you going at that point?

Reginald Spurgeon - Direct examination
by Solicitor Hunter

1 Which direction were you facing?

2 A I was going west---

3 Q All right.

4 A ---on Norris Street initially.

5 Q Okay. Did you have to turn around once you saw

6 Mr. Sims?

7 A I turned around because I didn't recognize the older

8 gentleman in the car.

9 Q Okay. But when you turned around, is that when you saw

10 Mr. Sims?

11 A I saw Mr. Sims in the vehicle, yes, sir.

12 Q How do you know Mr. Sims?

13 A Mr. Sims and I have encountered each other a number, a

14 number of times in the Highland area based on the activity

15 there.

16 Q Okay. Have you ever arrested Mr. Sims?

17 A Have I arrested Mr. Sims?

18 Q Or have you known him to be arrested?

19 A I've known him to be arrested numerous times, but I,

20 myself, might not of arrested him.

21 Q Okay.

22 A But, sir, I've arrested a lot of people.

23 Q All right. So what did you observe when Mr. Sims comes

24 out of the duplex?

25 A When he was coming out of the duplex, I noticed him hop

Reginald Spurgeon - Direct examination
by Solicitor Hunter

1 in the truck swiftly. That sort of got our attention and
2 based on the history of that area. And that was basically
3 it coupled with the fact that I didn't recognize the older
4 gentleman that was driving the car -- the truck.

5 Q Okay. So what did you do at that point?

6 A Pulled up behind the car initially and then, when he
7 stopped at the stop sign, I pulled beside the car, the car
8 just to see who was, who was in the vehicle. And when we
9 pulled up beside the vehicle, the truck, there was a strong
10 aroma of marijuana, marijuana emanating from the truck.

11 Q Okay.

12 A And that's when I engaged the conversation with
13 Mr. Mitchell.

14 Q Were your windows rolled down?

15 A Yes, sir, both of -- cause we want to have our windows
16 down so we can hear and see what goes on.

17 Q Okay. So your windows are rolled down normally when
18 you patrol?

19 A Always.

20 Q Okay. So you pull up to the side of this vehicle?

21 A Yes, sir, I pulled up to the driver's side of the
22 vehicle.

23 Q Okay. And it's at a stop sign?

24 A It's at a stop sign.

25 Q Which stop sign is that?

Reginald Spurgeon - Direct examination
by Solicitor Hunter

1 A It's at Bethlehem -- no, it's at Bethlehem Drive and
2 it's right near the Bethlehem Center right there.

3 Q Is that Highland Avenue?

4 A That could be Highland Avenue.

5 Q Okay. Is that the one where, if you go past the
6 Beacon, there's a flashing yellow light, you take a right?

7 Is that the street?

8 A That's the street, yes, sir.

9 Q Okay. And then there's a stop sign down there on your
10 left?

11 That's the stop sign?

12 A That's correct.

13 Q Okay.

14 A That's it, yes, sir.

15 Q Okay. Is this a two lane road, four lane road, what?

16 A It's actually a two lane road.

17 Q Is there room enough for cars to park on the sides of
18 that two lane road and still be a two lane road?

19 A That's probably -- yes, sir.

20 Q Okay. And when you pull up to the -- you said you
21 pulled up to the driver's side of the vehicle that
22 Mr. Mitchell was driving?

23 A Yes, sir.

24 Q He, he was driving, correct?

25 A Yes, sir.

Reginald Spurgeon - Direct examination
by Solicitor Hunter

1 Q And where was Mr. Sims?

2 A Mr. Sims was seated on the passenger's side.

3 Q If it's a two lane road, would it be fair to say cars
4 could get past you beside you?

5 A Sure. Yes, sir.

6 Q And, in fact, during this incident, did cars not pass
7 you on your driver's side?

8 A They did.

9 Q So cars could come either way on your driver's side?

10 A Yes, sir.

11 Q Okay. Your window's rolled down when you pull up.
12 What, what happens?

13 A Both windows are pulled down.

14 Q Okay.

15 A The passenger side which is beside Mr. -- Officer Smith
16 was on and I was on the driver's side, and, and once I saw
17 Mr. Mitchell, I said, you know, Laurent, I said you, you
18 smell that cause it was, it was strong from the truck, and
19 then I asked Mr., the older gentleman, I said where you
20 from---

21 Q Okay.

22 A ---cause that's when I got out the car to engage him in
23 conversation.

24 Q All right. What was Mr. Mitchell's window like?

25 A It was down.

Reginald Spurgeon - Direct examination
by Solicitor Hunter

- 1 Q It was down?
- 2 A It was down.
- 3 Q Okay. Did you ever ask him to roll his window down?
- 4 A Oh, no, sir.
- 5 Q Did you ever motion for him to roll his window down?
- 6 A No, sir.
- 7 Q Okay. Did you ever have your blue lights on?
- 8 A Never.
- 9 Q Did you ever have a siren on?
- 10 A No, sir.
- 11 Q If he had taken a right turn, would you have been able
- 12 to pull him over?
- 13 A He would of just taken a right.
- 14 Q In a traffic stop?
- 15 A No.
- 16 Q Had he committed a traffic offense?
- 17 A He hadn't committed a traffic offense, but when we
- 18 pulled up next to the vehicle we could smell marijuana
- 19 coming from the vehicle.
- 20 Q Okay. So you did not initiate a traffic stop---
- 21 A It was not initiated.
- 22 Q ---when you pulled up beside the vehicle?
- 23 A No, sir.
- 24 Q Okay. No lights?
- 25 A No lights. No sirens.

Reginald Spurgeon - Direct examination
by Solicitor Hunter

1 Q Did you have any other reason -- Mr. Mitchell have any
2 other reason to believe that you were pulling him over for a
3 traffic violation?

4 A No, sir.

5 Q Okay. But when you pull up, what's the first thing you
6 notice?

7 A Mr. -- the older gentleman, he seemed extremely nervous
8 and then just this smell came -- was blaring out the window.
9 Just blaring.

10 Q The smell of?

11 A Marijuana.

12 Q How do you know what marijuana smells like?

13 A Cause I've been exposed to marijuana a number of years
14 based on my professional experience --

15 Q All right.

16 A -- and prior narcotics experience.

17 Q Okay. Before you became a police officer, what type of
18 training did you have to go through at the State Law
19 Enforcement Academy?

20 A Eight weeks at the Academy.

21 Q Okay. Did they ever expose you to marijuana at the
22 Academy?

23 A They exposed us to a number of drugs, yes, sir.

24 Q Okay. So previous -- how many times have you
25 previously been exposed to marijuana in a law enforcement

Reginald Spurgeon - Direct examination
by Solicitor Hunter

1 capacity?

2 A Too many to count, sir.

3 Q All right. And you were involved in narcotics?

4 A Narcotics, yes, sir.

5 Q Okay. So how many -- just give an estimate of a number
6 of times you've been around marijuana.

7 A More than 500 I'd say.

8 Q Okay. So is it safe to say you know what marijuana
9 smells like?

10 A Yes, sir.

11 Q Okay. At that point you've pulled up beside and you've
12 smelled the smell of marijuana. Both your windows are down.
13 Mr. Mitchell's windows are down.

14 what do you do?

15 A I was speaking with Mr. Mitchell about the smell of
16 marijuana and he was just extremely nervous, and that's when
17 the passenger got out of the vehicle.

18 Q Okay. And the passenger was Mr. Sims?

19 A That's correct.

20 Q Okay. Did you ask Mr. Sims any questions?

21 A At that point.

22 Q At that point.

23 A No questions were asked, no, sir.

24 Q Okay.

25 A We just asked the older gentleman, you know, where you

Reginald Spurgeon - Direct examination
by Solicitor Hunter

1 gonna -- that's -- that smell of marijuana, marijuana is in
2 your car. That's, that's about all we asked him.

3 Q Okay. Did Mr. Sims say anything to y'all when he
4 stepped out of the vehicle?

5 A He did.

6 Q What did he say?

7 A Well, I think Officer Smith mostly had conversation
8 with him.

9 Q Okay.

10 A And that while I was engaging the older gentleman, and
11 then I noticed, when Officer Smith was talking to him, he
12 motioned for me to come around to speak with him also, and
13 that's when I smelled, you know, a bunch of marijuana coming
14 from his body, Mr. Sims body.

15 Q So you had a chance to speak with Mr. Mitchell?

16 A (Witness nods affirmatively.)

17 Q Close?

18 A (Witness nods affirmatively.)

19 Q And did he smell like marijuana?

20 A He didn't, no, sir.

21 Q Okay.

22 A But it was coming from his vehicle.

23 Q Okay. And you had a chance to go around the vehicle
24 and speak with Mr. Sims?

25 A I did.

Reginald Spurgeon - Direct examination
by Solicitor Hunter

1 Q And what was his -- what did he smell like?

2 A Strong -- strongly of marijuana.

3 Q Okay. When you say marijuana, have -- what type of
4 experience do you have with marijuana both in the raw form
5 as well as the smoke form?

6 A Well, the smoke form, it's -- the, the -- they're
7 different kinds of marijuana. So this, this marijuana was
8 extremely loud. The smell was -- it was real potent coming
9 from -- coming out the car.

10 Q Was it someone that had -- would you say appeared to
11 have smoked marijuana or had marijuana on them?

12 A No, this was smoked marijuana.

13 Q Okay. So this was the smell of marijuana smoke as
14 opposed to --?

15 A Well, it was smoked marijuana, but then you could also
16 smell fresh marijuana too.

17 Q Okay.

18 A There's a difference.

19 Q So it was both?

20 A Both.

21 Q Okay. When you go around to the vehicle, did Mr. Sims
22 say anything to you or did you overhear him say anything to
23 Officer Smith?

24 A I think he did say something to the officer. He said
25 something to both of us too. He said, when we, when we

Reginald Spurgeon - Direct examination
by Solicitor Hunter

- 1 first got to the vehicle and we -- and I told the other
2 gentleman there is marijuana in the -- I smelled marijuana,
3 he said you can search.
- 4 Q The older gentleman?
- 5 A No, no, he didn't---
- 6 Q Mr. Sims.
- 7 A Mr. Sims. We didn't ask the older gentleman. We
8 didn't even ask and then that's when Mr. Sims got out of the
9 car.
- 10 Q So---
- 11 A He said we don't have anything.
- 12 Q Did you ever ask Mr. Sims for consent to search before
13 he said that?
- 14 A No.
- 15 Q Did you?
- 16 A No.
- 17 Q Okay.
- 18 A No.
- 19 Q So you were talking to Mr. Mitchell?
- 20 A The whole time. And after I was speaking with Mr.
21 Mitchell for a period of time, he asked -- he gave us
22 permission to search the car.
- 23 Q Okay. But I'm asking specifically about Mr. Sims.
- 24 A Okay.
- 25 Q Did you, at, at any point when you first get out of

Reginald Spurgeon - Direct examination
by Solicitor Hunter

1 your vehicle, ask him a question?

2 A I didn't.

3 Q When you first get out of the vehicle.

4 A I didn't.

5 Q Okay.

6 A No, sir.

7 Q And you talked to Mitchell?

8 A Mr. Mitchell.

9 Q During your conversation with Mr. Mitchell, did
10 Mr. Sims ever say something to you?

11 A He said it to both.

12 Q He said it to you and Officer Smith.

13 Okay.

14 A You can search based on the smell.

15 Q Okay. And, at that point, is that when Officer Smith
16 decides to pat him down?

17 A Because he said, you know, after he said we can search,
18 he said I don't have anything and that's when the pat down
19 transpired.

20 SOLICITOR HUNTER: Okay. Your Honor, just to make
21 sure, his motion is just a motion that the -- there was a
22 stop that was invalid?

23 THE COURT: That's what the motion was, yes, sir.

24 SOLICITOR HUNTER: I just wanted to make sure we don't
25 go farther into anything we don't need to.

Reginald Spurgeon -- Direct examination
by Solicitor Hunter

1 THE COURT: I asked him for the---

2 MR. SCHULTZ: That's the -- that's the motion at this
3 time.

4 THE COURT: Okay.

5 SOLICITOR HUNTER: Okay.

6 THE COURT: Well, we need to cover all the motions
7 sometime today.

8 MR. SCHULTZ: Oh, I understand, judge.

9 THE COURT: They're other -- are there other motions?

10 MR. SCHULTZ: Not at this time, Your Honor.

11 THE COURT: Okay.

12 SOLICITOR HUNTER: Based on his motion---

13 THE COURT: Well, at this time, would there be any more
14 pretrial motions would -- but the Court's questions?

15 MR. SCHULTZ: No, Your Honor.

16 THE COURT: Before I swear the jury.
17 okay.

18 SOLICITOR HUNTER: okay. At this time, the state is
19 finished questioning---

20 THE COURT: Have you completed your questioning of the
21 witness?

22 SOLICITOR HUNTER: Correct, Your Honor.

23 THE COURT: You may cross-examine.

24 MR. SCHULTZ: Thank you, Your Honor.

25 May it please the Court?

Reginald Spurgeon - Direct examination
by Solicitor Hunter

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. SCHULTZ:

4 Q Officer Spurgeon, you've been with the city now for how
5 many years?

6 A I've been with the city 19 years, sir.

7 Q Nineteen years.

8 Okay. And right now, are you working as a housing,
9 housing officer?

10 A No, sir, right now I'm the status offender officer.

11 Q What is that?

12 A Status offender officer is the officer that deals with
13 juveniles and they are truants, your runaways, and your
14 incorrigibles. I'm trying to keep them out of DJJ now.
15 That's my purpose.

16 Q All right. And on December 9th, 2014, you were
17 patrolling in Spartanburg, correct?

18 A Yes, sir.

19 Q All right. And was it just you or was it somebody else
20 with you?

21 A Officer Smith was with me---

22 Q In your car?

23 A ---in my car.

24 Q All right. So it was just you and Officer Smith,
25 correct?

Reginald Spurgeon - Cross-examination
by Mr. Schultz

1 A Yes, sir, cause we were the housing officers at that
2 point in time.

3 Q All right. And you were on routine patrol in Highland,
4 right, Highland area?

5 A Right. That would be correct, sir.

6 Q All right. Now, you had occasion to approach a black
7 pickup truck, correct?

8 A Yes, sir.

9 Q Okay. Now, just because you see a, a truck or a car
10 unfamiliar in that area, that's not a reason to stop a car,
11 correct?

12 A You're absolutely correct.

13 Q All right. Are you DRE certified?

14 A DRE, no, sir, I'm not.

15 Q All right. You didn't recognize this truck, right?

16 A I hadn't seen the truck in the area before, no, sir.

17 Q All right. Okay. But nevertheless, you pulled up to
18 the truck. You were the, I guess to the left of the truck,
19 right, at this intersection?

20 A That would be correct.

21 Q All right. And you took an occasion to roll down your
22 windows?

23 A I didn't take an occasion to roll down my windows. My
24 windows were already down.

25 Q And your windows were rolled down all day?

Reginald Spurgeon - Cross-examination
by Mr. Schultz

- 1 A My windows are rolled down all day, yes, sir.
- 2 Q Okay. And so that's your usual practice---
- 3 A That would be correct.
- 4 Q ---to have your windows rolled down at all?
- 5 A Unless it's cold outside, it's partially cracked. When
- 6 I say partially cracked, that means halfway. But when it's,
- 7 you know, normally warm outside, I'll have the air going a
- 8 little bit and the windows all the way down. Especially on
- 9 my side. And it's cracked always on the passenger side when
- 10 I'm riding by myself.
- 11 Q When did you first see Devin Sims that day?
- 12 A That day?
- 13 Q Yes.
- 14 A Probably about twelve o'clock.
- 15 Q All right. Where did you see him?
- 16 A In -- at the apartment complex.
- 17 Q On Norris?
- 18 A Norris Street, yes, sir. Those duplexes, yes, sir.
- 19 Q Those duplexes?
- 20 A Yes, sir.
- 21 Q Okay. And you saw him get into a truck, correct?
- 22 A I did, sir.
- 23 Q All right. Did you notice anything suspicious at that
- 24 time?
- 25 A No, sir, I didn't.

Reginald Spurgeon - Cross-examination
by Mr. Schultz

1 Q Okay. How close were you to Devin Sims when you first
2 saw him for the first time that day?

3 A Probably from here to the attorney's table.

4 Q Mr. Hunter's attorney table?

5 A Yes, sir.

6 Q Okay. You said, later on, that you noticed a strong
7 smell of marijuana.

8 Did you notice it the first time that you saw Mr. Sims
9 that day?

10 A I stated, when I pulled up next to the vehicle, that's
11 when I noticed the strong smell of marijuana.

12 Q Oh, that's when there was a strong smell?

13 A Yes, sir.

14 Q But not when you first happened to see Mr. Sims, right?

15 A No, sir.

16 Q No.

17 Okay. When you first saw Mr. Sims, were you outside
18 your car?

19 Yes or no?

20 A No, sir.

21 Q You were in your car with the windows rolled down,
22 correct?

23 A That would be correct, sir.

24 Q All right. And you didn't smell any marijuana,
25 correct?

Reginald Spurgeon - Cross-examination
by Mr. Schultz

1 A No, sir.

2 Q All right. Now, in your direct testimony, you said
3 that it was a strong aroma of marijuana that you smelled
4 when you -- when Melvin, the driver in the car, rolled down
5 his window, correct?

6 A I didn't say he rolled down his window. His window was
7 already down.

8 Q His window was already down.

9 A I think his window was already down, yes, sir.

10 Q You made an incident report on this, right?

11 A I did.

12 Q Okay. Your testimony here today is Mr. -- the driver's
13 window was already rolled down. Yet, in your incident
14 report---

15 A That window was rolled down. There was a strong -- you
16 know---

17 Q So---

18 A When I got up to the vehicle---

19 Q That is incorrect?

20 A No, sir. No, sir. When I pulled up next to the
21 vehicle, his vehicle, he did roll his window down. That
22 would be correct.

23 Q All right.

24 A Yes, sir.

25 Q And then you said, this is, again, according to your

Reginald Spurgeon - Cross-examination
by Mr. Schultz

1 incident report---

2 A Yes, sir.

3 Q ---there was a strong odor of marijuana, right?

4 A Yes, sir.

5 Q The -- a strong odor of marijuana that you didn't smell
6 before, right?

7 A I couldn't smell it before, no, sir.

8 Q You couldn't smell it before?

9 A No, sir.

10 Q Okay.

11 A Yes, sir.

12 Q Was that -- did that vehicle -- did that truck, was it
13 in proper working order?

14 A It was running.

15 Q Were its tags in place?

16 A Yes, sir.

17 Q Was there any broken taillights?

18 A No, sir, not that I can recall.

19 Q Were there any cracked windows?

20 A Not that I can recall.

21 Q Did you run the license plate in your computer in your
22 car assuming you had a computer in your car?

23 A I didn't have a computer in my car, but I think Officer
24 Laurent Smith ran the tag himself.

25 Q And was that good?

Reginald Spurgeon - Cross-examination
by Mr. Schultz

1 A I'm not sure. I was paying attention to Mr. Smith --
2 the other gentleman at the time.

3 Q But your information, at least you didn't put in your
4 incident report, the, the driver -- everything was in
5 working order and tags were bad, correct?

