

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

Edward W Miller, Circuit Court Judge

RECEIVED

MAY 30 2012

SC Supreme Court

ROBDRECKO ANDRAY NILES,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

SUSAN B HACKETT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHN W MCINTOSH
Chief Deputy Attorney General

SALLEY W ELLIOTT
Senior Assistant Deputy Attorney General

KAREN RATIGAN
Assistant Attorney General

P O Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 ROBDRECKO NILES,) 2003-GS-23-8202
7 Defendant) 2004-GS-23-0600
8) MAY 3, 2005
9) Greenville, South Carolina

10 (VOLUME I)

11 B E F O R E

12 THE HONORABLE G EDWARD WELMAKER, JUDGE , and a jury

13
14 A P P E A R A N C E S

15 JOYCE MONTS, ASSISTANT SOLICITOR
16 Attorney for the State

17 CHRISTOPHER POSEY, ESQUIRE
18 Attorney for the Defendant

19
20 Michael R Watts
21 Circuit Court Reporter
22
23
24
25

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(MAY 3, 2005)

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1 (Proceedings, May 3, 2005)

2 MS MONTS Your Honor, we will go ahead and hand
3 up a bench warrant at this time

4 THE COURT This is the case of State of South
5 Carolina versus Robdrecko Niles, charged with trafficking
6 crack cocaine and driving under suspension

7 Are we ready to proceed with this one?

8 MS MONTS The State is ready, Your Honor

9 MR POSEY Your Honor, I would move that the
10 court issue a bench warrant at this time and continue the
11 trial Mr Niles, if convicted, is facing a mandatory 25 to
12 30 year sentence

13 Your Honor, I know case law allows the court to go
14 forward, but I don't see any way that Mr Niles won't be
15 prejudiced by the fact that he is not here I think any
16 juror is going to take that into consideration, no matter
17 what the court instructs them to do, and I have the greatest
18 respect for our jurors

19 Facing this type of sentence, I would ask the
20 court to err on the side of caution and issue a bench
21 warrant and continue the matter

22 Mr Niles is a local Greenville native, has been
23 in Greenville all of his life I can't for sure tell the
24 court the reason for his appearance, though I believe, as
25 the court probably does, it is because of the nature of what

1 he's facing There is no indication that he's ever been
2 anywhere other than the Greenville area I don't think it
3 would be long before he's found I don't see how the State
4 would be prejudiced in any way in issuing a bench warrant
5 first and waiting until Mr Niles is picked up on the bench
6 warrant I don't think that would be a long period of time,
7 because the history is he's been in and out of our detention
8 center quite frequently during his lifetime and the
9 Department of Corrections

10 Judge, I just -- I feel that the prejudicial
11 weight against Mr Niles in the juror's eyes, in these
12 juror's eyes, is overwhelming, compared to any prejudice the
13 State would have, as far as moving for the bench warrant and
14 continuing the trial at this time

15 THE COURT Thank you, Mr Posey

16 Be glad to hear from you, Ms Monts

17 MS MONTS Your Honor, Mr Robdrecko Niles was on
18 the trial docket previously, also presented by Mr Posey, on
19 Tuesday, February 1st of 2005 At that time it was not
20 reached

21 Mr Niles has recently been in contact with Mr
22 Posey, as well as myself He had been calling me several
23 times, and Mr Posey was aware of that Mr Posey finally
24 said if I wanted to speak to him, I could, because I was
25 telling him "I can't speak to you " I did speak to him on

1 the telephone last Thursday, did tell him that he was on the
2 trial docket for this week And he told me "yes, I know on
3 Tuesday, May 3rd," because we were talking about the dates
4 He told me himself that he was aware that he was supposed to
5 be here today I told him to make sure and get back in
6 contact with his attorney to get prepared for trial and
7 decide how he wanted to handle it

8 I also have my investigator, Shirley Almond,
9 seated next to me who did send him bond cards to his known
10 address on April 18th, as well as April 28th of 2005 Mr
11 Niles did tell me he had received the first bond cards
12 telling him to be here for trial, so we believe that he was
13 on notice and that we should be able to proceed at this
14 time

15 THE COURT Was he notified that the trial would
16 proceed in his absence?

17 MS MONTS Yes, Your Honor, his bond sheet does
18 say that

19 THE COURT Okay How about the card, does it say
20 that?

21 MS MONTS Yes, Your Honor In fact, it does
22 It says quote, "failure to appear may result in trial being
23 conducted in the defendant's absence and/or a bench warrant
24 being issued for defendant's arrest "

25 MR POSEY I would say, Your Honor, that "may"

1 word there may be a key word It does not put him on notice
2 his trial will be conducted without him It says it may be
3 conducted

4 I just -- and again, Your Honor, I don't have any
5 qualms Ms Monts has followed their procedures to the
6 letter I think just in this case, where it is such a large
7 sentence that Mr Niles will face, if convicted, with no
8 parole eligibility, essentially will do almost 25 to 30
9 years in the penitentiary, if convicted And based on the
10 circumstances of him being a local resident, and really with
11 no apparent ties to anywhere other than Greenville, again, I
12 will state I think the prejudice to him far outweighs any
13 prejudice to the State in issuing a bench warrant and
14 continuing the matter at this time

15 MS MONTS Your Honor, I can, for the court, put
16 in as a Court's Exhibit a copy of the bond, and the bond
17 sheet does state "I understand and have been informed that I
18 have a right and obligation to be present at trial And
19 should I fail to attend court, the trial will proceed in my
20 absence " The defendant did sign this document, Your Honor

21 THE COURT Has the bondsman been notified?

22 MS MONTS Yes, Your Honor

23 THE COURT Is he out on surety bond?

24 MS MONTS Yes, Your Honor

25 MR POSEY Your Honor, the only question I would

1 ask about that is when the bondsman was notified, because I
2 don't think Ms Monts was aware he was out of jail until
3 last week I don't know if Ms Almond was or not

4 MS MONTIS Your Honor, the bondsman was notified
5 on April 18th and again on April 28th, when we again sent
6 second cards

7 THE COURT Has there been any discussion with the
8 bondsman?

9 MS MONTIS No, Your Honor

10 THE COURT Has the case been on the trial docket,
11 other than the February term and this term?

12 MR POSEY Your Honor, for the record, just -- I
13 don't think either one of us stated, Mr Niles was incarcerated
14 during the February -- when the trial was set in February
15 He was not out on bond He was in the our local detention
16 facility

17 THE COURT But has he been on the docket since
18 February?

19 MR POSEY No, sir

20 MS MONTIS Your Honor, I turned him in for I
21 think it's the last week of February, but Mr Posey, I found
22 out after I put it on, was on vacation that week, so it was
23 taken off It was not printed on you as being on the docket
24 at that time

25 Your Honor, I would go ahead and give them a copy

1 of the bond sheet

2 THE COURT And the card, if we could make both
3 court exhibits

4 Is there any family member that knows his
5 whereabouts?

6 MR POSEY Your Honor, the number that I have for
7 him is a cell phone number I don't know if the bond form
8 lists any other numbers or not, because I have not been
9 privileged -- normally I have to get that from the client
10 himself, but it's my understanding his entire family lives
11 in the Greenville area

12 THE COURT What was the amount of his bond?

13 MS MONTS Your Honor, \$20,000

14 THE COURT His bond was just made last month?

15 MR POSEY I believe it was in February, Your
16 Honor, my understanding

17 THE COURT Had he been in jail since?

18 MR POSEY He had been -- it's my understanding
19 he was arrested on this charge, subsequently was sent to the
20 Department of Corrections on a parole violation, if I'm
21 getting -- if I'm remembering right He was brought back to
22 the law enforcement center after his parole violation, and
23 stated -- I think he was here in our law enforcement
24 facility about three months prior to making bond, Your
25 Honor

1 MS MONTES Your Honor, the bondsman went off the
2 bond on the first time he went in, to get off his bond when
3 he got in trouble again, so this was a new bond company
4 signing this bond on February 7th

5 (Bond Paper marked as Court's Exhibit No 1 for
6 identification)

7 (Bond Card marked as Court's Exhibit No 2 for
8 identification)

9 (Bond Card marked as Court's Exhibit NO 3 for
10 identification)

11 MR POSEY Your Honor, I have never had any
12 particular dealings with that particular bonding company I
13 don't even recognize the name myself

14 MS MONTES Your Honor, the defendant was booked
15 in our Greenville LEC on November 1st of 2004, on failing to
16 pay child support and the bondsman going off the bond on
17 these current charges He apparently either paid or did his
18 time on the child support and made bond on the drug charges
19 and was released February 8th of '05, on the new bond And,
20 as I said, both Mr Posey and myself spoke to him I spoke
21 to him on Thursday And Ms Almond as well spoke to him on
22 Thursday, because I confirmed his address She called him
23 back again on his cell phone, which is the number we had and
24 confirmed his address, plus he told me he knew he was
25 supposed to be here on today's date

1 MR POSEY Your Honor, last week was the first
2 time that I had any contact with him at all since his
3 release I did not have any means to contact him up until
4 that time, and there has not been any substantive
5 conversations between Mr Niles and myself since late
6 January, the first day of February Most of last week was
7 relating an offer that Ms Monts had made at the time It
8 was not substantive issues

9 THE COURT Ms Monts, your recollection of the
10 conference with him last Thursday was that he knew what --
11 you didn't have to tell him to be here He knew already
12 that his case was up for trial today?

13 MS MONTS Yes, sir In fact, I had given the
14 wrong date I said "I believe you are supposed to be here
15 next Thursday, May 5th " And he said "no, I have got
16 Tuesday, May 3rd " And I said "you are absolutely correct
17 I misstated You are to be here Thursday, May 3rd," and he
18 said "that's what the card says "

19 THE COURT Is his phone disconnected or is it
20 still --

21 MR POSEY The last time I tried it, Your Honor,
22 which was yesterday, because I have been up here most of the
23 today day, is it would go to his -- to a voicemail His
24 voicemail does not have his voice on it It just goes to an
25 automated system

1 THE COURT Okay

2 MR POSEY But it is a 350 number, which I
3 believe -- or 380

4 MS MONTS 325

5 MR POSEY 325 number, Your Honor, which is a
6 local cell provider

7 THE COURT So what number is

8 MR POSEY I believe that would be his home
9 number in the Simpsonville, Fountain Inn area, Your Honor,
10 which I think has been his area of residence for quite a few
11 years

12 THE COURT I certainly realize the seriousness of
13 the charge, and the points you make are well taken, Mr
14 Posey, but I think there's substantial evidence here that he
15 has been notified, both by his bond and the card, two
16 conversations with the solicitor's office, with permission
17 of defense counsel that may be talking with him as recently
18 as five days ago I think in my judgment there is no
19 question but that he was aware that today was the day for
20 his trial, and so I'm going to allow the State to proceed
21 with the case

22 MR POSEY Your Honor, in that case I would make
23 a motion to be relieved I have not had any substantive
24 conversations with Mr Niles in nearly three months now
25 Even though this case was on the trial docket before, I have

1 not been able to meet with Mr Niles personally to engage in
2 any trial strategy for this particular trial I think I
3 would be more or less, even though I'm very familiar with
4 the facts and, in fact, do have some a legal motion to make,
5 when Your Honor sees the perfect time to do so, I don't
6 believe that effective representation without Mr Niles
7 input is possible here, and I think it is merely setting up
8 for a post-conviction relief matter to be held, whenever Mr
9 Niles is picked up, should he be convicted of the charges

10 THE COURT Thank you I again appreciate the
11 fact that input from your client could certainly be of some
12 assistance to you in trial strategies, cross-examination and
13 other matters, but I will deny your motion to be relieved as
14 counsel, based on the fact that you do have familiarity with
15 the case Hopefully the matters that come up during the
16 course of the trial will be the things that would have been
17 discussed by you and your client beforehand that you will be
18 able to adequately represent him I'm sure that you can
19 adequately represent him

20 MR POSEY Thank you, Your Honor

21 THE COURT That's denied as well

22 Okay, I understand that you do have a further
23 motion legally, but, if we can, let's go ahead and strike a
24 jury and then we will send them to lunch and we can take of
25 those matters afterwards

1 Is there any particular voir dire questions, other
2 than usual voir dire? Certainly I'll inquire of the jury
3 whether or not they could be fair to absent defendant

4 MR POSEY Nothing

5 MS MONTS Not from the State, Your Honor

6 MR POSEY Nothing from the defendant, Your
7 Honor

8 THE COURT Okay All right, five and five on the
9 strikes

10 MR POSEY Yes, sir

11 MS MONTS Yes, sir

12 Your Honor, I did want to -- Mr Posey agrees to a
13 stipulation, which we can certainly do after we swear -- or
14 excuse me, after the jury is selected, but based on that
15 stipulation, I can take off two of my witnesses That would
16 be Marie Wearing and JoAnn Bachelor Their names do not
17 need to be read

18 THE COURT That's Marie Wearing and JoAnn
19 Bachelor, number 4 and 5

20 Let's bring the jury up

21 MS MONTS Your Honor, should we have the
22 defendant's name called out at this time?

23 Your Honor, do you ask if the people have any
24 relatives who have been charged or convicted with drug
25 offenses? Can you ask that?

1 THE COURT I will

2 (Whereupon, the jury venire panel was brought into
3 the courtroom)

4 THE COURT Ladies and gentlemen, thank you very
5 much for your patience with us We are now ready to select
6 a jury for the trial of the next case that we have for this
7 week

8 This is a case with two charges that charges
9 Robdrecko Niles, the defendant, he's charged with driving
10 under suspension and also has an indictment of trafficking
11 crack cocaine

12 Again, these are indictments, which certainly are
13 no evidence of any offense, but merely the charging papers
14 that bring these cases to court

15 The offenses, according to the indictment,
16 allegedly occurred here in Greenville County on or about
17 September the 15th of the year 2003

18 The first question I need to ask of you, ladies
19 and gentlemen, is whether or not any member of the panel is
20 related by blood or connected by marriage to Robdrecko A
21 Niles? If so, would you please stand

22 Yes, ma'am, you are --

23 UNKNOWN JUROR My husband was arrested for a
24 suspended license

25 THE COURT All right We will address that in

1 just a few moments, okay

2 Is anybody related by blood or marriage to Mr
3 Niles in this matter? If so, would you please stand

4 Thank you There is no response

5 Is there any member who has a close business,
6 personal, or social relationship with Mr Niles? If so,
7 would you please stand

8 Thank you, there is no response

9 I gave you a brief synopsis of the facts of the
10 case in November of -- or excuse me, September of 2003

11 Is there any member of the jury panel who has any
12 independent knowledge from any source - news reports,
13 newspaper articles, being a witness - any source whatsoever
14 of information about these particular charges that have been
15 made? Do you have any independent knowledge of it? If so,
16 would you please stand

17 Thank you There is no response

18 Ladies and gentlemen, what the State and the
19 defendant desire in this case is a fair and impartial juror,
20 one that will listen to the evidence and decide the case
21 just what you hear in the courtroom, the facts presented,
22 the evidence presented and the law that I give you

23 I'm going to read you a list of names of potential
24 witnesses who may be called upon to testify in this case and
25 then I need to ask you some questions concerning that

1 Potential witnesses are Chuck Porter of the
2 Greenville County sheriff's office

3 Marcus Cannon of the sheriff's office

4 William Richter of the sheriff's office

5 Sean Collins with the crime lab

6 Tony Vinskus of the property and evidence
7 department of the office

8 Is there anybody on the jury panel who is related
9 by blood or marriage to any of these potential witnesses?

10 If so, would you please stand

11 Thank you There is no response

12 Is there any member of the jury panel who has a
13 close business, social or personal relationship with any of
14 these potential witnesses? If so, would you please stand

15 Thank you There is no response

16 Ladies and gentlemen, in this state a defendant,
17 one accused of crimes, may be tried, even though the
18 defendant does not attend the trial The fact that the
19 defendant is not present at this time in the courtroom
20 cannot be considered by you in any way in your decision as
21 to whether or not there is evidence, based upon the law, to
22 prove that guilt beyond a reasonable doubt

23 Is there any member of the jury panel who believes
24 that they would be unable to be fair to a defendant who is
25 not present in the courtroom? Could you still hear the case

1 and decide it on the facts presented and the law that I give
2 you? If you believe that you could not be a fair witness or
3 a fair juror, would you please stand

4 Thank you There is no response

5 At this time I'm going to ask the attorneys to
6 please stand and introduce themselves to the jury panel

7 MS MONTS My name is Joyce Monts I work for
8 the Greenville County circuit solicitor's office

9 MR POSEY My name is Christopher Posey I
10 represent Mr Niles in this matter

11 THE COURT Thank you Is there any member of the
12 jury panel who is related by blood or marriage to either of
13 these attorneys? If so, would you please stand

14 Thank you No response

15 Is there any member of the jury panel who has a
16 close business, social or personal relationship with either
17 of these attorneys? If so, would you please stand

18 Thank you, there is no response

19 Is there any member of the jury panel aware of any
20 bias or prejudice of any kind that would prevent you from
21 being a fair and impartial juror in this case? If so, would
22 you please stand

23 Thank you There is no response

24 Is there any member of the jury panel who has
25 expressed or formed an opinion as to the guilt or innocence

1 of the defendant in this case? If so, would you please
2 stand

3 Thank you There is no response

4 Is there any member of the jury panel who has a
5 member of your immediate family who has ever been arrested
6 for drug offenses? If so, would you please stand

7 All right Let me get your name, please, starting
8 over here Your name, please?

9 JUROR NUMBER 7 Ballenger Deborah Ballenger

10 THE COURT Ms Ballenger

11 And your name, please, ma'am?

12 JUROR NUMBER 19 Amy Butler

13 THE COURT Ms Butler

14 And your name?

15 JUROR NUMBER 40 Arlington Dotson

16 THE COURT All right The fact that you have
17 had a family member who has been arrested for drug
18 violations, would that interfere in any way with your
19 ability to be a fair juror in this case and decide the case
20 on the facts that you hear and the law that I give you?
21 Would it to you, Ms Ballenger?

22 JUROR NUMBER 7 No

23 THE COURT All right You could still be fair to
24 both the State and to the defendant?

25 JUROR NUMBER 7 Yes, sir

1 THE COURT All right Thank you You may be
2 seated

3 The same question to you, Ms Butler, is that
4 right?

5 JUROR NUMBER 19 Butler

6 THE COURT Could you still be a fair and
7 impartial juror, or do you believe that that would cause you
8 some hesitation to be fair to both the State and the
9 defendant in this case?

10 JUROR NUMBER 19 I could be fair

11 THE COURT You could be fair to both?

12 JUROR NUMBER 19 Uh-huh, yes, sir

13 THE COURT Thank you, ma'am You may be seated

14 And, yes, ma'am, the same questions to you The
15 fact that you have had a relative arrested for drug
16 offenses, would that interfere with your ability to be a
17 fair juror?

18 JUROR NUMBER 40 No, it would not

19 THE COURT Okay Thank you, ma'am You may be
20 seated

21 Ladies and gentlemen, as I stated, each side is
22 entitled to a fair and impartial jury

23 Is there any member whatsoever who knows of any
24 reason that you don't believe that you could be fair to both
25 the State of South Carolina and the defendant and decide

1 this case just on the evidence that you hear from the
2 witness stand, the documentary evidence that may be
3 presented and the law that I give you? If you feel that you
4 could not give both the State and the defendant a fair trial
5 for any reason, would you please stand?

6 Thank you There is no response

7 Any other questions from the State?

8 MS MONTS No, Your Honor

9 THE COURT From the defendant?

10 MR POSEY No, Your Honor

11 THE COURT Okay Let's select a jury

12 THE CLERK Ladies and gentlemen, as I call your
13 name and your number, please stand, remain standing until I
14 give you further instructions

15 154, Phil Gregory

16 What says the State?

17 MS MONTS Please present the juror

18 THE CLERK What says the defendant?

19 MR POSEY Please seat Mr Gregory

20 THE CLERK You may have a seat in the jurors box
21 Number 7, Deborah Ballenger

22 What says the State?

23 MS MONTS Please excuse the juror from this

24 trial

25 THE CLERK You are excused from this case You

1 may be remain seated

2 Number 40, Arlington Dotson

3 What says the State?

4 MS MONTS Please excuse this juror from this

5 trial

6 THE CLERK You are excused from this case

7 Number 49, Shirley Fulmer

8 What says the State?

9 MS MONTS Please present the juror

10 THE CLERK What says the defendant?

11 MR POSEY Please excuse the juror from the trial

12 of this case

13 THE CLERK You are excused from this

14 Number 4, Elaine Ayscue

15 What says the State?

16 MS MONTS Please present the juror

17 THE CLERK What says the defendant?

18 MR POSEY Please seat the juror

19 THE CLERK You may have a seat in the jurors box

20 46, Emilio Fernandez

21 What says the State?

22 MS MONTS Please present the juror

23 THE CLERK What says the defendant?

24 MR POSEY Please seat the juror

25 THE CLERK You may have a seat in the jurors box

1 Juror 75, James Little
2 What says the State?
3 MS MONTS Please present the juror
4 THE CLERK What says the defendant?
5 MR POSEY Please seat the juror
6 THE CLERK You may have a seat in the jurors box
7 38, Lita Dirton
8 What says the State?
9 MS MONTS Please excuse the juror from this
10 case
11 THE CLERK You are excused from this case
12 124, Gail Sparks
13 What says the State?
14 MS MONTS Please present the juror
15 THE CLERK What says the defendant?
16 MR POSEY Please excuse the juror from the trial
17 of this case
18 THE CLERK You are excused from this case
19 Number 8, David Barnett
20 What says the State?
21 MS MONTS Please present the juror
22 THE CLERK What says the defendant?
23 MR POSEY Please seat the juror
24 THE CLERK You may have a seat in the jurors box
25 Number 25, Michel Chambers

1 What says the State?

2 MS MONTS Please present the juror

3 THE CLERK What says the defendant?

4 MR POSEY Please seat the juror

5 THE CLERK You may have a seat in the jurors box

6 Number 2, Jerry Anderson

7 What says the State?

8 MS MONTS Please present the juror

9 THE CLERK What says the defendant?

10 MR POSEY Please seat the juror

11 THE CLERK You may have a seat in the jurors box

12 Number 1, Charles Alford

13 What says the State?

14 MS MONTS Please present the juror

15 THE CLERK What says the defendant?

16 MR POSEY Please seat the juror

17 THE CLERK You may have a seat in the jurors box

18 107, Dennis Risher

19 What says the State?

20 MS MONTS Please present the juror

21 THE CLERK What says the defendant?

22 MR POSEY Please seat the juror

23 THE CLERK You may have a seat in the jurors box

24 156, Lynne Mcguirt

25 What says the State?

1 MS MONTS Please present the juror
2 THE CLERK What says the defendant?
3 MR POSEY Please seat the juror
4 THE CLERK You may have a seat in the jurors box
5 58, Paul Iannitti
6 What says the State?
7 MS MONTS Please present the juror
8 THE CLERK What says the defendant?
9 MR POSEY Please seat the juror
10 THE CLERK You may have a seat in the juror's
11 box
12 Number 10, Joan Belcher
13 What says the State?
14 MS MONTS Please present the juror
15 THE CLERK What says the defendant?
16 MR POSEY Please excuse the juror in the trial
17 of this case
18 THE CLERK You are excused from this case
19 149, Johnnie Wright
20 What says the State?
21 MS MONTS Please excuse the juror from this
22 case
23 THE CLERK You are excused from this case
24 Number 66, Wayne King
25 What says the State?

1 MS MONTS Please present the juror

2 THE CLERK What says the defendant?

3 MR POSEY Please seat the juror

4 THE CLERK You may have a seat in the jurors box

5 THE COURT We will get one alternate

6 THE CLERK The alternate, 28, Marie Cohen

7 What says the State?

8 MS MONTS Please present the juror

9 THE CLERK What says the defendant?

10 MR POSEY Please excuse the juror from the trial

11 of this case

12 THE CLERK You are excused from this case

13 130, Iris Sutherland

14 What says the State?

15 MS MONTS Please present the juror

16 THE CLERK What says the defendant?

17 MR POSEY Please seat the juror

18 THE CLERK You may have a seat in the jurors box

19 THE COURT Any legal matters, as far as the

20 selection of the jury?

