ORIGINAL

21319

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Berkeley County
Honorable Stephanie P. McDonald, Circuit Court Judge
Appellate Case No. 2013-001430

THE STATE,

Appellant,

vs.

WALTER M. BASH

Respondent.

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STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS COURT
	)	
COUNTY OF BERKELEY	)	NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,	)	
	)	
vs.	)	Case No.: 2012-GS-08-1823
	)	2012-GS-08-1824
WALTER M. BASH,	)	
	)	
Defendant.	)	

ORIGINAL

TRANSCRIPT OF PROCEEDINGS
HEARD BEFORE JUDGE STEPHANIE McDONALD
ON JUNE 11, 2013

ROLAYNE M. VOLPE, CCR, RPR
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R. 1

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The above-styled cause came on for hearing on the 11th day of June, 2013, at 3:00 p.m., before Judge Stephanie McDonald, Circuit Judge for the Ninth Judicial Circuit, presiding over the General Sessions Court for the County of Berkeley, when the following proceedings were had and entered of record, to wit:

PROCEEDINGS

THE COURT: I want you to give your names to my court reporter first, and I'm going to get a copy of that -- of the Indictment so I can take a look at it.

MS. GAY: Okay. My name is Melisa Gay. My client's name is Walter Bash.

THE COURT: All right.

MR. PATTERSON: For the State, Michael Patterson, and assisting me is Colleen Dixon.

THE COURT: Wow, they've got you busy this week.

Do you have the Indictment, or we pulling it? Or however many there are?

MR. PATTERSON: They should have a --

THE COURT: All right. I just don't have any information about the case yet, so. . .

MR. PATTERSON: I have a copy of the Indictment.

THE COURT: All right.

THE DEPUTY CLERK OF COURT: Those are the ones that --

THE COURT: Oh, great. Here's one of them.

(The Judge speaks with the Deputy Clerk of Court off the record.)

THE COURT: All right. I just need to know what we're going -- I've got four Indictments here. Are we going forward on all of them?

MR. PATTERSON: It should be -- there should be a trafficking cocaine base from November 10th, 2011, and trafficking cocaine from November 10th, 2011.

THE COURT: Okay. I've got those. And then --

MR. PATTERSON: The other two should be 2009; those are not what the State is proceeding with.

THE COURT: Okay. Are they still --

MR. PATTERSON: They have not been disposed of.

THE COURT: They have not been disposed of. Okay. Great.

So just for the record, 2009-1403 and 2009-1404 are two Indictments that have not been disposed of yet, but we are not going forward on those at this time. The Indictments that we are going forward on are 2012-1823 for trafficking cocaine and 2012-1824 for trafficking cocaine base.

And now that we've got Mr. Bash with us, I am

ready to proceed whenever the lawyers are.

MS. GAY: Your Honor, going to pull a few copies of some cases that I have --

THE COURT: Oh, great. Okay.

MS. GAY: -- that I sort of looked at and talked about. And I'm going to give you some copies and the Solicitor a copy and, of course --

May I approach, your Honor?

THE COURT: Yeah. Come on up.

MS. GAY: Thank you.

(Documents are handed to the Judge.)

THE COURT: Thank you.

MS. GAY: As an introductory statement, your Honor, not to be argumentative in any way, but, obviously, my client is charged with a large amount of drugs that were seized by the Berkeley County Sheriff's Department, and they are -- or Berkeley County, and he is moving to suppress those drugs in this hearing and at this trial, your Honor. So I had notified the Solicitor that I was doing a Motion to Suppress. I have a written copy of it, but I'll get it in the record.

THE COURT: Okay. Unless I need it for --

MS. GAY: It's simple. It just says we want to suppress, and we want a hearing.

THE COURT: Great.

MS. GAY: Nothing complicated.

THE COURT: No. And I appreciate you handing up the cases.

MS. GAY: I have a number of pictures which I'd like to provide to the court reporter for marking.

THE COURT: Certainly.

MS. GAY: The Solicitor and I have discussed these pictures; he's not opposed to my introduction of these pictures. So he's not requiring me to lay a foundation as to who took them or anything. He's stipulating or acknowledging that they are, in fact, pictures of this yard that we're here about, so if you want to --

THE COURT: Are we just going to mark them Defendant's 1 through however many?

MS. GAY: Yes, ma'am.

THE COURT: All right.

MS. GAY: And, initially, your Honor, I'll just do a little overview of what this case is about. My client --

THE COURT: Hang on one second, if you would, because I'm going to need -- we're going to put stickers on them and get them marked.

It will be Defendant's 1 through 9 admitted for the purposes of this hearing.

(Defendant's Exhibit Numbers 1 through 9 are admitted into evidence.)