6 A Did I put it in an incident report?

7 That was your question?

8 Q Yes.

9 A No, sir, I did not.

10 Q All right. But the information, everything on the car
11 was valid, correct?

12 A Yes, sir.

13 Q And the driver was licensed to drive in the State of
14 South Carolina, correct?

15 A After we spoke with him, yes, sir.

16 Q All right. Okay. So there was no valid reason for you
17 to turn on your blue lights and initiate a stop, correct?

18 A You're absolutely correct. I didn't -- but I didn't
19 initiate my blue lights nor did I initiate the stop. I --
20 it was an encounter in the, in the roadway.

21 Q But there was no valid reason, again, hypothetically,
22 for you turning on your blue lights, correct?

23 A I didn't turn them on.

24 Q All right. Cause there was no criminal activity afoot
25 that you'd been able to see?

Reginald Spurgeon - Cross-examination
by Mr. Schultz

1 A There wasn't any criminal activity afoot that I could
2 see up until I got next to the vehicle.

3 Q All right.

4 A You're absolutely correct.

5 Q And you said in your incident report that there was a
6 strong aroma of marijuana, right?

7 A That's correct, sir.

8 Q Okay. Did you find marijuana on the defendant, on
9 Mr. Sims?

10 A Did I find marijuana on him?

11 Q Yes.

12 A I didn't do the pat down, sir. Officer Smith did.

13 Q Okay.

14 A And I'm pretty sure he did cause he gave it to us.

15 Q Did you do the -- did you do a search of the car?

16 A Mr. -- the older gentleman gave us consent to search
17 the car after Mr. Sims had gotten out of the car.

18 Q Did you do a search of the car?

19 A Yes, sir.

20 Q All right. Did you find burnt marijuana in the car?

21 A No, sir, all, all the marijuana that was located was on
22 the defendant, Mr. Sims, sir.

23 Q How long was Devin Sims in the car?

24 A In my car?

25 Q No.

Reginald Spurgeon - Cross-examination
by Mr. Schultz

1 In that car that you, that you stopped.

2 How long is he in the car when you first---

3 THE COURT: Let him testify -- he hadn't testified to a
4 stop.

5 MR. SCHULTZ: Yes, sir.

6 Could I rephrase the question, Your Honor?

7 THE COURT: Please.

8 Q When you're first encountering Mr. Sims --

9 A Yes, sir.

10 Q -- how long was it before you saw him at the
11 intersection?

12 A Probably about four or five minutes.

13 Q Four or five minutes?

14 A That would be correct.

15 Q So---

16 A I'm estimating. That would be---

17 Q All right. So---

18 A But it wasn't a long period of time.

19 Q It wasn't a long period of time.

20 Okay. Did you find any drug paraphernalia in the car?

21 A Yes, sir, there was a -- I believe it was what we call
22 a crack pipe in the car, sir.

23 Q All right. Was Mr. Sims arrested for that crack pipe?

24 A No, sir, Mr. Sims was initially charged with the
25 marijuana that he had on his person that he consented to a

Reginald Spurgeon - Cross-examination
by Mr. Schultz

1 search on him and actually said here it is.

2 Q All right. How much marijuana was found?

3 A Don't recall, sir. I didn't recover it.

4 Q Okay. Was it an ounce?

5 A I don't recall, sir. I didn't recover the marijuana.

6 Q Was it a lot of marijuana?

7 SOLICITOR HUNTER: Your Honor, asked and answered.

8 THE COURT: He says he didn't have a recollection. He
9 didn't recover it. So I think it has been answered.

10 MR. SCHULTZ: Yes, sir, Your Honor. I'll move on.

11 THE COURT: Thank you.

12 Q Was the driver charged with the crack pipe to your
13 information?

14 A No, sir, he was not.

15 MR. SCHULTZ: All right. Beg the Court's patience,
16 Your Honor.

17 THE COURT: Yes, sir.

18 (Pause.)

19 Q Did you appear in City Court with Mr. Sims or was that
20 officer Smith?

21 A That was both of us, sir.

22 Q Both of us?

23 A Yes, sir.

24 Q Okay. So you were in City Court with---

25 A I was in City Court, yes, sir.

Reginald Spurgeon - Cross-examination
by Mr. Schultz

1 Q All right.

2 A I was in City Court, but I didn't testify in City
3 Court.

4 Q You did not testify?

5 A I was there.'

6 Q What was your recollection of what happened in City
7 Court?

8 A My recollection that what happened in City Court---

9 Q Yes, sir.

10 A ---as far as what, what was concerned?

11 As far as what?

12 Q Did Mr. Sims enter a guilt plea to simple possession of
13 marijuana?

14 Yes or no.

15 A Yes, sir, he did.

16 Q Yes.

17 Okay. To your recollection, was there any reference to
18 the amount of marijuana in that guilty plea?

19 A To my recollection, sir, I don't know cause I was
20 standing on the other side of the courtroom. I wasn't
21 really paying attention to that.

22 Q All right. But it was, to your recollection, he was
23 charged with simple possession of marijuana, correct?

24 A That would be correct.

25 Q All right.

Reginald Spurgeon - Cross-examination
by Mr. Schultz

1 A Yes, sir.

2 Q Also, to your recollection, was the marijuana found in
3 his pants?

4 A That would be correct, sir.

5 Q All right. Did you conduct that search?

6 A I didn't conduct any search.

7 Q All right. Now, you said the smell was really potent.
8 Is that correct?

9 A That would be correct, sir.

10 Q All right. In fact, in your incident report you said
11 there was a strong aroma of marijuana coming from the
12 vehicle, correct?

13 A Yes, sir.

14 MR. SCHULTZ: Beg the Court's patience, Your Honor.

15 THE COURT: Yes, sir.

16 (Pause.)

17 Q And, again, your testimony here today is you presented
18 no evidence in City Court against my client, correct?

19 A I don't recall that I did, sir.

20 MR. SCHULTZ: That's all I have at this time, Your
21 Honor.

22 THE COURT: Redirect.

23 SOLICITOR HUNTER: Not of this witness, Your Honor.

24 THE COURT: You may step down, sir.

25 THE WITNESS: Thank you, Your Honor.

Laurent Smith - Direct examination
by Solicitor Hunter

1 SOLICITOR HUNTER: State would call Officer Smith.

2 THE COURT: Come forward and be sworn, sir.

3 LAURENT SMITH, being first duly
4 sworn, testified as follows:

5 THE COURT: Once you're seated, sir, state your name.

6 THE WITNESS: Laurent Smith.

7 THE COURT: Thank you.

8 Your witness.

9 DIRECT EXAMINATION

10 BY SOLICITOR HUNTER:

11 Q Officer Smith, can you briefly go over your law
12 enforcement background?

13 A Yes, sir, I have approximately ten years law
14 enforcement experience, I have two years Department of
15 Corrections, six years with the city, and working on really
16 about six and a half with the city. I've been with the
17 county now for going on a year now.

18 Q Okay. What were your duties at the City Police
19 Department?

20 A Mainly routine patrol, and during the time of this
21 incident, it was the housing unit.

22 Q Did you say uniform patrol?

23 A Yes, sir.

24 Q Okay. You were there on December 9th, 2014, over
25 there on Highland Avenue and Bethlehem?

Laurent Smith - Direct examination
by Solicitor Hunter

1 A Yes, sir, I was.

2 Q Okay. Can you just kind of go over what happened that
3 day?

4 A Yes, sir.

5 Q What you observed.

6 A Yes, sir, I was employed with the City of Spartanburg
7 at the time. Myself and Officer Spurgeon, we were
8 patrolling the area of Prince Hall, the Highland area. I
9 believe we were headed to Norris Ridge going from complex to
10 complex speaking with the managers.

11 We were traveling on Norris Street and observed a
12 pickup truck occupied by an older black male sitting in the
13 front yard of like the way he explained, one of the
14 duplexes. Also observed Mr. Devin Sims enter the vehicle
15 and then they begin to travel on Bethlehem.

16 We turned around on the vehicle. I had dispatched to
17 run a South Carolina tag [REDACTED], which
18 came back to a 2000 Chevy S10 pickup to the registered owner
19 of Melvin Mitchell that was located a [REDACTED] [REDACTED] [REDACTED],
20 Spartanburg, South Carolina.

21 Q Did you know Mr. Sims previous to this?

22 A I had a few encounters with him, but didn't per se know
23 him personally.

24 Q Okay. And after you run the tag, are you in the
25 passenger seat?

Laurent Smith - Direct examination
by Solicitor Hunter

1 A Yes, sir, I am.

2 Q Okay. And where does, where does the -- where are the
3 cars positioned?

4 A As I'm running, as I'm running the tag?

5 Q No, no, when you come to the stop sign.

6 A As Officer Spurgeon explained, he pulled to the
7 driver's side of the vehicle. So me being the passenger, I
8 would of been right next to the driver --

9 Q Okay.

10 A -- at the stop sign.

11 Q What was your window like at that point?

12 A My window was partially -- it was partially down. It
13 was -- I want to say half way down, something to that
14 nature.

15 Q What about the window of the truck driven by Mr.
16 Mitchell?

17 A His window was partially down as well. I was actually
18 speaking with Officer Spurgeon at the time and observed the,
19 the operator of the vehicle roll, roll the window all the
20 way down, completely down.

21 Q Okay. Were you -- at, at -- just to make this clear,
22 and I was trying to be clear with Mr. Spurgeon, there was no
23 traffic violation?

24 You didn't have probable cause for a traffic violation
25 at this point?

Laurent Smith - Direct examination
by Solicitor Hunter

1 A No, sir.

2 Q Would you agree with that?

3 A There was no infraction at the time.

4 Q So you were, at this point, you were just pulling up
5 beside the vehicle?

6 A Yes, sir.

7 Q Were your cars that you were in lights, blue lights
8 flashing?

9 A No, sir, I was---

10 Q Sirens going?

11 A No, sir.

12 Q Any other indication to Mr. Mitchell that he was being
13 pulled over for a traffic violation or any other type of
14 violation?

15 A Not at all, sir.

16 Q Okay. What did you observe when you pulled up beside
17 the vehicle?

18 A As we pulled up beside the vehicle, the driver almost
19 had like a blank stare and looking straight ahead. As he
20 noticed the marked patrol vehicle come, come up to the
21 driver's side, he kind of looked over and acknowledged, like
22 I said, still in a fearful manner or a scared manner, just
23 that blank stare, and he we -- we began to converse with
24 him. We began to talk to him.

25 Q What did you smell?

Laurent Smith - Direct examination
by Solicitor Hunter

1 A I could smell a strong odor of marijuana coming from
2 the vehicle.

3 Q Okay. So at this point you're still in your vehicle
4 and you could smell it coming from the truck?

5 A Yes, sir.

6 Q Okay. Well, what do y'all do at that point?

7 A Simply ask him what is the strong odor, why is there a
8 strong odor of marijuana coming from the vehicle.

9 Q Did Mr. Mitchell answer that?

10 A He -- I don't recall him ever answering that. I recall
11 Mr. Devin Sims, who's present in the courtroom, kind of
12 leaning forward and explaining to us that he smoked
13 marijuana earlier in the day.

14 Q All right. So, according to your testimony, Mr. Sims
15 admits to having smoked marijuana earlier that day?

16 A Yes, sir.

17 Q When y'all asked why the car smelled or the truck
18 smelled like marijuana?

19 A Yes, sir.

20 Q Okay. How, how are you familiar with the smell of
21 marijuana?

22 A Through my law enforcement experience. I've made
23 approximately 300 arrests in reference to marijuana or other
24 narcotics.

25 Q Okay. Have you been able to smell both raw marijuana

Laurent Smith - Direct examination
by Solicitor Hunter

1 as well as smoked marijuana?

2 A I have been able to.

3 Q Okay. And how do you know, how do you know that that
4 is the smell of marijuana?

5 A It's, it's just got a distinct smell unlike any other
6 that I can really explain.

7 Q Okay. All right. And so y'all have asked why the --
8 at this point, are you getting out of your vehicle?

9 A Well, we converse with them for a short -- we continue
10 to converse with them and Mr. Mitchell, I'm sorry, Mr. Sims
11 was advising us that the driver was gonna take him to pick
12 his daughter up from school.

13 Q All right. So y'all are still in the car at this
14 point?

15 A Yes, sir.

16 Q Both, both -- they're still in their truck?
17 Y'all are still in your vehicles?

18 A Yes, sir.

19 Q Still no blue lights?

20 A Yes, sir.

21 Q Okay. And he's admitted, at this point, that he had
22 smoked marijuana earlier in the day?

23 A Yes, sir.

24 Q Okay. What do y'all do at that point?

25 A With, with the, the smell of marijuana coming from the

Laurent Smith - Direct examination
by Solicitor Hunter

1 vehicle, I recall Mr. Sims stating to us several times, he
2 was, he was saying that, you know, I smoked earlier, you can
3 search, you can search almost in a demanding, in a demanding
4 way.

5 Q Did you ever ask him if -- to search?

6 A No, sir.

7 Q Did you, did -- one time did you ever ask Mr. Sims to
8 search?

9 A No, sir.

10 Q All right. In fact, who was the one bringing it up?

11 A He was.

12 Q Okay. So what did y'all do at that point?

13 A At that point I advised dispatch that we would be out
14 with the vehicle at the intersection just getting the
15 location and the tag number that we had ran. I advised him
16 that we'd be out with the vehicle and I exited my patrol
17 vehicle and immediately went over to the passenger side of
18 the vehicle where Mr. Sims was exiting the passenger side of
19 the truck and---

20 Q Did he say anything to you at that point?

21 A No, he didn't say anything to me. He continued to say,
22 I'm sorry, he continued to say you can search and he just
23 kind of begin to -- I guess when he acknowledged how quickly
24 I got to the passenger side of the vehicle, it appeared to
25 kind of startle him a little bit and he kind of just put his

Laurent Smith - Direct examination
by Solicitor Hunter

1 hands up on the roof of the truck and he was uncertain as to
2 where he wanted to put his hands and what he wanted to do.

3 Q All right. So what did you do at that point?

4 A At that point, due to the high crime rate in the area,
5 drug activity, guns, violent crimes that have occurred in
6 that area---

7 Q Along with his statement?

8 A Yes, sir, along with his statement, I conducted a frisk
9 of his person.

10 Q Okay. Briefly describe what you, you say is a frisk?

11 A It -- generally patting down for weapons, making sure
12 there's nothing that can, you know, really just harm me in
13 that manner.

14 Q Okay.

15 A Through my, through my law enforcement experience, I
16 have seized guns from underneath people's testicle and just
17 I mean several different places.

18 Q All right. Where in the -- how would you describe a
19 Terry frisk as composed (sic) to a search in your mind?

20 A You -- you're just checking the waistband area, the
21 back. You want to pretty -- just go over the pockets and,
22 like I, like I explained, due to me seizing guns, prior to
23 this incident, from underneath the genital area, then I
24 would, you know, go to that area as well and make a search.

25 Q Okay. But are you going in the pants?

Laurent Smith - Direct examination
by Solicitor Hunter

1 A No, sir.

2 Q Okay. This is all in the outer clothing?

3 A Yes, sir.

4 Q Okay. And did you do that to Mr. Sims?

5 A Yes, sir, I did.

6 Q And what did you feel?

7 A At that time I felt what appeared to be a foreign
8 object. Due to my law enforcement experience, it, it was
9 packaged -- it was packaged in his -- underneath his
10 testicles in the, in the genital and groin area, and it, it
11 didn't appear to be normal or natural.

12 Q What did Mr. Sims do at that point?

13 A He began a scuffle and attempt to flee at that point.

14 Q Okay. At that point did you -- was he placed under
15 arrest?

16 A After a brief scuffle ensued.

17 Q Or detained?

18 A Yes, sir, I advised, due to him wanting to scuffle,
19 Officer Spurgeon came to assist me and he was detained after
20 that point.

21 Q Okay. Ultimately what did you recover from Mr. Sims?

22 A Ultimately I recovered 2 grams of a green leafy
23 substance also known as marijuana based on my police
24 experience as well as 44.5 grams of an off white powder like
25 substance. Based on my police experience, it appeared to be

Laurent Smith - Direct examination
by Solicitor Hunter

1 cocaine and it was -- the cocaine was packaged, I believe,
2 in several different baggies.

3 Q But they were in the same general area?

4 A All in the same general area.

5 Q All right. So Mr. Sims admitted that he had smoked
6 marijuana prior to your encounter?

7 A Yes, sir.

8 Q And you also recovered two grams of marijuana---

9 A Yes, sir.

10 Q -- on his person to which he is been convicted---

11 A Yes, sir.

12 Q ---since then?

13 A The, the potency in -- with the marijuana that was
14 recovered off of his person was -- it was extremely potent.

15 Q Okay. Obviously Spurgeon testified that he could smell
16 marijuana.

17 What, what was your experience with smelling marijuana
18 on the scene?

19 A My experience it -- like I said, it's -- there are --.

20 Q I'm saying just specifically on this scene.

21 A Yes, sir.

22 Q When and where did you smell marijuana?

23 A I initially smelled it coming from the vehicle as soon
24 as we pulled up beside it and began to converse with the
25 driver, and then, after I exited my patrol vehicle and

Laurent Smith - Direct examination
by Solicitor Hunter

1 approached Mr. Sims, I smelled it coming from his person.

2 Q Okay. Please answer any questions Mr. Schultz may
3 have.

4 A Yes, sir.

5 THE COURT: Mr. Schultz, your witness.

6 MR. SCHULTZ: Thank you, Your Honor.

7 Please the Court.

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. SCHULTZ:

11 Q How long have you been with the city again?

12 A I was with the city for approximately six and a half,
13 seven years.

14 Q Now you're with the Sheriff's Office, correct?

15 A Yes, sir.

16 Q All right. And 12 -- on December the 9th, 2014, you
17 had an occasion to talk to Mr. Sims?

18 A We had an encounter, yes, sir.

19 Q All right. Now, you were with Officer Spurgeon on that
20 day, correct?

21 A Yes, sir.

22 Q Okay. Now, you and Officer Spurgeon encountered
23 Mr. Sims at the duplex on Norris Street?

24 A We observed him.

25 Q You, you observed him?

Laurent Smith - Cross-examination
by Mr. Schultz

1 A Yes, sir.

2 Q You didn't have an encounter with him, but you observed
3 him, correct?

4 A Correct.

5 Q Okay. And he got into a car driven by a gentleman
6 named Melvin, correct?

7 A Yes, sir.

8 Q Okay. And about how long was he in the car between
9 when he -- well, when he got in the car and when he was
10 stopped or Melvin was stopped at the stop sign?