21 MS MONTS No, Your Honor

22 MR POSEY Nothing, Your Honor

23 THE COURT All right Ladies and gentlemen of

24 the jury panel who were not selected for the trial of this

25 case, I'll be able to dismiss you for the rest of the day

1 If you would, please call back tonight after six o'clock and
2 you will have further instructions about your additional
3 service this week Thank you very much for being with us
4 today You are dismissed at this time

5 (Whereupon, the jury venire panel left the
6 courtroom)

7 THE COURT Ladies and gentlemen who have been
8 selected for this case, I'm going to give you a lunch break
9 at this time I'll send you to lunch We will start the
10 trial about two o'clock If you will be back in your jury
11 room at two o'clock

12 You don't know anything at all about this case I
13 have called out some questions and potential witnesses, but
14 you don't have any knowledge about the case, and you have
15 committed to these parties that you are going to decide the
16 case solely on what you hear in this courtroom - the witness
17 stand, any documents that may be presented and ultimately
18 from the law that I give you

19 At lunch you may decide to get to know some of
20 your fellow jurors You may have some business associates
21 to meet with, some family members Folks are going to be
22 curious as to what you are doing this week on jury service
23 and did you get picked for a case Lots of questions like
24 that, even tonight at home with your family While you are
25 in the process of hearing the case, it's improper for you to

1 discuss the case with anyone, even your fellow jurors, if
2 some of you get back before the others It would not be
3 legal for you to do that You are to discuss the case only
4 when all the evidence is in and I have charged you on the
5 law Not anytime before then

6 While you are at lunch, if someone were to
7 approach you wanting to talk about the case, let them know
8 that you can't do that, because I have instructed you not
9 to And if anyone persists in wanting to talk about it or
10 give you information about the case, then please get their
11 name and let us know and we will take care of that matter
12 for you

13 The bailiff now will show you where your jury room
14 is and where to come back at two o'clock We will be ready
15 to start the case at that time Thank you very much You
16 are excused at this time

17 (The following takes place outside the presence of
18 the jury panel)

19 THE COURT Okay, Mr Posey, what's the nature of
20 your legal matter that we need to discuss?

21 MR POSEY If I might, Your Honor, I would move
22 to suppress all the evidence in this case, Your Honor, in
23 that the stop -- the initial stop conducted in this case was
24 unconstitutional, violated Mr Niles Constitutional Rights,
25 in that -- and I'm quoting from the discovery and officers

1 report that I have, "while on routine patrol I observed
2 elicited vehicle turn into Oakview Apartments from Boling
3 Road He then drove in front of my patrol car and turned
4 into the parking area of the B building I pulled in
5 adjacent to his car and got out as the subject got out of
6 his car I approached the subject and asked for his
7 driver's license "

8 Your Honor, nowhere in the discovery or anything
9 that I have been given indicates that there was any
10 reasonable articulable suspicion that any laws have been
11 violated or would be violated by Mr Niles There is
12 nothing in the report to indicate there is any violations
13 with the automobile in which he was driving There was no
14 tag violations, apparently No light violation Nothing
15 listed in the report

16 Your Honor, in the case I handed up to you,
17 Delaware v Sprouse, Justice White, writing for the
18 majority, I think I have it more succinctly stated, Your
19 Honor, "except in those situations in which there is at
20 least an articulable and reasonable suspicion that a
21 motorist is unlicensed or that an automobile is not
22 registered, or that either the vehicle or an occupant is
23 otherwise subject to seizure for violation of law, stopping
24 an automobile and detaining the driver in order to check his
25 license and registration are unreasonable under the Fourth

1 Amendment of the Constitution of the United States "

2 Your Honor, as soon as Mr Niles stopped his
3 vehicle, the officer pulled in adjacent to him, was getting
4 out of his vehicle and asked him for his driver's license
5 At that time there has been nothing given to the defense or
6 nothing that is in this report that indicates he was doing
7 anything illegal, that there was any reason to believe that
8 he was doing anything illegal, other than pulling into a
9 parking space There is no evidence of anything was wrong
10 with the car This is a routine patrol where he followed
11 him into a parking space, stopped him and asked him for his
12 license And pursuant to that, all the other events
13 occurred

14 Your Honor, I know most of the time you hear
15 defense argue, counsel argue the length of the stop and what
16 occurred during the stop Here there is no basis for the
17 stop There is no -- all citizens have a Constitutional
18 Right not to be stopped by the police to be questioned,
19 without some articulable reasonable suspicion Here there
20 has none been indicated There is no reasonableness of the
21 stop, other than Mr Niles was pulling into an apartment
22 complex and pulling into a parking spot

23 Your Honor, I think the holding in Delaware v
24 Sprouse by the Supreme Court, which is still valid law to
25 this day, 8 to 1 decision, controls in this case, and I

1 would ask the court to suppress all evidence that occurred
2 as a result of the stop, being that there was no legal
3 reasonable basis for the stop in the first place, Your
4 Honor

5 THE COURT Okay Thank you very much, Mr Posey
6 Anything from the solicitor about that?

7 MS MONTIS Yes, Your Honor The case at hand can
8 be easily distinguished from the case that Mr Posey held
9 up The case at hand is not a car stop The next sentence
10 in the officer's report says "I approached the subject and
11 asked for his driver's license as he was walking away from
12 his car " The defendant has gotten out of his car, shut the
13 door and is walking away and is not a car stop

14 The testimony that the officers will give is that
15 this is an abandoned building in a known drug area There
16 was no reason at 1 40 in the morning for this person to have
17 pulled in front of an abandoned building that's being torn
18 down and pull there They have every right to approach
19 someone on foot, and case law supports that Officers can
20 approach anyone on foot and ask them, and that person has
21 the right to turn around and walk away This is on foot
22 It is not a car stop This is a drug area that officers are
23 patrolling There was no one living in these buildings by
24 where the defendant has pulled in and stopped There is no
25 lawful reason for him to be there Officers merely

1 approached, asked him for his driver's license He says he
2 doesn't have one They have every right in this area, which
3 is their normal routine area, to investigate what they
4 observed happened in front of them on the ground in this
5 abandoned area

6 MR POSEY Your Honor, I think the distinction
7 the State is trying to make is a splitting hairs argument
8 He obviously followed Mr Niles through the parking area
9 When Mr Niles pulled in this parking spot The vehicle
10 stop can be considered a vehicle stop if somebody is sitting
11 in a parked car Because Mr Niles was able to exit his
12 vehicle prior to the officer being able to ask for his
13 license I think is not an indistinguishable point

14 The fact is he followed Mr Niles through this
15 parking spot, pulled adjacent to it, and according to his
16 report, and I'll read it again, Your Honor, "I pulled in
17 adjacent to his car and got out as the subject got out of
18 his car " He was going to stop Mr Niles at that point in
19 time That's the only reason he could have been following
20 Mr Niles And it's a common sense conclusion, Your Honor
21 There is no reasonable basis to distinguish it A vehicle
22 stop does not have to mean the person is sitting in the
23 vehicle He's following the vehicle with intent to stop the
24 person in the vehicle And pursuant to Delaware v Sprouse,
25 Your Honor, it's not constitutionally permitted

1 If we are going to distinguish that, then every
2 officer that -- you can train every officer to wait until
3 somebody parks their car and then go ask them that, and
4 that's not what the Constitution says and that's not -- I
5 don't believe that's what the case law says, Your Honor

6 THE COURT Okay, sir

7 MS MONTES Your Honor, if we need any testimony,
8 the officer would be testifying that he was already there
9 when the defendant pulled into this area

10 THE COURT Okay Well, we can take some
11 testimony after we take a lunch break Okay I would like
12 to hear the officer's testimony in-camera, as far as just
13 what the stop was, and I'll review the case too, but let's
14 try to be back by ten 'til That will give you about 55
15 minutes for lunch We will have an opportunity to hear the
16 officer's testimony at that time

17 MS MONTES Thank you, Your Honor

18 (Whereupon, proceedings were recessed)

19 (Whereupon, proceedings were reconvened)

20 THE COURT Okay Do you have any testimony to
21 offer at this time, MS Montes?

22 MS MONTES Yes, Your Honor

23 The State calls Officer Porter

24 OFFICER CHUCK PORTER, having been first duly
25 sworn, testified as follows

1 DIRECT EXAMINATION BY MS MONTIS

2 Q Officer Porter, please tell the court where you are
3 employed

4 A I am employed with the Greenville County sheriff's
5 office

6 Q How long have you worked for the sheriff's office?

7 A Approximately five years

8 Q Can you describe your training and your duties?

9 A I am certified to the South Carolina Criminal Justice
10 Academy as a police officer I have had extensive training
11 in basic police officer duties Part of my duties on a
12 daily basis are to basically defend life and property and to
13 see to it that nothing happens to either one of those two
14 things

15 Q And are you assigned to a certain shift?

16 A I am assigned to the Delta Platoon uniform patrol
17 division

18 Q And in September of 2003, were on that same unit?

19 A Yes, ma'am, I was

20 Q What shift on September 15th of 2003 were you working?

21 A I was working the night shift, ma'am, seven p m to
22 seven a m

23 Q And what were your duties on that shift on that night?

24 A Pretty much the same as any night, ma'am I was
25 performing standard patrol duties, to basically patrol my

1 assigned beat area

2 Q And what is your assigned beat area?

3 A It would be beat area two, which contains parts of
4 Taylors, Greer, some of Blue Ride, and surrounding areas

5 Q And are Oakview Apartments in this beat area?

6 A Yes, ma'am, they are

7 Q And were any other officers working with you on that
8 night?

9 A Yes, ma'am, there were several other officers working
10 with me

11 Q Was anyone in your vehicle?

12 A No, ma'am, I was alone

13 Q Did you have occasion at approximately one o'clock, or
14 so, to go to Oakview Apartments?

15 A Yes, ma'am, I did

16 Q Or did you go earlier? I don't mean to give you a
17 time

18 A It was approximately one o'clock in the morning

19 Q And what did you and the others, if they went, do when
20 you arrived there?

21 A Basically to just patrol the area It's what we
22 consider to be a known drug area, and we were extra
23 patrolling the area, just in an attempt to kind of quell
24 some problems that have been outstanding down there

25 Q With what type of problems?

1 A Drug problems, problems with auto breakings,
2 burglaries, thefts

3 Q And was there any construction work going on at that
4 time?

5 A Yes, ma'am, there was At the time Oakview was being
6 updated by HUD and was being renovated The roofs were
7 being removed, rafters and shingles were being added The
8 apartments were -- I won't say -- I won't go so far to say
9 that they were gutted, but everybody had been moved out of
10 the apartments, assigned to a different area to live while
11 the renovation was taking place

12 Q And were there building materials on the grounds in
13 that area?

14 A Yes, ma'am, there was There was lumber, plywood,
15 vinyl siding, things used in the construction and renovation
16 of those apartments

17 Q Was there any security for these items?

18 A No on-site security, per say There was just us

19 Q And do some officers work off duty there?

20 A The apartment complex had a grant, and still does have
21 a grant, to employ off duty sheriff's deputies to work there
22 off duty to extra patrol the area, to keep unwanted people
23 out, to keep an eye on the property

24 Q And were you very familiar with Oakview Apartments?

25 A Yes, ma'am

1 Q Did you know some of the residents there, or most of
2 residents, or what was your knowledge?

3 A I have been down there enough to know the people that I
4 see on a regular basis by face, some of them by name

5 Q And did the security there have anything to do with
6 trespassers?

7 A Yes, that apartment complex, because it is government
8 controlled, has very strict policy when it comes to who can
9 be there and who can't be there, and at one time they were
10 even going so far as to issue identification cards to the
11 residents

12 Q And on September 15th of 2003, approximately 1 30, or
13 so, in the morning, do you recall where you were at -- were
14 you at Oakview?

15 A Yes

16 Q Do you recall where at Oakview that you were?

17 A We were at the front entrance -- well, the entrance to
18 Oakview There is really only one entrance We were at the
19 entrance of the gated section of Oakview

20 Q And were you on foot or in your vehicle?

21 A We were standing on foot near our patrol cars

22 Q How many officers were there?

23 A There was a total of five, I believe

24 Q Were there any blue lights going?

25 A No, ma'am

1 Q Had you been walking around the complex?

2 A Yes, ma'am, we had been on foot patrol

3 Q And did you observe the defendant in this case that
4 night?

5 A Not -- well, yes, ma'am, I did

6 Q Okay What was the first -- what is the first sight
7 that you had?

8 A As he turned off of Boling Road onto Boling Road
9 Extension, which is the main road that runs through the
10 center of the apartment complex, I saw him turn off of
11 Boling Road onto Boling Road Extension and come into the
12 apartment complex through the gate

13 Q At that point did you know who was in the vehicle?

14 A No, ma'am

15 Q Could you see how many people were in the vehicle?

16 A I could see that there was one occupant in the vehicle

17 Q And what did you observe about that one occupant?

18 A I observed that as he drove into the complex, he looked
19 straight ahead And then as he approached our patrol cars,
20 the first patrol car and came alongside me, he noticed that
21 there were patrol cars parked there, so he looked once and
22 then looked again, quickly, kind of eyes were wide, kind of
23 surprised, and then looked straight back ahead

24 Q Could he have seen you before he made the turn?

25 A It's possible that he could have seen us through the

1 fence, yes

2 Q And how dark was it at this time of night?

3 A It's one o'clock in the morning, so it's fairly dark

4 Q But there are streets lights?

5 A There are street lights and other illumination in the
6 area, yes

7 Q And what did you observe the vehicle that the defendant
8 was in do?

9 A After it passed our, what would be the first patrol car
10 in the line, he made the very first right-hand turn that was
11 available to him and parked in the very first available
12 parking spot

13 Q Is that first right a street?

14 A No, it's a parking area

15 Q And what is in that parking area?

16 A That would be the B building That would be the
17 parking, the assigned parking for the B building

18 Q And what was going on with the B building at that time?

19 A It was under renovation at the time

20 Q So were people living in there?

21 A No, ma'am

22 Q Were there building materials outside?

23 A There were building materials on the ground It was
24 obvious that they had gotten underway with the renovation
25 There were -- vinyl siding There was rafters There was

1 lumber and other common tools used in renovation and
2 construction

3 Q And what did -- what did you observe next? Did someone
4 get out of the vehicle?

5 A I observed the driver and the sole occupant of that
6 vehicle park and exit the vehicle. He took two or three
7 steps away from the vehicle. At that time I had gotten into
8 my patrol car and pulled around the corner and parked behind
9 his car. As I was exiting my vehicle, he turned and looked
10 at me, walked back to his vehicle, put the key in the lock,
11 locked the door, took the key back out, and then started to
12 walk towards the B building

13 Q And did you get out of your vehicle?

14 A I did

15 Q And did you approach him?

16 A I did

17 Q And what transpired?

18 A At that time I merely asked him for some form of
19 identification, whether it be a driver's license or an ID,
20 to find out who he was and to ask him his purpose at being
21 at this particular building, because there is -- he couldn't
22 have lived there, because there was nobody living there at
23 the time

24 Q Did anything else about his demeanor alert you?

25 A The thing that caught my attention first is when he

1 looked at us when he drove by, what I would refer to as a
2 deer in the headlights kind of a look

3 The second thing that got my attention is when he
4 exited his car, he took a couple of steps away and then came
5 back almost as an afterthought to lock it with the key, as
6 opposed to locking the door when he got out It just seemed
7 kind of curious to me that he would have taken the extra
8 time to come back and make such an overt action as to lock
9 that door

10 Q Where were the other officers when you were
11 approaching?

12 A They had parked their patrol cars behind mine and were
13 stepping out of their vehicles, basically standing behind
14 me

15 Q What is the distance from where you were standing on
16 foot and originally saw him pass you to your getting in your
17 vehicle and actually turning the corner?

18 A I would say no more than 50 yards

19 Q So could you have walked it?

20 A Absolutely

21 Q Do you know where he was going, which apartment, if he
22 was going to an apartment?

23 A I -- I inquired as to what apartment he was going to
24 He looked up at the top of the building where the letters
25 were posted prominently on the front of the building He

1 looked up at that and he says "I'm going to building B And
2 I said "which -- okay, "which apartment?" He said "B-16 "

3 Q And was this surprising?

4 A It was a little curious to me, because there is no
5 B-16

6 Q What is the most apartments there are?

7 A There would have been eight total

8 Q And were there any other lights on in this building at
9 all?

10 A No, ma'am

11 Q Was anyone living in there?

12 A No, ma'am

13 Q Was there any furniture inside?

14 A No, ma'am

15 Q Please continue What did you say to him, if anything?

16 A At that point, after I inquired about his
17 identification, he told me that he had left his driver's
18 license at home, and at home was in Fountain Inn

19 Q And did you see him driving the vehicle?

20 A I did see him driving that vehicle, yes

21 Q Were you going to arrest him at that point?

22 A Not -- I hadn't intended to arrest him at that point,
23 although driving without a driver's license in possession is
24 certainly an arrestable offense

25 Q What did he do or what did you do once he told you he

1 did not have a driver's license?

2 A At that point I continued to question him At that
3 point I had reached a level of curiosity through his actions
4 and the answers that he was giving me I inquired as to
5 whose car he was driving

6 And while I was talking to him, he would put his hands
7 in his pockets and he would back away from me He would
8 almost walk backwards If I would step forward towards him
9 to hear what he was saying, he would take a step back away
10 from me

11 I asked him on several occasions to keep his hands out
12 of his pockets That's just an officer's safety issue I
13 don't like people putting their hands in their pockets when
14 I'm talking to them because I don't know what they have in
15 their pockets I can't see in them

16 Q And why are you patrolling this particular area?

17 A Because it is a -- it is a high crime area It is a
18 high drug area

19 Q And have you come across high crime in this area
20 yourself?

21 A I have I have made numerous, numerous arrests and
22 made numerous charges for drugs in that area

23 Q And please continue What did you do once he continued
24 to put his hands in his pockets?

25 A It -- at that point --

1 Q Did you tell him not to do that?

2 A I did I told him several times "please don't put your
3 hands in your pockets Please don't put your hands in your
4 pockets " After that it became "don't put your hands in
5 your pockets again " At that point I felt that he had
6 something in his pocket that may be a weapon, and I couldn't
7 see in his pocket, so I decided at that point that I wanted
8 to find out for myself

9 I -- I asked or told him that I was going to conduct a
10 pat-down on him for weapons and did so

11 Q Did you find any weapons at that time?

12 A No, ma'am

13 Q Where were the other officers? Had they come any
14 closer to you?

15 A No, ma'am, not any significant distance closer to me
16 They were still standing behind me

17 Q Did you find any ID or driver's license on the
18 defendant?

19 A No, ma'am

20 Q Did you search the car?

21 A Not at this point, ma'am

22 Q Did you ask for permission?

23 A I did There was -- while conducting a pat-down of his
24 pockets, I felt what felt like paper I asked permission to
25 put my hands in his pockets to see what he had He granted

1 me permission to do so On one side he had several small
2 bills, one dollar bills In the other side, his other
3 pocket, I pulled it out The first bill on top was a
4 hundred dollar bill, and there was a quantity of bills
5 underneath that I immediately put it back down into his
6 pocket and withdrew my hands

7 That, the fact that he had what I felt like was a large
8 sum of money, he was in a place that is a high drug area, he
9 was at an apartment that was being renovated and nobody
10 lived at, all these things came together in my mind and said
11 "well, there is something more going on here than what he's
12 telling me "

13 Q Did you ask for permission to search the car?

14 A I did I asked him if he had anything in the vehicle
15 that wasn't supposed to be there - guns, knives, alcohol,
16 alcohol open, containers or drugs of any kind He said --
17 he said that he did not And at that point I asked for
18 permission to search the vehicle

19 Q And did he give permission?

20 A He did give me permission to search the vehicle
21 Keeping in mind that the door was locked, I asked him for
22 the keys He at that point -- it's hard to explain, but in
23 one motion he threw his car keys and took off running all at
24 the same time

25 Q Did any of the officers chase?

1 A All of us

2 Q Who caught up to him, or did anyone?

3 A At that point he -- he ran for probably 50 to 75 yards,
4 not in the roadway, but he stayed of kind on the grass next
5 to a hedge row or where there is bushes planted, discarded
6 something from his pocket and laid down Gave up,
7 basically

8 Q Was he arrested at that time?

9 A When I got to him, I immediately got down on top of him
10 and asked him why he ran He said he ran because his
11 driver's license was suspended At that point in time I did
12 take him into custody

13 Q When you went back did you search the vehicle?

14 A I did, yes, ma'am

15 Q Was that subsequent to his arrest?

16 A Yes, ma'am

17 MS MONT'S Your Honor, may I have the witness
18 step down to the drawing board?

19 THE COURT Yes

20 (Witness off the witness stand)

21 BY MS MONT'S

22 Q If you would, please, as largely as you can, draw for
23 us the road leading into apartment complex, where you were
24 standing, where he turned and subsequently parked

25 A Bear with me I'm left-handed, so I might have to turn

1 kind of crooked to do this

2 (Witness drawing diagram)

3 A This will be Boling Road coming from main street,
4 Taylors

5 And this will be Boling Road It's the same road going
6 towards Taylors Road

7 This will be the border, the fence for the apartment
8 complex

9 This is Boling Road Extension

10 Our cars were initially parked here

11 Q Were you on foot at this point?

12 A We were on foot, standing about our vehicles

13 Q Were the red lights or blue lights going?

14 A No, ma'am No, ma'am We were -- we were parked and
15 at that point minding our own business, so to speak

16 Q Please continue What did you observe?

17 A The defendant came from Boling Road, from the Taylors
18 roadside of Boling Road, this way and turned into the
19 apartment complex Right about here is where he noticed us
20 and I noticed him

21 Q If you will go back up just a hair so the judge can
22 see

23 THE COURT Thank you, sir

24 A At that point he continued on and made an immediate
25 right turn into this parking area This would be the B

1 building here He made an immediate right turn and parked
2 his vehicle there

3 BY MS MONT'S

4 Q Do you know if there was any other vehicles there?

5 A There was no other cars in that parking lot at all

6 I pulled my car from here to here and stopped, and then
7 the other deputies fell in behind me

8 Q And when you got out of your vehicle, was he on foot?

9 A Yes, ma'am, when I got -- by the time I got out of my
10 vehicle, he had already exited his car, started walking in
11 towards the breezeway of the B building, came back, locked
12 his door and started back

13 Q Okay Did you at any time restrain this individual?

14 A Not -- not until he ran Up and to the point where he
15 ran, no, ma'am

16 Q Were there any other people hanging out in this area?

17 A No, ma'am, there wasn't anybody out in that immediate
18 area

19 Q And was there anyone living in that immediate area?

20 A No, ma'am

21 MS MONT'S Thank you

22 I have no further questions

23 (Witness back on the witness stand)

24 THE COURT You may cross-examine, Mr Posey

25 MR POSEY If it please the court, Your Honor

1 CROSS EXAMINATION BY MR POSEY

2 Q I'll ask you just a few questions

3 A Yes, sir

4 Q You parked your car directly behind his vehicle, is
5 that correct?

6 A Yes, sir

7 Q So his vehicle wasn't going anywhere, unless he moved
8 your car?

9 A That's correct, sir

10 Q Okay At that point in time had he violated any laws
11 that you know of?

12 A No, sir

13 Q Was anything suspicious about his car? I mean, was the
14 tags out, tag light out, headlights out, anything of that
15 nature?

16 A No, sir

17 Q Okay Now, in your report you wrote you pulled up
18 adjacent to his car and got out as he was getting out of his
19 car That's what you wrote in your report

20 A Yes, sir

21 Q So when he was getting out of his car, you were getting
22 out of your car? That's the way I read that

23 A Not -- our feet weren't hitting the ground at the same
24 time

25 Q But --

1 A In a general --

2 Q Within a matter of seconds?

3 A Yes, sir

4 Q Other than the second look he gave you, is there any
5 other reason that you followed that vehicle?

6 A Yes, sir, because he pulled into an apartment parking
7 lot where he had no business to be pulling into

8 Q I understand that, but you already had to be in your
9 vehicle and following him to get out within seconds of his
10 vehicle?