MS. GAY: Additionally, your Honor, I have a made a -- I have a few other motions, one of which is a Motion to Sequester Witnesses. I believe there is multiple witnesses in the State's presentation today, and I would ask them to be -- to not hear each other testify, basically.

THE COURT: All right.

MR. PATTERSON: State has no objection to sequestration.

THE COURT: Granted without objection.

If we could just get everybody to excuse themselves that needs to be excused.

MR. PATTERSON: Can -- your Honor, can my case agent stay in --

MS. GAY: I have no objection to that.

THE COURT: Sure. Sure.

MS. GAY: This, your Honor -- this is being -- what I'm filing with the Court. But it's a -- it will be *voir dire* for when we pick the jury and several notes, standard stuff: prior convictions, bad acts, admissibility of statements, things that -- Motion to Suppress -- you know, things that are just housekeeping matters in terms of this trial.

THE COURT: Well, anything y'all want to hand up, and if the State's got any *voir dire* or witness list, anything like that.

(Documents are handed to the Judge from the State and from Ms. Gay.)

MR. PATTERSON: Your Honor, I'm handing up copies of case law.

THE COURT: Wonderful. Thank you.

MS. GAY: And one of the things I was asked, your Honor, since this is going to -- I believe to be a pretty complicated issue, is that we be -- I be allowed to sort of make my final argument in the morning so I can go over what he gave me. And, I mean, I think you're going to also want to go over some things about this case.

THE COURT: Is it a Fourth Amendment issue?

MS. GAY: Yes.

THE COURT: All right.

MS. GAY: It is.

THE COURT: We'll see if we decide today or tomorrow.

MS. GAY: Okay. So, your Honor, as I said, just to give a real brief overview of what was going on in this case, my client was at a barbecue, and he went -- he was parked -- he was sitting in a pickup

truck in the backyard of a place, a home, with some friends -- at a friend's house. And without a warrant, for his either arrest or a search warrant, he was arrested and charged with a large quantity of drugs. It's like 400-something grams of drugs.

THE COURT: Let me stop you real quick. Sitting in a car in a backyard? The car is not moving?

MS. GAY: Right.

THE COURT: And I assume we're going to hear some witness testimony about why the car was approached at all?

MS. GAY: Right.

THE COURT: Okay.

MS. GAY: And I think that, your Honor, what I am saying and what my argument is and after we hear all this -- I believe you'll agree with me -- is that this search was a violation of his Fourth Amendment Right; that -- well, for one, that it is a search under the Constitution; for two, it's in violation and -- and, therefore, the drugs as -- should be, you know, suppressed and any other things that he may have been charged with pursuant to this arrest or such, would be also dismissed as fruit of the poisonous tree. This case really is about curtilage. And curtilage is a hot word, your Honor, that's recently in a good bit of case

law, both state and, you know, like --

THE COURT: Yep.

MS. GAY: -- nationwide.

THE COURT: I'm aware.

MS. GAY: And it is a curtilage case. And so I have -- I have several cases that I've provided to you, and he's also provided me some. But the primary case is Florida versus Jardines, that came out in March of 2013. And, fortunately, for us, your Honor, we have this case, which, I believe, is very defendant friendly and -- or Constitution friendly, and it is here, and it's available now to look at these curtilage situations.

If you follow the reasoning of -- of Jardines, your Honor, they basically find that a search of an area around a home, whether it be the front porch or the area around the home, is, in fact, a search. They find that -- defining the word as curtilage is that space around a home that people enjoy their privacy. There is a point where it says that, you know, no man can set his foot upon his neighbor's close without his leave. That's a quote from an old English case in Jardines. And in this case the police have reasons -- which I know that's what we're here to talk about -- why they believe that they were able to see these drugs in plain view in my client's car after they believe that they entered the

premises lawfully, which I just don't agree with.

And flipping to that issue, your Honor, they --

THE COURT: Pretty interesting crew in Jardines that got together and decided that one.

MS. GAY: Yeah. Well, it came from the Supreme Court, your Honor.

THE COURT: Yeah. I mean, it's just you don't normally see Scalia lining up with Ginsburg, Kagan, and Sotomayor.

MS. GAY: Well, your Honor, in --

THE COURT: Pretty persuasive.

MS. GAY: -- in South Carolina, just flipping to our State before Jardines, there was a case that is the case of Leon Wright -- State versus Gregory Leon Wright, and that's a case where it had to do with a plain view-type arrest, and something where -- all this is warrantless -- you know, search warrantless, arrest warrantless, all this. And in this particular case, your Honor, they defined what is "plain view," and they make it the initial intrusion, which afforded the authorities the plain view was lawful and incriminating nature of the evidence was immediately apparent to the seizing authorities. And that's what is required. And they go back to a case called Horton. And Horton is a case, that I also provided the Court with, that talks

about whether or not inadvertence is important or not and, of course, Wright says, no, it's not. We don't need any inadvertence; we just need something that's lawful.