11 A The gentleman was driving extremely slow. I want to
12 say somewhere between three -- two to three minutes, three
13 to four minutes, somewhere in that area.

14 Q Okay.

15 A Approximately.

16 Q Now, your window was partially down too, right?

17 A Yes, sir.

18 Q Okay. As was Officer Spurgeon's, correct?

19 A Yes, sir.

20 Q Okay. Was it cold that day?

21 A It was, it was a little chilly. I wouldn't consider it
22 to be extremely cold, but it was a little chilly.

23 Q Like the weather today or colder?

24 A I can't recall just exactly what the temperature was.

25 Q All right. Now, you did a search on Mr. Sims, correct?

Laurent Smith - Cross-examination
by Mr. Schultz

- 1 A A frisk of his person, yes, sir.
- 2 Q A frisk of his person?
- 3 A Yes, sir.
- 4 Q Okay. And this is according to your incident report
- 5 here, and you do incident reports in almost all of your
- 6 cases correct?
- 7 A For the most part, yes, sir.
- 8 Q And you, and you want to be concise as possible?
- 9 A Yes, sir.
- 10 Q You want to be as detailed as possible?
- 11 A Yes, sir.
- 12 Q You want to be as thorough as possible, correct?
- 13 A I want to be as accurate to the incident that occurred.
- 14 Q Because you may be called to testify later on like you
- 15 are today, correct?
- 16 A Yes, sir.
- 17 Q Now, you utilized latex gloves and -- to search
- 18 Mr. Sims, right?
- 19 A Yes, sir.
- 20 Q All right. Did you find anything, any illegal
- 21 narcotics on the outside of Mr. Sims person?
- 22 A No, sir.
- 23 Q Okay. Did you conduct a search of the truck?
- 24 A Yes, sir, we eventually did after we recovered the
- 25 narcotics off of Mr. Sims person.

Laurent Smith - Cross-examination
by Mr. Schultz

- 1 Q All right. Did you find any burnt marijuana in the
2 truck?
- 3 A Not that I recall.
- 4 Q Did you find any marijuana in the truck---
- 5 A Not that I recall.
- 6 Q ---in unburnt form?
- 7 A Sir?
- 8 Q In unburnt form I guess.
- 9 A Just marijuana laying around inside of the truck?
- 10 Q Yes.
- 11 A No, sir.
- 12 Q No.
- 13 Okay. Did Melvin have any marijuana on him?
- 14 A Yes, sir, he did.
- 15 Q Melvin did?
- 16 A I'm sorry. I'm sorry. I thought -- no, sir, he
17 didn't. I apologize.
- 18 Q Okay. So Melvin did not have any marijuana.
- 19 Okay. But your testimony here today is you were
20 closest to Melvin when Melvin rolled down his window,
21 correct?
- 22 A Yes, sir, due to him being the driver of the vehicle.
- 23 Q Okay. About how many yards away were you when you
24 first encountered this truck?
- 25 A How many yards away from the truck---

Laurent Smith - Cross-examination
by Mr. Schultz

1 Q Yes.

2 A ---you're saying?

3 Q At the stop sign. I'm sorry.

4 A Probably a yard or two.

5 Q A yard?

6 A Yeah, I'd say three feet or six feet. It's somewhere
7 in-between that area.

8 Q Okay. And your testimony here today is that you
9 immediately smelled the strong aroma of marijuana?

10 A Well, when we begin to converse with him, marijuana --
11 the strong -- a strong odor of marijuana began to enter the
12 patrol vehicle and myself and Officer Spurgeon acknowledged
13 it and we got out.

14 Q Okay. Now, you conducted, again, you conducted a
15 search of Mr. Sims, correct?

16 A Yes, sir.

17 Q All right. And there was no marijuana found on the
18 outside of his jacket or outside of his pants or anything,
19 right?

20 Was any marijuana -- answer that. I'm sorry.

21 A No.

22 Q There was no marijuana found on the outside of his
23 person?

24 A No marijuana exposed---

25 Q Okay.

Laurent Smith - Cross-examination
by Mr. Schultz

1 A ---to the naked eye.

2 Q All right.

3 A On the outside of his person, no, sir.

4 Q Was there any marijuana found in his pockets?

5 A Not that I recall, no, sir.

6 Q Was there any marijuana found in his pants pockets?

7 A No, sir.

8 Q Was there any marijuana found in his socks or his
9 shoes?

10 A No, sir.

11 Q Okay. At this point you noticed a bulge in Mr. Sims
12 pants, correct?

13 A Yes, sir.

14 Q All right. And, at that point, you applied your latex
15 gloves, right?

16 A Well, when I, when I noticed the -- when I felt the
17 bulge that appeared to be a foreign object, and, like I
18 said, due to my police experience, it was consistent with
19 the packaging of narcotics. Mr. Sims, I believe it was
20 apparent that I felt the foreign object, the narcotics on
21 his person and he began to scuffle. Like I said, I'm sorry,
22 Officer Spurgeon assisted while he was scuffling and we --
23 the scuffling ensued and, you know, we detained him.
24 Eventually he said he was done and then I applied the latex
25 gloves while the officer was still -- while Officer Spurgeon

Laurent Smith - Cross-examination
by Mr. Schultz

1 still was holding Mr. Sims, I applied the latex gloves and I
2 recovered the foreign objects, the narcotics off of his
3 person.

4 Q How, how was Spurgeon holding him?

5 A Pretty tight grip. I mean, like I said, he, he tried
6 to fight, scuffle, and flee from the area. That's, you
7 know, what we thought he was doing. So --.

8 Q Did you note in your incident report that he attempted
9 to flee?

10 THE COURT: I'm beginning to wonder what this has to do
11 with whether there was a stop or not or the -- Mr. Schultz?

12 MR. SCHULTZ: Yes, sir.

13 THE COURT: What's the relevance --

14 MR. SCHULTZ: The relevance is the---

15 THE COURT: -- to the questions before me?

16 MR. SCHULTZ: The, the accuracy -- the relevance is the
17 accuracy of the officer's testimony here.

18 THE COURT: Go ahead.

19 MR. SCHULTZ: Thank you, Your Honor.

20 A To answer your question, I just notated that he
21 attempted to -- well, he -- a brief scuffle ensued. That's
22 what I notated.

23 Q All right. Again, the last time, you didn't note that
24 he fled, right, or tried to flee?

25 A I mean that's what people do in that situation there.

Laurent Smith - Cross-examination
by Mr. Schultz

1 They're not gonna scuffle and stick around.

2 Q Explain how you found the marijuana in the front flap
3 of Mr. Sims long johns. Explain that. How, how -- excuse
4 me. Let me rephrase the question.

5 SOLICITOR HUNTER: Your Honor, objection. This is
6 getting way past whether this was a stop or not.

7 MR. SCHULTZ: Your Honor, what, what I'm getting at
8 here is that the marijuana found in his pants could not have
9 smelled that much. I'm trying to get to the essence of this
10 whole thing.

11 THE COURT: Well, he testified that the gentleman said
12 he had been smoking marijuana earlier in the day, and I
13 gathered from the testimony perhaps he smelled of marijuana
14 from his person, not from necessarily the marijuana that was
15 in his pants.

16 MR. SCHULTZ: I understand, Your Honor, but, but, at
17 the same time, if I could just ask two more questions about
18 this.

19 THE COURT: Well, let's get on with it. I mean this
20 is, this is -- we're trying the whole case here it sounds
21 like.

22 MR. SCHULTZ: Yes, sir.

23 THE COURT: We're suppose to be handling the pretrial
24 motions on specific issues.

25 Go ahead. We got a jury waiting.

Laurent Smith - Cross-examination
by Mr. Schultz

1 MR. SCHULTZ: Yes, sir.

2 How many layers of clothing was the marijuana -- was
3 the two grams of marijuana found under?

4 A He had on some exterior clothing and then there was
5 long johns underneath. It didn't appear to be, based on my
6 police experience, I know every person is different, but I
7 recall that day it wasn't cold enough that I would be
8 wearing long johns, and through my police experience, I've
9 located people -- narcotics being placed in long johns or
10 that being a holding compartment due to them being tight,
11 kind of like leggings, or something like that, but them
12 being able to hold narcotics.

13 MR. SCHULTZ: All right. Beg the Court's patience,
14 Your Honor.

15 THE COURT: Yes, sir.

16 (Pause.)

17 MR. SCHULTZ: That's all I have for this witness, Your
18 Honor.

19 THE COURT: Redirect.

20 SOLICITOR HUNTER: No redirect, Your Honor.

21 THE COURT: All right. You may step down, sir.

22 State wish to call any other witnesses?

23 SOLICITOR HUNTER: The State's not gonna present any
24 other witnesses.

25 THE COURT: All right. Defense wish to call any

1 witnesses on this subject?

2 MR. SCHULTZ: Your Honor, may we approach briefly?

3 THE COURT: Yes, sir.

4 (WHEREUPON, a bench conference was held at this time.)

5 THE COURT: We'll take a brief recess while you call
6 him.

7 MR. SCHULTZ: Thank you, Your Honor.

8 (Whereupon, a short recess was taken at this time.)

9 THE COURT: All right. You suspect he's gonna take
10 about as long as the last witnesses did?

11 MR. SCHULTZ: He may.

12 THE COURT: All right. I'm releasing the jury then
13 until after lunch.

14 How long do you think the pretrial is going to go on?

15 Give me an estimate so I'll know what to do with the
16 jury.

17 MR. SCHULTZ: Well, Mr. Mitchell is gonna be my only
18 witness on pretrial.

19 THE COURT: You're not calling, you're not calling your
20 client?

21 MR. SCHULTZ: No, sir.

22 THE COURT: Okay.

23 MR. SCHULTZ: So I would estimate about a half hour.

24 THE COURT: You anticipate any other witnesses?

25 SOLICITOR HUNTER: Not from the State, Your Honor.

1 I'll be very brief.

2 THE COURT: All right. I'll just have them come back
3 at two o'clock. That will give us time to do lunch.

4 So we're gonna -- let me get the jury in and release
5 them. If y'all have a seat. I need to get the defendant
6 in. Get him in. I can't deal with the jury without him
7 being present.

8 (WHEREUPON, the defendant returns to the courtroom at
9 this time.)

10 THE COURT: All right. Let's bring the jury in please.

11 (WHEREUPON, the following takes place within the
12 presence of the jury.)

13 THE COURT: All right. The record will reflect the
14 jury has returned to the courtroom.

15 Ladies and gentlemen of the jury, I've been going
16 through some pretrial matters with the attorneys, and, quite
17 frankly, this is taking a little longer than I anticipated.
18 And rather than have you sit back there any longer without
19 anything to be doing, I'm going to release you to go to
20 lunch at this time and bring you back and hopefully, when
21 you come back, we'll be in a position to actually start the
22 trial of the case.

23 So as you leave to go to lunch, there's some things I
24 want to go over with you. My instructions to you will be
25 that you should not try to gather any information about this

1 case on your own from any source because, later on when you
2 come back in the courtroom, you're going to take an oath to
3 decide this case based upon the law and the evidence and
4 that's all you're suppose to decide this case on.

5 The only place you're going to hear the law of this
6 case and the evidence in this case is in this courtroom
7 during the trial from witnesses testifying from the witness
8 stand, and I'll give you the law at the close of the trial.

9 So you have -- if you were to go out and try to gather
10 information about this case from any source outside of this
11 courtroom, that would be a violation of your oath. So I'm
12 going to, again, instruct you, don't try to gather any
13 information yourselves. You've been selected as fair and
14 impartial jurors. You've got an open mind about this case.
15 I hope you realize that, if you go to lunch, and you see a
16 family member or a friend, and you start talking to them
17 about either the people involved in this case or what the
18 case is about, they may say something to you that might
19 color your ultimate decision in this case, and you haven't
20 heard the first word of the testimony and haven't seen the
21 first piece of evidence yet.

22 So I'm going to urge you and instruct you not to
23 discuss the case with anyone, even among yourselves, until I
24 instruct you to begin your discussions in the jury room, and
25 I'll only do that after you've heard all the evidence, all

1 the arguments and the law. Only then will you have the
2 information you need to begin a discussion about this case.

3 So it's okay to tell family and friends that you've
4 been selected to serve in a case, that you're going to be
5 serving. That's the end of the discussion right there. You
6 need to then talk about sports, weather, Christmas coming,
7 whatever you want to talk about, but don't talk about this
8 case or the issues involved in this case.

9 Now, I've already told you earlier that if someone
10 tries to influence your decision in a case, that that's a
11 violation of the law. So if someone does contact you about
12 your service on the jury or tries to discuss something that
13 has to do with this case with you, report that upon your
14 return. I'll see that proper investigations are begun
15 should someone attempt to do that.

16 So, in a nutshell, my instructions are don't try to
17 gather any information on your own. Don't discuss the case
18 with anyone. Don't allow anyone to discuss it with you.
19 Don't listen to, watch, or read any media reports that there
20 might be in existence about this case. I don't anticipate
21 this case being in the news, but I don't control the news.
22 So if you see something like that or hear something like
23 that, don't listen to it. Don't read it. Don't watch it.
24 Ignore it. And if anybody tries to contact you during your
25 absence from the courthouse, please report that to us as

1 soon as you can.

2 I'm gonna ask you to be back in the jury room at two
3 o'clock this afternoon. We should be in a position then to
4 start the case and should have completed our pretrial
5 matters. So, at this point in time, you're free to go to
6 lunch. I'll be asking you about whether you've been able to
7 follow my instructions when you come back. So please follow
8 my instructions.

9 Thank you very much.

10 (WHEREUPON, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right. Defense wish to call witnesses?

13 MR. SCHULTZ: It does, Your Honor.

14 May it please the Court.

15 THE COURT: Yes, sir.

16 MR. SCHULTZ: Defense calls Melvin Mitchell to the
17 stand.

18 THE COURT: Mr. Mitchell, if you'll come over here to
19 my left and be sworn in to tell the truth, sir.

20 MELVIN MITCHELL, being first duly
21 sworn, testified as follows:

22 THE COURT: Have a seat, sir. Once seated, I want you
23 to state your name for me.

24 THE WITNESS: Melvin Mitchell.

25 THE COURT: Thank you, sir.

Melvin Mitchell - Direct examination
by Mr. Schultz

1 Your witness, Mr. Schultz.

2 MR. SCHULTZ: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 DIRECT EXAMINATION

5 BY MR. SCHULTZ:

6 Q Mr. Mitchell, where do you live?

7 A [REDACTED] [REDACTED] [REDACTED].

8 Q And that's here in South Carolina?

9 A Yes.

10 Q All right. Do you know my client, Devin Sims?

11 A Yes.

12 Q All right. And did you have occasion to encounter him
13 on December 9th, 2014?

14 A Yes.

15 Q All right. Were you giving him a ride that day?

16 A He called me and asked me to give him a ride to pick
17 his daughter up from the day care.

18 Q And where was the day care to your information?

19 A I don't know.

20 Q Okay. Tell the Court what happened when you picked
21 Mr. Sims up.

22 A Well, around when I pulled up, when I pulled up, the
23 cops, the city cops, was turning in at that same time I was
24 pulling into his house. When I pulled up to his house he
25 got in the car and I backed out. They turned around and

Melvin Mitchell - Direct examination
by Mr. Schultz

1 followed us.

2 Q All right. And then what happened?

3 A Then when we got to the corner of Highland Avenue they
4 pulled up beside the car -- my truck I mean, and I think I
5 had my windows down. I'm not sure. But they pulled and
6 said that they thought that they smelled marijuana coming
7 from the truck. So they got out and told Devin to get out,
8 and they told me to get out, and they search him and they
9 handcuff me and they searched my truck.

10 Q And what did they find in the truck?

11 A They didn't find nothing in the truck.

12 Q Was there any burnt marijuana in your truck?

13 A No, no marijuana was in my truck, no.

14 Q All right. Do you smoke marijuana?

15 A I have, yes. Yeah, I would say that, yeah.

16 Q Did you that day?

17 A No, no, hu huh. (Negative).

18 Q All right. And were you placed under arrest as a
19 result of this incident?

20 A No, they didn't arrest me. They wanted me to come down
21 to the station and give a statement.

22 Q Did you give a statement?

23 A Yes.

24 Q All right. And do you remember giving that statement
25 to the police?

Melvin Mitchell - Direct examination
by Mr. Schultz

1 A Yes.

2 Q Do you remember what you said in that statement?

3 A This is what happened. They told me that if I, if I
4 had ever had any dealings with him occasionally with drugs,
5 and I told -- well, I told them that -- they told me if I
6 give a statement that I could go home. So I gave them a
7 statement. It wasn't the right statement, but I, you know,
8 I was -- just wanted to go.

9 Q What do you mean it wasn't the right statement, sir?

10 A When they asked me whether he -- I had over caught, got
11 anything from him, you know, I told them yes because I
12 thought that would, would of been a way for me to, you know,
13 be out of the situation that I was in, but I have never
14 gotten anything from them. He didn't never sold me
15 anything. So, you know, I didn't know, at the, at the time,
16 that I would be putting him in this type of predicament, but
17 that's -- I guess I was trying to flee myself, you know. So
18 that's what really did happen.

19 Q So the statement that you -- your testimony here today
20 is your, your, your statement that you gave to the city
21 police is false?

22 A It's not true, right.

23 Q All right.

24 A It wasn't true.

25 Q All right. So your testimony here today is that Devin

Melvin Mitchell - Direct examination
by Mr. Schultz

1 Sims never sold you anything?

2 A No, he usually---

3 Q Narcotics.

4 A No.

5 Q Okay. In exchange for rides?

6 A No.

7 Q Okay.

8 A No, he usually pay me cash money.

9 Q He paid you in cash money---

10 A Yes.

11 Q ---for rides?

12 A Yes.

13 Q Okay. And I, I did it really because I, I was -- use
14 to do yard work and stuff for him too, and, you know, he
15 would pay me for cutting their grass and cleaning up around
16 his house. So, you know, I just figured I, you know, I take
17 him to go pick his daughter up if that's what he needed.

18 Q All right. And that's what you were doing that day,
19 correct?

20 A That's what I was doing that day, yes, sir.

21 MR. SCHULTZ: All right. I have nothing further for
22 this witness.

23 THE COURT: Mr. Hunter.

24 CROSS-EXAMINATION

25 BY SOLICITOR HUNTER:

Melvin Mitchell - Cross-examination
by Solicitor Hunter

1 Q Does Mr. Sims live at that residence that you picked
2 him up at?

3 A I think so.

4 (WHEREUPON, a statement was marked as State's Exhibit
5 No. 3 for identification purposes only at this time.)