11 A Well, no, sir, it was a matter of yards

12 Q Then why not -- you said you could have walked Why
13 not walk?

14 A Because I'm lazy

15 Q Also because you wasn't going to let that vehicle
16 leave?

17 A Sure

18 Q Okay

19 MR POSEY I have nothing further, Your Honor

20 THE COURT Any redirect?

21 MS MONTS No, Your Honor

22 THE COURT All right, sir, you may step down
23 Anything further?

24 MS MONTS No, Your Honor I think -- I think
25 that's all we are going to show on this issue, Your Honor

1 THE COURT Mr Posey?

2 MR POSEY Your Honor, I think the last question
3 sums up my point That vehicle wasn't going anywhere It
4 was a vehicle stop Because Mr Niles had gotten out maybe
5 seconds before the officer had, which that's his words, not
6 mine, that he just testified to you at, within seconds, the
7 vehicle wasn't going anywhere This was a vehicle stop

8 Within a few moments after he stopped Mr Niles
9 after getting out of the car he's asking to search the
10 vehicle, Your Honor This was a vehicle stop No --
11 however you couch it, it's -- like my last question, he
12 parked behind that car because the vehicle wasn't going
13 anywhere That is a stop And the case -- the Delaware
14 case that I presented to the court says if you stop a car
15 and asks for license and identification, that is a seizure
16 The Supreme Court of the United States says that, Your
17 Honor It's a seizure He's not free as, Ms Monts stated
18 earlier, to just walk away They consider that to be a
19 seizure

20 In this case, Your Honor, I would submit to you
21 deer in the headlight eyes are not articulable reasonable
22 suspicion to believe somebody is involved in criminal
23 activity If it is, they would stop every car that pulled
24 into Oakview Village, probably I'm not arguing that
25 Oakview Village is not a high crime area It is I'm not

1 arguing that they don't have a tough job there They do,
2 but the Constitution of the United States and of this state
3 does not allow somebody's individual freedoms to be
4 infringed in this manner

5 These officers do excellent jobs, Your Honor I'm
6 not impugning their work at all Everybody makes mistakes
7 This was a mistake This was an infringement upon Mr Niles
8 Constitutional Rights He had done nothing illegal There
9 was nothing illegal about the car There was nothing he had
10 done that would give rise that he's going to be involved in
11 criminal activity Parking in front of a building, whether
12 it's occupied or not, doesn't necessarily mean that you are
13 going to be involved in criminal activity, Your Honor

14 What the State has presented to you I do not think
15 rises to the level to infringe upon somebody's
16 Constitutional Rights to the degree that Mr Niles was
17 infringed upon here, and I would submit to you his last
18 statement makes this a vehicle stop, not a foot stop, as
19 they were arguing earlier And based on the Delaware case,
20 Your Honor, I don't think that they have given this court
21 enough to sustain their burden in this matter, and I would
22 respectfully ask that you suppress the stop, which would
23 necessarily suppress all that followed the stop

24 THE COURT Okay, sir Thank you, Mr Posey

25 MS MONTS May it please the court?

1 THE COURT Yes, ma'am

2 MS MONTS Your Honor, in just a second I'll hand
3 you up the Burton case And the main points I want to make
4 is that again it was not a car stop The officer, as he
5 said he was trying to tell you the truth as far as timing,
6 but he did tell you, if you will remember, that he observed
7 the defendant get out of his vehicle, take a few steps away,
8 come back, lock the car with the key, and then turn around
9 and walk off about before the officer even got up there
10 All this may have occurred in a very short time, but it was
11 enough time for the defendant to have gotten out of his car,
12 walked away, come back and walked away again Possibly just
13 a few feet So the officer is approaching somebody on foot
14 at this place that he is -- the officer is there to make
15 sure that there is no illegal activities taking place He
16 and the other officers were there that evening That was
17 where they were working They had been out on foot patrol
18 in this area to keep illegal activity and trespassers They
19 are there to protect these materials that are on the ground
20 from being stolen

21 The Burton case specifically says "law enforcement
22 officers do not violate the Fourth Amendment by merely
23 approaching an individual on the street They may question
24 citizens without implicating Fourth Amendment protections "

25 But, Your Honor, most importantly, it is not a car

1 stop They are on their feet The defendant had every
2 right at that point to say, if he wanted to, you know, I
3 need to leave He didn't say that He didn't say "please
4 move your car, I to leave " He was walking away towards an
5 empty building that was being -- as officer said, not
6 totally gutted, but there was nothing inside there There
7 was no reason for the defendant to be going towards that
8 building, and there was no other cars there There were no
9 other people there It was quite obvious that he was trying
10 to elude the police by turning immediately and getting
11 himself away from the vehicle, where ultimately the drugs
12 were found

13 The things that the officer told you that alerted
14 him, first off, was that the defendant had a deer in the
15 headlight look, that he immediately turned into the nearest
16 place that he could park that vehicle to elude them and
17 distance himself Not only did he want to distance himself,
18 he wanted to lock that vehicle so that the police couldn't
19 go in it

20 So there were three things right there The fact
21 that it was 1 40 in the morning, that it's in a high crime
22 area It's at a place that law enforcement has been
23 assigned to protect There were four or five of them there
24 in this community area that evening assigned to protect the
25 area

1 The fact that there were construction materials
2 out there on the ground And if this person is in that
3 area, he's got to have some reason for being there He
4 makes up a reason He says he's going to B-16 Well, there
5 is no one in that building, much less there isn't even a 16
6 There are only eight apartments

7 The officer is doing his duty He has every
8 reason to think there is something wrong here His senses
9 have been alerted to possible illegalities and he's got to
10 pursue that, Your Honor

11 The two issues in the Sprouse case, whether the
12 police officers stopped an automobile and whether there was
13 any wrongdoing or specific activity That court said there
14 was no suspicious activity, but here we have got eight or
15 ten instances of suspicious activity There is no possible
16 reason at that point that the officer could have found any
17 legal reason that this person would have been there, and
18 that is his job, to make sure there is no trespassers, no
19 threats, no drug activity going on, and he has every right
20 to approach this person

21 As soon as the officer finds out that the person
22 doesn't have a driver's license or identification, there is
23 probable cause for an arrest, Your Honor It wasn't a car
24 stop It is suspicious activity That's all the officer
25 needs in order to further investigate, Your Honor, and we

1 believe that it should be sent onto the jury to decide

2 Thank you

3 THE COURT Thank you

4 Yes, sir, briefly

5 MR POSEY Briefly, Your Honor

6 With all due respect to Ms Mont's argument, all
7 this suspicious behavior she's giving you is after the
8 decision had been made by the officer And he said it on
9 the witness stand, Your Honor When he pulled the car
10 behind Mr Niles car, that car was not going anywhere He
11 affirmed that testimony, that statement All the other
12 suspicious behavior - the not having the driver's license,
13 not -- the fidgeting and all that took place subsequent to
14 that

15 What the Delaware case deals with, and what we are
16 talking about, is the actions up until the time he stopped
17 the car The car wasn't going anywhere She said he was
18 free to walk away and leave No, he wasn't, Your Honor He
19 said -- he told you on the stand he wasn't He told you the
20 car was not going -- my question to him was specific, "was
21 that car going anywhere when you pulled behind him?"

22 "No, sir "

23 THE COURT Okay, sir

24 MR POSEY And there is no other way to couch
25 that but it's a vehicle stop, Your Honor

1 MS MONTS And, Your Honor, I'll hand up that
2 Burton case

3 THE COURT Obviously, each of you viewed the stop
4 differently One believes it's a Terry stop One believes
5 it's an automobile stop

6 I find the distinction -- and I appreciate both of
7 your articulate arguments -- the distinction being that the
8 car was not stopped by an officer From what I hear, the
9 defendant on his own volition drove, parked the car, got out
10 of the car, and there was never a blue light on There was
11 never a siren

12 Regardless of the timing of who got out, how
13 quickly it was, at the same time, or somewhat later, or even
14 simultaneously, I believe this is outside the realm of an
15 automobile stop Even though you certainly harp upon the
16 fact that the vehicle wasn't moving, the stop had been made
17 of the defendant's own volition by parking the automobile,
18 exiting the vehicle, and only then did the confrontation I
19 think it's much closer to a Terry stop And for that reason
20 I will deny your motion to suppress

21 MR POSEY Thank you, Your Honor Just note my
22 objection for the record

23 THE COURT Yes, sir

24 Okay For the benefit of the attorneys, during
25 the lunchtime one of the jurors called in with an emergency

1 that his brother, who had had some tests done this morning,
2 was admitted to the hospital after the tests for some cancer
3 problems, so I told the clerk to dismiss him, since we did
4 have an alternate picked That's juror number 154, Mr Phil
5 Gregory, has been excused because of the urgent illness of
6 his brother during the course of the morning, that he only
7 found out about during the lunch break, so we will proceed
8 with the other twelve

9 All right I understand that we have a verdict in
10 the other case, so if we can ask you to step back just for a
11 moment, we will get that jury in

12 (Whereupon, proceedings were recessed)

13 (Whereupon, proceedings were reconvened)

14 THE COURT Let's bring the jury in

15 MR POSEY Your Honor, this is just real brief,
16 just for the record

17 THE COURT Just a minute

18 MR POSEY In reviewing some notes, Mr Niles had
19 made mention to me about the issue of his alleged consent on
20 the search of the car I would just again move for
21 continuance, since he's not here, there is no way that I can
22 prosecute that -- put that issue before the court, since he
23 would be the only person that would be able to testify that
24 what he said in-camera to Your Honor It was something that
25 we had discussed But, of course, with him not being here,

1 it's not a motion that I can now put before the court to
2 protect those rights he may have under -- with him saying he
3 did not give consent to search So, again, I would just
4 renew my motion for continuance on that basis, Your Honor

5 THE COURT Okay sir Thank you It's noted

6 MS MONTS Your Honor, there is one more issue

7 THE COURT Okay

8 MS MONTS This is a stipulation that Mr Posey
9 and I have both signed It's regarding the driving under
10 suspension issue, and that's why I did not need to highway
11 department personnel here And I thought the stipulation,
12 as well as the defendant's driving record, which has been
13 redacted to remove any reference to a controlled substance
14 violation And Mr Posey has been over this redacted copy
15 and has agreed to let this in, as well as three orders of
16 suspension One of those three had a mention of controlled
17 substance violation, and I had that redacted out as well,
18 Your Honor

19 Mr Posey has been over all these documents, has
20 signed the stipulation, as well as myself, and we would like
21 this -- I would like this introduced into evidence and the
22 stipulation at the correct opportunity read to the jury,
23 Your Honor

24 THE COURT That would be without objection

25 MR POSEY No objection, Your Honor

1 (Stipulation marked as State's Exhibit No 1 for
2 identification)

3 MS MONTS Your Honor, Mr Watts has marked the
4 attachments to the stipulation as State's Exhibit No 1, and
5 I was just wondering, will the stipulation itself, once you
6 read it, will that go back to the jury as well, or do we
7 leave it as a Court's Exhibit?

8 THE COURT That would be a court's exhibit

9 MS MONTS Okay

10 THE COURT And do you want me to read it, or were
11 you going to read it?

12 MS MONTS Either way, Your Honor

13 THE COURT You can read that to the jury at the
14 time that you want to put that into evidence, and I'll
15 explain to them what a stipulation is

16 MS MONTS Okay

17 (Stipulation marked as Court's Exhibit No 4 for
18 identification)

19 MS MONTS Your Honor, just to clarify, when I
20 read the stipulation, can I at that point tell the jury that
21 the attached documents will be sent back as an exhibit?

22 THE COURT That's without objection, correct?

23 MR POSEY Without objection

24 THE COURT And those would be an exhibit as to
25 the stipulation

1 Okay We are ready for the jury now Let's bring
2 the jury in

3 (The following takes place in the presence of the
4 jury panel)

5 THE COURT Okay If you would swear the jury,
6 please

7 (Whereupon, the Clerk administered the oath to the
8 jury panel)

9 THE CLERK Thank you You may be seated

10 THE COURT Ladies and gentlemen, thank you very
11 much for your patience with us I have a few comments I
12 need to make to you We have had some other matters to take
13 care of with the other trial and I apologize for the delay
14 in getting you back in here Also one of your fellow jurors
15 had an emergency to come up with a family member who had
16 some health problems, so he had to be excused, so the
17 alternate is now a part of the full panel for the duration
18 of the trial

19 Let me give you a few remarks This is in no way
20 to be considered a charge on the law I'll do that at the
21 conclusion of the case, but to let you know a little bit
22 about the process by which we will be operating

23 You are going to be the judges of the facts, and
24 I, as the judge of the law, we will be working together in
25 this case I'm honored to have the privilege to work with

1 you You might have some apprehension about being a judge
2 You might be saying to yourself, well, I have never been
3 trained in the law and I don't know anything about being a
4 judge But believe me that you have more than sufficient
5 experience, because of the life experiences that you have
6 and the common sense that you bring to the courtroom to be a
7 judge, to be the judges of the facts That will be your
8 duty as we go along to be the judges of the facts

9 Oftentimes jurors wish to take notes about what's
10 proceeding, and note taking is not allowed Sometimes by
11 taking notes you don't have an opportunity to do the
12 observation that you need to listen as you should to what
13 the witness may say on the stand, to watch the demeanor, to
14 look at the body language, to see some other event taking
15 place in the courtroom, so note taking will not be allowed
16 But in order for you to be a judge of the facts, you are
17 going to need to listen to what transpires And your
18 comfort is of primary concern to us, because you obviously
19 can't be a good listener if you are uncomfortable in any
20 manner We are going to take breaks periodically Every
21 hour, hour and a half, we will take a break for you
22 Sometimes you may need a break before we think that one is
23 appropriate, and please let us know that if that is needed
24 by any of you, either through the bailiffs, or raise your
25 hand and let us know, and we will certainly take breaks to

1 keep you comfortable, because that's most important for you
2 to be attentive to what transpires here in the courtroom

3 You have met the bailiffs

4 You have met our clerk, whose here that has had
5 some intersection with them

6 Mike Watts is seated in front of me He's the
7 court reporter He's going to be taking down everything
8 that's said during the course of the trial to protect the
9 record, to keep everything in proper order

10 My job is to preside during the course of the
11 trial

12 I have a law clerk who will be coming in and out,
13 Daniel Hughes He's a recent law school graduate He will
14 be assisting me periodically, and you might see him seated
15 here with me

16 Each of us, as I have said, have different roles
17 to fulfill And as the fact finders, you are going to
18 listen to the case as it's presented I have told you
19 before that in this particular case the defendant is not
20 present in the courtroom And, again, let me remind you
21 that that's not to be a consideration by you in any manner
22 whatsoever, because every person who is tried before a court
23 in this state and in our country is presumed innocent, and
24 such is the case in this particular matter with this
25 defendant And the burden of proof is on the State of South

1 Carolina to prove his guilt beyond a reasonable doubt on
2 each of the indictments for which is before you today

3 The case will develop in several stages You may
4 have served on a jury before You may not have Your
5 experience in a courtroom may be from what you have watched
6 on TV or read in a John Grisham novel, but let me assure you
7 that what takes place in the courtroom is a deliberative
8 process, often slow, and develops in stages

9 You will have the opportunity soon to hear the
10 attorneys make an opening statement to you, to give you an
11 overview of what each would expect to take place during the
12 course of the trial While these opening statements are not
13 evidence, they are important, and I urge you to listen
14 carefully as each attorney gives you that road map, if you
15 will, of what you can expect to see in the development of
16 the case, important points that you need to be alerted to

17 After that there will be evidence presented
18 During the course of the evidence being presented, part of
19 my job is to rule on the admissibility of evidence There
20 might be an objection made If there is an objection, we
21 will try to handle it, either directly Sometimes it
22 requires the attorneys to approach me at the bench to see if
23 we can resolve it It may happen that you will have to be
24 excused from the courtroom to go back to your jury room,
25 because oftentimes when objections are made it involves

1 questions of law And questions of law are my prerogative,
2 just as questions of fact are yours, and in discussing legal
3 matters, we sometimes have to talk about the factual issues
4 that have been presented or factual issues that may be
5 presented later on that you haven't even heard yet And it
6 would obviously be improper for you to hear those kind of
7 matters that we have to discuss to rule on those issues of
8 law It's very similar to when you -- when all the evidence
9 is in and you have been instructed on the law, you will be
10 back in your jury room deliberating to determine what the
11 facts are And it would be improper for me to be there with
12 you telling you my view of the facts, because we each have
13 different roles as judges You are responsible for
14 determining the facts of the case, and that's your
15 prerogative, and yours alone, just as mine is to determine
16 what the law is and explain the law to you and preside
17 during the course of the trial and to rule upon
18 admissibility of evidence and other matters that may arise

19 After all the evidence is in, the attorneys will
20 again have an opportunity to address you and give you a
21 summary of their respective cases And after that I'll
22 charge you on the law It's only then that final stage of
23 the case is for you to do your deliberations I have
24 explained briefly before that that deliberative process
25 cannot start until you have been instructed on the law, and

1 I can only instruct you on the law after all the evidence is
2 in

3 I look forward to working with you in this matter
4 I'm honored to be doing so, and I appreciate the fact that
5 you have accepted your duty and taken the oath to give both
6 the State of South Carolina and the defendant in this case a
7 fair and impartial trial, that you have committed to both
8 sides to be fair and impartial I look forward to working
9 with you in that capacity

10 At this time I need to assure that the record is
11 protected and ask if either side has objections to the
12 preliminary remarks made

13 Any from the State?

14 MS MONTS No, Your Honor

15 THE COURT From the defendant?

16 MR POSEY None from the defense, Your Honor

17 THE COURT You may make your opening statement

18 MS MONTS May it please the court, Your Honor

19 Ladies and gentlemen of the jury, my name is Joyce
20 Monts I'm an attorney for the State

21 As His Honor instructed you, everyone in this
22 courtroom has a job His Honor's job is the finder of the
23 law Your job is another judge, the finder of the facts
24 My job is to prove to you beyond a reasonable doubt that the
25 defendant is guilty of the charges that are pending against

1 him Those two charges are driving under suspension and
2 trafficking crack cocaine

3 How are you going to decide that? The twelve of
4 you, once His Honor instructs you at the end of the trial,
5 are going to sit down and discuss what you hear in this
6 courtroom and what you see in this courtroom The evidence
7 that I'm going to present to you is going to come from
8 testimony from the witness stand The officer will get on
9 the stand and tell you what happened

10 The incident date is September 15th of 2003, at
11 1 40 a m in the morning at Oakview Apartments, here in
12 Greenville County, what he saw, what he observed the
13 defendant do, and what he found at that time

14 Trafficking crack cocaine, what does that mean? A
15 big word You would think that meant a truckload of drugs
16 coming in The statute, as His Honor will tell you at the
17 end, has different weights, which mean trafficking in If
18 an individual possesses over ten grams of crack cocaine,
19 that is trafficking All he has to do is possess that He
20 can also sell it, or distribute it, or bring it into the
21 state, or provide money for it, but this is a very simple
22 case and won't take very long, because all we want to prove
23 to you is that the defendant, Mr Robdrecko Niles, was in
24 possession of more than ten grams of crack cocaine on
25 September 15th of 2003, in Greenville County

1 We appreciate your time We appreciate your being
2 here I don't want to elongate this trial any longer than
3 necessary Please listen to the testimony that comes from
4 the witness stand and any physical evidence that you will
5 have in your hands when you go back to deliberate

6 The defendant is currently cloaked in a robe of
7 innocence But when you come back with your unanimous
8 verdict at the end, the State believes that cloak will no
9 longer be there and that you will uphold that verdict that
10 you swore to uphold and find the defendant guilty of driving
11 under suspension and trafficking in crack cocaine Thank
12 you

13 THE COURT Mr Posey

14 MR POSEY May it please the court, Your Honor

15 Ms Monts, Mr Foreman, ladies and gentlemen of
16 the jury, my name is Chris Posey and I represent Mr
17 Robdrecko Niles in this case

18 I'm going to make her job a little bit easier for
19 you today On the date in question that you are going to
20 hear testimony about, Robdrecko Niles was doing one thing
21 wrong He was driving under suspension There is no
22 question about it I'll tell you that up front She's
23 going to produce some documents for you to look at later on
24 The documents aren't in question He is guilty of that

25 Where I want you to pay close attention to, what I

1 want you to listen to, is the evidence regarding trafficking
2 in crack cocaine

3 The evidence that you are going to hear, and Your
4 Honor to going to instruct you on all these things at the
5 end of the trial, is called circumstantial and direct
6 evidence You will hear a little bit of both in this case,
7 in fact But think of the circumstantial evidence -- all of
8 us who have kids make little chain with paper where you fold
9 papers in a circle and hook them together with a little
10 glue, little tape Think what will happen if one of those
11 pieces of tape falls off or the glue doesn't stick What
12 happens to your chain? Think about that when you hear the
13 evidence See if there is a break I submit to you that
14 there is going to be a few breaks

15 Their job is to prove him guilty beyond a
16 reasonable doubt That's their burden Mr Niles has no
17 burden He has not one burden to come before you today
18 That's all on her It's all on Ms Monts and all on the
19 police officers Listen to the breaks in those chains
20 Listen for the evidence as it's going to be presented to
21 you That's all we ask Keep an open mind and listen

22 We are not even going to talk about the DUS,
23 except for the limited part she's going to submit the
24 paperwork on We are not contesting that, but listen to the
25 other evidence Just because I'm giving her that one, I'm

1 not giving her the other one

2 I thank you in advance for your time and
3 attention Mr Niles thanks you in advance for your time
4 and attention, and we truly do appreciate your service,
5 because you are what allows the system to work Thank you

6 THE COURT You may call your first witness

7 MS MONTS Your Honor, if I may, I would first
8 like to stipulate -- or to publish the stipulation of Mr
9 Posey and myself to the jury

10 THE COURT All right

11 MS MONTS Do you want to explain to them?

12 THE COURT A stipulation is just an agreement
13 between counsel as to the matters contained in the
14 stipulation She will share that with you at this time

15 MS MONTS The stipulation reads "I, Chris Posey,
16 attorney for Robdrecko Niles on his behalf, and Joyce Monts
17 assistant solicitor, stipulate that Robdrecko Niles'
18 privilege to drive in the State of South Carolina was
19 suspended on September 15th, 2003, and that the Court of
20 General Sessions, Greenville County, has jurisdiction to
21 hear the charge of driving under suspension on September
22 15th, 2003, against Robdrecko Niles

23 "Also prior to September 15th of 2003, Robdrecko
24 Niles had legal notice that his privilege to drive in South
25 Carolina had been suspended "

1 It's signed by Chris Posey and by myself, Joyce
2 Monts

3 (Driving Record of Robdrecko Niles marked as
4 State's Exhibit No 1 for identification)

5 MS MONT'S Your Honor, State's Exhibit 1 is put
6 into evidence at this time, which are the attachments to
7 that stipulation

8 THE COURT All right Without objection

9 MR POSEY No objection, Your Honor

10 THE COURT Exhibit 1

11 MS MONT'S Your Honor, the State calls Officer
12 Porter

13 OFFICER CHARLES PORTER, having been first duly
14 sworn, testified as follows

15 THE CLERK State your full name for the record,
16 please

17 THE WITNESS Master Deputy Charles Porter

18 THE CLERK Thank you

19 DIRECT EXAMINATION BY MS MONT'S

20 Q Officer Porter, please tell the jury where you are
21 currently employed

22 A I'm currently employed at the Greenville County
23 sheriff's office

24 Q How long have you worked for the sheriff's office?

25 A Approximately five years

1 Q And what unit are you currently assigned to?

2 A I'm the assigned to the Delta Platoon, the uniform
3 patrol division

4 Q And in September of 2003, what duties -- what unit were
5 you assigned to?

6 A The same

7 Q And what are your duties in that platoon?

8 A My duties in uniform patrol are basically the
9 protection of life and property, to see to it that nothing
10 happens to the fine citizens of Greenville County and the
11 fine property therein

12 Q And what shift on September 15th of 2003 were you
13 assigned to?

14 A The same, Delta

15 Q And what time of day is that shift assigned at that
16 time?

17 A At that time it was the night shift, seven p m to
18 seven a m

19 Q And can you describe for the jury what training you had
20 to have in law enforcement?

21 A Initially I completed the South Carolina Criminal
22 Justice Academy in 1998 From there I have been to numerous
23 schools, street level narcotics school, advanced driving
24 under the influence detection school, radar school, data
25 master school I have attended numerous schools and hold

1 numerous certifications through the State

2 Q And were you -- on the night of September 15th, or
3 actually the early morning of September 15th of 2003, who
4 were you working with?

5 A I was working with other units of Delta platoon and
6 other units of our Echo platoon, which is the swing shift

7 Q And what area were you assigned to that night?

8 A I was assigned to beat area two, which contains or
9 would contain Taylors, Greer, parts of Mauldin, Blue Ridge

10 Q Does this include Oakview Apartments?

11 A Yes, ma'am, it does

12 Q What street or area is that on?

13 A It's in the Taylors area It runs off or is actually
14 on Boling Road, off of School Street, off of Main Street,
15 Taylors

16 Q And is that in Greenville County?

17 A Yes, ma'am, it is

18 Q And do you know what time you went to Oakview
19 Apartments that morning?

20 A We started in that area --

21 Q Or evening It might have been the evening before, but
22 go ahead

23 A We started in that area approximately at one o'clock in
24 the morning

25 Q And do you recall how many officers went or how many

1 vehicles?

2 A There was approximately five officers, four vehicles

3 Q Was anyone else in your vehicle?

4 A No, ma'am, I was alone

5 Q And can you describe what you were doing at Oakview
6 Apartments that morning?

7 A Several of us had gotten out in Oakview in the
8 apartment complex It's kind of a suppression exercise
9 Oakview is pretty notorious in the sheriff's office for
10 having -- it's got a bad drug reputation and a bad crime
11 reputation We were there at the time for presence, for
12 officer presence, to be seen, and to get on foot and
13 interact with people that were in the area

14 Q Are some of your officers employed there off duty?

15 A Yes, ma'am, the property manager and the government
16 received a grant from the Federal Government to employ
17 off-duty sheriff's deputies to work there in their off time
18 as a way for the sheriffs -- for the deputies to make some
19 extra money and for the apartment complex to have some extra
20 protection

21 Q What are their duties?

22 A Their duties basically are to deter crime through
23 interaction with the community and to do away with people
24 that don't belong there, basically

25 Q And describe at approximately 1 40 or 1 30 that morning

1 on September 15th of 2003, where you and the other members
2 of your unit were?