And so as we move forward in this hearing, your Honor, it is my position and my client's position that this entry on to this private property, curtilage was not lawful. And so we have -- he has his position and I have my position and --

THE COURT: And there was no warrant ever involved in any way, shape, or form?

MS. GAY: There was no warrant until after -- what happened is, is that -- and I'm just kind of jumping the gun here. But he --

THE COURT: I just want to know why they were at the property in the first place.

MS. GAY: They had an anonymous tip, which is also what is mentioned in Jardines, and that is it. I've discussed with him specifically. I sent E-mails back and forth with him whether or not the tipster could be identified. There is no identification on it. If they provide it to me now, it's a violation of Rule 5 because I've asked specifically for it. I'm told that they had an anonymous tip, and they put themselves into this area. Narcotics officers were in this area, your

Honor. In my opinion, it's very similar to Jardines because -- it's not a front porch, and it's not a dog. But narcotics officers were in this area to do an investigation that they didn't have any probable cause and/or exigent circumstances to do.

THE COURT: But what's the police agency, just out of curiosity?

MR. PATTERSON: Berkeley County Sheriff's Office, your Honor.

MS. GAY: The Sheriff's Office.

THE COURT: Okay.

MS. GAY: And so they -- as it happens, your Honor, they claim they see a codefendant person -- we won't even call him a codefendant -- another guy drop a bag of drugs from a long distance away. And I believe that's what they say is their exigent circumstances to come on the property, which I also dispute --

THE COURT: After they got an anonymous tip?

MS. GAY: Right. And so -- and then they eventually get a search warrant, which is written -- it's a written search warrant, your Honor -- establishing probable cause for going inside the house, which --

THE COURT: Okay.

MS. GAY: -- there's -- they didn't find

anything inside the house that they charged my client with. They charged a different person. But that is actually written down a lot of what -- I guess we should ask to have that as an exhibit at this hearing, but we can bring that in with one of the officers. But it's written down what they believe to be the probable cause to get in the house.

THE COURT: Uh-huh.

MS. GAY: And, your Honor, a lot of this case law talks about the need for a warrant, and that there is places where, if you believed you had a problem, you should have gone to get a warrant. If you believed certain things had occurred, you -- you know, because it's a house, because it's a curtilage, because it's surrounding property, you should have gone to go get a warrant. So that's the basis of what we're talking about here today, your Honor.

And so I would -- he's obviously going to have evidence, and this I have not seen. He may want to address this right now. But, obviously, he has case law that he believes that they did -- that they did a correct warrant or correct arrest; I have case law that I believe they didn't. But there's no doubt --

THE COURT: Well, the case law is often case-by-case in these Fourth Amendment situations.

MS. GAY: Right. And also in Wright, your Honor, it says specifically -- just to let you know how important you are in this process, it says specifically that the Trial Court is the one who weighs the weight and discretion to make the decision. And so, you know, on the heels of Jardines, there's -- we've looked for case law in America, you know, using this case, citing it, anything, and so far I have not been able to find anything that talks about -- that takes this into state case law. But that's what this case does.

THE COURT: Okay. Well, that's very interesting.

MR. PATTERSON: Your Honor, the State may be able to shed some light on the issue of whether or not Jardines has been considered since it came out. The Tenth Circuit has heard a case that distinguishes Jardines.

THE COURT: What's the cite for it? Do you have it -- oh, if you have a copy, that'd be great. Or I can just pull up -- I've got Westlaw up, so. . .

MR. PATTERSON: I didn't know that would be an issue.

THE COURT: Let's go off the record for a minute, Rolayne.

(A discussion is held off the record.)

MS. GAY: This case he just handed me, it talks about knock and talks, privilege, and things like that. So, as I said, your Honor, this is one of the reasons why I really don't want this all decided until tomorrow, because, I mean, I just got handed this in the process. I was --

THE COURT: So you want to be able to read everything again and argue tomorrow morning if necessary?

MS. GAY: Yes.

THE COURT: Okay. Well, I mean, I'm happy to do that. That's fine. We can do that.

MS. GAY: I told my client that today was the day to put all this into evidence --

THE COURT: Sure.

MS. GAY: -- on the record. And then, you know, we were going to try to -- you know, we don't -- he's the only one here. We don't have any other people that were at the party. Two of them are arrested. So they're defendants. One belongs to the Public Defender's Office. And, you know, if we choose, after there's some evidence presented today, to bring one of those people in, we might could or should, but I'm -- it was just -- you know, I'm telling these people at noon, Get up here at two o'clock.