6 SOLICITOR HUNTER: May I approach the witness?

7 THE COURT: You may.

8 SOLICITOR HUNTER: Thank you.

9 THE COURT: Yes, sir.

10 Q I want to give you a copy of what's marked State's
11 Exhibit 3 and let you look at it.

12 A (Witness complies.)

13 Okay.

14 Q Do you recognize that statement?

15 A No. No, I mean---

16 Q Well, excuse me.

17 Is that the statement that you say is false?

18 A Yeah.

19 Q Okay. Just to be sure, that statement is in the
20 handwriting of Mr. Spurgeon. You didn't write that
21 statement.

22 Is that correct?

23 A No.

24 Q The officer wrote, wrote the actual statement out?

25 A Yes.

Melvin Mitchell - Cross-examination
by Solicitor Hunter

1 Q But your name is Melvin Mitchell?

2 A Right.

3 Q And the address up top, that is your address---

4 A Yes.

5 Q ---at the time of---

6 A Yes.

7 Q Those phone numbers are your phone numbers?

8 That [REDACTED]?

9 A Yes.

10 Q And, in fact, in fact, that's the number that I called
11 you at on not five minutes ago to get you into the
12 courtroom?

13 A Yeah.

14 Q Okay. That's your Social Security number?

15 A Yeah.

16 Q That's your date of birth?

17 A Yes.

18 Q All right. Down at the bottom where it says signed, is
19 that your signature?

20 A Yes.

21 Q Okay. And did you complete the 12th grade and can read
22 and write as is initialed by you on that date?

23 A Yes.

24 Q Okay. I want you to just look at three lines for me or
25 one line. It's the third line from the bottom starting with

Melvin Mitchell - Cross-examination
by Solicitor Hunter

1 man.

2 Do you see that?

3 A Yes.

4 Q Man, you have been smoking weed pretty hard today,
5 haven't you.

6 You see that line?

7 A Yes.

8 Q Not thinking about you, you saying that you didn't give
9 him a ride for crack, but is that, is that a correct
10 statement?

11 A That I been smoking weed?

12 Q No, no. That Mr. Sims, man, you have been smoking weed
13 pretty hard today.

14 Is that a correct statement?

15 A I don't remember that. I don't remember telling him,
16 telling him that.

17 Q You don't remember him -- telling, telling him that?

18 A I told him that?

19 Q Yes.

20 A No, I don't remember telling him that.

21 Q All right. And you don't remember telling the officers
22 that you gave him rides for crack?

23 A That's when they, they asked me about a statement and I
24 told them he usually pay me.

25 Q Pay you for what, the rides?

Melvin Mitchell - Cross-examination
by Solicitor Hunter

- 1 A For the rides, yeah.
- 2 Q You also said for leaves at his apartment?
- 3 A For weed?
- 4 Q For weed?
- 5 A No.
- 6 Q I said he also pays you for getting up leaves at his
7 apartment or his duplex?
- 8 A Oh, yeah, cutting the grass. I, I use to cut his yard.
- 9 Q How big is that yard?
- 10 A I'd say it's maybe about a fourth of an acre.
- 11 Q It's a fourth of an acre?
- 12 A Yeah.
- 13 Q At that duplex that you picked him up at?
- 14 A Oh, no, not there.
- 15 Q Okay. Officers also found something behind your
16 driver's seat, didn't they, when they searched your car?
- 17 A Yes.
- 18 Q And what did they find?
- 19 A A smoke pipe.
- 20 Q Okay. And you admitted it was yours?
- 21 A Yes.
- 22 Q All right. And you smoke crack?
- 23 A Yes.
- 24 Q Okay. But he didn't, he didn't offer you crack for
25 this ride?

Melvin Mitchell - Cross-examination
by Solicitor Hunter

1 A No.

2 Q That's your testimony today?

3 A No, I -- no, he show didn't.

4 Q But on this date, 12/9, you told police that he did?

5 I'm saying on this day. Not what your testimony is
6 here today.

7 But on this day you told police that you gave him rides
8 for crack?

9 A Yeah, because I---

10 Q Well, I'm just asking, on this date, did you tell him
11 that?

12 A Yes.

13 Q Okay. And, on this date, did you tell him that he
14 smelled like weed?

15 A That he, that he smelled like weed?

16 Q Yes. Man---

17 A No.

18 Q When Devin Sims got in my truck, I told him man, you
19 have been smoking weed pretty bad today, haven't you?

20 A I don't remember saying -- I don't remember telling --
21 saying that, but if I smelled it, you know, I don't, you
22 know, it was just in the yard and that's what I thought I
23 smelled when I pulled up in the yard.

24 Q So you thought you smelled weed when you pulled up in
25 the yard?

Melvin Mitchell - Cross-examination
by Solicitor Hunter

1 A Yeah.

2 Q Okay.

3 A I mean cause it's -- I did have my window down and it
4 did smelt like that.

5 Q And the officers never blue lighted you?

6 A Say what?

7 Q The officers never turned their blue lights on you, did
8 they?

9 A No.

10 Q And did the officers ever use their siren on you?

11 A No.

12 Q In fact, they just pulled up beside you?

13 A Yes, sir.

14 Q And started conversing with you through the, the---

15 A Right.

16 Q ---both of y'all's windows?

17 A Right.

18 Q Okay. Did you ever hear Mr. Sims say that he had
19 smoked weed earlier that day?

20 A No.

21 Q You never heard him tell police that?

22 A Oh, yeah, I -- did he tell the police that?

23 Q Yes.

24 A I don't know. I don't -- really don't know.

25 Q Okay.

Melvin Mitchell - Cross-examination
by Solicitor Hunter

1 A If he, if he did I didn't, I didn't hear it.

2 Q Okay. But your testimony today is that this is a false
3 statement?

4 A Yes, sir.

5 Q Completely and utterly false even though you signed
6 your name to it?

7 A Yes.

8 SOLICITOR HUNTER: Okay. No further questions.

9 THE COURT: You may redirect.

10 MR. SCHULTZ: I have nothing further for this witness.

11 THE COURT: All right. You may step down, sir. If
12 you'll give that paper to the court reporter there.

13 (Witness complies.)

14 THE COURT: Thank you, sir.

15 Sir, you're still under subpoena for this case. You
16 don't need to leave.

17 THE WITNESS: Okay.

18 THE COURT: You can stay here at the courthouse.

19 THE WITNESS: Okay.

20 THE COURT: Thank you, sir.

21 Defense may call its next witness.

22 MR. SCHULTZ: Your Honor, I do not have anymore
23 witnesses.

24 THE COURT: All right. You may argue your case.

25 MR. SCHULTZ: For pretrial.

1 THE COURT: You may argue your motion.

2 MR. SCHULTZ: Thank you, Your Honor.

3 May it please the Court.

4 THE COURT: Yes, sir.

5 MR. SCHULTZ: Your Honor, I would make this motion to
6 dismiss this case based upon a couple of things here.

7 Number one, the overwhelming smell of marijuana is used
8 as a probable cause search in a lot of cases here as
9 probably the Court has seen, and I'm under the understanding
10 that it can be used as probable cause or reasonable
11 articulable suspicion to conduct further searches or stops
12 of, of cars and/or houses as well. But, in this case, I
13 don't think the facts warrant this.

14 My argument here to the Court is that the overwhelming
15 smell of marijuana could not have been in the car for that
16 long and thus the officers could not have smelled it that
17 much emanating from the car.

18 My understanding, from the direct testimony and the
19 cross-examination that I was able to get, was that the cars
20 were close together but, but about a yard away. Somehow or
21 another both windows were rolled down and then they, then
22 both officers said we smelled the overwhelming smell of
23 marijuana, but it is the officer's testimony that no burnt
24 marijuana or no recently smoked marijuana was found in the
25 car.

1 So, I would think that the officer, officers maybe
2 smelled marijuana when they approached my client, but at the
3 initial time, and I'm not gonna call it a stop, but the
4 initial encounter, the smell of marijuana could not have
5 been that overwhelming or strong. Not in the words of
6 myself, but in the words of the officer. That's what I'm
7 making and I, and I believe that is what would, what would
8 happen is, if the, if the, if there wasn't a smell of
9 marijuana or if there's nothing at all, then there would be
10 no stop.

11 I don't believe that there was the overwhelming smell
12 of marijuana. Maybe later on there was when the officers
13 approached the vehicle when they got out of their cars, but
14 not at the time of the initial not stop but encounter. That
15 would be my argument. And if there, if there was, obviously
16 that would be grounds for a further, a further stop, an
17 actual stop.

18 But I also want to note that the car, all the tags
19 were, were in working order and everything was legal. There
20 was no valid reason to stop the vehicle in the first place.
21 I'm not arguing that. I'm arguing that the officers could
22 not clearly have smelled the overwhelming smell of marijuana
23 when my client was in that car for approximately -- I think
24 the testimony of the officer was four to five minutes or
25 something like that.

1 It's not that long of a trip to get from Norris to that
2 intersection of Highland and I believe Bethlehem. It's not
3 that long of a trip. I, I went there last night to -- as
4 part of my investigation.

5 So I would believe that the officers are maybe mis,
6 misremembering this event. I don't, I don't believe that
7 the odor of marijuana was that strong at that point. So I
8 do not believe the stop, the eventual stop---

9 THE COURT: well, apparently you cross-examined them on
10 their incident reports.

11 MR. SCHULTZ: Yes.

12 THE COURT: I have not seen them. I heard your
13 cross-examination. Apparently the incident reports relate
14 that there was the overwhelming smell of marijuana.

15 MR. SCHULTZ: And I believe the officers testified---

16 THE COURT: It was at the time that it occurred.

17 MR. SCHULTZ: Sir?

18 THE COURT: That was done relatively close to the time
19 that this occurred --

20 MR. SCHULTZ: Yes, sir.

21 THE COURT: -- per the reports.

22 MR. SCHULTZ: Per their reports, yes, sir.

23 THE COURT: Okay. Go ahead.

24 MR. SCHULTZ: And I find it very interesting too that
25 when Officer Spurgeon said to Mr. Hunter, even in his direct

1 testimony, he said he never asked Mr. Sims, and hopefully
2 I'm referring this correctly to the Court, they never asked
3 Mr. Sims to, to be searched, that's interesting and I also
4 wish to note that I wrote down several times that Officer
5 Spurgeon said the, the smell was really potent and he --
6 it's -- it was the extreme -- it was an extreme smell,
7 strong odor.

8 Judge, it can not be a strong odor in that amount of
9 time that Mr. Sims was in the car for. Maybe later on that
10 it was. But not when the windows were rolled down for a
11 very very small amount of time, and then the stop was
12 initiated.

13 I just -- I, I do not believe that marijuana can have
14 that smell especially when there was no burnt marijuana
15 found in or around the car. I don't believe Melvin was,
16 was -- had any marijuana on him. I know that. So I would
17 believe the initial encounter is invalid, and based upon
18 that, I think the stop actually is invalid.

19 THE COURT: Okay. I'll hear from Mr. Hunter.

20 SOLICITOR HUNTER: Your Honor, just for the purposes of
21 this hearing, we haven't heard any testimony about how long
22 a marijuana smell stays around. What we've heard is from
23 two officers who stated, in their training and their law
24 enforcement experience and dealing with marijuana, they
25 understand and know the smell of marijuana, and, on that day

1 when they pulled up to that vehicle, they smelled marijuana.

2 To the, to the first case of whether this was a traffic
3 stop, we've obviously argue this is a consensual encounter.
4 They pulled up next to the vehicle. I freely admit, as well
5 as the officers, there was no traffic violation. All they
6 did was pull up next to the vehicle. There is a video that
7 we put into evidence for the purpose of this hearing. If
8 you'd like to watch it, it can just kind of show you how the
9 vehicles were positioned at that stop sign.

10 No blue lights. No sirens. The officers smelled
11 marijuana. In fact, Mr. Mitchell just got on the stand, and
12 even though he says two of the statements he did not say, he
13 admitted right before he got off that he smelled marijuana
14 when he pulled up to pick Mr. Sims up.

15 Your Honor, based on that fact, we'd argue it's a
16 consensual encounter. There was not a stop. The stop for
17 the detention did not occur until after Mr. Sims got out of
18 the vehicle and was placed in handcuffs. Even at that
19 point, Your Honor, Mr. Sims, getting out of the car, again
20 still in his consensual encounter with police officers,
21 tells the officer that you can search. Based on the smell
22 of marijuana as well as that statement, again, Mr. Sims also
23 stated to the officers that he had smoked marijuana
24 previously that morning, based on that a pat down was done.
25 During that pat down a bulge was found. At that point it

1 becomes a little more than a consensual encounter. Cuffs
2 are applied. A scuffle ensues and cocaine and marijuana is
3 found.

4 But, Your Honor, we'd argue, based on the presentation
5 by both officers, Officer Spurgeon and Smith, that marijuana
6 smell was present, therefore they had a right to search
7 Mr. or least pat down Mr. Sims which is what they did when
8 the cocaine was found, and we'd argue that this should go
9 before a jury after lunch.

10 THE COURT: All right. Thank you very much.

11 I'm gonna take a look at the video. And so we'll --
12 I'll come back at two o'clock and we'll make a ruling and
13 then we'll go from there based on the ruling.

14 MR. SCHULTZ: Thank you, Your Honor.

15 THE COURT: Thank you.

16 Court's in recess until two o'clock.

17 (WHEREUPON, Court was in recess for the lunch hour.)

18 THE COURT: All right. We're back on the record in the
19 case of Devin Jamahl Sims.

20 I've been informed by counsel that Mr. Sims wishes to
21 change his plea.

22 Is that correct?

23 MR. SCHULTZ: It is, Your Honor.

24 THE COURT: And how do you wish to plead in this now?

25 Is it gonna be -- you expect it to be a guilty plea---

1 MR. SCHULTZ: I expect it to be---

2 THE COURT: ---Mr. Schultz?

3 MR. SCHULTZ: I expect it to be a guilty plea, Your
4 Honor.

5 THE COURT: All right. Now, I've received a sentencing
6 sheet in the case. It indicates that there has been a
7 negotiation taking place, and that there now is a
8 recommended negotiated sentence.

9 Can you go over that with me, Mr. Hunter?

10 SOLICITOR HUNTER: Yes, Your Honor.

11 When we returned from lunch, Mr. Schultz approached me
12 and asked me if the State was willing to accept a negotiated
13 plea of 15 years. At that point I told him that we were
14 not. He then mentioned 18 years and I told Mr. Schultz, at
15 that time, we were not accepting the offer. But if he would
16 go talk to his client. If his client wanted to offer us
17 that as a counteroffer, we would think about it.

18 Mr. Schultz came back to me and said his offer or he
19 was offering 18 years negotiated to us at which point I
20 contacted Solicitor Barnette. We spoke about it and we are
21 agreeing to a negotiated 18 year plea in this case, Your
22 Honor.

23 THE COURT: All right. Mr. Schultz, do you agree that
24 that's the status of the negotiation?

25 MR. SCHULTZ: Yes, sir.

1 THE COURT: And that's the, that's the sentence that
2 the defendant is asking me to accept?

3 MR. SCHULTZ: Yes.

4 THE COURT: And please place Mr. Sims under oath at
5 this time for me.

6 THE CLERK: Yes, sir.

7 (WHEREUPON, the defendant was placed under oath at this
8 time.)

9 THE COURT: Now, Mr. Sims, you've heard me discuss the
10 plea negotiations and the recommended negotiated sentence in
11 this case with the attorneys.

12 Is that right?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Did you understand what we said?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And you agree that that is the status of
17 the negotiations at this time?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, Mr. Sims, do you have any conditions,
20 be they mental, physical, nervous problems, any conditions
21 that would affect your ability to be able to reason or to
22 make good decisions today?

23 THE DEFENDANT: No, sir.

24 THE COURT: Have you taken or used any drugs,
25 medicines, or other substances that would affect your

1 reasonable abilities today?

2 THE DEFENDANT: No, sir.

3 THE COURT: So are you able to handle this plea today?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And are you able to make good decisions
6 today?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, you've discussed this matter, I'm
9 sure, with your attorney, Mr. Schultz.

10 Is that correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And are you satisfied with his efforts thus
13 far in your case?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you need to consult with him any further
16 about this matter at this time?

17 THE DEFENDANT: No, sir.

18 THE COURT: And is there anything else that you feel
19 that he has not yet done for you that he should do for you
20 before we proceed with this plea?

21 THE DEFENDANT: No, sir.

22 THE COURT: All right, sir. Now, I will tell you
23 that -- a few things about this particular offense.

24 First of all, the case has been presented to the Grand
25 Jury and the Grand Jury has issued a true bill on this

1 indictment. So it is properly in front of this Court.

2 Again, I've been informed by the State that there is a
3 negotiated sentence in the case. I was not a party to those
4 negotiations. I'm not required to accept them. I'm going
5 to review your case at this time and I'll decide whether or
6 not I can accept that. If I can accept it, then we'll
7 proceed with a plea if you wish to do so.

8 Now, if I can not accept the negotiation, I will advise
9 you of that fact and give you an opportunity then to
10 withdraw your plea.

11 So do you understand how I'm going to handle this plea?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And is that how you felt or thought that I
14 was going to handle the plea?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay. Now, sir, I will tell you a few
17 things about the offense to which you're pleading. You're
18 pleading to trafficking in cocaine 28 grams or more but less
19 than 100 grams.

20 It's a -- is this a first or a second?

21 SOLICITOR HUNTER: It's a second offense. It's
22 originally a third offense, Your Honor.

23 THE COURT: I see.

24 SOLICITOR HUNTER: We're allowing him to plead to a
25 second offense.

1 THE COURT: Okay. Now, the second carries a possible
2 sentence of anywhere from seven years up to thirty years and
3 a fine of \$50,000.

4 Do you understand that that is the range of sentencing
5 for this offense?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Now, I will tell you that the
8 crime is classified as a violent and serious offense. In
9 the future, if you were convicted of other crimes that were
10 similarly classified such as violent, serious, or most
11 serious offenses, your guilty plea in this case could be
12 used in those future cases to make future sentences more
13 severe. It, depending on the convictions and the crimes
14 involved, it could result in a sentence of life imprisonment
15 without the possibility of a parole.

16 Do you understand that that's what could happen in the
17 future if you had future similar convictions?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Now, I'll also tell you that
20 this particular offense carries no suspended sentence. It's
21 considered a no probation and a no parole offense as well.

22 Are you aware of those facts?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. And have you discussed those
25 matters with your attorney?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. Now, as to this, this case, you have
3 the right to plead either guilty or not guilty given the
4 negotiated sentence.