3 A There were several of us gathered at the entrance to
4 Oakview Apartment complex We were -- our cars were parked
5 and we were standing alongside our vehicles

6 Q Were your blue lights going?

7 A No, ma'am, our cars were turned off Our lights were
8 off We were parked

9 Q No sirens?

10 A No, ma'am, parked in truest sense of the word

11 Q And had you been on foot in the area?

12 A Yes, ma'am

13 Q How far had you gone on foot?

14 A I couldn't give you a mileage, but we had walked a good
15 bit of the community A good bit of the community

16 Q And did you see any of the vehicles approximately 1 40
17 that morning come near where you were?

18 A Yes, ma'am Yes, ma'am, I did

19 As we were standing near the entrance of Oakview, I
20 observed a car coming up Boling Road and make a right turn
21 into the front gate of the apartment complex

22 Q And can you describe the apartment complex? How many
23 ways in and out are there?

24 A There is one way in and one way out, and it is the same
25 way

1 Q And what did you observe? Were you standing at the one
2 entrance and exit to the complex?

3 A Yes, ma'am

4 Q And what did you observe about this vehicle?

5 A I observed the vehicle turn right into the apartment
6 complex and approach our vehicles I could see the driver
7 inside the vehicle I could see that it was occupied by one
8 person, and I could see him see us as he drove by

9 Q What did you notice about him seeing you?

10 A What attracted my attention to him -- well, first of
11 all, it was 20 minutes to two in the morning and he was the
12 only car that had driven into the apartment complex at that
13 time

14 As he drove past us -- and forgive me for being
15 animated, but when he drove by, he looked at us and then
16 looked at us again with -- his eyes were about this big,
17 what I would refer to as a deer in the headlights kind of
18 look, like he wasn't expecting to see police cars where he
19 saw police cars

20 Q And how could you see? How well lit was it?

21 A He -- there are street lights up and down the street of
22 that community

23 Q And did you observe where this vehicle went?

24 A Yes, ma'am, after he passed the last, or first if you
25 are looking at it backwards, the first patrol car, he made

1 his first immediate right turn into a parking area and
2 his -- and parked in an available parking space

3 Q And describe the traffic in this area Were there
4 other cars parked there?

5 A No, ma'am At that time Oakview was undergoing HUD
6 renovation At one point they had had flat roofs and the
7 government was putting rafters in and making it an angled
8 roof, so they would move everybody out of one building
9 somewhere else, tear the roof off of the building, renovate
10 the inside apartments And at that time that's what was
11 going on with this particular apartment, so there was nobody
12 in the apartments, nobody living in the apartments, and no
13 other cars in the parking lot

14 Q Were there any other individuals outside at this
15 particular time?

16 A No, ma'am

17 Q What did you observe the occupant of the vehicle do
18 once he pulled into the parking area?

19 A I observed him step out of the vehicle

20 Q Excuse me, how far was he from you now?

21 A At this point he's merely 25 yards He's not very far
22 at all He exited his vehicle, took a couple -- and by a
23 couple, I mean, less than five steps, stopped, turned around
24 and went back to his vehicle, and I thought -- what I
25 thought to be unusual is that he locked his car door with

1 his key, and that just struck me as odd, that he got out of
2 the car, didn't lock it, walked away from it, and then came
3 back and locked it with the key, almost as an afterthought

4 Q And then where did he go?

5 A Then he started back towards what would be the B
6 building

7 Q Describe the B building

8 A At that time the B building -- the buildings in that
9 community are lettered, or were at that, lettered A, B, C,
10 D, and then they had an individual number for each
11 individual apartment So if you lived in the first
12 apartment in the B building, you would live in B-1

13 At that time the B building was being renovated, so
14 there were -- there was nothing in it There were some
15 walls, and that's about the extent of it

16 Q Were there any interior lights on?

17 A No

18 Q Were there any building materials outside?

19 A Yes, ma'am, the construction crews had left a majority
20 of their equipment and materials outside around the
21 apartment There was vinyl siding, lumber, rafters that had
22 already been put together Some of the larger equipment and
23 tools that they would use in the renovation

24 Q Was there any indication at all that people could be
25 living in that building?

1 A No, it would be hard to say that there would be people
2 that -- there basically wasn't any way to live in the
3 building

4 Q Please continue Did you stay on foot, or did you get
5 in your vehicle?

6 A As he turned -- as the vehicle turned into the parking
7 area and proceeded to park, I got into my patrol car and
8 moved it up into the same parking area

9 Q And what did the other officers do?

10 A They -- they followed a short distance behind me

11 Q And at what -- what was the defendant doing when you
12 pulled up?

13 A As the defendant was getting out of the vehicle, he was
14 exiting the vehicle and beginning to walk away

15 Q And did you get out of your vehicle?

16 A I did

17 MS MONTIS Your Honor, may I approach the
18 witness?

19 THE COURT You may

20 MS MONTIS Your Honor, may I ask the witness to
21 step down?

22 THE COURT Yes, sir If you would project your
23 voice so the jury and court reporter can hear you

24 THE WITNESS Yes, sir, Your Honor

25 (Witness off the witness stand)

1 BY MS MONT'S

2 Q I'm going to hand you a red pen to kind of point with

3 A Okay

4 Q Can you please explain -- did you draw this drawing
5 that the jury is now looking at?

6 A I -- I did I was going to sign it, but --

7 MS MONT'S Your Honor, I would like this marked
8 State's identification -- purely for identification

9 THE COURT For identification That would be No

10 2

11 (Diagram marked as State's Exhibit No 2 for
12 identification)

13 BY MS MONT'S

14 Q Officer, referring to State's Exhibit 2 for
15 identification, please tell the jury what this is

16 A This is my rendition of the entrance and roadways
17 leading into Oakview Apartments

18 Q And describe for them the roads and where you were
19 standing, please

20 A This indicates the borders of the roads This would be
21 Boling Road going into the entrance of Oakview Apartments

22 This would be Boling Road

23 This is Boling Road coming from main street Taylors

24 This is Oakview coming from Taylors Road

25 This leads into the entrance of Oakview

1 This is the fence line here And if I had continued
2 drawing, there would be also a fence line over here

3 Q And please describe what direction the defendant came
4 from

5 A The defendant came from the Taylors roadside of Boling,
6 making a right turn into the apartment complex and driving
7 straight past our patrol cars, which were parked here

8 Q At what point did you observe him and did he observe
9 you?

10 A About -- well, I saw him coming I saw his headlights
11 I saw him coming up the road, so I turned to look, watched
12 him make the right turn here, and we made eye contact at
13 about this point

14 Q And do you recall -- and if you recall, which patrol
15 car was yours?

16 A This one

17 Q And where were all the officers standing?

18 A We were standing here, amidst the patrol cars

19 Q In the road more?

20 A Yes Yes

21 Q Please continue What happened once you observed the
22 defendant and he observed you?

23 A As he turned in here to go into this parking area, this
24 would be the B building here, and please for give my
25 rendition, I entered my patrol car and pulled in and stopped

1 here His car was parked here My car was parked here

2 Q And describe that little area, that parking area Does
3 it continue on?

4 A No, ma'am, it dead ends Well, where the paper dead
5 ends, it dead ends right here

6 Q And were there any other cars in that parking lot?

7 A No, ma'am

8 Q And, generally, would people have been parked there, if
9 that building were in use?

10 A Yes, ma'am, had that building been occupied, there
11 would be cars there

12 Q What did you find, if anything, unusual about this?

13 A I found it unusual that somebody would be pulling into
14 that particular part of the complex because there is really
15 nowhere for them to go There is no reason to park there
16 because you can't go anywhere There is no -- there is no
17 apartment to go into

18 Q Please continue What happened once you got out of
19 your vehicle there in the parking lot? And -- excuse me,
20 could you have walked this distance?

21 A Yes, ma'am, I could have walked myself there, but I
22 chose to drive my car

23 Q Okay Please continue

24 A As Mr Niles, the defendant, exited his vehicle here, I
25 approached him on foot and at that point asked him to

1 produce some identification, whether it be a driver's
2 license or some form of state issued ID, something with his
3 picture and his name on it, to which he replied he had left
4 it at home I asked him where home was, and home was in
5 Fountain Inn, so he was quite a distance from his
6 identification

7 Q Could you have arrested him at that point?

8 A Yes, ma'am, I could have for operating a motor vehicle
9 without a driver's license in possession

10 Q Please continue Did you have further conversation?

11 A I -- I did At that point -- I asked him at that point
12 whose car he was driving

13 As I initiated conversation with the defendant, he
14 would put his hand in his pockets and talk to me To the
15 average person I know that doesn't seem like too big of a
16 deal, but to a police officer, especially standing out in
17 the middle of the road at night, I don't know what a person
18 has got in their pockets because I can't see in them, and
19 that makes me very nervous

20 I asked Mr Niles several times, first nicely "please
21 keep your hands out of your pockets," and then after the
22 third or fourth time "keep your hand out of your pockets "
23 He continued to put his hand in his pockets and back away
24 from me His nervousness made me nervous and it made me
25 feel that maybe he had something, to include a weapon, in

1 his pocket that he didn't want me to find

2 Q And where were you standing on this diagram when this
3 conversation took place?

4 A About here

5 Q In the parking lot?

6 A In the parking lot area

7 Q Go ahead and have a seat

8 (Witness back on the witness stand)

9 BY MS MONT'S

10 Q Did you then -- and what did you do, based on his
11 nervousness?

12 A At that point I decided to conduct what we call a
13 pat-down, a Terry frisk of his outer layers of clothing, to
14 determine whether or not he was armed in any way

15 Q And did you pat him down?

16 A I did pat him down

17 Q And what did you observe?

18 A Upon the pat-down I felt in his pockets what felt like
19 paper material to me I asked him if I could reach my hand
20 into his pocket to identify the objects, to which he agreed
21 In one pocket he had some dollar bills, several, I believe
22 three one dollar bills, and in his other pocket he had what
23 I observed to be a stack of bills, the top of which was a
24 hundred dollar bill I identified that to be a pretty large
25 quantity of money and immediately put that back down into

1 his pocket

2 Q Where was the defendant going?

3 A He stated to me that he was going to go to apartment
4 B-16

5 Q Did that exist?

6 A No, ma'am, there is -- there is only eight apartments
7 in that building

8 Q And do any of the apartments in that complex have 16
9 apartments?

10 A Some of the bigger units in the flat apartments do, but
11 that particular one does not

12 Q What did you do once you returned the money into his
13 pockets?

14 A That action or that finding of that money combined with
15 the other things that I had observed - his nervous behavior,
16 his pulling into a parking lot where there was no reason to
17 pull into a parking lot, telling me that he was going to a
18 building or an apartment that didn't exist - those things
19 made me feel like he was hiding something from me

20 What attracted my attention or made my attention go to
21 his car is the fact that he walked away from it and returned
22 to lock it and then walk away from it again, as if he was
23 locking it, not locking it to keep somebody out At that
24 point I asked him if he had anything in his vehicle that may
25 be illegal - guns, knives, open alcohol containers, drugs of

1 any kind He replied that he did not

2 Q Did you ask for consent to search the vehicle?

3 A I did He said that he did not have anything I asked
4 for permission to search the vehicle He said that I may

5 Knowing that the vehicle was locked, I asked Mr Niles
6 for the keys to the car so I could unlock it and proceed to
7 search the car Upon asking for the keys, Mr Niles took a
8 step back and then in one fell swoop threw the keys and
9 turned around and headed off in the opposite direction at a
10 fairly high rate of speed on foot He ran from us

11 Q So the keys were not thrown towards you?

12 A No, no, the keys were actually thrown quite the
13 opposite from us They were thrown away from us, and then
14 he ran in the opposite direction from the keys

15 Q On your diagram, which way did he run?

16 (Witness off the witness stand)

17 A This way The keys went that way and he went that way

18 BY MS MONTIS

19 Q And did you pursue him?

20 A Yes, ma'am, I did

21 (Witness back on the witness stand)

22 BY MS MONTIS

23 Q And did other officers pursue him?

24 A Yes, sir, other officers on the scene also pursued him

25 Q And what did you see as he was running away?

1 A As he was running away, I noted that he -- instead of
2 running on the hard -- the asphalt surface, which would make
3 for an easier run, he stayed in the grassy area And he
4 came to a -- I don't want to kill it a hedge row, but a set
5 of bushes that were planted for aesthetic purposes He fell
6 down, or I should say laid down, and simultaneously threw
7 something into the bushes that I could never identify what
8 it was he threw into the bushes, but he threw something into
9 the bushes and then laid down and basically gave up

10 Q Did you arrest him at that time?

11 A I did take him into custody at that time

12 Q And where were the other officers?

13 A The other officers were hot on my heels

14 Q And where did you go with him?

15 A Well, we -- initially I asked him the obvious question,
16 "why are you running," and he said "because my driver's
17 license is suspended " At that point I took him into
18 custody, picked him up and took him back toward the patrol
19 cars were parked and where his car would be parked

20 Q And were the others officers with you as well?

21 A Yes

22 Q And please tell what happened once you got back to his
23 car

24 A Once -- once we got back to the car, it was -- at that
25 point he was under arrest We determined that the vehicle

1 that he was operating that night and the sole occupant of
2 that night was to be towed, per our policy We can't leave
3 the vehicle unattended for liability purposes If anything
4 were to happen to the vehicle, it would come back to haunt
5 us, so we called for a tow truck and conducted an inventory
6 of that vehicle

7 Q And did you get the car opened?

8 A Yes, ma'am, I did get the car opened I had to use a
9 Slim Jim to get the car opened, but I did open it

10 Q And what did you observe inside the car?

11 A Once inside the car, I observed a hat, a baseball cap
12 laying on the passenger's side seat I lifted that hat,
13 under which I found a quantity of a white -- off-white
14 rock-like substance that I am somewhat familiar with through
15 my travels to be consistent with crack cocaine

16 MS MONTES Your Honor, if I may have this
17 envelope and its contents marked for identification only?

18 THE COURT Okay That would be for I D No 3

19 (Drugs marked as State's Exhibit No 3 for
20 identification)

21 BY MS MONTES

22 Q I'm handing you what's been marked as State's Exhibit
23 No 3 for identification Can you please describe this to
24 the jury and explain what the markings are?

25 A Inside this bag there are several other bags, and

1 inside those several other bags is the substance that I
2 located inside the defendant's vehicle

3 Inside the very last bag -- I don't know if you would
4 like to hand this to them or not, ma'am, but my case number,
5 my name, my unit number and the date that I located this
6 substance is written on the inside of this first bag that
7 contains the substance The bag was then heat sealed with
8 my name and the substance inside that bag

9 Q Describe what heat sealing means

10 A Heat sealing is -- these bags are made of a varied
11 amount of a plastic When heat is applied to them, like you
12 are at-home kitchen heat sealer, you push it down and it
13 melts the edge of the bag together so that it can't be
14 opened, or if it is opened, it has to be cut

15 The substance is heat sealed inside the bag with my
16 name -- my name, my unit number and the case number and the
17 date And then it is placed into a brown envelope with the
18 property and evidence form and a drug analysis request

19 Q And describe where you take that once you put it in the
20 plastic heat sealed envelope into the brown envelope

21 A The brown envelope and the contents therein go into
22 what we call a drop box And in our records division we
23 have -- it's a mailbox that's locked with a padlock The
24 only people that have access to that lock box are the
25 property and evidence people that actually empty the

1 container and transfer the evidence or property down to our
2 property room

3 Q And prior to you heat sealing this substance, did you
4 do any testing yourself on it?

5 A On the scene I did what we call a field test We are
6 equipped with small plastic pouches with vials that have a
7 liquid chemical agent inside that will react with whatever
8 drug that you are testing for and it will give you a color
9 indication The liquid will actually change color to
10 indicate the presence, or in this case the cocaine base

11 Q And have you seen this package since the date that you
12 dropped it off?

13 A Not until today, no, ma'am

14 Q And did you -- where did you get it today?

15 A I picked it back up at our property and evidence room

16 Q And did you have to sign any documentation?

17 A Yes, ma'am, upon picking it up I had to sign it back
18 out on the same property and evidence form that I initially
19 put it in under, to maintain our chain of custody

20 Q And did you bring it to court with you today?

21 A Yes, ma'am, I did

22 Q Has it been in your possession since you checked it out
23 today?

24 A Yes, ma'am, it has

25 Q Back at the scene on September 15th was the defendant

1 taken to the law enforcement center that morning?

2 A Yes, ma'am, he was He was taken to the law
3 enforcement center where he was booked in, per our
4 procedures He was -- he had his finger prints rolled and
5 his picture taken

6 Q And did you confirm his correct identity at that time?

7 A Yes, ma'am And in the event that he was not who he
8 said he was, then we would have been alerted by not only the
9 FBI, but by the detention center that he had given a false
10 name based on his fingerprints

11 Q And what name did you confirm was his correct identity?

12 A Robdrecko Niles

13 MS MONTS Thank you I have no further
14 questions at this time

15 THE COURT Okay You may cross-examine the
16 witness

17 MR POSEY If it please the court, Your Honor
18 CROSS EXAMINATION BY MR POSEY

19 Q Just go briefly back to the start of it

20 You said there were four cars and five officers at the
21 scene that night, right?

22 A To be best of my recollection, yes, sir

23 Q Is that an unusual saturation for that area, or is that
24 normal?

25 A That's about average

1 Q Okay Is that just the sheriff's department policy, or
2 that, what, at the community's request, or why is that kind
3 of situation done? Was it asked for, or was it dictated, I
4 guess is the best way

5 A I would have to say that it was requested

6 Q Is it usually just your platoon that does that kind of
7 saturation, or is it all shifts?

8 A No, sir, most -- most of the other shifts -- and I
9 can't speak for the officer rotation, because I don't ever
10 get to see those guys, but on our rotation we stay down
11 there pretty frequently

12 Q Let me move on to when you stopped Mr Niles

13 A Yes, sir

14 Q He got out of the car, come back and locked his car?

15 A Yes, sir

16 Q You stopped him and asked him for his I D ?

17 A Yes

18 Q He told you he had none?

19 A Yes, sir

20 Q Which was a truthful answer, correct?

21 A Yes, sir

22 Q He put his hands in the pocket, about like I am right
23 now, probably, and made you a little nervous?

24 A Yes, sir, actually made me a lot nervous

25 Q I can understand that

1 You subsequently did what we call Terry Pat-down, is
2 that correct?

3 A Yes, sir

4 Q You found money on him?

5 A Yes, sir

6 Q Is that correct?

7 A Yes

8 Q Now, the big wad of money that you said that you found
9 was -- the only big bill that you saw was the one on top,
10 right?

11 A Yes, sir

12 Q You don't know what the subsequent bills were, do you?

13 A No, sir, I didn't count them

14 Q It could have been all ones, as far as you know, is
15 that correct?

16 A Yes, sir

17 Q Okay The other stack of money that you found, was it
18 all small bills?

19 A Yes, sir, it was merely three singles

20 Q After that point in time you stated he ran from you
21 shortly thereafter and threw the car keys away?

22 A Yes, sir

23 Q We won't rehash all that

24 Let me ask you this At what point in time did you
25 find out who the owner of the vehicle was?

1 A About the time that we got ready to tow it, to put it
2 on the truck

3 Q Okay At any point in time did you contact the owner
4 yourself?

5 A No, sir, I did not

6 Q Okay Did you further question Mr Niles about where
7 he got the vehicle from?

8 A To the best of my recollection, I asked him several
9 times who the car belonged to The best answer I recall
10 getting was "my girl, my girl, my girl "

11 Q Okay His girl, in fact, lived in Oakview Village, is
12 that correct?

13 A That was my understanding, yes, sir

14 Q Do you know if she was the registered owner of the
15 vehicle?

16 A I would assume so, yes, sir

17 Q Okay Would it surprise you if I told you she wasn't
18 the registered owner of the vehicle?

19 MS MONTS Objection, Your Honor

20 THE COURT What's your objection?

21 MS MONTS He's testifying

22 THE COURT I'll allow him to ask the question

23 A The question was would it surprise me?

24 BY MR POSEY

25 Q Yes

1 A If I found out she was not the registered owner?

2 Q Yes

3 A I don't know that I would -- after seven years in law
4 enforcement, I don't know if I surprise too easily, sir

5 Q I understand that

6 Was any questioning done of the girlfriend, as far as
7 her knowledge of any drugs in the car?

8 A She arrived as we were putting the car on the skid
9 truck

10 Q Okay

11 A I don't recall asking her any specific questions about
12 dope in the car myself

13 Q Okay Was there any evidence, other than being in the
14 car, that linked Mr Niles to the drugs?

15 A Other than him being in the car with it?

16 Q Yes, sir

17 A No, sir

18 Q Was any tests done to show the baseball hat in the car
19 was his?

20 A No, sir, I don't know that there would be a test for
21 that

22 Q Was there any fingerprints done on the bags?

23 A No, sir The -- the -- no, there was not

24 Q So the registered owner, or who you believe the
25 register owner of the car was not -- nobody else was

1 investigated regarding the drugs, is that correct?

2 A That's correct, sir According to -- according to --
3 the registered owner I have would be Louise Moon

4 Q That's right, but that's not the girlfriend, is it?

5 A I don't -- I don't know

6 Q Okay Do you have a tow-in sheet with you?

7 A Yes, sir

8 Q Up there?

9 A A copy of it, yes, sir

10 Q Can you look at it?

11 A Yes, sir

12 MR POSEY Do you mind if I approach, Your Honor?

13 BY MR POSEY

14 Q Louise Moon was not the person that showed up that
15 night, was she?

16 A I -- I don't recall, sir

17 Q Okay Did Mr Niles say anything else to you that
18 night except the two basic statements he didn't have
19 identification and my driver's license is suspended?

20 A There wasn't a whole lot of conversation between us,
21 no, sir

22 Q Let me just ask you about Oakview Village It's not a
23 big area, is it?

24 A It's pretty sizeable It's not a small complex

25 Q Not a small complex, but, I mean, it's not -- the

1 buildings around a mile away from each other, or a half mile
2 away?

3 A No, no, no, no, it's not acres and acres, no

4 Q I mean, could you throw a rock from one building and
5 hit the other one?

6 A Yes, sir

7 Q So we are not talking -- you could walk the complex in
8 fairly -- well, I think you, in fact, you all stated you had
9 walked all over the complex in the 40, 45 minutes that y'all
10 had been there?

11 A Yes, sir

12 Q And just one last question You said the girlfriend
13 showed up Do you know who called her to the scene?

14 A I have no idea

15 Q Was Mr Niles allowed to use the phone at any point in
16 time?

17 A Not to my knowledge, no, sir

18 Q Could you see from -- where your location of pulling
19 in, other people lived in other buildings, could they see
20 that area?

21 A There is a good likelihood that they could, yes, sir

22 Q Okay

23 MR POSEY I have nothing further at this time,
24 Your Honor

25 THE COURT All right Any redirect?

1 MS MONT'S No, Your Honor

2 THE COURT Thank you, officer You may step
3 down

4 THE WITNESS Thank you, sir

5 THE COURT You may call your next witness

6 MS MONT'S Your Honor, the State calls Sean
7 Collins

8 SEAN COLLINS, having been first duly sworn,
9 testified as follows

10 THE CLERK You may be seated

11 State your full name for the record, please

12 THE WITNESS Sean Franklin Collins

13 MR POSEY Your Honor, having known Mr Collins
14 for nearly 15 years now, I will be happy to stipulate to his
15 qualifications as an expert

16 THE COURT All right, sir

17 MR POSEY In field testing

18 THE COURT Stipulated

19 DIRECT EXAMINATION BY MS MONT'S

20 Q Please tell the jury where you are employed

21 A I'm employed by the Greenville County crime laboratory
22 here at the law enforcement center

23 Q And what are your duties at the crime lab?

24 A My duties include the analysis of suspected controlled
25 substances

1 Q And, briefly, since Mr Posey has already stipulated to
2 your qualifications, please briefly tell the jury what your
3 background is

4 A I have a Bachelor of Science Degree in chemistry from
5 Clemson University

6 Upon graduating, I began my employment with the crime
7 laboratory

8 I have attended several instrumental schools for the
9 equipment I use in my analysis I have over 700 hours of
10 training

11 Q And I'm going to have you take a look --

12 MS MONT'S And Your Honor, you did put it on the
13 record that he's been qualified as an expert?

14 THE COURT Without objection

15 BY MS MONT'S

16 Q I hand you what's been marked for identification as
17 State's Exhibit 3 Can you tell the jury what you know
18 about this?

19 A I received these items to be tested

20 Q And describe how you get an item to be tested Where
21 do you go to get it?

22 A Evidence is stored in the property and evidence
23 section It's in the basement of the law enforcement center
24 down the hallway from the laboratory I have to retrieve
25 items from that room, return to the laboratory, perform my

1 analysis And once it's completed, I'll return the evidence
2 to that room for storage

3 Q. And describe what condition this was in when you
4 received it, the packaging

5 A The packaging I received was sealed inside this inner
6 plastic envelope. I opened it to perform my analysis and
7 then sealed it in the new bag on the outside.

8 Q And did you produce a report once you analyzed this
9 substance?

10 A Yes, ma'am, I did.

11 Q Can you read the results of your report?

12 A. I found Item A, which is a bag containing rock
13 substance, to be ~~crack cocaine with the weight of 4.11~~
14 ~~grams~~

15 And Item B was also a bag containing rock substance,
16 which I found to be crack cocaine, ~~with the weight of 17.87~~
17 ~~grams~~.

18 Q And you said Item A and B, can you describe that for
19 the jury? What do you mean, two separate things?

20 A The smaller bag here is labeled as Item A, and the bag
21 with the larger pieces in it is Item B

22 MS MONTS Your Honor, I would move Mr Collins
23 report into evidence at this time.

24 MR POSEY No objection, Your Honor

25 THE COURT. Without objection, that would be.

1 MS MONTS Your Honor, that would be marked 4
2 (Lab Report marked as State's Exhibit No 4 for
3 identification)

4 MS MONTS Your Honor, I would also move in
5 what's been marked for identification State's Exhibit 3 into
6 evidence at this time

7 MR POSEY No objection, Your Honor

8 THE COURT Without objection, Exhibits 3 and 4
9 are into evidence

10 MS MONTS No further questions of this witness,
11 Your Honor

12 MR POSEY No questions, Your Honor

13 THE COURT Thank you, Mr Collins You may step
14 down

15 MS MONTS Your Honor, we would ask Mr Collins
16 to be excused at this time

17 THE COURT Any objection?

18 MR POSEY No objection, Your Honor

19 THE COURT Mr Collins is excused

20 MS MONTS Your Honor, we have no further
21 witnesses at this time

22 THE COURT The State rests?

23 MS MONTS Yes, Your Honor

24 THE COURT Okay

25 Ladies and gentlemen, I'm going to ask you, if you

1 would, briefly to go to your jury room We have a few
2 matters of law that we must discuss We will take a break
3 and I'll call you back in just a few minutes

4 Again, don't discuss the case at this time

5 When you come back, I'm going to appoint Ms
6 Mcquirt as the foreperson of the jury If you would, have a
7 seat on the front row closest to the witness stand

8 As foreperson you don't have more votes than
9 anyone else What your job will be will be to accept
10 exhibits as they are offered Sometimes when you are in the
11 jury room there might be some communication that has to take
12 place with the court through the bailiff You could
13 communicate with the bailiff, if someone needs to make a
14 call, or if you have special questions of the jury You are
15 to basically be the presiding officer, to help the jury in
16 discussion of the case, once that takes place You will be
17 the conduit, if you would, between the court and the jury
18 for any needs that may come up

19 So the rest of you can sit in any of the seats
20 that you prefer I just ask the forelady to take the first
21 seat on the front row

22 At this time I'll excuse you back to your jury
23 room Don't discuss the case at this time and we will call
24 you back in just a few minutes

25 (The following takes place outside the presence of

1 the jury panel)

2 THE COURT Okay Anything we need to bring up
3 before we continue with the case?

4 MR POSEY Your Honor, I would make a motion for
5 a directed verdict on behalf of Mr Niles at this time

6 THE COURT On what basis?

7 MR POSEY Your Honor, I would just say the State
8 has not sufficiently tied the crack cocaine to Mr Niles
9 He was driving someone else's vehicle and it was underneath
10 a baseball hat and they proved that he had no knowledge or
11 any reason to have knowledge or authority He admitted he
12 was driving under suspension that night He said that's the
13 reason he was running He told the officer up front he had
14 no identification And other than being in somebody else's
15 car, there is no other proof to offer that he had knowledge
16 of the crack cocaine

17 THE COURT Okay Thank you

18 Viewing all the evidence in the light most
19 favorable to the State, as I must, there is some evidence to
20 send the case to the jury

21 I have committed that we leave before five o'clock
22 night Therefore, I think we probably can't get our
23 argument and charge in this afternoon this late It's about
24 4 15 now

25 MR POSEY Your Honor, if we went until about

1 5 15, I think it would be okay, and I know argument is not
2 going to be probably more than five or ten minutes

3 THE COURT The problem would be that the jury is
4 out, I don't know whether we can dismiss you

5 MR POSEY Well, I understand that And if we
6 can't, I can make other arrangements

7 THE COURT Okay Well, are y'all ready to argue
8 and charge and get it to the jury this afternoon? If the
9 State ready, or we can do it in the morning, either way

10 MS MONTS I'm prepared, but it's up to Mr
11 Posey

12 MR POSEY I would prefer it before, just if you
13 will make a phone call and --

14 THE COURT Let's take a break and we will see if
15 you can make arrangements We will do it either way,
16 though

17 We'll be at ease for about five or ten minutes

18 (Whereupon, proceedings were recessed)

19 (Whereupon, proceedings were reconvened)

20 THE COURT Mr Posey, I'll just ask that my other
21 two witnesses can be excused

22 MR POSEY No objection

23 THE COURT Thank you

24 Okay I believe that it probably would be in the
25 best interest for us to just wait until tomorrow You might

1 have made arrangements, but I think in light of the lateness
2 the hour, the jury would wouldn't get it, the charge until
3 well after five Might even have an opportunity to locate
4 your client tonight The defense has not rested, so you
5 might -- we will take care of that in the morning first
6 thing We will start -- we will start at nine o'clock in
7 the morning?

8 MR POSEY Yes, sir

9 THE COURT Be all right?

10 MS MONTS Yes, sir

11 THE COURT We will start at nine and give the
12 defense an opportunity to -- if you wish to put anything up
13 If not, then we will go right into the argument and charge

14 Does anybody have any requests for charge, other
15 than the standard charges? I will certainly talk about the
16 absence of the defendant and his right not to testify and
17 that could not be held against him

18 MR POSEY Your Honor, I would ask for a mere
19 presence charge, since it was not his automobile, mere
20 presence in automobile then

21 THE COURT I'll touch on mere presence, but not
22 the elaborate mere presence charge

23 Anything from the State?

24 MS MONTS No, Your Honor

25 THE COURT Let's bring the jury in

1 (The following takes place in the presence of the
2 jury panel)

3 THE COURT Madam Forelady and ladies and
4 gentlemen of the jury, in the interests of time and the fact
5 that the remainder of the trial may take a little longer
6 than we need to be here the rest of the day, I'm going to
7 excuse you for the rest of the day We are going to start
8 back at 9 15 in the morning At that time we will be ready
9 to proceed and hopefully be able to complete the case in the
10 morning

11 As I mentioned to you, it would be improper for
12 you to discuss the case with anyone other than your fellow
13 jurors, and that only after I have charged you on the law
14 and the case is concluded So we will trust you to abide by
15 the instructions Lots of times you have folks who are
16 curious and want to know things about the case or jurors
17 sometimes want to take it upon themselves to do independent
18 research and find out a little bit about things, or go to
19 the scene, or all kind of this things like that Please
20 understand that would be totally improper because you have
21 committed to the State and to this defendant, Mr Niles,
22 that you will decide this case on what you hear in the
23 courtroom, and that alone - the evidence, the law that I
24 give you and nothing else So don't do any kind of a
25 research or don't discuss the matter with anyone at all We

1 will conclude the case tomorrow and you will have an
2 opportunity then to do your deliberations on the law and the
3 evidence that you have been presented, and we will let you
4 make your decision on that basis, and that alone, under your
5 oath

6 Have a good evening I'll dismiss you at this
7 time If you would be back in your jury room in the morning
8 at 9 15

9 (The following takes place outside the presence of
10 the jury panel)

11 THE COURT We will start back at 9 15 in the
12 morning

13 (Whereupon, proceedings were adjourned to May 4,
14 2005, at 9 15 a m)
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25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 ROBDRECKO NILES,) 2003-GS-23-8202
7 Defendant) 2004-GS-23-0600
8) MAY 4, 2005
9) Greenville, South Carolina

10 (VOLUME II)

11 B E F O R E

12 THE HONORABLE G EDWARD WELMAKER, JUDGE , and a jury

13
14 A P P E A R A N C E S

15 JOYCE MONTS, ASSISTANT SOLICITOR
16 Attorney for the State

17 CHRISTOPHER POSEY, ESQUIRE
18 Attorney for the Defendant

19 Michael R Watts
20 Circuit Court Reporter
21
22
23
24
25

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1 (Proceedings, May 4, 2005)

2 THE COURT Mr Posey, do you have any defense
3 that you wish to put up?

4 You don't have your client here with you today?

5 MR POSEY No, sir, Your Honor, on both counts,
6 and the defense would rest at this time

7 THE COURT Anything else from the State?

8 MS MONTS Nothing, Your Honor I was just going
9 to mention that I did hand up a jury charge request

10 THE COURT That one will be covered in the
11 general charge A little bit -- we talked about the -- I
12 think your charge talked about the premises I will say the
13 property, but it will be clear enough for the jury In
14 substance it will be in the charge

15 MS MONTS And one other question, Your Honor I
16 assume that you do circumstantial evidence in the charge?

17 THE COURT Yes, sir

18 MS MONTS Thank you

19 THE COURT Okay Let's bring the jury in

20 (The following takes place in the presence of the
21 jury panel)

22 THE COURT Good morning, ladies and gentlemen

23 All the evidence is now in The State has rested
24 and the defense has rested, so we are now at the stage of
25 the case where you will hear the closing statements of each

1 of the attorneys I urge you to listen carefully to these
2 statements, and after that I'll charge you on the applicable
3 law in this case

4 Ms Monts

5 MS MONTS May it please the court, Your Honor

6 Madam Forelady, ladies and gentlemen of the jury,
7 we certainly appreciate the time and attention that you
8 spent in this trial What my job at this point to do is to
9 summarize from my point of view what I would like for you to
10 be concentrating on when the judge tells you it's your time
11 to go back and deliberate

12 What I tell you is not the law What His Honor
13 tells you, when he instructs you is the law I'm just
14 pointing out things that I have observed If I say anything
15 that differs from how you remember it said from the witness
16 stand or anything that you have back in your jury room and
17 you are looking at, please remember it how you remember it
18 I'm going from my perspective, so I'm going to try to say it
19 how it was said, but if you remember it differently, then
20 concentrate on how you remember it

21 The two charges that the defendant is charged with
22 are driving under suspension and trafficking crack cocaine

23 I'm going to spend very little time on the driving
24 under suspension As you heard, it's been put into evidence
25 that the defense has stipulated that the defendant was under

1 suspension on the date that this occurred, which was
2 September 15th of 2003 You heard testimony from the
3 officer on the stand that he saw the defendant driving a
4 vehicle on the roads of South Carolina on that date Since
5 the defense has stipulated that he was under suspension,
6 then you can find that he was guilty of driving under
7 suspension on that date

8 So let's focus on the trafficking in crack
9 cocaine

10 I told you at the beginning the only amount we
11 need to prove trafficking crack cocaine is ten grams, or
12 more You are going to have this baggy of crack cocaine in
13 the back when you deliberate You are going to have the
14 chemist's analysis and the weights on here is to show what
15 these weighed when he analyzed them There were two
16 separate bags, bag A and bag B Bag A weighed 4 11 grams
17 Bag B weighed 17 87 grams, that total weight being 21 98
18 grams All we need to prove is ten grams 21 98 is over
19 two times the amount of crack cocaine that needed to be
20 involved in this incident in order for the defendant to be
21 guilty

22 Now, it's interesting to me, because one of the
23 bags is already broken down into the smaller rocks The
24 other bag is the whole cookie that has yet to have been
25 broken down You can also remember that the defendant had a

1 large sum of cash on him

2 The main thing to remember is all we have to prove
3 is possession, that he was in possession of over ten grams
4 of crack cocaine

5 I'm going to go over some of the reasons why I
6 believe the State has proven to you that the defendant was
7 in possession of these amounts

8 Now, His Honor is going to charge you in actual
9 and constructive possession

10 Actual possession means something on you - your
11 cloths, something in your pocket

12 Constructive possession means that you have the
13 knowledge that it exists and the right to execute control
14 over it That be your car, something that you have at home
15 If I put my pen down, I am no longer in actual possession of
16 it, but I know it's there and I have the right to execute
17 control over it

18 Now, if you walk -- if somebody walks in the
19 courtroom right now, they might not know that that's my pen
20 because they didn't see me put it down So in that case
21 what do you have to use? You have to use circumstantial
22 evidence

23 Now, one thing that you can consider is that I was
24 close to it One thing to consider, but that is not -- that
25 doesn't prove that that was my pen, but it's one thing to

1 consider

2 Now, let's apply facts to what we have at hand
3 The officer testified that he saw the defendant get out of
4 the vehicle So what do we know? The defendant was in the
5 vehicle

6 What else do we know? The crack rocks were found
7 on the passenger seat So he was close to them That's
8 something that you can consider, that he was close to the
9 drugs, but that's not -- we need more than that to prove to
10 it, but it is something for you to consider

11 What else do we know? He was the driver of the
12 vehicle Not only was he in it, he was the driver, which
13 means what? He was in control of that vehicle There was
14 no one else in the car He is the only one

15 What else do you know? He had the keys

16 What else do you know? When he got out of that
17 car, he took -- I believe the officer said, and if you will
18 remember differently, please remember it how you remember
19 it, but he said several, and he said meaning up to five
20 steps So the defendant started walking away from the car,
21 turns around, goes back, and what? Locks the car And
22 that's really important, because the defense, I believe,
23 wants to state that the defendant ran because he was driving
24 under suspension Ladies and gentlemen, if that were the
25 only reason he ran, and I'm not saying it might not have

1 been part of the reason, but if that were the only reason
2 when he got out of that vehicle, why didn't he take off
3 running immediately? He would have had a big head start on
4 the officers, because they were just coming up. They were
5 just getting out of the vehicle. If that were the only
6 reason, he would have been gone. But he doesn't. He comes
7 back to the car and locks it. Why? Because he knows what
8 is in there. And what does he know? He knows there are
9 21.98 grams of crack cocaine sitting on that car seat and he
10 doesn't want the police to go in that vehicle and take that

11 What else do we know? Everything -- most
12 everything in this world has a value. People sell crack
13 cocaine, from your personal knowledge, to make money. This
14 has a value. That's worth a lot of money. Who would leave
15 something worth a lot of money sitting on a car seat? They
16 wouldn't. They would lock the car, which is exactly what
17 the defendant did in this case.

18 What else do I need to prove to you? I need to
19 prove to you that it occurred in Greenville County. The
20 officer testified to that. We have to prove the identity of
21 the person. They did that at booking, confirmed his
22 identity.

23 What else do we know about what the defendant did
24 when he pulled into the parking lot? He had to go wherever
25 he was going, if he was going somewhere in this complex. As

1 soon as he sees the officers that are parked there, he turns
2 the first turn to an abandoned or empty building and gets
3 out and walks away from the car He's trying to elude the
4 officers by getting away from the car as quickly as he can
5 If he were going to someone else's house, he could keep
6 driving to whatever other building he was going to, because
7 he was not going to this building There was nothing to do
8 at that building There was no one there He's trying to
9 distance himself from the car because he knows that there is
10 21 98 grams of crack cocaine in that vehicle

11 His Honor is going to instruct you onto the burden
12 the State has, and that's to prove to you beyond a
13 reasonable doubt that the defendant is guilty of these two
14 charges - driving under suspension and trafficking crack
15 cocaine You will not hear His Honor say it is beyond all
16 doubt

17 There is very few things that can be proven in
18 this world to a hundred percent certainty, so we have to use
19 our common experiences, our backgrounds, our educations, our
20 knowledge, what's happened to us in our life, and weigh what
21 you heard from the witness stand and decide what happened on
22 September 15th, 2003, and it is an awesome responsibility
23 that the twelve of you have, but together you can decide
24 what really happened And we have to prove that to you by
25 circumstantial evidence, because nobody saw -- no one here

1 saw the defendant put that crack cocaine on the car seat, so
2 we have to prove to you by circumstantial evidence that the
3 defendant had the knowledge that it was there and the right
4 to execute control over it And you do that by considering
5 all these things He was in the vehicle He was closest to
6 it He was the driver and in control of the premises that
7 the drugs were on He was the only one there He had the
8 keys He made the intentional act of going back and locking
9 that car He didn't take off and run because he was afraid
10 to be arrested for driving under suspension He went back
11 risked being caught, because he wanted to lock that car and
12 just not run off, because if he knew if he had ran off, they
13 were definitely going to go and look in that car

14 The evidence that you are going to have in the
15 back will be the defendant's driving record to show that you
16 he was under suspension The defense has already
17 stipulated, which means agreed that that is true He was
18 under suspension The officer testified that the defendant
19 was driving in Greenville County on that day

20 You will have the crack cocaine, which has been
21 admitted into evidence, and you will have chemist Sean
22 Collins' analysis that it is crack cocaine

23 So the State has proven to you beyond a reasonable
24 doubt that the defendant was driving under suspension and
25 that the defendant was trafficking in crack cocaine on

1 September 15th of 2003

2 Trafficking we are arguing is merely possession
3 We are not even arguing that he was selling, because we
4 don't have to All we have to prove to you is that he was
5 in either actual or constructive possession of this amount
6 of drugs And we believe that we have done that and we
7 believe that when the twelve of you come to a unanimous
8 verdict, that that verdict will be guilty of both charges
9 Thank you very much

10 THE COURT Mr Posey

11 MR POSEY If it please the court, Your Honor

12 Ms Monts, Madam Forelady, ladies and gentlemen of
13 the jury, I thank you for your time and attention I thank
14 you on Mr Niles behalf for your attention

15 Ms Monts told you a story just then, the way she
16 saw what happened in this case I submit to you she gave
17 you the easy way out of this case That story is the easy
18 way to believe When I stood before you at the beginning of
19 the trial I asked you to listen to everything that you would
20 hear I also asked you to listen to what you didn't hear

21 What didn't you hear? Most everything --
22 everything she told you was what was testified to, but what
23 she didn't tell you? Mr Niles didn't own that vehicle It
24 was a borrowed vehicle The drugs were found under a hat
25 they could not connect to Mr Niles The drugs were hidden

1 You are able to use your life experiences when you
2 go in that jury room, as well as the evidence, and you use
3 your life experience Is it unreasonable that somebody who
4 borrowed the car didn't move the items that were in the car?
5 Is that unreasonable? I submit to you it's not So,
6 therefore, I think on the first test, have they proven
7 beyond a reasonable doubt that he had knowledge that the
8 drugs were in the car? I say no The drugs were hidden
9 under a hat they can't attribute to him, in a car that he
10 does not own

11 But think about what else wasn't done It was
12 testified on the stand that the owner, or who they thought
13 was the owner of the vehicle at the time, showed up at the
14 scene Was the owner of the vehicle questioned? No Was
15 the owner of the vehicle asked anything about the drugs in
16 the car? The answer is no

17 What is unreasonable about making them take the
18 next step? They are here to prove beyond a reasonable
19 doubt Is there not some doubt if you don't even question
20 the owner of the vehicle? It's their car The drugs were
21 found in their car hidden under a hat Is it unreasonable
22 to leave that part unanswered? I submit to you no It is
23 not reasonable to leave it where they left it

24 Another point in fact Did Robdrecko Niles ever
25 lie to that officer that night? He got out of the car "Do

1 you have a driver's license or ID?"

2 "No, I do not "

3 "Why did you run?"

4 "I was driving under suspension "

5 I told you at the beginning I'm giving the driving
6 under suspension No doubt You don't even have to get
7 beyond a reasonable doubt, because there is no doubt he was
8 driving under suspension Even gave him his correct name,
9 correct address It was confirmed when he went through the
10 booking process

11 At what point did Robdrecko Niles lie to the
12 officers that night? None

13 You have an awesome burden before you They are
14 asking you to convict somebody beyond all reasonable doubt
15 Not every doubt, Ms Monts was right, but beyond all
16 reasonable doubt I'm asking you to take the facts as you
17 heard them and ask was everything reasonable done in this
18 case Was it investigated to the fullest extent to get you
19 to beyond a reasonable doubt? Is it not reasonable to
20 believe that the drugs found in that car could have belonged
21 to the person who owned the car? Is that unreasonable? I
22 submit to you it's not

23 Was any fingerprint testing done on that bag to
24 confirm whether Mr Niles ever touched that bag? The answer
25 was no Is that an unreasonable thing to do?

1 There is all kinds of tests you can perform on the
2 hat DNA testing to see if Robdrecko Niles ever had that
3 hat on his head Was it done? No Was it -- is it
4 unreasonable? No, it's not unreasonable Is it enough to
5 create reasonable doubt? Yes

6 Is there reasonable other explanation for those
7 drugs being in the car that you cannot exclude? And if that
8 is the case, if you can come up with a reasonable
9 alternative to how those drugs was in that car and who put
10 and who put the drugs in the car, then you have but one duty
11 at that point in time Based on the law His Honor is going
12 to charge you, you have to find Robdrecko Niles not guilty
13 of trafficking in crack cocaine

14 I'll concede the weight of the drugs It meets
15 the trafficking statute There is no question You don't
16 even have to go back to talk about that

17 What you have to go back and talk about is did
18 they prove knowledge beyond a reasonable doubt? Did they
19 prove possession beyond a reasonable doubt? If he didn't
20 have knowledge, he didn't have possession So if there is
21 any doubt about either of one of those, you have to find in
22 favor of the defendant His Honor is going to instruct you
23 that is the law He gets the benefit of any doubt They
24 don't And is the doubt I'm asking you to look at
25 unreasonable? Just based on two or three simple factors,

1 they never even questioned the owner of the vehicle They
2 never made any attempt to They never took that bag for
3 fingerprint analysis Simple things to do They never sent
4 the hat for any kind of analysis Simple thing to do

5 They are asking you to impose a criminal
6 conviction for a very severe charge upon the defendant
7 without taking all the steps, without taking the steps to
8 prove to you beyond a reasonable doubt Ask if anything I
9 just said to you as far as what they didn't do is
10 unreasonable? How much time and effort would it have taken?
11 You don't know the answers to the questions of what would
12 have happened, had they done those things I don't either,
13 but that is reasonable doubt Not knowing those answers is
14 reasonable doubt

15 Their burden is to get you to beyond a reasonable
16 doubt If you say to yourselves the things that I just said
17 to you are not unreasonable, then you have reasonable doubt,
18 and your duty as jurors, as His Honor will instruct you, at
19 that point in time is you have to tell the State that they
20 did not meet their burden the law imposes upon them, to find
21 Mr Niles not guilty of trafficking in crack cocaine

22 You have an awesome responsibility of whether to
23 impose a criminal conviction upon somebody as a group I
24 ask you, and I have no doubt, to take all the time that you
25 need and all the thoughts that you need to go over what I

1 just presented to you about the reasonableness or
2 unreasonableness, if you see it that way, of what they could
3 have done to prove this beyond a reasonable doubt And,
4 again, don't impose a criminal conviction for such a serious
5 charge on somebody if you have that reasonable doubt Hold
6 him to the standard the law imposes upon them Don't give
7 them the easy way out Their story is nice There story is
8 neat, but it's not finished They didn't erase the
9 reasonable doubt that they could have done by two or three
10 simple tasks, possibly I don't know what -- we don't know
11 what it would have come to if they would have done that
12 And that's what I'm saying to you, simply and plainly, by
13 not taking the last two or three steps, they did not get you
14 beyond a reasonable doubt

15 I thank you for your time I thank you for your
16 attention listening to me I thank you on behalf of Mr
17 Niles again And, again, I ask you to come back with a
18 verdict of not guilty for trafficking in crack cocaine
19 Thank you

20 (Whereupon, at 9 50 a m , the Court instructed the
21 jury panel)

22 THE COURT Madam Forelady, ladies and gentlemen,
23 it now becomes my duty to instruct you on the law of the
24 case

25 The indictments that I mentioned yesterday and

1 that are before me I'll remind you are just the charging
2 papers They are the papers by which these cases come
3 before this court They should not be considered by you in
4 any manner as to an inference of guilt

5 Two separate and distinct indictments are before
6 you One is that of trafficking in crack cocaine and the
7 other is driving under the influence Each of the
8 indictments in this case need to be decided by you
9 separately on the evidence and the law applicable to it,
10 uninfluenced by your decision on what you decide on the
11 first indictment In other words, the defendant could be
12 acquitted on both indictments, found guilty on both,
13 acquitted on one and found guilty on the other It's up to
14 you to make that determination And, of course, you would
15 write a separate verdict of guilty or not guilty for each of
16 the two charges

17 The defendant in this case has entered a plea of
18 not guilty to each of the indictments, and that plea puts
19 the burden on the State of South Carolina to prove the
20 defendant's guilt A person charged with committing a
21 criminal offense in South Carolina is never required to
22 prove himself or herself innocent

23 I charge you that this is an important rule of law
24 that a defendant in a criminal trial, no matter how serious
25 the charge may be, will always be presumed innocent of the

1 crime for which the indictment was issued, unless the guilt
2 has been proven by evidence satisfying you of that guilt
3 beyond a reasonable doubt