5 How are you pleading?

6 THE DEFENDANT: Guilty, sir.

7 THE COURT: And have you discussed this plea fully with
8 Mr. Sims, Mr. Schultz?

9 MR. SCHULTZ: I have, Your Honor.

10 THE COURT: And are you satisfied that he understood
11 the advice and discussions you've had with him?

12 MR. SCHULTZ: I am, Your Honor.

13 THE COURT: Do you -- based on what you know about his
14 case and the facts that have been presented to you and the
15 discovery you've received and I'm sure gone over with
16 Mr. Sims, do -- are you in agreement with his decision to
17 accept this plea?

18 MR. SCHULTZ: I am.

19 THE COURT: And has he been able to assist you in
20 preparing his case and being ready for trial in this?

21 MR. SCHULTZ: Absolutely, Your Honor. Not only
22 Mr. Sims, but also his family's been very helpful to me.

23 THE COURT: I see.

24 Okay. Thank you.

25 Now, Mr. Sims, according to my information, you are 28

1 years of age.

2 Is that true?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And how far did you go with your education?

5 THE DEFENDANT: Ninth grade.

6 THE COURT: All right. Did you ever go back to get
7 your GED?

8 THE DEFENDANT: I was in the process of it before I
9 came in.

10 THE COURT: I see.

11 Now, are you currently married?

12 THE DEFENDANT: No, sir.

13 THE COURT: Are you married?

14 THE DEFENDANT: No, sir.

15 THE COURT: All right. Do you have children?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: How many?

18 THE DEFENDANT: One.

19 THE COURT: And what age is the child?

20 THE DEFENDANT: She just turned one years old.

21 THE COURT: I see.

22 Now, before you were arrested on this matter, were you
23 working a job somewhere?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And tell me about that.

1 What were you last doing?

2 THE DEFENDANT: At S&W Pallets.

3 THE COURT: Okay. Now, Mr. Sims, has anyone done
4 anything to you such as threaten you, put pressure on you,
5 tried to intimidate you, used violence against you or
6 threats of violence in an effort to get you to enter this
7 plea?

8 THE DEFENDANT: No, sir.

9 THE COURT: So there's been no one force you to do
10 this.

11 Is that right?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. And is it -- excuse me. Are
14 you doing this of your own free will?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you had sufficient time in which to
17 consider your decisions?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Did anyone offer you anything
20 of value to get you to plead?

21 THE DEFENDANT: No, sir.

22 THE COURT: Has anyone made any promises, guarantees,
23 or assurances to you about any matters in connection with
24 the plea including but not limited to such matter as pardon,
25 parole, probation, early release, length of sentence?

1 So has anyone made a promise, a guarantee about any of
2 those matters?

3 THE DEFENDANT: No, sir.

4 THE COURT: Now, when you plead guilty, Mr. Sims, and I
5 accept the plea, you will be giving up your Constitutional
6 rights as they relate to this charge. One of my jobs is to
7 be sure you understand those rights and what you're giving
8 up before I accept the plea. So I'm going to go over those
9 rights with you now, and, when I finish, if you have a
10 question, let me know. I'll be glad to go back over any of
11 them or you have a right to consult with your lawyer about
12 these rights if you wish to do so.

13 First of all, we've talked about two of your rights
14 already. One is the right to have your case considered by
15 the Grand Jury. They've already done that. They issued a
16 true bill.

17 You also have a right to an attorney. You've indicated
18 that you're satisfied with Mr. Schultz's services up to this
19 point in time.

20 In addition, you have, as you're aware because we're in
21 the process of starting your trial, you have a right to a
22 trial by jury. At that trial, you'd be presumed to be
23 innocent. That presumption would continue until the State
24 proved your guilt to the jury and they'd have to prove that
25 guilt by proof beyond a reasonable doubt. You would not be

1 required to prove anything at that trial because you're
2 presumed to be innocent.

3 Do you understand how a trial would be conducted?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Now, at the trial, if there were witnesses
6 that were in your favor, you'd have the right to have the
7 clerk issue subpoenas to those witnesses to require their
8 attendance at the trial. You would have the right at the
9 trial to, to either examine or cross-examine any witness who
10 might testify during the trial. You'd have the right, at
11 the trial, to present any defense you have and you'd be
12 given the opportunity to try to suppress the State's
13 evidence against you. That includes any statements you may
14 have made.

15 At all times you have the right to remain silent, Mr.
16 Sims, and, if you remained silent during your trial, the
17 judge conducting that trial would instruct the jury that
18 your silence could not be used against you.

19 Now, Mr. Sims, did you understand those rights?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Any questions about them?

22 THE DEFENDANT: No, sir.

23 THE COURT: Do you need any additional explanation
24 concerning any of them?

25 THE DEFENDANT: No, sir.

1 THE COURT: Do you understand that, if I later accept
2 your plea, you will be giving up those rights as they relate
3 to this charge?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Does the fact that you're giving up those
6 rights cause you to want to withdraw or change your plea at
7 this time?

8 THE DEFENDANT: No, sir.

9 THE COURT: All right. Now, are you pleading guilty to
10 this charge because you are guilty of it?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Mr. Hunter's gonna go over the
13 facts with me at this time. Once he finishes I'll ask you
14 about that and I'm aware of a good bit of that since we've
15 already had some hearings on this, but I want him to go over
16 it with me at this time.

17 Mr. Hunter.

18 SOLICITOR HUNTER: Okay. Your Honor, just to keep it
19 brief since you have heard a lot of the story in this case.
20 So 12/9/14 here in the City and County of Spartanburg,
21 officers were at Bethlehem and Highland Avenue intersection
22 there. Mr. Mitchell had driven a truck up to that
23 intersection. Officers pulled up next to him. Both windows
24 were down. Officers smelled the distinct odor of marijuana.
25 At that point they began talking to Mr. Mitchell as well as

1 Mr. Sims.

2 Mr. Sims admitted to smoking marijuana earlier that
3 day. Pat down was done on Mr. Sims after he had given
4 consent to the officer. The officer felt a bulge in his
5 long johns underneath his pants. In that bulge was, tested
6 by Melissa Hendricks of the Sheriff's Office, was 40.15
7 grams of cocaine in three different bags, Your Honor.

8 THE COURT: Okay. Mr. Sims, you heard what the
9 solicitor told me about the facts.

10 Is what he told me, was that true?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, have you been truthful with me today?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Did anyone tell you how to respond to my
15 questions?

16 THE DEFENDANT: No, sir.

17 THE COURT: The answers that you've given to me, Mr.
18 Sims, then would of been your own.

19 Is that right?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Is there any part of what you and I have
22 discussed during this discussion of the plea, is there any
23 part of that you'd like to go back and change anything
24 you've told me so far?

25 THE DEFENDANT: No, sir.

1 THE COURT: All right. Mr. Sims, I'm going to accept
2 the plea. It's my finding that it's been freely and
3 voluntarily given. You're aware of the charge, the
4 penalties, had the advice of counsel. You're satisfied with
5 that advice. There's a factual basis for the plea. So I
6 will accept the plea and now I'll consider the sentencing.

7 So I'll hear from your client -- your lawyer and then
8 I'll hear from you, Mr. Sims.

9 Mr. Schultz.

10 MR. SCHULTZ: Thank you, Your Honor.

11 May it please the Court?

12 THE COURT: Yes, sir.

13 MR. SCHULTZ: Your Honor, obviously you've, you've
14 heard the facts of this case today. The Court knows that
15 this is obviously a negotiated sentence. So I'll be brief
16 here.

17 I've been representing Mr. Sims for about the last
18 month, month and a half. Had a chance to talk to him
19 several times about his case.

20 Obviously, you know, he's someone that has a record as
21 you're about to hear. He has not been in this much trouble
22 ever in his life, and I think you can see that right now in
23 the tears that he's shedding here before the Court.

24 I think he -- I think he's someone that is a very very
25 nice person. He's always been very gracious and nice with

1 me, very respectful to me at the jail, and I've represented
2 Devin before and had no problem with him whatsoever. He's
3 just a -- I can't say enough good things about him.

4 His family has been in support of him all throughout
5 this very trying time, and I'd like to thank them too on the
6 record for what they've been through with this case. I do
7 not believe they wish to address the Court.

8 Y'all -- no. But they're here in support of him.

9 THE COURT: I understand.

10 MR. SCHULTZ: We want, we want the Court to know, know
11 that.

12 Eighteen years is a long time, judge, and, and
13 hopefully, I think, everybody can learn from it. He's 28
14 years old. This potentially saves him from---

15 THE COURT: well, there's some, there's some light at
16 the end of the tunnel for somebody his age.

17 MR. SCHULTZ: Yes, sir, this -- I agree with the Court.
18 This potentially saves him from potentially a 30 year
19 sentence, and if he gets a 30 year sentence, then he would
20 be 30 or 40 or 50, he would get out when he's in his mid
21 50s.

22 So I think that, I think it's in the best interest of
23 him to take this, this negotiated sentence. I do believe --
24 I thank the State for making it, but I know Mr. Sims wishes
25 we had a different outcome here today, but that's all I can

1 say about Mr. Sims.

2 THE COURT: All right.

3 MR. SCHULTZ: Thank you.

4 THE COURT: Mr. Sims, anything you want to tell me?

5 THE DEFENDANT: I just want to apologize for my
6 actions, sir, and---

7 THE COURT: Thank you.

8 THE DEFENDANT: ---apologize to my family for what I
9 took them through and the Court for what I took them
10 through.

11 THE COURT: I understand.

12 Prior record.

13 SOLICITOR HUNTER: Your Honor, just for the General
14 Sessions purposes, there's a 2007 possession of crack and a
15 2013 distribution of crack. He may actually still be on
16 probation for that distribution of crack. I know, with an
17 18 year sentence, it's not gonna matter, but I didn't know
18 if you wanted us to wait and bring a probation officer over
19 here and go ahead and do it.

20 THE COURT: Well, if you want me to handle both of them
21 now, I will need to have that person come in---

22 SOLICITOR HUNTER: Okay. I just---

23 THE COURT: ---to do that.

24 SOLICITOR HUNTER: I just know they're over in Judge
25 Hayes and Cole's courtroom.

1 THE COURT: Well, do you want to take a second and see
2 if they can step over?

3 We can take a second cause that might be easier on --
4 is he, in fact, on probation at this time?

5 MR. SCHULTZ: He tells me that he is, Your Honor.

6 THE COURT: Well, let's, let's wrap it all up right
7 now.

8 So have a seat, Mr. Sims, over there at the table.
9 Let's see if we can get somebody in here to take care of
10 that for me. We'll get all this done so you won't have to
11 come back again.

12 SOLICITOR HUNTER: Thank you, Your Honor.

13 MR. SCHULTZ: Thank you, Your Honor.

14 (Pause.)

15 SOLICITOR HUNTER: Judge, can we approach briefly?

16 THE COURT: Yes, please.

17 (WHEREUPON, a bench conference was held at this time.)

18 THE PROBATION AGENT: Devin Sims, yes, sir.

19 THE COURT: Okay. Step back up.

20 SOLICITOR HUNTER: And I have a few -- two other things
21 to put on the record, Your Honor.

22 THE COURT: Beg your pardon?

23 SOLICITOR HUNTER: Two other items to put on the
24 record.

25 THE COURT: All right. Why don't you go ahead and do

1 that and then I'll deal with her.

2 SOLICITOR HUNTER: All right. We looked at his
3 booking. He gets credit for 44 days on the bench warrant
4 he's currently serving on---

5 THE COURT: All right.

6 SOLICITOR HUNTER: ---plus two days on the original
7 warrant. So he gets credit---

8 THE COURT: Forty-six days.

9 SOLICITOR HUNTER: ---for 46 days and, Your Honor,
10 he -- when he was arrested on the bench warrant, two other
11 drugs charges were sought on him from that day, and, as part
12 of this plea, we will be dismissing those drug charges so he
13 doesn't have any further charges pending in our office.

14 THE COURT: All right. Is that your understanding, Mr.
15 Schultz?

16 MR. SCHULTZ: I'm not sure what other drug charges they
17 are. I just---

18 THE COURT: He said the two that were placed on him
19 when he was picked up with the bench warrant.

20 MR. SCHULTZ: What were they?

21 SOLICITOR HUNTER: I don't know. You represent him.

22 I believe it was a -- it was either a possession with
23 intent to distribute crack and a half mile charge.

24 MR. SCHULTZ: Okay.

25 THE COURT: I see. All right.

1 SOLICITOR HUNTER: I just wanted to confirm that, Your
2 Honor.

3 THE COURT: Okay. Now, I understand that he is on
4 probation at this time.

5 Is that correct?

6 THE PROBATION AGENT: Yes, sir.

7 THE COURT: Can you tell me his probationary status?

8 THE PROBATION AGENT: He's currently on for a
9 distribution of cocaine base first offense. It was
10 sentenced to 30 months suspended to 90 days and 36 months
11 probation. He has had one prior violation. At that time
12 Judge Hayes continued him on May the 29th, 2015.

13 He's currently in arrears on supervision fee, seven
14 payments behind, five payments behind on his fine.

15 Let's check his reporting.

16 (Pause.)

17 THE PROBATION AGENT: He is missed a few reports with
18 the agent, but normally he does report and come in.

19 THE COURT: Well, he's been incarcerated---

20 THE PROBATION AGENT: Incarcerated.

21 THE COURT: Yeah, recently.

22 This is -- this particular event occurred on December
23 9th of 2014. I believe it would constitute a violation of
24 that probation.

25 Is that correct?

1 THE PROBATION AGENT: Yes, sir, because this case
2 started April 11th of 2013.

3 THE COURT: And, Mr. Schultz, are you willing to assist
4 you by representing him on that matter as well?

5 MR. SCHULTZ: I am, Your Honor.

6 THE COURT: Okay. Now, did we finish going over the
7 prior record?

8 SOLICITOR HUNTER: Yes, sir, it was the '07 possession
9 of crack and 2013 distribution of crack, and just to be
10 fully -- the two cases I'm dismissing are warrants
11 2015A4210104186 and 41187.

12 THE COURT: All right. Anything further from the
13 defense?

14 MR. SCHULTZ: Your Honor, on the probation violation,
15 only on the probation violation, I would, I would ask that
16 the Court, whatever sentence that the Court sentences
17 Mr. Sims to, I would ask that it be served concurrently with
18 the 18 years negotiated sentence and I would ask that the
19 monetary obligations be converted to a civil judgment.

20 THE COURT: All right. I'm gonna revoke the probation
21 in full. Terminate the case. Any unpaid obligations will
22 be converted to a civil judgment.

23 THE PROBATION AGENT: Yes, sir.

24 THE COURT: I'm gonna run that sentence concurrently
25 with the sentence in this case, and the sentence in this

1 case is that you be confined to the State Department of
2 Corrections for a period of 18 years. This carries a
3 mandatory fine and I will include the mandatory fine of
4 \$50,000 although I'm not sure what importance that has.
5 I've given credit for the 46 days. It is run concurrent
6 with the probation revocation.

7 Good luck to you, Mr. Sims.

8 MR. SCHULTZ: Thank you, Your Honor.

9 THE COURT: I did include a request that he get his GED
10 while he's there.

11 MR. SCHULTZ: Yes, sir.

12 THE COURT: Thank you.

13 MR. SCHULTZ: Thank you, Your Honor.

14 (WHEREUPON, the jury panel was dismissed at this time.)
15
16

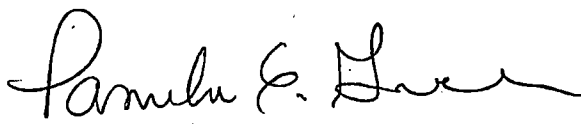
17 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 16th day of December, 2015.

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

August 9th, 2016



PAMELA E. GREEN, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Spartanburg

Devon James Sims 00364510
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2016-CP-42-2747

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 Lieber Correctional Institution, P.O. Box 205 Ridgeville S.C. 29472
2. Name and location of Court which imposed sentence Spartanburg County Court of General Sess.
3. Name(s) of co-defendant(s) (if any) Melvin Mitchell
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2015 GS 4202663

(b) _____

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) December 18, 2015

(b) _____

2016 JUL 25 AM 10:03
M. HOPE BLACKLEY

- (c) _____
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?
NO

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

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

i. N/A

ii.

iii.

(b) the result in each such Court to which you appealed:

i. N/A

ii.

iii.

(c) the date of each such result:

i. N/A

ii.

iii.

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unk

ii.

iii.

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) Ineffective Assistance Counsel

(b)

(c)

(10). State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

2016 JUL 25 AM 10:03
M. HOPE BLACKLEY

- (a) Ineffective Assistance of Counsel
 (b) denial of 6th and 14th Amendment U.S. Const.
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Counsel failed as an advisor, negotiator, and failed to investigate and prepare for trial
 (b) Applicant reserves the right to Amend this PCR
 (c) Application once Counsel is appointed

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)? N/A
 (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. N/A
 ii. _____
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. N/A
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. N/A
 ii. _____
 iii. _____

2016 JUL 25 AM 10:03
 M. HOPE BLACKLEY

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

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?

First Filing of P.C.R.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

2016 JUL 25 AM 10:03
M. HOPE BLACKLEY

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 Filing of P.C.R. Application

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (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. Joshua E. Shultz
 - ii. 144 N. Daniel Morgan Ave.
 - iii. Spartanburg S.C. 29302
- (b) the proceedings at which each such attorney represented you:
 - i. Arraignment and Plea
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:

Resentencing

20. Are you now under sentence from any other court that you have not challenged?

NO

M. HOPE BLACKLEY

2016 JUL 25 AM 10:03

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Dorchester)

Devin Sims

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.

Devin Sims

SWORN to and subscribed before me this 19th
day of July, 2016.

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

2016 JUL 25 AM 10:03
M. HOPE BLACKLEY

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

Devin Sims
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.

Devin Sims
Applicant

SWORN or affirmed to and subscribed before me this
19th day of July, 2016.

Ludrean Bryant
Notary Public

My Commission Expires: May 26, 2026

2016 JUL 25 AM 10:03
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Devin Jamahl Sims, #366510,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

2016-CP-42-2747

**RETURN AND MOTION
FOR MORE DEFINITE
STATEMENT**

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on July 25, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted at the June 2015 term of the Grand Jury for Spartanburg County for trafficking in cocaine, second offense (2015-GS-42-2663). Applicant was represented by Joshua Schultz, Esquire. On December 16, 2015, Applicant pleaded guilty before the Honorable Roger L. Couch to trafficking in cocaine 28 grams or more but less than 100 grams, second offense.¹ Pursuant to a negotiated sentence, Judge Couch sentenced Applicant to eighteen (18) years' imprisonment.² Applicant did not appeal his guilty plea or sentence.

¹ According to the plea transcript, the Solicitor dismissed two other drug charges in exchange for Applicant's guilty plea.