4 The presumption of innocence doesn't end when you
5 begin your deliberations, but it accompanies the defendant
6 throughout the trial, until you reach a verdict of guilty,
7 based upon the evidence satisfying you of that guilt beyond
8 a reasonable doubt

9 The presumption of innocence has been described as
10 a robe of righteousness placed about the shoulders of a
11 defendant, we remains on that defendant until it's been
12 stripped from the person by evidence satisfying you of that
13 person's guilt beyond a reasonable doubt

14 Presumption of innocence is not a mere legal
15 theory It's not just a legal phrase that we use It's a
16 substantial right to which every defendant is entitled,
17 unless you, the jury, are satisfied by the evidence of the
18 defendant's guilt beyond a reasonable doubt

19 Now, what is a reasonable doubt in the law? A
20 reasonable doubt is the kind of doubt that would cause a
21 reasonable person to hesitate to act The State has the
22 burden of proving the defendant guilty beyond a reasonable
23 doubt

24 Some of you may have had an opportunity in the
25 past to serve on civil cases as a juror, where you were told

1 that it was only necessary to prove a fact by what was
2 called the greater weight or the preponderance of the
3 evidence, the fact was more likely true than not true In a
4 criminal case, however, the State's proof must be more
5 powerful than that It must be proof beyond a reasonable
6 doubt Proof beyond a reasonable doubt is proof that leaves
7 you firmly convinced of the defendant's guilt

8 Now, ladies and gentlemen, there are very few
9 things in the world that we know with absolute certainty,
10 and in criminal cases the law doesn't require proof that
11 overcomes every possible doubt

12 If, based upon your consideration of the evidence,
13 you are firmly convinced that the defendant is guilty of the
14 crimes charged, you must find the defendant guilty

15 If, on the other hand, you think there is a real
16 possibility that the defendant is not guilty, you must give
17 the defendant the benefit of the doubt and found him not
18 guilty

19 I'll remind that you during the course of the
20 trial each of us have had certain duties to perform As the
21 trial judge, it's been my responsibility to preside over the
22 trial of the case, to rule upon the admissibility of
23 evidence offered during the trial, and you are to consider
24 the evidence that is before you - the testimony, the
25 exhibits that have been made a part of the record, and

1 stipulations

2 I have the additional duty to charge you on the
3 law applicable in this case As the presiding judge, I'm
4 the sole judge of the law in the case, and it's your duty as
5 jurors to accept and apply the law that I now state to you
6 You may already have an idea as to what the law is in a case
7 such as this or what the law ought to be And if that
8 doesn't agree with what I now tell you the law is, you must
9 abandon those idea, because you have taken an oath to accept
10 the law and apply the law exactly as I state it to you

11 In every case tried before a jury in this
12 courthouse the jury becomes the sole and exclusive judges of
13 the facts A trial judge is not allowed to intimate or
14 state, comment on, or make any statement during the course
15 of the trial about the facts in a case Since you, the
16 jury, are the sole judges of the facts, you are not to infer
17 from anything that I have said during the progress of the
18 trial, or any rulings that I have made on evidence, or
19 anything that I even say now during the course of this
20 instruction to you that I have an opinion about the facts in
21 the case The law doesn't allow me to have an opinion In
22 fact, I don't have an opinion It's a matter solely up to
23 you You as the jurors are to make the determination of the
24 facts based upon the effect, the value, the weight, and the
25 truth of the evidence that has been presented to you during

1 the course of the trial

2 There are two types of evidence that are generally
3 presented during the course of a trial There is direct
4 evidence and circumstantial evidence

5 Direct evidence is the testimony of a person who
6 claims to have actual knowledge of a fact, such as an
7 eyewitness It's evidence which immediately establishes the
8 main fact to be proved

9 Circumstantial evidence is proof of a chain of
10 facts and circumstances that indicate the existence of a
11 fact It's evidence based on inference and not on personal
12 knowledge or observation

13 The law makes absolutely no distinction between
14 the weight or value to be given either direct or
15 circumstantial evidence, nor is a greater degree of
16 certainty required of circumstantial evidence than of direct
17 evidence

18 You should weigh all the evidence in the case
19 And after weighing all the evidence, if you are not
20 convinced of the guilt of the defendant beyond a reasonable
21 doubt, then you must find the defendant not guilty

22 In order to establish criminal liability, criminal
23 intent is required Criminal intent must be proven by the
24 State beyond a reasonable doubt Criminal intent is always
25 a matter that must be determined by the jury from the

1 circumstances surrounding the situation There is no way to
2 prove intent to a mathematical certainty There is no way
3 that medical science can dissect a person's brain and
4 determine what the person had in mind, so the law says that
5 criminal intent may be inferred from the circumstances shown
6 to have existed This is how you make a determination of
7 whether or not intent was present It's not necessary to
8 establish intent by direct and positive evidence, but intent
9 may be established by inference, in the same way as any
10 other fact, taken into consideration the acts of the parties
11 and all the facts and circumstances of the case

12 Criminal intent is a mental state, a conscious
13 wrongdoing It's up to you to determine what the defendant
14 intended to do, based on the circumstances shown to have
15 existed

16 Necessarily you must determine the credibility of
17 witnesses who have testified in the case Credibility
18 simply means believability It's your duty as jurors to
19 analyze and evaluate the evidence and determine which
20 evidence convinces you of its truth

21 In determining the believability of a witness who
22 has testified, you can believe one witness over several
23 witnesses, or several witnesses over one witness

24 You can believe a part of a testimony of a
25 witness, and disbelieve the remaining part of the testimony

1 of the very same witness

2 You can believe the testimony of a witness in its
3 entirety You have a right in your discretion to reject the
4 testimony of a witness in its entirety

5 You can consider whether a witness has exhibited
6 to you any interest, or bias, or prejudice, or other motive
7 in the case

8 You can consider the appearance and the manner of
9 the witness while on the witness stand

10 It's your prerogative, and yours alone, to
11 determine the facts, based upon the credibility of the
12 witnesses in this case

13 Ordinarily the Rules of Evidence would not permit
14 a witness to testify to opinions or conclusions An
15 exception to this rule exists for witnesses that we call
16 expert witnesses An expert witness is one who by education
17 or experience has become expert in some art, science,
18 profession or calling, and those individuals may state an
19 opinion as to relevant and material matters to which the
20 witness claims to be an expert

21 You should consider an expert opinion received in
22 evidence in the case like any other evidence Give it the
23 weight that you think it deserves If you decide the
24 opinion of the expert is not based on sufficient education
25 and experience or conclude that the reasons given in support

1 of the opinion are not sound or the opinion is outweighed by
2 other evidence, you can disregard the opinion in its
3 entirety An expert witness testimony is to be given no
4 greater weight than that of any other witness simply because
5 the person is an expert

6 Further, you are not required to accept the
7 expert's opinion, even though it's perhaps uncontradicted

8 Under the law of this state a defendant may be
9 tried, even if the defendant does not attend the trial The
10 fact that the defendant is not present may not be considered
11 against the defendant in any manner whatsoever

12 And the fact that the defendant did not testify in
13 the case is not a factor to be considered by you in any way
14 in your deliberations and in your consideration of the guilt
15 or innocence of the defendant It must not be considered by
16 you in any manner whatsoever A person charged with a crime
17 has a Constitutional Right to remain silent, and asserting
18 this right must not be considered by you in your
19 deliberations

20 I repeat Under your oath you are to draw no
21 conclusions whatsoever from the fact that the defendant in
22 this case is not present and did not testify The fact that
23 the defendant did not testify and was not here should not
24 even be discussed by you in the jury room The burden of
25 proof, as I have stated, is on the State The defendant is

1 not required to prove his innocence, and the burden remains
2 on the State to prove guilt beyond a reasonable doubt

3 There are two separate charges in this case
4 First is that of driving under suspension

5 The State must prove beyond a reasonable doubt
6 that the defendant drove a motor vehicle on a public highway
7 in the state during the time the defendant's driver's
8 license was cancelled, suspended, or revoked

9 To be guilty of driving under suspension, the
10 defendant must have been notified by the Department of
11 Public Safety that his driver's license had been cancelled,
12 suspended, or revoked

13 The defendant is also charged in this case with
14 trafficking in crack cocaine

15 The State must prove beyond a reasonable doubt
16 that the defendant knowingly sold, manufactured, cultivated,
17 delivered, purchased, brought into this state,

18 Or, provided financial assistance, or otherwise
19 aided, abetted, attempted, or conspired to sell,
20 manufacture, cultivate, deliver, purchase, or bring into
21 this state,

22 Or, was knowingly in actual or constructive
23 possession,

24 Or, knowingly attempted to become in actual or
25 constructive possession of the crack cocaine

1 The State must also prove beyond a reasonable
2 doubt the amount of the crack cocaine was ten grams, or
3 more

4 To prove possession, the State must prove beyond a
5 reasonable doubt that the defendant had both the power and
6 the intent to control the disposition or use of the crack
7 cocaine

8 Possession may be either actual or constructive

9 Actual possession means that the crack cocaine was
10 in the actual physical custody of the defendant

11 Constructive possession means that the defendant
12 had dominion and control, or the right to exercise dominion
13 or control either over the substance itself or the property
14 on which the cocaine was found

15 Mere presence at the scene where the drugs were
16 found is not enough to prove possession Actual knowledge
17 of the presence of the crack cocaine is strong evidence of
18 the defendant's intent to control its disposition or use

19 The defendant's knowledge and possession may be
20 inferred when the substance is found on the property under
21 the defendant's control However, this inference is simply
22 an evidentiary fact to be taken into consideration by you,
23 along with other evidence in the case, and to be given the
24 weight that you think it should have

25 Now, Madam Forelady and ladies and gentlemen,

1 there is two possible verdicts which you can find in this
2 case I have prepared a verdict form for you on each of
3 those, and obviously the verdicts are either guilty or not
4 guilty And one of those has to be listed first on the
5 verdict form, so you should certainly take no significance
6 in the fact that one is listed first One has to be listed
7 first

8 Your verdict must be unanimous

9 When the jury has reached a unanimous verdict on
10 each of the charges, then, Madam Forelady, you would merely
11 write your name in the appropriate place on each of the
12 verdict forms, date it, and then let the bailiff know by
13 knocking on the door that you have reached a unanimous
14 verdict on each charge At that time we would receive you
15 back into the courtroom and accept the verdicts

16 You are the judges of the facts and you are to
17 determine the facts from the evidence that's been presented
18 to you

19 I will ask that you now return to your jury room
20 Don't begin your deliberations just yet There is a final
21 matter of law that we need to discuss with the attorneys
22 In a few moments we will have the bailiff notify you that
23 you can begin your deliberations, bring you the evidence
24 that's been offered into evidence in the trial of the case,
25 and I'll have the verdict forms for you at that time

1 I'll dismiss you at this time to your jury room
2 Do not begin your deliberations

3 (Whereupon, at 10 07 a m , the jury panel went to
4 the jury room, awaiting instructions to begin deliberations)

5 THE COURT Any exceptions to the charge from the
6 State?

7 MS MONTS Your Honor, the only thing I wanted to
8 mention, and Mr Posey might be -- I don't have any
9 objection, but I did want to mention at the very beginning
10 when you mentioned the two charges, you said driving under
11 the influence rather than driving under suspension

12 THE COURT I did? I didn't mean to say that
13 Okay

14 MS MONTS But then later on you did -- when you
15 got into it more, you did say that

16 MR POSEY I have no problems I don't think
17 it's something that needs to be corrected I think they are
18 fully aware

19 THE COURT But later I said driving under
20 suspension

21 MS MONTS Yes, sir

22 MR POSEY Yes, sir, and I think everything else
23 is clear to them that it's driving under suspension

24 THE COURT All right Maybe they also understood
25 my misstatement I won't call them back out to clarify

1 that

2 Thank you

3 All right If you will get all the evidence

4 together Let me let you look over the verdict forms here

5 (Off the record)

6 (Back on the record)

7 THE COURT Are you all right with the verdict

8 forms?

9 MS MONTS Yes, sir, Your Honor

10 MR POSEY Yes, sir, Your Honor

11 THE COURT All right We will be at ease

12 (Whereupon, 10 08 a m , the jury panel was

13 instructed to begin deliberations)

14 (Whereupon, at 10 09 a m , proceedings were

15 recessed, pending the verdict of the jury panel)

16 (Whereupon, at 10 24 a m , proceedings were

17 reconvened)

18 (Jury Note marked as Court Exhibit No 5 for

19 identification)

20 THE COURT Court Exhibit No 5 is a question from

21 jury "We don't have Exhibit 2 Flip chart Do we need it

22 or should we have it?" I'm going to write on this sheet

23 that it was not introduced into evidence

24 "Exhibit 2 was not introduced into evidence," and

25 send the note back to them okay

1 MR POSEY Yes, sir

2 MS MONTS Thank you

3 THE COURT Thank you

4 (Whereupon, at 10 21 a m , proceedings were
5 recessed, pending the verdict of the jury panel)

6 (Whereupon, at 11 37 a m , proceedings were
7 reconvened)

8 THE COURT Let's bring the jury in

9 (Whereupon, at 11 38 a m , the jury panel returned
10 to open court to report its verdict)

11 THE COURT Madam Forelady, has the jury reached a
12 verdict?

13 JURY FORELADY We have

14 THE CLERK Is it a unanimous verdict on each of
15 these charges?

16 JURY FORELADY Yes, sir

17 THE COURT If you would, please, hand it to the
18 bailiff

19 You may publish the verdicts

20 THE CLERK Your Honor, this is case number
21 2003-GS-8202, we, the jury, by unanimous consent find the
22 defendant Robdrecko A Niles as to the charge of trafficking
23 in crack cocaine guilty

24 Indictment 2004-GS-600, we, the jury, by unanimous
25 consent find the defendant Robdrecko A Niles as to the

1 charge of driving under suspension guilty

2 Both are signed Lynn McQuirt

3 If that is your verdict, so say you all?

4 THE JURY Yes, sir

5 THE COURT Thank you

6 Is there anything we need from the jury before
7 they are discharged in this case?

8 MR POSEY No, sir, Your Honor

9 MS MONTS No, Your Honor

10 THE COURT Okay Thank you very much, ladies and
11 gentlemen, for serving on this matter I consider it an
12 honor for me to have gotten to work with you and I
13 appreciate your kind attention to the case and your
14 conscientious effort

15 You are dismissed for the rest of the day You
16 are going to need to call back again tonight after six
17 o'clock for us to determine your need that we may have of
18 you for the rest of the week, but we will have a message for
19 you after six o'clock tonight You are dismissed for the
20 rest of the day Thank you very much for your
21 participation

22 Madam Forelady, we need to you to wait in the
23 hallway, if you would, just a minute to sign a couple of
24 other papers for us Thank you, ma'am

25 (Whereupon, at 11 41 a m , the jury panel was

1 discharged)

2 THE COURT Anything else from the State?

3 MS MONTS Not from the State, Your Honor

4 MR POSEY Not from the defendant, Your Honor

5 THE COURT All right Thank you I enjoyed
6 working with you on this one We will be at ease on this
7 case

8 MR POSEY Judge, I think you can go ahead and
9 sentence him and the sentences would be sealed

10 THE COURT Excuse me?

11 MR POSEY Is my understanding

12 THE COURT Yeah, it would be sealed

13 She will give me the sentencing sheet

14 MR POSEY Yeah

15 MS MONTS And I would need to put a prior record
16 I think to show that it is a third offense

17 THE COURT Right, we do need that, because if you
18 put on the record now the offense or the prior record I
19 also need the information on the DUS charge as well, which
20 offense it is

21 (Off the record)

22 (Back on the record)

23 MS MONTS Yes, Your Honor This is regarding
24 Robdrecko Niles, Your Honor

25 Regarding the driving under suspension, this is

1 the third offense His prior two convictions for driving
2 under suspension within five years from the incident date
3 were March 9th of 2000 And the conviction on the other one
4 was October 16th of 2001, making this a third offense, Your
5 Honor

6 THE COURT Okay

7 MS MONTS Regarding the trafficking in crack
8 cocaine, this is also a third offense His two prior drug
9 offenses occurred in, possession of crack cocaine, July 20th
10 of '99 And another possession of crack cocaine conviction
11 date August 12th of 2002

12 THE COURT What was his sentence on the second
13 one?

14 MR POSEY 18 months, Your Honor, on the second
15 crack cocaine charge

16 THE COURT Okay

17 MR POSEY Your Honor, I guess at the appropriate
18 time I would ask you to impose the minimum sentence It
19 still is substantial, but I would -- since the sentences
20 will be sealed, I would ask you to impose the minimum on
21 each charge It's 25 years on the crack cocaine charge at
22 85 percent, and the 90 day sentence on the DUS third, Your
23 Honor

24 THE COURT All right Thank you, Mr Posey

25 Anything else from the State?

1 MS MONTS No, Your Honor

2 THE COURT Okay Thank you very much I'll seal
3 the sentences

4 MR POSEY Judge, can I move to be relieved at
5 this point? I won't pursue it past that It would go to
6 appellant defense after that That's the only thing I would
7 be asking, then I would stay on the case as far as that
8 goes

9 THE COURT You are not going to file it on your
10 own volition?

11 MR POSEY I don't think that I can until he's
12 actually sentenced, Your Honor I don't think that the
13 clock starts on that until the sentence is unsealed in his
14 presence

15 THE COURT Okay Mr Posey, I'll -- I don't know
16 who -- I'm not going to relieve you at this time

17 MR POSEY Okay

18 THE COURT Certainly you might be required to
19 process the appeal, but --

20 MR POSEY , Thank you, Your Honor

21 THE COURT We will entertain that at the time
22 when we sentence him

23 MR POSEY Thank you, Your Honor

24 THE COURT Thank you for the job that you did

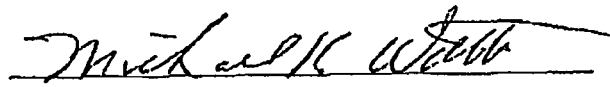
25 (END OF REQUESTED TRANSCRIPT OF RECORD)

1 CERTIFICATE

2 I, the undersigned, Michael R Watts, Official Court
3 Reporter for the Thirteenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate and complete Transcript of Record of the
6 proceedings had and the evidence introduced in the trial of
7 the captioned case, relative to appeal, in the Court of
8 General Sessions for GREENVILLE County, South Carolina, on
9 the 3rd and 4th days of May, 2005

10 I do further certify that I am neither of kin, counsel
11 nor interest to any party hereto
12
13

14 August 31 , 2006
15
16

17 

18 Michael R Watts
19 Circuit Court Reporter
20
21
22
23
24
25

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE) 13TH JUDICIAL CIRCUIT

THE STATE) TRANSCRIPT OF RECORD
) 03-GS-23-8202
) 04-GS-23-600
ROBDRECKO NILES,)
) DEFENDANT)

JUNE 5, 2006
GREENVILLE, SOUTH CAROLINA

B E F O R E

THE HONORABLE D GARRISON HILL, JUDGE

A P P E A R A N C E S

JOYCE MONTS, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

CHRIS POSEY, ESQUIRE
ATTORNEY FOR THE DEFENDANT

SHARON L VIZER-HANKS
CIRCUIT COURT REPORTER

I N D E X

PAGE

SENTENCING HEARING

---3

CERTIFICATE OF REPORTER

---7

NO EXHIBITS WERE INTRODUCED

1 Monday, June 5, 2006

2 THE COURT: Yes, ma'am, Ms. Monts.

3 MS MONTS. May it please the Court, Your Honor
4 Before you is Mr Robdrecko Niles He's represented by
5 Mr. Posey. He was tried in absence for trafficking third
6 offense and found guilty on May 3rd of 2005, and we are here
7 to have his sealed sentence unsealed, Your Honor

8 THE COURT: Yes, Mr Posey

9 MR POSEY: Your Honor, he was tried in his absence.
10 I think he wants to address the Court at the appropriate time.
11 But I would just ask you whatever is written on there I'd
12 asked you to impose the minimum It's a 25 to 30 year
13 sentence, Your Honor, and we would just ask you if it's not 25
14 to impose the minimum sentence on Mr. Niles

15 THE COURT: Let me see you all up here one second

16 (WHEREUPON, a bench conference was had)

17 THE COURT Yes, ma'am, Ms Monts, go ahead

18 MS MONTS Your Honor, the 2 charges that Mr Niles
19 was tried on and convicted on were ~~driving under suspension~~
20 ~~third offense. That on indictment 2004-GS-23-600.~~ The other
21 indictment was for ~~trafficking crack cocaine third offense~~
22 ~~That was indictment 2003-GS-23-0202~~ And I'm handing you the
23 sealed envelope, Your Honor.

24 THE COURT Okay I'm going to unseal the envelope

25 MS MONTS: And, Your Honor, just for the record

1 That has been kept with the clerk's office who did bring it to
2 court this morning, Your Honor

3 THE COURT Okay. It says you're found guilty by
4 the jury on May 4th of '05, Mr Niles, and on the trafficking
5 he imposed a ~~sentence of 30 years, that is, 30 months~~
6 ~~8202, and on the DUS three is 6 months concurrent~~

7 Anything further?

8 MR POSEY: Your Honor, I think Mr Niles wants to
9 make a statement I've explained to him that you can't
10 entertain any motions as far as the case goes And I've
11 explained his appellate rights and that I will file a notice
12 that he has asked me to He wanted to make a statement to
13 preserve the record on an issue, Your Honor, and I told him
14 this would be his only opportunity to do so since it would
15 still be a matter of the trial record

16 THE COURT: All right Okay Yes, sir?

17 DEFENDANT NILES On the day that I was supposed to
18 appear for court I was late, and I had called -- and I had
19 called the solicitor's office and asked to speak with
20 Ms Monts, and they patched me through to her and I told her
21 what was happening, I was late for court and whatnot

22 And she told me that basically she really wasn't
23 supposed to be talking to me, that it was a roll call and when
24 my next card come to show up for court And I gave word to
25 the bondsman who bailed me out, Mr Andrea, bail bondsman, and

1 he also verified with her, too But all in all, I still end
2 up with the failure to appear on both charges, though

3 I guess whatever happened was she was busy or
4 whatnot, I guess I don't know, but I guess my name fell in
5 the bracket with the people who didn't show up for court,
6 that's how I ended up with the failure to appear

7 THE COURT Okay, sir

8 What is his record?

9 MS MONTS Your Honor, the defendant's record is a
10 1998 possession of crack cocaine, 2000 driving under
11 suspension, 2002 possession of crack cocaine, 2002 driving
12 under suspension, also in 2002 an open container

13 MR POSEY Your Honor, again, we would just ask you
14 to consider imposing the 25 instead of the 30 year sentence,
15 since his two prior convictions are for simple possessions

16 MS MONTS And, Your Honor, if I may? Regarding
17 the statements by the defendant I have no knowledge of that,
18 and if we were in court I would not have been in my office and
19 I would not have told the defendant not to appear for trial,
20 Your Honor

21 MR POSEY And for the record, Your Honor I know
22 I did object to the trial going forward in the defendant's
23 absence So I think that is preserved on the record and I've
24 explained that to Mr Niles as well

25 THE COURT Anything further?

1 MR POSEY: Nothing further, Your Honor

2 THE COURT ~~The sentence of the Court in the~~

3 ~~trafficking charge, 25 years. On the 10th of June, 6 months~~

4 ~~concurrent~~ Thank you And credit for any time served he's

5 had

6 (WHEREUPON, the hearing was concluded)

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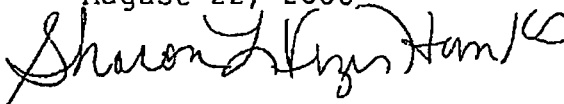
25

C E R T I F I C A T E

I, Sharon L Vizer-Hanks, Official Court Reporter
for the 13th 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
the evidence introduced in the hearing of the captioned case
in Circuit Court on the 5th day of June 2006

I do further certify that I am neither of kin,
counsel nor have an interest to any party hereto

August 22, 2006



SHARON L VIZER-HANKS

CIRCUIT COURT REPORTER

FORM 5

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

County of GREENVILLE)

2010-CP-23- 5260

RODRECK A. NILES # 259964)

Full name and prison number (if any) of Applicant)

v)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B 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 386 REDEMPTION WAY, MC CORMICK SC 29871
MC CORMICK CORR INST
- 2 Name and location of Court which imposed sentence GREENVILLE COUNTY COURT
OF GENERAL SESSION, GREENVILLE, SC
- 3 Name(s) of co-defendant(s) (if any) N/A
- 4 The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed
(a) 03-65-23-8202 TRAFFICKING

- (b) D4-605 3-0000 DUS
 (c) _____

5 The date upon which sentence was imposed and the terms of the sentence

- (a) MAY 4, 2005
 (b) UNSELED ON JUNE 5, 2006
 (c) TRAFFICKING SENTENCE 25 YRS / DUS 6 MONTHS CONCURRENT

6 Check whether a finding of guilty was made

- (a) after a plea of guilty _____
 (b) after a plea of not guilty ☒ _____
 (c) after a plea of nolo contendere _____

7 Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8 If you answered Ayes@ to (7), list

- (a) the name of each Court to which you appealed

I SC COURT OF APPEALS
 II _____
 III _____

- (b) the result in each such Court to which you appealed

I APPEAL (DENIED)
 II REHEARING (DENIED)
 III _____

- (c) the date of each such result

I APPEAL DENIED (OCT 21, 2008)
 II REHEARING DENIED (OCT 9, 2009)
 III _____

- (d) if known, citations of any written opinion or orders entered pursuant to such results

I N/A
 II _____
 III _____

9 If you answered Anou to (7), state your reasons for not so appealing

- (a) N/A

- (b) _____
- (c) _____
- 10 State concisely the grounds on which you base your allegation that you are being held in custody unlawfully
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) VIOLATION DUE PROCESS / EQUAL PROTECTION OF LAW
- (c) ILLEGAL SEARCH & SEIZURE / MISINSTRUCTION OF JUSTICE
- 11 State concisely and in the same order the facts which support each of the grounds set out in (10) ① TRIAL JUDGE PREJUDICE PETITIONER BY (NOT) ALLOWING JURY PANEL TO REVIEW (EXHIBIT #2) TRANS PP 139 (20 25)
- (a) ② FAILURE TO CONDUCT INVESTIGATION OF CASE, ETC (SEE MEMO ATTACHED)
- (b) ③ DENIED RIGHT TO BE PRESENT AT TRIAL; ETC. (SEE MEMORANDUM)
- (c) ④ SEE MEMORANDUM ATTACHED ⑤ TRIAL JUDGE MISINFORMED JURY THAT I WAS BEING TRIED FOR DRIVING UNDER INFLUENCE (JURY TRIAL JUDGE FAILED TO CORRECT ERROR)
- 12 Prior to this application have you filed with respect to this conviction
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? _____
- 13 If you answered Ayes@ 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 _____

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?