² Applicant was also on probation at the time of his plea for a prior conviction of distribution of cocaine base (2012-GS-42-03207). Judge Couch revoked Applicant's probation and invoked the thirty (30) month suspended sentence to run concurrently with his 18 year sentence. Applicant does not contest the probation revocation.

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2017 MAY -4 AM 9:49
M. HOPE BLANCHETT

II.

In his application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a. "denial of 6th and 14th amendment U.S. Const."
- b. "Counsel failed as an advisor, negotiator, and failed to investigate and prepare for trial."

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject convictions, the transcript from Applicant's plea, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. 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.

Each and every allegation contained within the application not either expressly admitted, qualified, or explained is hereby denied.

V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well

in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

By: 
ATTORNEYS FOR RESPONDENT

May 1, 2017

CLERK OF COURT
CORRECTIONS DEPARTMENT
2017 MAY -4 AM 9:49
M. HOPE BLANKENHORN

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMONS PLEAS
) CASE NO: 2016-CP-42-2747
)

)
) Devin Jamahl Sims, SCDC 366510,
) Applicant,
)

) AMENDMENTS TO
) POST CONVICTION
) RELIEF APPLICATIONS
)

vs.)

) THE STATE OF SOUTH CAROLINA,
) Respondent.
)
_____)

The applicant hereby amends answers to number 9 and number 10 of his Application for Post-Conviction Relief to state the following:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(A) The Applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of The South Carolina Constitution.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) The applicant was provided with deficient representation by his attorney, in that the conduct of his attorney was objectively unreasonable under the circumstances. Strickland v. Washington, 466 U.S. 668 (1984). The outcome of the applicant's proceeding was prejudiced, and it is reasonable probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. Defense counsel was ineffective based on one or more of the following:

1. My defense attorney failed to conscientiously discharge his

professional responsibilities while he was handling my case.

2. My defense attorney failed to effectively challenge the arrest and seizure of Applicant.
3. My defense attorney failed to act as my diligent, conscientious advocate.
4. My defense attorney failed to give me his complete loyalty.
5. My defense attorney did not have my best interest in mind while he was supposed to be investigating and preparing my case.
6. My defense attorney failed to serve my cause in good faith.
7. My defense attorney neglected the necessary investigations and the preparation of my case.
8. My defense attorney did not do the necessary factual investigations on my behalf.
9. My defense attorney did not do the necessary legal research.
10. My defense attorney did not conscientiously gather any information to protect my rights.
11. My defense attorney did not try to have my case settled in a matter that would have been to my best advantage.
12. My defense attorney did not advise me of all my rights or take any of the actions that were necessary to protect preserve them; knowing that I was not versed in the law.
13. My defense attorney, knowing I was illiterate in the law, never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case.
14. My defense attorney never properly consulted with me or kept me informed with what was going on as far as my case was concerned.
15. My defense attorney never explained to me or discussed with me any of the elements of the crime charged.
16. My defense attorney never made any attempt to ascertain whether or not I actually knew what the elements fo the crime charged were

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FBI - NEW YORK

or whether or not I understood exactly what the term "criminal element" actually meant.

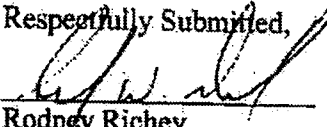
17. My defense attorney never explained to me or discussed with me how the elements of the crime charge and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State V. Boyd.
18. My defense attorney never informed me of any of the defenses that were available to me.
19. My defense attorney never intended to offer any defense to the court on my behalf.
20. My defense attorney never explained to me or discussed with me any kind of defense strategy.
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22. My defense attorney dictated to me exactly how my case was going to be handled and offered no alternative options.
23. My defense attorney failed to properly acquaint themselves with the law and the facts surrounding my case and as a direct result of their intentional negligence, there was a very serious error in their assessment of both the law and the facts.
24. Because of my defense attorney's gross neglect and his many legal errors no defense at all was put in issue for me during the Court proceedings.
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26. My defense attorney failed to oppose the prosecution's case with any adversarial litigation.
27. My defense attorney failed to function as the government's adversary in any sense of the word.
28. My defense attorney failed to pursue any of the legal recourse that were available to him.

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31. My defense attorney failed to appeal my case after I was convicted when I wanted to appeal.

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Respectfully Submitted,


Rodney Richey
Richey and Richey, P.A.
Post Office Box 10916
Greenville, South Carolina 29603
Attorney for the Applicant

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May 9, 2017

RICHEY AND RICHEY
ATTORNEYS AT LAW

A PROFESSIONAL ASSOCIATION

RODNEY W. RICHEY
LOLA S. RICHEY

POST OFFICE BOX 10916
GREENVILLE, SOUTH CAROLINA 29603

(864) 467-0503
(864) 467-0646 FAX

May 9, 2017

Spartanburg County Clerk of Court
Attn: PCR Division
180 Magnolia Street, Suite 500
Spartanburg, SC 29306

RE: Devin Jamahl Sims, SCDC# 366510 vs. The State of South Carolina
Case No: 2016-CP-42-2747

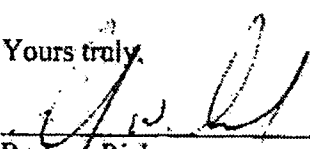
Dear Mr. Sims:

Please find enclosed amendments for the above referenced matter. Please file these amendments and return the copy to me. I have enclosed a self-addressed stamped envelope for you to return the copy to me.

Thank you for your help and if you should have any questions please feel free to call me. If you should have any questions please feel free to write me.

RICHEY AND RICHEY, P.A.

Yours truly,


Rodney Richey

RWR/
enclosure

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Devin Jamahl Sims, #366510

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2016-CP-42-2747

ORDER OF CONTINUANCE

This matter comes before the Court by way of an application for post-conviction relief. An evidentiary hearing into the matter was scheduled for Thursday, September 21, 2017, at the Spartanburg County Courthouse. At the hearing, Respondent moved for a continuance on the grounds that a necessary witness is unavailable due to a family emergency. This came to the attention of all parties the day before the hearing. Applicant does not oppose the motion. This Court finds that this matter should be continued until the next term of court for post-conviction relief matters in the Seventh Judicial Circuit.

IT IS THEREFORE ORDERED:

1. This post-conviction relief matter shall be continued and re-scheduled, and
2. Applicant remain in the custody of Respondent.

AND IT IS SO ORDERED this 22 day of September, 2017


GRACE GILCHRIST KNIE
Presiding Judge
Seventh Judicial Circuit

CLERK OF COURT
SPARTANBURG COUNTY
2017 SEP 22 AM 10:38
M. HOPE BLACKLEY

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2391
Fax (864) 596-2239

M. Hope Blackley
Clerk of Court

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Valerie Gowan
Applicant #366510

7TH JUDICIAL CIRCUITCASE # *2016CR4-2047*

vs
Steele
Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the *Order of Continuance*
In this action dated *9-22-2017* on *9-22-17*

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Valerie Gowan
Lindsay McCoy
Redney Pickens

9-22-17
(Date)

Carrie Self
(Signature)

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMONS PLEAS
CASE NO: 2016-CP-42-2747

Devin Jamahl Sims, SCDC 366510,
Applicant,

AMENDMENTS TO POST CONVICTION RELIEF APPLICATIONS

VS.

THE STATE OF SOUTH CAROLINA,
Respondent.

The applicant hereby amends answers to number 9 and number 10 of his Application for Post-Conviction Relief to state the following:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(A) The Applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of The South Carolina Constitution.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) The applicant was provided with deficient representation by his attorney, in that the conduct of his attorney was objectively unreasonable under the circumstances. Strickland v. Washington, 466 U.S. 668 (1984). The outcome of the applicant's proceeding was prejudiced, and it is reasonable probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. Defense counsel was ineffective based on one or more of the following:

1. My defense attorney failed to conscientiously discharge his

professional responsibilities while he was handling my case.

2. My defense attorney failed to effectively challenge the arrest and seizure of Applicant.
3. My defense attorney failed to act as my diligent, conscientious advocate.
4. My defense attorney failed to give me his complete loyalty.
5. My defense attorney did not have my best interest in mind while he was supposed to be investigating and preparing my case.
6. My defense attorney failed to serve my cause in good faith.
7. My defense attorney neglected the necessary investigations and the preparation of my case.
8. My defense attorney did not do the necessary factual investigations on my behalf.
9. My defense attorney did not do the necessary legal research.
10. My defense attorney did not conscientiously gather any information to protect my rights.
11. My defense attorney did not try to have my case settled in a matter that would have been to my best advantage.
12. My defense attorney did not advise me of all my rights or take any of the actions that were necessary to protect preserve them; knowing that I was not versed in the law.
13. My defense attorney, knowing I was illiterate in the law, never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case.
14. My defense attorney never properly consulted with me or kept me informed with what was going on as far as my case was concerned.
15. My defense attorney never explained to me or discussed with me any of the elements of the crime charged.
16. My defense attorney never made any attempt to ascertain whether or not I actually knew what the elements fo the crime charged were

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or whether or not I understood exactly what the term "criminal" element" actually meant.

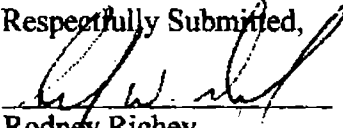
17. My defense attorney never explained to me or discussed with me how the elements of the crime charge and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State V. Boyd.
18. My defense attorney never informed me of any of the defenses that were available to me.
19. My defense attorney never intended to offer any defense to the court on my behalf.
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Attorney for the Applicant

2017 MAY 12 AM 10:08
RECEIVED

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GREENVILLE, SOUTH CAROLINA 29603(864) 467-0503
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May 9, 2017

Spartanburg County Clerk of Court
Attn: PCR Division
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Spartanburg, SC 29306RE: Devin Jamahl Sims, SCDC# 366510 vs. The State of South Carolina
Case No: 2016-CP-42-2747

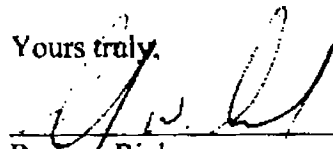
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RICHEY AND RICHEY, P.A.

Yours truly,


Rodney RicheyRWR/
enclosure

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
3
4 Devin Jamahl Sims,)
5 Applicant,) TRANSCRIPT OF RECORD
6 -vs-) 2016-CP-42-2747
7 The State,) November 13, 2017
8) Spartanburg, South Carolina
9
10

11 B E F O R E :

12 HONORABLE G. THOMAS COOPER, JR., JUDGE
13
14

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

16 RODNEY W. RICHEY, ESQUIRE
17 Attorney for the Applicant

18 VALERIE GIOVANOLI, ESQUIRE
19 Attorney for the State
20
21

22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

INDEXWITNESSESPAGE

DEVIN JAMAHL SIMS (AW)

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Cross-examination by Ms. Giovanoli

8

E. JOSHUA SCHULTZ (AW)

Direct examination by Mr. Richey

14

Cross-examination by Ms. Giovanoli

16

No exhibits entered into evidence.

1 THE COURT: Ms. Giovanoli.

2 MS. GIOVANOLI: May it please the Court. This is
3 Devin Jamahl Sims vs. the State of South Carolina, Docket
4 No. 2016-CP-42-2747.

5 We're before the Court on an application for post
6 conviction relief that was filed on July 25th of 2016.

7 Applicant was indicted in June of 2015 for trafficking
8 in cocaine second offense. Applicant was represented by
9 Joshua Schultz.

10 On December 16th of 2015 applicant pled guilty before
11 the Honorable Roger L. Couch to trafficking in cocaine
12 28 grams to a hundred grams second offense.

13 According to the plea transcript the solicitor
14 dismissed two other drug charges in exchange for
15 applicant's guilty plea.

16 Pursuant to a negotiated sentence, Judge Couch
17 sentenced applicant to 18 years imprisonment.

18 Applicant was also on probation at the time of his
19 plea for a prior conviction of distribution of cocaine
20 base. Judge Couch revoked that probation and invoked the
21 30-month suspended sentence to run concurrently with his
22 18-year sentence.

23 Applicant is not contesting the probation revocation
24 just for the Court's knowledge.

25 Applicant did not appeal his guilty plea or his

1 sentence.

2 The state had earlier filed a motion for a more
3 definite statement because the applicant's allegations were
4 very vague.

5 Since then applicant has filed an amendment to the
6 post conviction relief, but this amendment is -- alleges a
7 number of vague allegations that amount to really no
8 allegations. So I would ask that counsel clarify for the
9 record exactly what allegations we're going forward on
10 today.

11 The state is ready to proceed and applicant is also
12 present and represented by Mr. Rodney Richey. I will hand
13 it over.

14 MR. RICHEY: Thank you, Your Honor. We'll call Mr.
15 Sims, and while he's going there I'll tell the Court we --

16 THE COURT: Just hold on. Just answer her question.

17 MR. RICHEY: Okay. Yes, sir. The issue --

18 THE COURT: I'm looking at 20 -- 31 amendments to his
19 application. Which of those are you proceeding on?

20 MR. RICHEY: Sir, what we will notify the attorney
21 general is there was a suppression hearing in this case --

22 THE COURT: There was?

23 MR. RICHEY: -- that was done, but there was no
24 ruling. Before the ruling he entered a plea, a negotiated
25 plea, of 18 years.

1 And his only issue is he felt counsel should have went
2 forward with the suppression hearing and got a ruling on
3 it. That's the only issue we have.

4 THE COURT: Now, this is -- did the trial actually
5 start?

6 MS. GIOVANOLI: Yes, Your Honor. It was a suppression
7 motion, so that's why it's so thick and then after they --

8 THE COURT: So that is the suppression motion?

9 MS. GIOVANOLI: Yes, Your Honor. It was the day of
10 trial. They were going forward with the motion to
11 suppress.

12 And then towards the end you'll see on -- I believe
13 it's page -- where it changes to a guilty plea. Let me
14 find that page number for you. I believe it's close to
15 115. I don't have the exact page marked.

16 THE COURT: All right. So let me just find that.

17 MS. GIOVANOLI: Okay. Page 114 is where the guilty
18 plea begins, and everything prior to that is argument and
19 testimony on the motion to suppress.

20 THE COURT: Let me see then. The Court went into
21 recess. Says he will come back at 2:00 o'clock and make a
22 ruling. He's going to take a look at the video. "I've
23 been informed by counsel Mr. Sims wishes to change his
24 plea." Correct? That's where we are?

25 MS. GIOVANOLI: That's right.

Devin Jamahl Sims
Direct examination by Mr. Richey

1 THE COURT: He never got a ruling.

2 MS. GIOVANOLI: Never.

3 THE COURT: All right. Is that -- that's one of your
4 grounds for post conviction relief. Are there any others?

5 MR. RICHEY: No, sir. That's the only issue we're
6 going forward on.

7 THE COURT: All right. Is that satisfactory, Ms.
8 Giovanoli?

9 MS. GIOVANOLI: Yes, Your Honor.

10 THE COURT: Thank you very much. You may proceed,
11 Mr. Richey.

12 DEVIN JAMAHL SIMS, having been
13 first duly sworn, testified as follows:

14 THE COURT: State your full name for the record.

15 THE WITNESS: Devin Jamahl Sims.

16 THE COURT: Have a seat.

17 DIRECT EXAMINATION BY MR. RICHEY

18 Q Sir, where are you currently incarcerated?

19 A Lieber Correctional Institute.

20 Q And what are you incarcerated for?

21 A Trafficking cocaine.

22 Q Okay. And where were you convicted of those charges?

23 A Spartanburg County.

24 Q Okay. And who represented you on those charges?

25 A Joshua Schultz.

Devin Jamahl Sims
Direct examination by Mr. Richey

1 Q Okay. And you filed an application for post
2 conviction relief saying he did not effectively represent
3 you, correct?

4 A Yes, sir.

5 Q And what did -- the issue you have is before the trial
6 y'all had a suppression hearing, correct?

7 A Yes, sir.

8 Q And y'all did not receive a ruling on that, is that
9 correct?

10 A No, sir.

11 Q And you pled guilty before the ruling, is that right?

12 A Yes, sir.

13 Q And you believe that your counsel should have waited
14 until you got a ruling on it prior to you pleading,
15 correct?

16 A Yes, sir.

17 Q And did you all talk about any consequences where you,
18 like, get a better deal or anything?

19 A No.

20 Q Y'all did not?

21 A I'm not understanding you.

22 Q Okay. The question is you pled before you got a
23 ruling, right?

24 A Yes, sir.

25 Q Did you and your counsel talk about the benefits of

Devin Jamahl Sims
Cross-examination by Mr. Giovanoli

1 doing that?

2 A When I -- when I was -- when the plea was presented to
3 me I was told that the plea that I'm receiving now is
4 better than getting 30 years.

5 Q Right.

6 A So it seemed like the right thing to do at the time.

7 Q Okay. So you're saying he should have waited and got
8 a ruling before you pled, correct?

9 A Yes, sir.

10 Q Okay. Answer any questions the attorney general will
11 have for you.

12 CROSS-EXAMINATION

13 BY MS. GIOVANOLI

14 Q Okay. In this case do you recall your motion to
15 suppress hearing?

16 A Yes, ma'am.

17 Q Okay. And the officers testified in this case, didn't
18 they?

19 A Yes, ma'am.

20 Q Okay. And, basically, the facts that led to your
21 arrest were that they pulled up alongside you at a stop
22 sign, is that correct?

23 A Yes, ma'am.

24 Q And they smelled a smell of marijuana, is that
25 correct?

Devin Jamahl Sims
Cross-examination by Mr. Giovanoli

1 A That's what they said.

2 Q Okay. And then you -- they approached your vehicle,
3 and you actually got out of the vehicle, is that correct?

4 A No, ma'am.

5 Q Okay. Go ahead and tell me what happened there.

6 A They approached the vehicle. They pulled up beside of
7 us at the stop sign. The window was down. The officer
8 talks to the driver in the -- in the car. He asked where's
9 you going. He said I'm taking this guy to pick this child
10 up. He said who do you have in the car. I leaned up. I
11 said the officer's name. I said you know who I am, don't
12 start to harass. No. It ain't nothing like that. I'm
13 just getting acquainted with your driver.

14 So he was like why do I smell weed in there. I'm like
15 I don't know nothing about that. He hopped straight outta
16 the car and come to the passenger side of the car and pulls
17 me outta the car. For what, I don't know.

18 Q Does he physically pull you out of the car?

19 A Yes, yes, ma'am.

20 Q And didn't you tell the cops that you had previously
21 smoked marijuana before getting into the truck?

22 A Yes, ma'am.

23 Q Okay. So the fact that they smelled marijuana was, in
24 fact, true.

25 A It couldn't have been true if I smoked it in the house

Devin Jamahl Sims
Cross-examination by Mr. Giovanoli

1 and not in the car.