No

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 _____

- 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) PETITIONER NOW SEEKS PCR REVIEW
 (b) AFTER DENIAL OF DIRECT APPEAL
 (c) _____

- 17 Were you represented by an attorney at any time during the course of

(a) your arraignment and plea? _____
 (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 Ayes@ to one or more parts of (17), list

(a) the name and address of each attorney who represented you
 I ESQ. CHRIS POSEY
POST OFFICE BOX 10916, 315 WEST STONE AVENUE, CORTLANDVILLE
 II SC 291603
 III DIRECT APPEAL - APPELLATE DEFENSE ATTORNEY
ESQ. ROBERT M. DUDEK, 1330 INDY ST STE# 401 COLUMBIA SC 29211-1589
 (b) the proceedings at which each such attorney represented you
 I TRIAL
SENTENCE (CHRIS POSEY, ESQ)
 II _____
ROBERT M. DUDEK, ESQ - (DIRECT APPEAL)
 III _____

19 State clearly the relief you seek in filing this application

(VACATE) OF SENTENCE AND/OR (NEW TRIAL)

20 Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of McCORMICK)

VERIFICATION

I, ROB DRECKO A NILES #259964, 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

Robdrecko A Niles

SWORN to and subscribed before me this 23
day of June, 2010

J C Franklin (L S)
Notary Public

My Commission Expires 12/6/2019

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, ROBDRECKO A NILES # 2599164, 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

Robdrecko A Niles
Applicant

SWORN or affirmed to and subscribed before me this

23 day of June, 2010

J Crankler
Notary Public

My Commission Expires 12-16-2019

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

ROBDRECKO NTIES, #259964

PIAINTIFF,

VS

THE STATE OF SOUTH CAROLINA,
DEFENDANTS

IN THE COURT OF COMMON PLEAS

PIAINTIFF'S P C R MEMORANDUM

IN SUPPORT OF CLAIMS §17-27-40/50-

FILED
IN THE COURT
1-3 P 3 47

TO THE STATE OF SOUTH CAROLINA ATTORNEY GENERAL ESQUIRE HENRY McMASTERS

Now comes the petitioner in the above captioned case titled as the "MEMORANDUM IN SUPPORT OF THE PETITIONER'S POST CONVICTION RELIEF CLAIMS" raised in the petitioner's P C R 'Cause of Action' before this court for judicial review. The petitioner amends this "Memorandum" pursuant to the South Carolina Code Ann §17-27-40/50. The petitioner's amendments read as follows:

INEFFECTIVE ASSISTANCE OF COUNSEL

The petitioner contends that he was afforded ineffective assistance of counsel in the event that trial counsel failed to properly represent him in the Greenville County Court of General Sessions in a trial by jury and judge that was held on the date of May 3, 2005 and on May 4, 2005. The petitioner's claims are fully supported by the allegations mentioned below:

1. Trial counsel failed to conduct any investigation on the petitioner's case, before presenting the petitioner's case to the jury, and

2 Trial counsel failed to conduct a thorough investigation regarding the defectives that exist in the plaintiff's Rule 5 'Motion of Discovery' material (to wit defectives in the chain of custody of the drug weight that was seized from the vehicle and

3 Trial counsel failed to advise the petitioner as of 'when his court date would be' and in the event that counsel failed to give the petitioner as timely notice, the 'petitioner was tried in his absence', and

4 Counsel failed to move for a "Motion requesting a Direct Verdict" in the event that there was not enough evidence that was produced by the state in order to have tried the petitioner for the criminal offense for trafficking crack cocaine, and

(SEE Transcript Pg 87 (2-14) the record clearly reflects to the fact that the key's in question that were supposedly thrown by the petitioner were never relocated nor searched for by the police officers that pursued to arrest the petitioner), and due to this fact it is impossible for counsel to have failed to moved for a Direct Verdict where as here there was no evidence to have placed the petitioner in actual and/or constructive possession of the drugs in question, and

5 Ineffectiveness of counsel exist in the event that trial counsel was not prepared to present the petitioner's case at trial due to the fact that trial counsel had absolutely no trial strategies prepared and trial counsel had not had any adequate time enough to have spoke with the petitioner before proceeding to have represented the petitioner (Pg 14 (4-15)

6 Trial counsel failed to move to make a 'Motion' requesting a 'charge to be gave to the Jury for "A LESSER INCLUDED OFFENSE" for the criminal violation denoted under "MURDER PRISONS" charge, and

7 Trial counsel erred in the event that 'Trial counsel stipulated with the solicitor' against the petitioners agreements to do so "that the petitioner was in fact guilty of

driving while under suspension, and

8 Trial Counsel erred in the event that trial counsel agreements that the petitioner was in fact guilty (stipulation) of driving while under suspension , placed the petitioner as the sole occupant of the vehicle and the narcotics that were illegally seized from the illegal search that was conducted by the police officials, (Pp 120 (16-17))

Overall the assistance of counsel that was rendered to the petitioner in the above captioned case clearly manifest that "counsel was both incompetent and prejudice in the handling of the petitioners case at trial, and save but for the ineffectiveness that was rendered to the petitioner by counsel, the petitioner would have not been found guilty nor would the petitioner had been absent from his trial Strickland Vs. Washington, 104 S Ct. 2052 (1984),
U S Constitution 6th. Amendment violation

DENIAL OF DUE PROCESS/EQUAL PROTECTION OF LAW

The petitioner contends that his United States Constitutional right due him by the 14th amendment of the United States Constitution was violated by the State of South Carolina in the event that the petitioner was deprived of the following

1 The petitioner was deprived of the right to have been "PUT ON NOTICE" as of the date of trial for his case to have been heard , and

2 The petitioner was misinformed by the Greenville County solicitor Ms Monts "that his date for court was not yet due to occur " (Pp 4 (17-24))

3 Petitioner further contends that he was deprived of due-process, of law in the event that :

A Criminal Arrest Warrant's listed in the above captioned case were not filed with the Greenville County Court, and

B Petitioner's Criminal Indictment's were not filed with the Greenville County Clerk of Court office

(In the event that S.C.R. Crim Proc Rule 3 (a), (b), (c) were violated the petitioner USCA 14th Amendment Federal Protected Rights were violated as well, and Violation of these Federal Protected Rights give way to a Judicial Misarrange of Justice State vs Watts, 465 SE 2d 359 (SC App 1995), Williams vs State, 306 SC 89, 410 SE 2d 563 (1991); An arrest Warrant and indictment is insufficient if the offense is stated without sufficient certainty and particularity to enable the 'defendant and the court' to know what judgement to pronounce State vs Owens, 293 SO 161, 359 SE 2d 275 (1987), SC Code §17-19-A.)

4 Petitioner further contends "that he was not afforded a fair an impartial trial by Jury" based on the

Amplified Facts

Petitioner 'Miles' was convicted in his absence on the date of May 4, 2005 in the Greenville County Court of General Sessions by The Honorable Judge G Edward Welmeyer, and a Jury Trial court "failed" along with Petitioner's Counsel to advise the petitioner of his trial date State, ex vs Fleming, 335 S.E.2d No. 0557 [Hear] 9-18-85/ Decided 10-2-85] Reversed and Remanded

In 'Fleming', trial court Judge "failed to make a finding that Fleming received a proper notice as of when to attend court for trial, this is the self-same error that exist in Petitioner 'Miles' case

For the above reason due-process of law was deprived unto 'Miles' and the Petitioner is due to receive a "New Trial" Rule 85(b) SCRPC, Rule 3.5, S.C. Crim Proc Rule 32(a)(1)(c), Fed Rules Crim Proc Rule 431 18 U.S.C.A., U.S.C.A. Amend 6th, 14th

Illegal Search & Seizure

The petitioner further contends "that an illegal search and seizure" occurred in the present case (See Trans. Pp 89 (7-9)). The police officials claim that 'files' threw the car key's, but the police failed to undergo a search of the premises to recover the key's 'they claim were thrown' by the petitioner.

Police officials finding "no keys" next took it upon themselves to 'Break and Enter' the vehicle which did not belong to 'files' nor was there any check run (conducted) to determine the name and resident location of the vehicle owner.

Police officials took a 'Slim Jim' (tool) and did Break and Illegally Enter the vehicle absent consent from the vehicle owner.

Evidence seized by means of an illegal search and seizure clearly violates U.S.C.A 4th Amendment Fed Protected Right, and all contraband seized is due to be suppressed at trial (Trans. Pp 29 (21-25), Pp 30 (1-4)). Petitioner sentence, is due to be vacated.

Based on all of the above facts and matters
of law the Petitioner Prays for Relief Reads
as follows

- 1 Vacate of sentence
- 2 and/or Modification of Sentence and New Trial

Respectfully Submitted

x Robdrecho Niles
ROBDRECKO NILES #2599164
386 REDEMPTION WAY
McCORMICK, SC 29899

Sworn Before me this 23 day
of June 2010

J C Franklin
Comm Ex 12162019

FBI

STATE OF South Carolina
County of Greenville

RODRICKO A NILES # 259464
Applicant

Vs

STATE OF South Carolina
Respondent

IN THE COURT OF
Common Pleas

PROOF OF SERVICE

FILED CLERK OF
COURT
JUN 28 10 33 AM '11

I, RODRICKO A NILES # 259464, CERTIFY THAT I HAVE THIS DAY SERVED APPLICANT'S ORIGINAL APPLICATION FOR POST-CONVICTION RELIEF, ALONG WITH ATTACHMENT MEMORANDUM IN SUPPORT OF LAW INCORPORATED WITH THE APPLICATION ARE ANSWER TO QUESTIONS 1) THROUGH 20, EXHIBITS OF PROOF OF SERVICE POST-CONVICTION APPLICATIONS UPON THE HONORABLE CLERK OF COURT PAUL B WICKENSIMER, GREENVILLE COUNTY BY DEPOSITING 1) ORIGINAL AND 1) RETURNED COPY OF THE SAME IN THE U.S. MAIL, BY AND THROUGH THE MRS CORNICK CORRECTIONAL INSTITUTIONS LEGAL MAIL SYSTEM APPLICANT ASSERTS THE "NOTORIZED" SIGNATURE INDICATES THE ABOVE IS NOW IN THE POSSESSION OF SAID HEREIN INSTITUTION APPLICANT FURTHER CLAIMS THE PROTECTION OF HOUSTON V LACK, 487 U.S. 266

THE FOLLOWING PARTY WAS SERVED AT THE BELOW ADDRESS:

HONORABLE CLERK OF COURT
Paul B WICKENSIMER

SWORN OR AFFIRMED TO AND
SUBSCRIBED BEFORE ME THIS 23 DAY
OF JUNE 2011

Rodrigo Niles
386 REDEMPTION WAY
MC CORMICK, SC 29899

J C Fankler
NOTARY PUBLIC

My Commission Expires: 12/16/2015

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
ROBERTO A NILES # 259444

Applicant

VS

STATE OF SOUTH CAROLINA
Respondent

IN THE COURT OF
COMMON PLEAS

Summons

TO RESPONDENT:

YOU ARE HEREBY SUMMONED AND REQUESTED TO SERVE YOUR ANSWER TO THE ATTACHED APPLICATION POST-CONVICTION RELIEF ATTACHMENT MEMORANDUM IN SUPPORT OF LAW POST-CONVICTION RELIEF UPON APPLICATION AND RULE 12 SCRPC 445 (90) DAYS TO RESPOND TO POST CONVICTION RELIEF IF YOU FAIL TO ANSWER ANY CLAIM OR SUBSECTIONS THEREIN, APPLICANT WILL MOVE FOR SUMMARY AND/OR DEFAULT JUDGMENT AGAINST YOU AND IF YOU CONTEST ANY ALLEGATIONS OR RELIEF SOUGHT, YOU MUST DO SO WITHIN YOUR RETURN, OR IT WILL BE DENIED THAT YOU HAVE CONCEDE TO APPLICANT'S PCR CLAIM AND RELIEF REQUESTED

SWORN OR AFFIRMED TO AND
SUBSCRIBED BEFORE ME THIS 23 DAY
OF JUNE 2010

J C Franklen
Notary Public

Robbrocho Niles
386 REDEMPTION WAY
MCORMICK, SC 29899

My Commission Expires: 12/16/2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C A No 2010-CP-23-5260
COUNTY OF GREENVILLE	)	
	)	
Robdrecko Andray Niles, ¹	)	
S C D C No 259964,	)	
	)	
Applicant,	)	
	)	RETURN
v	)	
	)	
State of South Carolina,	)	
	)	
Respondent	)	

In response to the post-conviction relief application filed June 28, 2010, the Respondent would show this Court

I

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the November 2003 term of General Sessions for trafficking crack cocaine (2003-GS-23-8202) and at the February 2004 for driving under suspension (DUS) (2004-GS-23-0600). Christopher T Posey, Esquire represented the Applicant.

After the State called the case to trial, the trial proceeded in absentia before the Honorable G Edward Welmaker. Judge Welmaker sealed the sentence on May 4, 2005. On June 5, 2006, the Applicant appeared before the Honorable D Garrison Hill to be sentenced. Judge Welmaker's sealed sentence was for concurrent terms of thirty (30) years for trafficking

¹ The South Carolina Department of Corrections lists the Applicant's name as Rodbreco A Niles

crack cocaine, third offense and six (6) months for DUS, third offense Judge Hill amended the trafficking sentence to twenty-five (25) years for trafficking crack cocaine, third offense

A notice of appeal was filed at the South Carolina Court of Appeals Robert M Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal The Court of Appeals affirmed the Applicant's conviction and sentence State v Niles, Op No 2008-UP-546 (S C Ct App filed October 9, 2008) The South Carolina Supreme Court denied the subsequent petition for writ of certiorari by order dated October 7, 2009

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records

II

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reasons

- 1 Ineffective assistance of counsel
 - a Failure to investigate
 - b Failure to advise the Applicant of the trial date
 - c Failure to make a proper motion for directed verdict
 - d Failure to develop trial strategies
 - e Failure to request a charge of a lesser-included offense
 - f Stipulated "with the solicitor "
- 2 Violation of Due Process and Equal Protection
 - a Denied right to be present at trial
 - b Trial judge did not allow the jury to review Exhibit 2
- 3 Illegal search and seizure
- 4 "Misinstruction of justice "
 - a Judge misinformed jury that the charge was driving under the influence

III

The Respondent asserts the Applicant's allegation that his attorney was ineffective is

without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a criminal defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984), Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of

trial ' Johnson v State, 325 S C 182, 186, 480 S E 2d 733, 735 (1997) (citing Strickland v Washington, 466 U S 668, 104 S Ct 2052 (1984))

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v State, 279 S C 264, 265, 305 S E 2d 247, 248 (1983) (citing Norman v State, 276 S C 278, 277 S E 2d 707 (1981))

IV

The Respondent denies each allegation not expressly admitted, qualified or explained

V

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W McINTOSH
Chief Deputy Attorney General

SALLEY W ELLIOTT
Assistant Deputy Attorney General

KAREN C RATIGAN
Assistant Attorney General
P O Box 11549
Columbia, S C 29211

By


Attorneys for Respondent

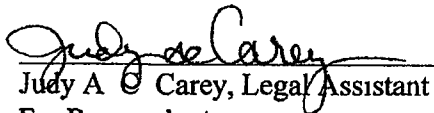
December 20, 2010

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2010-CP-23-5260
	)	
ROBDRECKO ANDRAY NILES, 259964	)	
	)	
Applicant	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent	)	

- 1 I am an employee of the Respondent in the above-captioned action
- 2 Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail
- 3 I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid

Rodbreco A Niles, 259964
McCormick Correctional Institution
386 Redemption Way
McCormick SC 29899

DATED this 20th day of December, 2010


 Judy A. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF COMMON PLEAS

2010-CP-23-05260

ROBDRECKO ANDRAY NILES)

APPLICANT)

vs)

STATE OF SOUTH CAROLINA)

RESPONDENT)

ORIGINAL

TRANSCRIPT OF RECORD

November 8, 2011
Greenville, South Carolina

B E F O R E

THE HONORABLE EDWARD W MILLER, Judge

A P P E A R A N C E S

MILLS ARIAIL, ESQ
Attorney for the Applicant

KAREN C RATIGAN, ESQ
Attorney for the Respondent

APRIL HERRON
Official Court Reporter

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CHRISTOPHER POSEY

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» > ○ < «

There were no Exhibits

Certificate of Reporter	21
-------------------------	----

1 THE COURT Ms Ratigan

2 MS RATIGAN Your Honor, this is Robdrecko

3 Andray Niles vs The State of South Carolina, docket

4 number 2010-CP-23-05260 Mr Niles was indicted for

5 trafficking crack cocaine and driving under suspension

6 He was represented on those charges by Mr Posey The

7 State called to trial and that trial actually proceeded in

8 absence before Judge Welmaker Judge Welmaker sealed the

9 sentence May 4th, 2008 The Applicant came back to court

10 June 5th of 2008 before Judge Hill for the sentence to be

11 read It was for 30 years trafficking crack, third

12 offense, six months for driving under suspension, third

13 offense

14 Judge Hill, amended the trafficking sentence for

15 25 years for trafficking, third offense Note the appeal

16 was filed and perfected in October of 2008 And while

17 this Applicant filed a motion of Writ of Certiorari to the

18 to Supreme Court, that was denied in October of 2009 The

19 case was timely filed and the State is ready to proceed

20 THE COURT Okay

21 MR ARIAIL Your Honor, Mills Ariail, I

22 represent Mr Niles I call him as our first witness

23 THE COURT All right, come around to be sworn

24 THE CLERK Place your left hand on the Bible,

25 raise your right

1 ROBDRECKO NILES, after being duly sworn,
2 testified as follows

3 THE CLERK Thank you, please be seated Please
4 state your name full name for the record

5 THE WITNESS Robdrecko Andray Niles

6 DIRECT EXAMINATION

7 BY MR ARIAIL

8 Q Mr Niles, you heard that background information with
9 regard to your that case Mr Ratigan has talked about
10 but I want to get a little more information in
11 regards to it You -- I guess your case was called
12 for trial sometime in May of 2008, is that correct?

13 A Yes, sir

14 Q And you were not present at your trial?

15 A No, sir

16 Q Why were you not present at your trial?

17 A Because I never had notice that I was supposed to be
18 present at that time The first card that I
19 initially got was a roll call And I never got
20 notice from that point on So that's why I wasn't
21 present

22 Q Okay Part of the transcript that's here, there's a
23 discussion that you had with Ms Monts, who was the
24 solicitor in charge of your case, is that correct?

25 A Yes, sir

1 Q Okay You had a conversation with her in regards to,
2 I guess you didn't appear one time What discussion
3 did you have with her?

4 A Well, it was concerning the two different dates
5 because I think the actual date that I was put on
6 trial, when I was still in the detention center, I
7 think Mr Posey was on vacation at the time So they
8 pulled it off the docket Then, I guess, in the
9 process of them -- being brought up to the Judge on
10 his docket, I don't know how the mix-up got in but
11 somehow the dates weren't right with her Or
12 Mr Posey And I never got notified

13 Q So you apparently got out of jail after your, I
14 guess, case was put on the docket? Set on the
15 docket?

16 A Yes, sir

17 Q What communication did you have with Mr Posey in
18 regards to your case being called for trial?

19 A Well me and Mr Posey never talked We talked while
20 I was in the county but after I got out we never
21 talked anymore until like three to four months we
22 never had no conversations

23 Q Did you give him any information on where you were?
24 Your address, phone number?

25 A Yes, sir He had the phone number and the address

1 Q Okay Did you ever receive any letters from him in
2 regards to, I guess, your court date or anything from
3 the court in regards to that?

4 A No, sir

5 Q Okay Now, prior to that what discussions did you
6 have with Mr Posey in regards to your case?

7 A Well, you know, I pretty much explained to him what
8 took place that night and versus what the officer
9 wrote in his report And, you know, we came -- we
10 was talking, saying, you know, I pretty much let him
11 know what had took place that night versus what
12 happened in that report But really we didn't have
13 too much conversation

14 Q Okay This is a crack charge that they're alleging
15 that you had possession of crack cocaine, is that
16 correct?

17 A Yes, sir

18 Q And the issue in the case was, I guess, Judge Miller
19 can review the transcript, but it was a stop that was
20 made and then what happened after that stop, is that
21 correct?

22 A Yes, sir They -- they say there was a stop, a Terry
23 stop, but really there was never no blue lights on
24 the scene Like I was saying, like I told Mr Posey,
25 the way he, the officer, wrote in his report, it

1 never happened the way he said it happened When me
2 and the officer had a confrontation, we was in the
3 middle of the road after four officers already left
4 the scene and drove past me It was never no blue
5 lights or anything at the scene

6 Q Okay I guess -- did you provide that information to
7 Mr Posey telling him that you had certain things
8 that -- or saw certain things differently than what
9 the police were going to testify to?

10 A Yes, sir

11 Q Okay So you believe that at your trial you would
12 have -- would you have testified in regards to the
13 those issues?

14 A Yes, sir

15 Q Okay And the issues that you're discussing now are
16 a little bit of how the stop took place?

17 A Yes, sir, that is correct

18 Q Okay Would it have been -- what else would you have
19 testified to?

20 A I would have testified to the stop The stop being
21 questioned The probable cause issue The keys in
22 question to the vehicle because there never was no
23 keys located or found for the vehicle that the
24 officer saying that he seen me drove

25 Q Okay And you also indicated that during one of our

1 discussions that you had information that the stop
2 took place at some place different than where the
3 officer said it occurred?

4 A Yes, sir

5 Q What would you have testified in regards to that?

6 A In his report he's saying that he was patrolling and
7 he was standing outside of his patrol car at the
8 front entrance of the apartment complex When
9 actually I was walking to the back of the apartment
10 complex when the officers bypassed me but he was the
11 last officer who stopped and started questioning me
12 But he's saying that I drove past him In his report
13 he's saying I drove past him And had a deer in the
14 headlight look like I was surprised to see him there
15 Which like I told -- you know, what I'm saying, I
16 never met the officer, he never knew me so, you know,
17 as y'all can see now, I have big eyes So that was
18 never no probable cause for him to ever even say I
19 had a deer in the headlight look like I was surprised
20 to see he was patrolling there

21 Q What was in this case, they didn't arrest you with --
22 I guess where did they find the cocaine?

23 A Inside of the vehicle

24 Q Okay And was anything on your possession?

25 A No, sir

1 Q Okay In regards to, I guess some of the trial
2 strategies that were going about, did you discuss
3 those with Mr Posey at any time prior to your trial?

4 A Well, the conversations that we had was basically,
5 you know, he was telling me, you know, what I was
6 kind of up against and I was basically telling him
7 how, you know, the story happened But we supposed
8 to been having more conversation but I ended up
9 getting out so we never did talk anymore

10 Q Did you provide him the information you just provided
11 to the Court?

12 A Yes, sir

13 Q Okay So he knew that?

14 A Yes, sir

15 Q Okay Now, in regards to the -- I guess it was a
16 part of the transcript where Mr Posey stipulated to
17 a driving under suspension, that was just another one
18 of the charges you had?

19 A Yes, sir

20 Q Did you discuss with him in regards to, I guess, any
21 stipulations or how you wanted to handle that?

22 A Yes I told Mr Posey that they would charged me
23 driving under suspension and, you know, he stipulated
24 saying that I was driving, which I never told him
25 that -- I told Mr Posey that I never told him that

1 I was driving that car Which he -- I think he went
2 on later and did tell them that but I don't know I
3 wasn't present at the trial but the stipulation came
4 about

5 Q Okay And you've listed and the Court has it for its
6 review during your -- reviewing your PCR And I know
7 you put a lot of other things in there Any other
8 items in regards to trial strategy or things you
9 discussed with Mr Posey about your case that you
10 believe he didn't handle correctly?

11 A Yes, I feel like Mr Posey tried to make the Judge
12 and the jury aware that, you know, he didn't much
13 have talked to me in over three or four months He
14 wanted to let the Judge know that he didn't feel like
15 he could properly represent me and allow a motion --
16 an objection that he made and the Judge denied a lot
17 of his motions -- I mean, objections that he made and
18 made him go forward with the trial But he really
19 didn't want to because he felt like he couldn't
20 properly represent me

21 Q But he did make certain objections for you, on your
22 behalf, to try to continue the case?

23 A Yes, he did make objections The last objection he
24 asked to be relieved as counsel because he felt like,
25 you know, he couldn't properly represent me and the

1 Judge denied that motion as well

2 Q Okay

3 MR ARIAIL Your Honor, I have no further
4 questions

5 THE COURT All right, cross

6 CROSS-EXAMINATION

7 BY MS RATIGAN

8 Q So Mr Posey is saying you had several meetings with
9 him at the jail?

10 A Yes, ma'am

11 Q How many times would you say you met with him?

12 A Maybe twice

13 Q And you talked about the State's evidence against
14 you?

15 A Yes, ma'am

16 Q And you told him your version of what had happened at
17 the apartment complex that night?

18 A Yes, ma'am

19 Q And at some point you got out of jail?

20 A Yes, ma'am

21 Q And you stated that Mr Posey had all your contact
22 information?

23 A Yes, ma'am

24 Q And that he didn't contact you?

25 A No, ma'am

1 Q Did you try to contact him?

2 A Yes, ma'am, I did I left several messages with the
3 solicitor and she supposed to have -- they supposed
4 to have get back with me but I never heard anything

5 Q You left megasses with the solicitor or his
6 assistant?

7 A Well the solicitor and his secretary

8 Q But you never went by to try to talk to him
9 personally?

10 A No, ma'am

11 MS RATIGAN That's all I have, Your Honor

12 MR ARIAIL Nothing further, Your Honor

13 EXAMINATION

14 BY THE COURT

15 Q You got convicted of trafficking third offense, is
16 that correct?

17 A Yes, sir

18 Q So you had at least two prior convictions, is that
19 correct?

20 A Yes, sir

21 Q Who was your lawyer on those other two?

22 A I think Clay Allen and Mr Posey I think Mr Posey
23 represented me on the second one if I'm not mistaken

24 Q Okay All right What happened to those cases, did
25 you go to a jury trial or?

1 A No, sir, one of them I got like 90 days boot camp
2 then the second one I got a YOA sentence

3 Q Okay And you know that the sentence range on this
4 was a mandatory minimum 25 years?

5 A Yes, sir

6 Q Maximum was 30?

7 A Yes, sir

8 Q And you got the mandatory minimum, right?

9 A Well, yes, sir, I did

10 Q Judge Hill, when he imposed sentence, gave you the
11 minimum?

12 A Yes, sir

13 Q Okay All right

14 Anything else y'all want to ask?

15 MR ARIAIL No, Your Honor

16 MS RATIGAN No, Your Honor

17 THE COURT Okay, thank you You can step down

18 MR ARIAIL Your Honor, that's our case

19 THE COURT All right

20 MS RATIGAN Your Honor, well call Mr Posey

21 CHRISTOPHER POSEY, after being duly sworn,

22 testified as follows

23 THE CLERK Thank you, please be seat State
24 your whole name for the record, please

25 THE WITNESS Christopher Todd Posey

DIRECT EXAMINATION

BY MS RATIGAN

Q Mr Posey, do you recall representing Mr Niles on these charges?

A Yes, I do

Q Were you appointed in this case or were you retained?

A Appointed

Q Did you file the usual discovery motions?

A Yes, got everything from Ms Monts

Q Did you review those terms with your client?

A Several times, yes

Q Did he tell you his version of what had happened that night?

A Yes

Q What was your trial strategy?

A Basically it was arguing the stop The facts were not much in dispute other than the reason for the stop I argued that it should have been couched in terms of a traffic stop rather than a, I guess, a Terry stop more or less is how it ended up going through But the Court denied the motion after arguments with Ms Monts And we proceeded to go to trial and try the case on the facts after that

Q These meetings that you had with Mr Niles, were they at the jail or were they in your office?

1 A Most of them were at the jail Because he was in
2 quite frequently Not only just this case, I think
3 he had some child support issues during that time
4 It was originally put on the docket back in February
5 I think I was going to Disney World the week it was
6 put on the docket originally so it was continued I
7 think it was placed again maybe one other time prior
8 to the May term of Court when it was actually
9 reached

10 Q Once Mr Niles bonded out of jail, did he ever
11 contact you about his case?

12 A We talked by phone and I'm getting most of that
13 refreshed memory from the transcript And I believe
14 we did talk by phone And I believe he did try to
15 contact Ms Monts several times and she would not
16 speak to him And finally I think he was trying to
17 talk her into reducing the level of his offense So
18 he would not be facing the 25 to 30 Finally I said,
19 Fine I told her she had my permission to talk to
20 him if he called But I think we talked right up
21 until a day or two before the actual trial

22 Q Did you provide Mr Niles notice that he was on the
23 trial docket?

24 A I know at least verbal notice And, I think, those
25 conversations with Ms Monts too, he was keenly aware

1 that he was scheduled to go to trial May 3rd

2 Q At the trial you stipulated to the driving under
3 suspension, what was the purpose of that?

4 A Just to basically eliminate law enforcement
5 Additional law enforcement testimony against him I
6 don't think there was an issue factual at all whether
7 he was actually driving the vehicle in question And
8 there was no question that he was under suspension at
9 the time I think that -- I didn't see the need to
10 waste any time with that when the issue was -- kind
11 of stop was effected in the first place

12 Q Was your case hampered by his absence at trial?

13 A I think any case is when you can't communicate with
14 your client throughout the trial Sometimes I would
15 say you would think otherwise depending on the client
16 to know In any case I think it always helps

17 Q In your opinion, is there anything else you could
18 have done to prepare the case for trial and argue it?

19 A I think -- I think I argued any and all relevant
20 legal motions that I was aware of or know of based on
21 the facts of the case And I don't see anything else
22 I could have argued in his defense

23 MS RATIGAN That's all I have, Your Honor

24 THE COURT All right, cross

25 CROSS-EXAMINATION

1 BY MR ARIAIL

2 Q Mr Posey, just briefly, in regards to the stop, and
3 I know you made certain motions in regards to whether
4 it was a Terry stop or an automobile stop, was there
5 an issue -- I know he addressed that there was a
6 question whether or not he was driving?

7 A According to all the testimony and all the records
8 that were relevant, the officer never lost contact,
9 eye ball contact with him He immediately jumped out
10 of the car when the officer pulled up behind the car
11 and effected -- effectively blocked his car But
12 never lost eye contact with Mr Niles I don't think
13 it was an issue of whether he was the person they
14 were identifying

15 Q What was the issue in regards to the keys, I guess,
16 being tossed or not located Was the keys ever
17 found?

18 A To my knowledge they were not Based on my
19 recollection they were not But the officer, I
20 think, made the motion that he saw him in a throwing
21 motion And they just could not locate the keys
22 Apparently he parked in front of an abandoned
23 building at the apartment complex He also followed
24 him once he turned into the complex Once he parked
25 in front of the abandoned building or building that

1 was under going renovations, no one was living in at
2 the time, the officer pulled in behind his car and
3 effected the stop

4 Q Okay So after -- I know that he was incarcerated
5 then got out, was there, I guess, during your
6 conversations after he got out, you say you probably
7 gave him verbal notice of the trial date, was there
8 any confusion that he had or any type of--

9 A I don't remember any Like I said, most of my
10 recollection came from reading the transcript on
11 that But I did jog my memory Especially Ms Monts
12 asking -- calling me and telling me that he had been
13 contacting her several times right before trial And
14 finally I said you can talk to him if he calls you
15 back Because I think he was trying to ask her to
16 reduce the level of his

17 Q Do you have any -- I mean, any bond car or anything
18 that was sent to an address for him or anything that
19 you got from Ms Monts?

20 A I would not have the ones sent to him It would go
21 to him and the bonding company Which I think were
22 placed into evidence

23 Q Okay

24 A If I remember correctly

25 Q Okay Now, the -- I understand the driving under

1 suspension issue, did you have any conversation with
2 him about not stipulating or is that

3 A I don't think we ever had a conversation one way or
4 the other Just a strategy I used at the time Like
5 I said without him being there, there wasn't anything
6 we could really discuss

7 Q Okay In regards to the drugs, there was no -- you
8 didn't bring up any fingerprints from the bag or
9 anything like that?

10 A I think we actually did, I think I think we
11 actually brought up asking did they do a DNA test on
12 the hat that the drugs were found under I think I
13 remember doing that I think I did ask about
14 fingerprints I may have to refer back to the
15 transcript But I do remember the hat because they
16 were found underneath the hat I remember
17 specifically asking about did they try to pull any
18 hair strands or anything out the hat to see if it
19 belonged to Mr Niles or not

20 Q Okay It was in the car the officer said that he was
21 in?

22 A Yes

23 Q There were no other individuals in the car?

24 A No According to all the testimony and all the
25 records, there was no one else

1 MR ARIAIL I have no further questions, Your
2 Honor

3 MS RATIGAN I have nothing further, the State
4 would rest, Your Honor

5 THE COURT All right Thank you, you can step
6 down

7 All right, anything else?

8 MR ARIAIL Nothing further, Your Honor

9 MS RATIGAN (Ms Ratigan shakes her head)

10 THE COURT Well, Mr Niles, it's a tough go,
11 you got the burden of proving your case And I find that
12 you have not done that I'm going to deny your
13 application Wish you the best of luck, okay

14 I would ask the Assistant Attorney General in
15 charge of this case to prepare a proposed order, please

16 MS RATIGAN Thank you, Your Honor

17 THE COURT All right

18 (WHEREUPON, the proceedings were concluded)
19
20
21
22
23
24
25

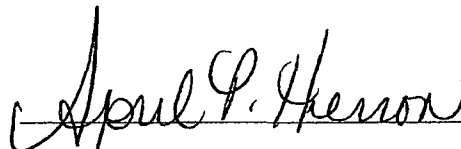
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, APRIL P HERRON, Official Court Reporter for the
Thirteenth 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
Common Pleas for Greenville County, South Carolina, on the
Eighth day of November, 2011

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

March 29, 2012



APRIL P HERRON, Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C A No 2010-CP-23-5260
COUNTY OF GREENVILLE	)	
	)	
Robdrecko Andray Niles, ¹	)	
S C D C No 259964,	)	
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v	)	
	)	
State of South Carolina,	)	
	)	
Respondent	)	

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 28, 2010. The Respondent made its return on December 20, 2010. An evidentiary hearing into the matter was convened on November 8, 2011 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by R. Mills Ariail, Jr., Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Christopher T. Posey, Esquire. The Court had before it the trial transcript, the sentencing transcript, the records of the Greenville County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the Respondent's return, and the appellate records.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections.

¹ This Court notes the South Carolina Department of Corrections lists the Applicant's name as Rodbreco A. Niles.

pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the November 2003 term of the Greenville County Grand Jury for trafficking crack cocaine (2003-GS-23-8202) and at the February 2004 term for driving under suspension (DUS) (2004-GS-23-0600). He was represented by Christopher T. Posey, Esquire.

After the State called the case to trial, the trial proceeded in absentia before the Honorable G. Edward Welmaker. The Applicant was found guilty of the charges and Judge Welmaker sealed the sentence on May 4, 2005. On June 5, 2006, the Applicant appeared before the Honorable D. Garrison Hill to be sentenced. He was represented by Mr. Posey. Judge Welmaker's sealed sentence was for concurrent terms of thirty (30) years for trafficking crack cocaine, third offense and six (6) months for DUS, third offense. Judge Hill, however, amended the trafficking sentence to twenty-five (25) years for trafficking crack cocaine, third offense.

A notice of appeal was filed at the South Carolina Court of Appeals. Robert M. Dudek, Esquire of the South Carolina Office of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. State v. Niles, Op. No. 2008-UP-546 (S.C. Ct. App. filed October 9, 2008). The South Carolina Supreme Court denied the subsequent petition for writ of certiorari by order dated October 7, 2009.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
 - a. Failure to investigate
 - b. Failure to advise the Applicant of the trial date
 - c. Failure to make a proper motion for directed verdict.
 - d. Failure to develop trial strategies
 - e. Failure to request a charge of a lesser-included offense
 - f. Stipulated "with the solicitor"

- 2 Violation of Due Process and Equal Protection
 - a Denied right to be present at trial
 - b Trial judge did not allow the jury to review Exhibit 2
- 3 Illegal search and seizure
- 4 "Misinstruction of justice "
 - a Judge misinformed jury that the charge was driving under the influence

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S C Code Ann § 17-27-80 (2003)

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S C 385, 389, 570 S E 2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U S 668, 104 S Ct 2052 (1984), Porter v. State, 368 S C 378, 383, 629 S E 2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S C 115, 117-18, 386 S E 2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine

confidence in the outcome of trial " Johnson v. State, 325 S C 182, 186, 480 S E 2d 733, 735 (1997) (citing Strickland v. Washington, 466 U S 668, 104 S Ct 2052)

The Applicant stated he only met with trial counsel twice while he was at the jail. The Applicant admitted he never went to trial counsel's office to discuss his case when he was released on bond. The Applicant stated he told trial counsel about what happened the night in question. The Applicant stated there was no probable cause for the officer to stop him. The Applicant stated he was not present at his trial because he did not receive notice. The Applicant stated trial counsel should not have stipulated to the DUS charge at trial.

Trial counsel testified he filed discovery motions and reviewed the discovery materials with the Applicant several times. Trial counsel testified the Applicant also told him his version of the events. Trial counsel testified most of his meetings with the Applicant were at the jail, but that he did speak with the Applicant on the phone after he was released on bond. Trial counsel testified his trial strategy was to challenge the stop in this case and argue it was a traffic stop, not a Terry stop. Trial counsel testified he gave the Applicant verbal notice that his case was on the trial docket. Trial counsel testified he stipulated to the DUS charge at trial in order to eliminate additional testimony from law enforcement officers against him. Trial counsel testified this was a strategic decision, as there was no question the Applicant was driving the vehicle.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel did not adequately meet with him to prepare the case. Trial counsel testified he filed discovery motions,

reviewed the discovery materials with the Applicant, and discussed the Applicant's version of events on the night in question. Trial counsel testified his trial strategy was to challenge the stop of the Applicant and argue the search was overbroad because it was a traffic stop and not a Terry stop. While both trial counsel and the Applicant agree they met about the case while the Applicant was at the jail, it does not appear the Applicant ever attempted to meet with trial counsel to discuss his case after he was released on bond. Trial counsel cannot be faulted for failing to meet with a client if the client does not take steps to meet with his attorney and discuss his pending charges. Further, this Court finds the Applicant failed to articulate how any further investigation or preparation would have changed the outcome of his case. See Davis v. State, 326 S. C. 283, 486 S. E. 2d 747 (1997) (denying relief where applicant failed to present witnesses or specific testimony establishing he would have had a defense with additional time to prepare for trial), Skeen v. State, 325 S. C. 210, 481 S. E. 2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court finds the Applicant failed to meet his burden of proving trial counsel did not provide him notice of the trial date. Trial counsel testified he gave the Applicant verbal notice that his case was on the trial docket. Further, the issue of notice was discussed in detail at the beginning of the Applicant's trial and the trial judge found the Applicant "was aware that today was the day for his trial" (Trial transcript, pp 5-13). This Court finds that, if the Applicant wished to challenge the sufficiency of the notice, he should have raised this issue on appeal. See Drayton v. Evatt, 312 S. C. 4, 8, 430 S. E. 2d 517, 520 (1993) (holding a post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal).

This Court finds the Applicant failed to meet his burden of proving trial counsel should

not have stipulated to the DUS charge at trial. Trial counsel testified this was a strategic decision since, as there was no doubt the Applicant was driving the vehicle, a stipulation would eliminate additional law enforcement testimony against him. This Court notes that where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel. See Roseboro v. State, 317 S C 292, 294, 454 S E 2d 312, 313 (1995). "Counsel's strategy will be reviewed under an objective standard of reasonableness." Huggler v. State, 360 S C 627, 633, 602 S E 2d 753, 756 (2004) (citation omitted). This Court finds trial counsel articulated a valid, strategic reason for the stipulation.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S C at 389, 570 S E 2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

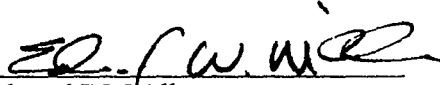
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED

- 1 That the application for post-conviction relief be denied and dismissed with prejudice, and
- 2 That the Applicant be remanded to the custody of the Respondent

AND IT IS SO ORDERED this 20 day of December, 2011


Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

 _____, South Carolina

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO 2010CP2305260

DEC 29 2 42 PM '11

Robdrecko Niles vs South Carolina State Of

CHECK ONE

- ☐ **JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON)** ☐ Rule 12(b) SCRPC ☐ Rule 41(a)
 SCRPC (Vol Nonsuit) ☐ Rule 43(k) SCRPC (Settled) ☐ Other _____
- ☐ **ACTION STRICKEN (CHECK REASON)** ☐ Rule 40(j) SCRPC ☐ Bankruptcy
☐ Binding arbitration subject to right to restore to confirm vacate or modify arbitration award
☐ Other _____
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
☐ Affirmed ☐ Reversed ☐ Remanded
☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED ☐ See attached order ☐ Statement of Judgment by the Court

Dated at Greenville, South Carolina, this 29th day of December, 2011

Court Reporter

PRESIDING JUDGE Edward W Miller

This judgment was entered on the 29th day of December, 2011, and a copy mailed first class this 29th day of December, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Robert Mills Arrail Jr. Law Office Of R. Mills
 Arrail Jr 11 North Irvine St Ste 11 Greenville SC
 29601

Karen Christine Rutigan Attorney Generals Office
 Po Box 11549 Columbia SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
 Clerk of Court

WITNESSES

PORTER *Person/5*

GCSO

09/15/03

ARREST WARRANT NUMBER

H466508

ACTION OF GRAND JURY

TRUE BILL

Russell Patton

FOREMAN GRAND JURY
Foreperson of Grand Jury

VERDICT

Guilty

Sydney McGurt 5/4/05
Foreperson of Petit Jury Date

DOCKET NO 2003-GS-23-
JLK 008202

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2003

GUILTY THE STATE
VS

ROBDRECKO A NILES

Indictment for

0450

TRAFFICKING CRACK COCAINE

VIOLATION § 44-53 375(C)

SUSPENDS

and Clerk receive driver's license?

YES _____ NO _____

if no, explain _____

Defendant

INDEXED

281

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
TRAFFICKING CRACK COCAINE

At a Court of General Sessions, convened on NOVEMBER 18, 2003 the
Grand Jurors of Greenville County present upon their oath

That ROBDRECKO A NILES did in Greenville County on or about the 15th day of September, 2003,
knowingly sell, manufacture, deliver or bring into the State of South Carolina or did knowingly provide
financial assistance or otherwise aid, abet or conspire to sell, manufacture, deliver or bring into the State
or was knowingly in actual or constructive possession of more than 10 grams of crack cocaine This is in
violation of §44-53-375(C) of the South Carolina Code of Laws (1976) as amended

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

James K. Monte
SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VSRobdrecko Niles

AKA _____

Race B Sex M Age 25DOB cc#Address FOUNTAIN INN, SCDL# SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#

2003GS2308202A/W# H466508Date of Offense 09-15-2003S C Code § 44-53-0375(C)(2)(CDR Code # 0452☐ CASE RESTORED
SENTENCE☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO TRAFFICKING CRACK COCAINE > 10 GRAMS 3RD OFFENSEin violation of § 44-53-0375(C)(2)(of the S C Code of Laws, bearing CDR Code # 0452☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand JuryThe plea is ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST

George E. Mantis
Solicitor

Defendant

Christy J. B.
Attorney for DefendantWHEREFORE the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25-30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment
of \$ _____, plus costs and assessments as applicable*, the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference☐ CONCURRENT or ☐ CONSECUTIVE to sentence on _____☒ The Defendant is to be given credit for time served pursuant to S C Code § 24-13-40 to be calculated and applied
by the State Department of Corrections

SPECIAL CONDITIONS

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total \$ _____ plus 20% fee \$ _____

Payment Terms _____

☐ set by SCDPPPS _____

Recipient _____

*Fine \$ _____

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

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

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

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

§ 35-13 (Public Def/Prob) \$500 \$ _____

§ 73-3-1B TP (Law Enforce Funding) \$25 \$ 25.00

§ 33-7, 1B TP (Drug Court Surcharge) \$100 \$ _____

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

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

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Paul B. Wicknerman
Clerk of Court/ Deputy ClerkCourt Reporter Nike Watts

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab or Job Corp _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd in equal, consecutive weekly/monthly
pmts of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other _____

☐ Appointed PD or appointed other counsel, § 35-13 TP
Requires \$500 be paid to Clerk during probationPRESIDING JUDGE C. J. WehnerJudge Code 2111317Sentence Date 5/4/05sentence unsealed, and
sentence of 25 years imposed. CH
SCCA/217 (7/2003) 2138

WITNESSES

PORTER *N arler /s*

GCSO

09/15/03

ARREST WARRANT NUMBER

57515 CO

ACTION OF GRAND JURY
TRUE BILL*Picky G. Sornath*

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

*Guilty**Lynne McGunt* 5/4/05
Foreperson of Petit Jury DateDOCKET NO 2004-GS-23 ^{JLK} 000600

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2004

THE STATE

GUILTY

VS

ROBDRECKO A. NILES

Indictment for

0175

DRIVING UNDER SUSPENSION

VIOLATION § 56-1-460

72

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
DRIVING UNDER SUSPENSION

At a Court of General Sessions, convened on FEBRUARY 17, 2004 the
Grand Jurors of Greenville County present upon their oath
That ROBDRECKO A NILES did in Greenville County, on or about the 15th day of September, 2003,
drive a motor vehicle on a public highway of this state when his license to drive was suspended, pursuant
to § 56-5-2990, such not being the first such offense within a period of five years including and
immediately preceding the foregoing date This is in violation of §56-1-460 of the South Carolina Code of
Laws (1976) as amended

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

Joyce K. Mont
SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF GreenvilleSTATE VSRobdrecko Niles

AKA _____

Race B Sex M Age 30

DOB _____ SS# _____

Address FOUNTAIN INN, SC

DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#

2004GS2300600A/W# 57515CODate of Offense 09-15-2003S C Code § 56-01-0460(2)CDR Code # 0175☐ CASE RESTORED
SENTENCE☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was
TO DUS / DRIVING UNDER SUSPENSION 3RD☒ CONVICTED OF or ☐ PLEADSin violation of § 56-01-0460(2) of the S C Code of Laws, bearing CDR Code # 0175☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is ☒ As Indicted ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand JuryThe plea is ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence ☐ Recommendation by the State
ATTESTJoseph K. Monte
Solicitor

Defendant

Charles J. H.
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 6 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment
of \$ _____ plus costs and assessments as applicable* the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference☒ CONCURRENT or ☐ CONSECUTIVE to sentence on 5/4/05☐ The Defendant is to be given credit for time served pursuant to S C Code § 24 13-40 to be calculated and applied
by the State Department of Corrections

SPECIAL CONDITIONS

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total \$ _____ plus 20% fee \$ _____

Payment Terms _____

☐ set by SCDPPPS _____

Recipient _____

*Fine

§ 14-1-206 (Assessments 107 5 %)

§ 14-1 211(A)(1) (Conv Surcharge

§ 14-1-211(A)(2) (DUI Surcharge

§ 56-5-2995 (DUI Assessment)

§ 35 13 (Public Def/Prob)

§ 73 3 1B TP (Law Enforce Funding

§ 33 7 1B TP (Drug Court Surcharge)

§ 50-21 114(BUI Breath Test Fee)

§ 56 5 2942(J) (Vehicle Assessment

3% to County (if paid in installments

TOTAL

Paul B. Wickman
Clerk of Court/ Deputy ClerkCourt Reporter Mike Wotta

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab or Job Corp _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd in equal, consecutive weekly/monthly
pmts of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other _____

☐ Appointed PD or appointed other counsel, § 35 13 TP
Requires \$500 be paid to Clerk during probationPRESIDING JUDGE C. E. WickmanJudge Code 21 1 1 3 1 7Sentence Date 5/4/05