2 Q Okay. So your testimony today is that after you
3 smoked marijuana you no longer smelled like marijuana.

4 A I could but I'm -- you're not going to smell it in a
5 car like that.

6 Q Okay. Let's fast forward to after the recess and
7 after the motion to suppress. You pled guilty, correct?

8 A Yes, ma'am.

9 Q Okay. And the state had extended an offer of 18
10 years, is that correct?

11 A Yes, ma'am.

12 Q And you agreed to that offer. You accepted that
13 offer, correct?

14 A Yes, ma'am.

15 Q Did Mr. Schultz force you to plead guilty?

16 A No. But in -- whereas, he scared me from continuing.

17 Q Okay. Are you sure you just weren't scared because of
18 the time you were looking at?

19 A It's the way he was stating it to me, like that, like
20 I wasn't, like, me personally. And you can look in the
21 file. You have me. I wasn't agreeing with the pull-over,
22 so I wanted to go to trial. But in the middle of the trial
23 he said he says me getting 30 and he don't want to continue
24 with it, so he going to try to get me a plea.

25 When he said that right there I didn't -- he said the

1 judge is not on our side, so I am going for the best thing
2 for my benefit at the time --

3 Q Okay. So you --

4 A -- not knowing the law.

5 Q You knew all of that prior to entering your guilty
6 plea, correct? All of that happened before you pled
7 guilty.

8 A Yeah, all of that happened before I pled guilty.

9 Q And you testified under oath at your guilty-plea
10 hearing. Do you remember that?

11 A Yeah.

12 Q Okay. And you know what the purpose of an oath is,
13 right, to tell the truth? And on page 117 -- I'll
14 reference this for the judge's sake.

15 The Court asked you if you were satisfied with your
16 attorney and his efforts to defend you in this case, and you
17 actually told the judge yes. So is it your testimony now
18 today that that's -- that was a lie?

19 A Because I didn't know what was going on, like, I
20 didn't know nothing about a suppression hearing. So I
21 thought everything was going the way they were supposed to
22 go.

23 Q What do you mean, the way that it was supposed to go?

24 A I didn't know that we -- we could have waited for a
25 hearing, for the verdict on the suppression hearing. I

Devin Jamahl Sims
Cross-examination by Mr. Giovanoli

1 didn't know all of that right there.

2 The only thing I knew is what I was being told at the
3 time, just to agree to what he was saying.

4 Q What do you mean, you agree to what he was saying?

5 A My attorney was telling me just to agree to what was
6 saying in the court.

7 Q But it was your decision to plead guilty.

8 A Yeah, it was my decision to plead guilty, but once we
9 come out from in there negotiating about the plea and when
10 we're leaving out he said when we get in the courtroom just
11 follow my lead and agree to what the judge said.

12 Q But isn't it correct that you could have said, no, I
13 don't want the guilty plea, I want to go forward with the
14 trial?

15 A I'm new to this, so I'm am not familiar with what was
16 going on.

17 Q Okay. Besides --

18 A I never been on trial before.

19 Q This was your second offense, is that correct?

20 A Yes, but I never been on trial before.

21 Q Okay. But you knew you had the right to a jury trial.
22 In fact, you were advised of such during the guilty plea.

23 A Yes.

24 Q Okay. So is it not true that you could have stood up
25 and said, no, I don't want the guilty plea, I want to go to

Devin Jamahl Sims
Cross-examination by Mr. Giovanoli

1 trial?

2 A Yes.

3 Q Okay. And you were aware of that whenever you pled
4 guilty.

5 A Not so true.

6 Q Well, how about whenever the judge informed you you
7 have a right to a jury trial, we've already started one, we
8 selected a jury, do you want to go forward with the trial?
9 And you told him you didn't want to, is that correct?

10 A Yes, yes, ma'am.

11 Q Okay. So you were aware of your right to a jury
12 trial.

13 A Yes, ma'am.

14 Q And you waived that right to the jury trial when you
15 pled guilty, correct?

16 A Yes, ma'am.

17 Q Okay. The Court also asked you on page 122 if you
18 were pleading guilty on your own free will, and you told
19 him yes, sir. Is that the truth?

20 A Yes, ma'am.

21 Q Okay. I have no further questions. Thank you.

22 MR. RICHEY: No other questions.

23 THE COURT: All right. You may come down.

24 MR. RICHEY: Call Mr. Schultz.

25

E. Joshua Schultz
Direct examination by Mr. Richey

1 E. JOSHUA SCHULTZ, having been
2 first duly sworn, testified as follows:

3 THE COURT: Have a seat please.

4 DIRECT EXAMINATION BY MR. RICHEY

5 Q Sir, would you state your name, please?

6 A Attorney E. Joshua Schultz.

7 Q And, Mr. Schultz, where do you practice law at?

8 A Right across the street in 184 North Daniel Morgan
9 Avenue.

10 Q Is that in Spartanburg County?

11 A It is.

12 Q Okay. And did you have an opportunity to represent
13 Mr. Sims?

14 A I did.

15 Q And during this case -- this was a drug case, correct?

16 A Correct.

17 Q And there was an issue in terms of a suppression
18 hearing, correct?

19 A Yes.

20 Q And prior to you getting a ruling Mr. Sims pled
21 guilty, is that correct?

22 A Correct.

23 Q And you understand his issue is that you should have
24 went forward and got a ruling on that hearing, on that
25 issue, correct? That's what his issue is. Do you

E. Joshua Schultz
Direct examination by Mr. Richey

1 understand that?

2 A Yes, I understand that's the issue, yes, sir.

3 Q And do you believe that you had an opportunity to win
4 that suppression hearing?

5 A There was an opportunity to win that. I'm not sure it
6 would ultimately have been successful. If it wasn't
7 successful and the narcotics were admitted into evidence
8 over my objection, obviously, then the sentencing could
9 have been far more.

10 Q Did you advise him to plead guilty prior to the
11 ruling? Did you advise him to plead guilty?

12 A Prior to trial or prior to the ruling?

13 Q Prior to the ruling.

14 A Prior to the ruling?

15 Q Yes, sir.

16 A It was my advice that based upon the potential
17 criminal liability that Mr. Sims was facing, which was I
18 believe 25 to 30, it would be my advice that 18 was
19 actually better than 25 to 30.

20 Q And do you believe he understood that?

21 A I think he did.

22 Q Did you have any discussions prior to the trial about
23 pleading in the suppression hearing?

24 A Prior to the picking of the jury or prior --

25 Q Yes, sir.

E. Joshua Schultz
Direct examination by Mr. Richey

1 A I think we did. I can't remember specifically, but I
2 spoke on a couple of occasions with Mr. Sims prior to
3 trial.

4 Q Did he express to you at any point that he wanted to
5 go forward with this hearing and get a ruling? Did he
6 express that to you?

7 A I can't remember specifically on that, but I know he
8 was in favor of pleading because of the potential criminal
9 liability of detention for 25 to 30 years.

10 Q Thank you. Answer any questions the attorney general
11 has.

12 CROSS-EXAMINATION

13 BY MS. GIOVANOLI

14 Q Good morning, Mr. Schultz.

15 A Good morning.

16 Q How long have you been practicing law?

17 A Since 2005.

18 Q Okay. And how much of that has been criminal law?

19 A Almost a hundred percent.

20 Q Okay. Were you retained or appointed in this case?

21 A Retained.

22 Q Okay. Let's just go to the suppression hearing. We
23 have the entire suppression hearing here in the record.

24 In your opinion what was the likelihood of success from
25 this hearing?

E. Joshua Schultz
Direct examination by Mr. Richey

1 A It -- right now it's probably difficult to say because
2 I'm not doing the suppression hearing right now, obviously,
3 but it would have been difficult to do that. It would have
4 been difficult to suppress the narcotics in this case,
5 because looking back at the transcript there could have
6 been at the very least reasonable articulable suspicion to
7 search the car and my client because of the smell of
8 marijuana.

9 Q Okay. You remember the facts in this case generally,
10 right?

11 A Yes, ma'am.

12 Q The cops encountered the defendant riding as a
13 passenger in a truck. They smelled the strong odor of
14 marijuana. They searched the defendant and they find
15 marijuana and cocaine, right?

16 A Yes.

17 Q Okay. And the -- the state was actually arguing that
18 this was began as a consensual encounter, correct?

19 A Yes.

20 Q And your arguments are all in the record, so we can
21 read that and determine the likelihood of success in that
22 hearing on our own. But is there any risk of waiting for a
23 ruling after a motion to suppress and allowing your client
24 to plead guilty after the ruling?

25 A Generally, there -- there could be a risk -- maybe not

E. Joshua Schultz
Direct examination by Mr. Richey

1 with this specific case -- but if the Court were to issue a
2 ruling suppressing the evidence. Then, obviously, that
3 would be a good thing. But if the Court issued a ruling
4 that denied my motion, then that offer could have
5 potentially -- not necessarily Mr. Sims' case -- but
6 potentially in another case could be withdrawn at that
7 point. And then we would proceed to trial and then my
8 client -- whoever it is -- would be looking at potentially
9 a maximum sentence if he were to be found guilty, if he or
10 she were to be found guilty, at trial.

11 Q And is it your testimony that that scenario wasn't
12 applicable to Mr. Sims' case, to wait for a ruling would
13 have basically caused an offer to be retracted? Do you
14 recall?

15 A I don't recall specifically, but Mr. Hunter is
16 usually -- Mr. Hunter is the solicitor in this case. But I
17 don't think the transcript reflects that the offer was
18 going to be withdrawn had I waited for the judge to make a
19 ruling on my suppression motion.

20 Q And there was actually an offer extended to Mr. Sims,
21 is that correct, prior to the motion to suppress?

22 A I can't remember specifically.

23 Q Okay. Well, I'll refer the Court to pages eight and
24 nine. The solicitor actually put the offer on the record,
25 and it was 7 to 25 years. They met in the courtroom. Sims

E. Joshua Schultz
Direct examination by Mr. Richey

1 left at that time and a bench warrant was issued. Do you
2 recall that?

3 A I -- I do recall that, but I believe that was before I
4 got retained.

5 Q Okay. So when he -- when the bench warrant was
6 issued, that was before you got retained.

7 A Yes, and --

8 Q When you were retained was there an outstanding bench
9 warrant?

10 A Yes, because he was in -- Mr. Sims was in jail when I
11 got retained, and I made a motion to rescind the bench
12 warrant that was denied. And then we proceeded to trial, I
13 believe, in December.

14 Q Okay. So he was in custody at the time of your
15 representation.

16 A Yes, ma'am.

17 Q Okay. But that offer was rescinded and the offer --
18 transcript will reflect such. And in this case he actually
19 ended up getting 18 years, is that correct?

20 A That's correct.

21 Q Okay. That -- and how did that plea negotiation come
22 about?

23 A Well, we -- my recollection is we broke for lunch and
24 the judge was going to make a ruling after lunch. And I
25 remember the last thing that Judge Couch said was I'm going

E. Joshua Schultz
Direct examination by Mr. Richey

1 to take a look at the video, because there was a video.
2 And I approached the -- one of the city officers. And I
3 said can we do -- can we work this out. And he said, well,
4 I don't know. And I threw out a number. I said 15. And
5 that was rejected by the officer and Mr. Hunter. Then
6 Mr. Hunter came back with 18. I think the transcript
7 reflects that. And then of course I talked to my client
8 and then he decided to plead.

9 Q Okay. And did you scare your client into pleading
10 guilty?

11 A I don't think so, no.

12 Q Did you coerce him?

13 A No.

14 Q What -- basically, what was your advice to him?

15 A Well, my advice was that if we did not accept the 18,
16 then we will proceed to trial; and if the outcome was a
17 guilty verdict of the jury, then he would have potentially
18 received a sentence of anywhere from 25 to 30 years.

19 Q Okay. And is that correct advice? Is that the
20 sentence he was facing?

21 A Yes.

22 Q Okay. Let's go. Let's talk about the video. So
23 there was a body cam in this case?

24 A I can't remember specifically, but I know there was a
25 video of this.

E. Joshua Schultz
Direct examination by Mr. Richey

1 Q Okay. So, essentially, everything the officers
2 testified to during the motion to suppress was on video,
3 correct?

4 A Yeah, most of it. Obviously, there's some recording
5 difficulties and everything. So not everything that the
6 officer said to my client or what was done during the stop
7 is on the video, but yes.

8 Q Not only was the judge considering the testimony
9 presented at the motion to suppress, but he also had a
10 video to watch, right?

11 A Yes.

12 Q Okay. And just for the record, you got discovery in
13 this case.

14 A Yes.

15 Q And you reviewed all of it with your client.

16 A Yes.

17 Q If the drugs weren't suppressed do you believe the
18 likelihood of conviction was high? Correct?

19 A Yes.

20 Q Okay. I have no further questions. Thank you.

21 MR. RICHEY: No other questions.

22 THE COURT: Let me ask.

23 Mr. Schultz --

24 THE WITNESS: Yes, sir.

25 THE COURT: -- what was your thought process in not

E. Joshua Schultz

1 waiting for Judge Couch to give you the ruling on the
2 suppression? I don't understand that.

3 THE WITNESS: Well, my recollection of it was -- is
4 that we did have a conference back in chambers. And the
5 judge indicated to me that maybe some future negotiations
6 may be applicable in this, and I said okay. So I started
7 negotiating with the --

8 THE COURT: What did you take that to mean?

9 THE WITNESS: I -- I took it to mean that the
10 suppression hearing would not go in my favor, Your Honor.

11 THE COURT: All right. That's -- that's reasonable.

12 I'm concerned about this issue of whether -- did you
13 have an offer at that point? At lunchtime after the
14 suppression hearing did you have an offer? You went to
15 lunch. You, obviously, apparently went back and talked to
16 the judge. Did you have an offer?

17 THE WITNESS: Prior to lunch, no; but after lunch, we
18 did.

19 THE COURT: So you had an offer of what?

20 THE WITNESS: Eighteen years.

21 THE COURT: Did you know at that point -- but you
22 still hadn't heard the decision.

23 THE WITNESS: No, sir.

24 THE COURT: But you had some knowledge because you
25 talked to the judge and he gave you the impression that he

E. Joshua Schultz

1 was going to deny the motion. Did the judge do that?

2 THE WITNESS: I got the distinct impression that the
3 judge was going to deny my suppression motion, yes.

4 THE COURT: From what he said?

5 THE WITNESS: Yes.

6 THE COURT: And he said you better go get an offer?

7 THE WITNESS: Well, I can't remember the exact words,
8 Your Honor, but I think it could have been implied by that.
9 That was -- in my opinion that would be the implication.

10 THE COURT: All right. We've got a situation here.
11 I've been in it myself.

12 THE WITNESS: Yes, sir.

13 THE COURT: Got a suppression motion in front of me.
14 obviously, if he agreed with you that the officers didn't
15 have articulable suspicion or some other reason, he can
16 deny the admission of the drugs, correct?

17 THE WITNESS: Yes, sir.

18 THE COURT: In which case your client -- if that's the
19 only thing they're trying him on, he'd go free.

20 THE WITNESS: Yes, sir.

21 THE COURT: That's -- that's a big -- that's a big
22 win.

23 THE WITNESS: Absolutely in a drug case, Your Honor.
24 I absolutely agree.

25 THE COURT: In a drug case. And if he denied the

E. Joshua Schultz

1 suppression motion you could still -- you said you -- the
2 solicitor had not withdrawn an offer. why couldn't you
3 have just heard the outcome of the suppression motion and
4 still gone ahead and pled? You could still go ahead and
5 plead.

6 THE WITNESS: I don't -- I don't have any --

7 THE COURT: Well, you know you could have pled.

8 THE WITNESS: Yes, sir.

9 THE COURT: Even after he said I deny your motion.

10 THE WITNESS: Yes, sir.

11 THE COURT: You could -- and that's -- that's the time
12 if you're going to plead to go ahead and do it rather than
13 submit it to the jury. Is that --

14 THE WITNESS: Yes, sir. If -- and the transcript
15 doesn't reflect that, and I don't have any explanation
16 because it happened several years ago, Your Honor. But I
17 don't have an explanation why. I wasn't running up on an
18 offer deadline at that time.

19 THE COURT: Yeah.

20 THE WITNESS: Because the offer was made. I mean,
21 maybe in retrospect I could have asked that the offer be
22 extended until the ruling was made.

23 THE COURT: Was it ever withdrawn?

24 THE WITNESS: The 18 years, Your Honor?

25 THE COURT: I thought the solicitor said it was 7 to

E. Joshua Schultz

1 20 or something like that. I don't know where the 18 comes
2 from.

3 THE WITNESS: Okay.

4 MS. GIOVANOLI: On page eight through nine of the
5 transcript the solicitor put the record -- the offer on the
6 record. It was 7 to 25.

7 THE COURT: That's what I thought you said.

8 MS. GIOVANOLI: But I think he's testified that it was
9 prior to his being retained, because at that point he left
10 when the offer was made and there was a bench warrant
11 issued.

12 THE COURT: Hold on. Let me follow that up.

13 Seven to 25 was made prior to your being retained.

14 THE WITNESS: Yes, yes.

15 THE COURT: So did you have any offer going into this
16 when you -- after you were retained did you have an offer
17 at any point in time?

18 THE WITNESS: No, sir.

19 THE COURT: Never? Did you not --

20 THE WITNESS: During -- during trial, yes, sir, Your
21 Honor, but -- but I didn't have that -- I'm sorry. Yes,
22 sir.

23 THE COURT: You get retained.

24 THE WITNESS: Yes, sir.

25 THE COURT: Up until the day he pled did you ever get

E. Joshua Schultz

1 an offer from the state?

2 THE WITNESS: No, sir.

3 THE COURT: So it was always straight up? Never got
4 an offer?

5 THE WITNESS: During my representation I believe it
6 was always straight up, I believe.

7 THE COURT: Did you not even ask for an offer?

8 THE WITNESS: I did. Absolutely.

9 THE COURT: They just adamantly refused.

10 THE WITNESS: I asked. I had a conversation with
11 Mr. Hunter, the solicitor, in the hall.

12 THE COURT: And when was that?

13 THE WITNESS: That was when I got picked up on the
14 case.

15 THE COURT: Okay.

16 THE WITNESS: When I got retained on the case, Your
17 Honor.

18 THE COURT: Okay.

19 THE WITNESS: And --

20 THE COURT: How soon? How much time prior to trial
21 was that?

22 THE WITNESS: I can't specifically remember, but it
23 was a month or so.

24 THE COURT: A month.

25 THE WITNESS: Yes, sir.

E. Joshua Schultz

1 THE COURT: Okay. So you had time to negotiate with
2 the state if you thought there was any -- that would bear
3 any fruit.

4 THE WITNESS: Yes. What I -- what I asked
5 specifically with the -- with the state is that he had an
6 offer of 7 to 25. And I believe Mr. Hunter, the solicitor
7 on the case, revoked that offer and then --

8 THE COURT: You believe he revoked that offer?

9 THE WITNESS: Yes.

10 THE COURT: When -- when he fled and the bench warrant
11 was issued?

12 THE WITNESS: Yes.

13 THE COURT: Okay. Go ahead.

14 THE WITNESS: Yes. And then -- then I got involved.
15 And then the only offer that was made prior to -- or excuse
16 me -- when I was retained was the -- that
17 18-years-negotiated offer.

18 THE COURT: When was that?

19 THE WITNESS: That was the day of trial, Your Honor.

20 THE COURT: Prior to trial.

21 THE WITNESS: The day of trial, Your Honor.

22 THE COURT: Prior to the trial beginning.

23 THE WITNESS: Yes, prior to the trial beginning, yes,
24 sir. I'm sorry.

25 THE COURT: But you had an 18. But you had discussed,

E. Joshua Schultz

1 you told me that you had discussed, you'd asked for a 15.

2 THE WITNESS: Yes, sir.

3 THE COURT: So that's the -- that's the extent of the
4 negotiations.

5 THE WITNESS: Yes.

6 THE COURT: Why did you start at 15? Just curious.
7 Based on your experience, I guess.

8 THE WITNESS: Yes. Usually in a trafficking offer
9 with a lot of crack cocaine or cocaine or methamphetamine,
10 usually the solicitor's offer in a serious case like that
11 would be 15 years. And I've worked out several cases like
12 that. Usually that's the best offer that they give to
13 defendants that have these type of trafficking charges.

14 THE COURT: Getting back to the case at hand and the
15 moment you come back to the courtroom after lunch, you know
16 that at that point that the state's offer is 18 years.

17 THE WITNESS: Yes, sir.

18 THE COURT: And there's no indication that the state
19 would withdraw that even if Judge Couch failed to suppress,
20 denied your motion.

21 THE WITNESS: Yes, sir.

22 THE COURT: So you felt comfortable that it wouldn't
23 be withdrawn.

24 I mean, like you say, you weren't running up against
25 that plea deadline.

E. Joshua Schultz
Cross-examination by Ms. Giovanoli

1 THE WITNESS: That's correct, yeah.

2 THE COURT: And then I guess the curious question is
3 why not just hear what he had to say.

4 THE WITNESS: I don't -- I don't have an explanation
5 for that, Your Honor.

6 THE COURT: Well, if that's the answer, that's the
7 answer.

8 THE WITNESS: Yes, sir.

9 THE COURT: All right. Thank you very much.

10 THE WITNESS: Thank you, Your Honor.

11 MS. GIOVANOLI: May I have one brief follow-up
12 question?

13 THE COURT: Certainly yes, ma'am.

14 CONTINUED CROSS-EXAMINATION

15 BY MS. GIOVANOLI

16 Q So based on your in-chambers conference you -- was it
17 your belief that the motion was going to be denied?

18 A Yes.

19 Q Okay. Nothing further. Thank you.

20 MR. RICHEY: No other questions.

21 THE COURT: You may come down.

22 MR. RICHEY: No more witnesses at this time, Your
23 Honor.

24 MS. GIOVANOLI: That state has no further witnesses.

25 THE COURT: All right. Thank you very much. Thirty

1 days. Free to go.

2 THE WITNESS: Thank you, Your Honor.

3 END OF REQUESTED TRANSCRIPT OF RECORD

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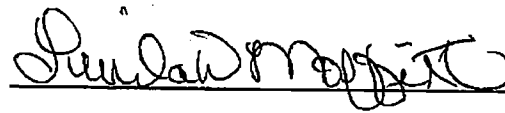
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of Common Pleas for Spartanburg County, South Carolina, on the 13th day of November 2017.

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

June 21, 2018



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Devin Jamahl Sims, #366510

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2016-CP-42-2747

ORDER OF DISMISSAL
WITH PREJUDICE

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Devin Jamahl Sims (Applicant) on July 25, 2016. The State (Respondent) made its return requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on November 13, 2017 at the Spartanburg County Courthouse. Applicant was present and represented by Rodney Richey, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. E. Joshua Schultz, Esquire, (Counsel) also testified. This Court had before it a copy of the Spartanburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the PCR application, Respondent's return, and Applicant's supplemental applications.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted at the June 2015 term of the Grand Jury for Spartanburg County for trafficking in cocaine, second offense (2015-GS-42-2663). Applicant was represented by Joshua Schultz, Esquire. On December 16, 2015, Applicant pleaded guilty before the Honorable Roger L. Couch to

trafficking in cocaine 28 grams or more but less than 100 grams, second offense.¹ Pursuant to a negotiated sentence, Judge Couch sentenced Applicant to eighteen (18) years' imprisonment.² Applicant did not appeal his guilty plea or sentence.

In his application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "denial of 6th and 14th amendment U.S. Const."
 - b. "Counsel failed as an advisor, negotiator, and failed to investigate and prepare for trial."

Pursuant to the State's motion for more definite statement included in its Return, Applicant, through counsel, filed a form supplemental application with 31 allegations, all of which are vague. At the start of the hearing, the State requested the allegations be clarified for the record. Applicant informed this Court he would only be proceeding on a claim that Counsel was ineffective for failing to obtain a ruling on the pre-trial motion to suppress hearing prior to allowing Applicant to plead guilty. Applicant informed this Court he was abandoning all other claims.

SUMMARY OF TESTIMONY AT PCR

I. Applicant testified to the following:

Applicant testified he believed he should have gotten a ruling on his motion to suppress prior to pleading guilty. He testified he pled guilty to a negotiated sentence of 18 years because he did not want to risk receiving 30 years if convicted at trial. Applicant believes the cop who searched him could not have smelled marijuana on him. Although Applicant admitted to

¹ According to the plea transcript, the Solicitor dismissed two other drug charges in exchange for Applicant's guilty plea.

² Applicant was also on probation at the time of his plea for a prior conviction of distribution of cocaine base (2012-GS-42-03207). Judge Couch revoked Applicant's probation and invoked the thirty (30) month suspended sentence to run concurrently with his 18 year sentence. Applicant does not contest the probation revocation.

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smoking marijuana before entering the vehicle, he claims he would not have smelled like marijuana because he did not smoke in the vehicle. He also admitted no one forced him to plead guilty.

II. Counsel testified to the following:

E. Joshua Schultz has been practicing criminal law since 2005. He was retained by Applicant after the State had extended an offer of 7-25 years to Applicant and Applicant fled. A bench warrant was issued and Applicant was thereafter arrested. Counsel received discovery and reviewed it with Applicant. Counsel did not receive any other offers from the State. Counsel filed a motion to suppress the drugs. A hearing was held the day of trial. After the hearing, there was a recess for lunch. Counsel spoke with the trial judge in chambers who indicated that further plea negotiations should be had. Counsel understood the conversation to imply his motion to suppress would be denied. Despite his conversation with the trial judge, Counsel believed the motion to suppress would be denied. Thereafter, Counsel engaged in negotiations with the State. Counsel requested 15 years and the State countered with 18.

Counsel advised Applicant of the offer, which Applicant accepted. Counsel advised Applicant he was facing 25-30 years at trial, but was offered to plead to a lesser included at 15 years. Although Counsel did not recall if the 18 year offer would be retracted after a ruling on the motion to suppress, he testified in his general experience, pursuing a pre-trial motion or ruling runs the risk of the offer being retracted. Counsel believed the motion was going to be denied, based on his discussion with the judge and the testimony and argument from the hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the

witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that he was prejudiced by any deficiency. A Post-Conviction Relief application is not a venue for questioning each and every decision of trial counsel in hindsight. Rather, the Applicant must demonstrate by a preponderance of the evidence that trial counsel was deficient and that the deficiency prejudiced the outcome of his trial. Applicant has failed to do so.

I. Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, the burden of proof is on the Applicant to prove his allegations by a preponderance of the evidence. Fraser v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(c), SCPCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment, Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured

by its "reasonableness under professional norms." Cherry, 300 S.C. at 117 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Failure to wait for ruling on motion to suppress

Applicant alleges Counsel was ineffective for *allowing* him to plead guilty prior to a ruling by the trial judge on his motion to suppress. There are several reasons why this claim fails. First, Applicant cannot prove Counsel was deficient. The testimony presented at the hearing and the record of Applicant's plea proceeding both demonstrate the decision to plead guilty was Applicant's. This Court finds credible Applicant's testimony that he was not forced or coerced to plead guilty. This Court also finds Counsel's testimony credible regarding his advice to Applicant to plead guilty. Counsel did not coerce Applicant to plead guilty. While Counsel's advice to Applicant was to accept the State's offer, the decision was solely Applicant's. Therefore, an allegation Counsel *allowed* him to plead guilty is inherently flawed. No defense attorney has the right to either allow or disallow a defendant to exercise their own judgment in deciding to accept a plea offer and plead guilty. Counsel should only advise a defendant as to the pros and cons of such a decision and advise what Counsel believes is in the defendant's best interest. This Court finds Counsel did just that. Furthermore, Applicant never even asked about waiting on a ruling on his motion to suppress prior to entering his guilty plea.

neither to Counsel nor on the record to the trial court. Only now, in hindsight, does he offer such an argument in an attempt to vacate his conviction and sentence.

Additionally, Counsel testified credibly that his advice to Applicant to plead guilty was based on sound professional judgment. Specifically, after testimony and argument from the motion to suppress hearing, Counsel did not believe they would be successful in getting the drugs suppressed. This belief was reinforced by an in-chambers conference with the trial judge who indicated further negotiations between the defense and the State should be had. Counsel understood this to mean his motion would not be granted.

Importantly, Counsel's belief is supported by the record of the pre-trial hearing. The State presented testimony from Officer Reginald Spurgeon. Officer Spurgeon worked in law enforcement for twenty-five years. He and Officer Laurent Smith were patrolling a high crime housing complex area when they saw an unfamiliar truck. The truck belonged to Melvin Mitchell. The officers observed Applicant get into Mitchell's truck in the passenger seat and pull out of the driveway. The officers were behind the truck about four or five minutes until they came to a stop sign. Spurgeon then pulled up next to the truck. With the windows down, Spurgeon immediately smelled a strong odor of marijuana emanating from the truck. The officers asked Mitchell why his truck smelled like marijuana. Spurgeon exited his vehicle and spoke with the driver, Mitchell, while Officer Smith spoke with the passenger, Applicant. Smith then motioned Spurgeon to the passenger side of the vehicle where Applicant was and Spurgeon went to them. At that point, the smell of marijuana was stronger coming from Applicant's person. Applicant told the officers they could search him. The officers never asked to search Applicant. (Tr. pp. 40-73).

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The State presented the testimony of Officer Laurent Smith. Smith had ten years of law enforcement experience. Smith was riding passenger to Spurgeon patrolling a housing complex area. Smith noticed the truck at one of the duplexes and witnessed Applicant get into the passenger side of the truck. They followed the truck for approximately two to four minutes to a stop sign where they pulled in the left lane next to the truck. Smith immediately smelled a strong odor of burnt marijuana coming from the truck. Smith asked Mitchell why there was a strong odor of marijuana when Applicant responded he had recently smoked marijuana that morning. Applicant also told Smith they could search him. Smith exited the patrol vehicle and went to the passenger side of the truck to Applicant. Smith also smelled marijuana coming from Applicant's person. Smith did not ask to search Applicant, but Applicant freely invited Smith to search him. Because of the high crime in the area, Smith conducted a Terry frisk for weapons and felt a bulge in Applicant's groin area that Smith believed to be a package. Applicant began to scuffle with Smith and attempted to flee. At that point, Smith and Spurgeon detained him and retrieved the package that was in his pants under his testicles. Smith found 2 grams of marijuana and 44.5 grams of cocaine in the package. (Tr. pp. 74-92).

The State presented testimony from Officer John Burgess. Burgess showed up to the scene after Applicant exited his car. Burgess's vehicle was equipped with a dash camera and was able to capture the positioning of Spurgeon's patrol car in relation to Mitchell's truck in which Applicant was a passenger. The two vehicles were side by side. The video was admitted into evidence as State's Exhibit 1. (Tr. pp. 40-45).

Counsel presented the testimony of Mitchell, the owner and driver of the truck. Mitchell picked Applicant up that day to take him to pick up Applicant's daughter from day care. The police pulled up alongside of his truck at a stop sign, no blue lights or siren. The officers told

Mitchell they smelled marijuana coming from his truck. Mitchell testified the officers asked Mitchell and Applicant to exit the truck and they searched Applicant and Mitchell's truck. The officers did not arrest Mitchell, but asked him to go to the police station to give a statement. Mitchell gave the police a statement, but testified it was not true. In his statement, he told law enforcement that when Applicant got in his car, Mitchell told him he must have been smoking weed pretty hard that day. Mitchell also stated he would give rides to Applicant in exchange for crack. Mitchell denied both that he ever told Applicant that and that Applicant paid him for rides with crack. Interestingly though, Mitchell even admit he smelled marijuana when he pulled up in the yard to pick up Applicant. Mitchell also admitted the police found a crack pipe in his truck and that he does smoke crack. (Tr. pp. 98-108).

After the testimony, Counsel argued for suppression of the drugs based on an unlawful search and seizure. Counsel argued that although the contact began as a consensual encounter, the officers lacked either probable cause or reasonable articulable suspicion to search and detain Applicant. In support of this argument, Counsel stated it would have been impossible to smell a strong odor of burnt marijuana when Applicant had smoked before entering the truck, and they drove with the windows down for four or five minutes before the consensual encounter with the police. The Court noted that based on Counsel's cross examination of the officers, they included the strong odor of marijuana in their incident reports written immediately after the arrest. The State argued there was no stop and that the consensual encounter turned into detention after Smith conducted a frisk of Applicant for weapons and Applicant began to scuffle and try to flee. During the consensual encounter, Applicant invited the officers to search him. Despite this, the experienced officers both smelled a strong odor of marijuana first from the truck and then from Applicant's person which gave them a right to search Applicant. Even Mitchell

conceded the smell of marijuana when he *pulled up* to pick up Applicant. Thereafter, a recess in the proceedings was taken. (Tr. pp. 109-114).

While this Court finds Counsel's efforts in his motion to suppress the drugs commendable, it is apparent from the record the motion would not have been successful. The case law supports a warrantless search where law enforcement detects an odor of marijuana — especially in this case where Applicant admitted he had smoked marijuana earlier in the day, invited the officers to search him and Officer Smith only conducted a Terry frisk for weapons before feeling the unnatural bulge of a package under Applicant's testicles. See State v. Odom, 376 S.C. 330, 335, 656 S.E.2d 748, 751 (Ct. App. 2007) (indicating that the sight of Swisher Sweet cigars, the strong odor of marijuana, the defendant's admission he smoked marijuana earlier in the day, and the presence of a gun holster in the back seat amounted to reasonable suspicion of the existence of drugs). See also State v. Dobbins, 420 S.C. 583, 593, 803 S.E.2d 876, 880 (Ct. App. 2017), reh'g denied (Sept. 21, 2017) (“[I]t is evident that the odor [of marijuana] emanating from the packages alone was a sufficient basis to establish probable cause as to their contents when it is considered that an officer of the law, familiar with the odor of marijuana, believed the odor being emitted was that of marijuana.”) (citing State v. Lane, 278 S.C. 68, 72, 245 S.E.2d 114, 116 (1978)). See also State v. Brown, 389 S.C. 693, 698 S.E.2d 811, 816 (Ct. App. 2010) (“Probable cause is a commonsense, nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. Probable cause to search exists where the known facts and circumstances are sufficient to warrant a man of reasonable prudence in the belief that contraband or evidence of a crime will be found in a particular place. The principal components of the determination of probable cause will be whether the events which occurred leading up to

the search, viewed from the standpoint of an objectively reasonable police officer, amount to probable cause.") (internal citations omitted).

Not only was it apparent from the hearing held on the motion and the testimony elicited that the motion would not be successful, the trial judge encouraged further plea negotiations which Counsel understandably interpreted to mean his motion to suppress would be denied. While this Court may not understand why Counsel did not simply await the ruling of the trial court prior to Applicant pleading guilty, this alone does not render Counsel's representation deficient. For Counsel's performance is based on a standard of *reasonableness*, not perfection. Cherry, 300 S.C. at 117 (citing Strickland).

Assuming *arguendo* this Court was to find Counsel deficient for not waiting for a ruling on the motion to suppress prior to Applicant pleading guilty, Applicant cannot prove he was prejudiced. As discussed above, the motion was not likely to have been granted and therefore, had Counsel awaited the ruling, there is no credible evidence that Applicant would not have pled guilty but rather insisted on going to trial. Hill, supra. In fact, Applicant testified he pled guilty to a negotiated sentence of 18 years *because he did not want to risk receiving 30 years if convicted at trial*. It is speculative, if not erroneous, to assume the motion would have been granted, the drugs suppressed, and Applicant freed of his drug charges. It is more likely that, had the trial court ruled prior to the guilty plea, the motion would have been denied, the drugs found admissible, and Applicant would find himself in the same situation of deciding to plead guilty rather than risk imprisonment for 30 years if convicted at trial. This Court finds Applicant has failed to prove Counsel was deficient or that he was prejudiced by any alleged deficiency. Therefore, the application is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any violations that would require this Court to grant his application. This Court finds Applicant has failed to prove any deficiencies on the part of Counsel and further, Applicant has failed to prove prejudice from any alleged deficiencies in Counsel's representation of him. Therefore, as Applicant has failed to meet his burden of proof in this post-conviction relief action, his application is denied and dismissed with prejudice.

This Court notifies Applicant he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 20 day of MARCH,

G. Thomas Cooper, Jr.
G. THOMAS COOPER, JR.
Presiding Judge
Seventh Judicial Circuit

Causey, South Carolina

SPARTANBURG COUNTY
2018 MAR 26 AM 10:20
M. HOPE BRACKLEY

WITNESSES

DOCKET # **15-35-42-2663**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 01 2015

TERM

THE STATE
vs.

DEVIN JAMAHL SIMS

Indictment for

TRAFFICKING IN COCAINE

SC Code: 44-53-370

SPTBG CITY PUBLIC SAFETY

1. SENTENCE MADE

2. REPORT MADE

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURES

7. ARREST WARRANT NUMBER
FINE CARD MADE

2014A4210203911

ACTION OF GRAND JURY

MAY 29 2015

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

SCANNED

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

MAY 29 2015

At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING IN COCAINE

That Devin Jamahl Sims did in Spartanburg County on or about December 9, 2014, knowingly sell, manufacture, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or did knowingly actually or constructively possess, or did knowingly attempt to actually or constructively possess more than (28) twenty eight grams of Cocaine, a schedule II controlled substance, in violation of §44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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



ASSISTANT SOLICITOR