THE COURT: Oh, no, no. And I understand that. Our case unexpectedly pled this morning. I mean, not to telegraph anything that I'm going to do, but, you know, I may toss this before y'all leave today based on what the officers have to say about the anonymous tipster, because, normally, you need a little bit more than that.

But, you know, again, it's all very case specific, and I want to hear what the officers have to say and how credible they are to me. All right? So y'all want to go ahead and put him up, or do you want to argue anything further before we start hearing from them?

MR. PATTERSON: No, nothing from the State, your Honor.

THE COURT: All right. Let's start putting them up.

MR. PATTERSON: State calls Lee Holbrook.

THE COURT: Officer, if you will come on up, we'll swear you in.

THE DEPUTY CLERK OF COURT: Please raise your right hand, place your left hand on the Bible.

(The oath is administered by the Deputy Clerk of Court, and the witness answers as follows:)

THE WITNESS: Yes, ma'am.

THE DEPUTY CLERK OF COURT: Please be seated.

State your full name; spell your last name for the record.

THE WITNESS: Lee Holbrook, H-o-l-b-r-o-o-k.

THE COURT: Okay. Happy to hear from you.

Ms. PATTERSON: Thank you, your Honor. May it please the Court?

THE COURT: Yes, sir.

LEE HOLBROOK,

having been first duly sworn by the Deputy Clerk of Court to tell the truth, the whole truth, and nothing but the truth, was examined and testified upon his oath as follows:

DIRECT EXAMINATION

BY MR. PATTERSON:

Q Sergeant Holbrook, where do you currently work?

A Berkeley County Sheriff's Office.

Q And how long have you worked for the Sheriff's Office?

A Approximately nine years, give or take.

Q And in what position do you currently work for the Sheriff's Office?

A In the drug enforcement unit.

Q How long have you been with the drug enforcement unit?

A Right around seven years.

Q And what unit were you working for when this incident occurred?

A In the drug unit.

Q And what -- what are your -- if you could briefly describe your duties as a member of the drug enforcement unit?

A We specifically handle any drug complaints and handle any of the drug buys. Any drug problems that we have throughout the county, we generally take care of.

Q With this particular case, how did you become involved with this case?

A We were in the Moncks Corner area of Berkeley County, and one of the agents -- I don't know exactly who it was at the time -- received a -- a phone call stating that there was drug activity at a particular residence, and we just happened to be in Moncks Corner and drove over there and handled it.

Q What was the -- what address was this?

A I believe it was the -- was [redacted] Nelson Ferry Road.

Q Would it be helpful if I showed you a copy of the report?

A Certainly.

THE COURT: Sergeant, when you said "one of the agents," one of the narcotics agents got an anonymous

tip?

THE WITNESS: That's correct.

THE COURT: Okay.

(Document is shown to Ms. Gay.)

MR. PATTERSON: Your Honor, may it please the Court?

THE COURT: You may.

(Document is handed to the witness.)

Q (By Mr. Patterson) Does this refresh your recollection?

A It does. It was -- the incident location was at [redacted] Nelson Ferry Road, Moncks Corner.

Q And what was the time frame for when you received the tip and when -- when you went to investigate this?

A I'd say within ten minutes or so.

Q And what did the tip involve? How was it relayed to you?

A The -- the tip was actually, if I'm not mistaken, that there was drug activity occurring at that exact time, and it was at [redacted] Nelson Ferry Road. And it -- just specifically, that there was drug activity occurring at that incident. So we happened to be in Moncks Corner and were right around the corner and attempted to go handle that complaint.

Q Did the tip indicate where this drug activity was taking place?

A It did. It was on the property of [redacted] or on it.

Q So what did you do when you went by there? How many people were there?

A Excuse me?

Q What did you do?

A We actually located the house and noticed that there were some males behind the house in a grassy area. So instead of actually approaching the house and conducting a knock-and-talk investigation, we just simply drove towards the backyard in a grassy spot behind the backyard where the individuals were -- there were several individuals back there -- and simply got out of the vehicle to meet with those folks.

Q For purposes of describing this -- this address, would it assist your testimony to use a map for demonstrative purposes?

A Sure.

MR. PATTERSON: Your Honor, if I might?

THE COURT: You may. Sure.

(Mr. Patterson is setting up the easel.)

MS. GAY: Yeah, I've seen it.

MR. PATTERSON: Okay.

Q (By Mr. Patterson) Do you need this --

MR. PATTERSON: I just want to make sure everybody can see it. Would it be helpful to move it closer to him?

THE COURT: I can see it.

Can you see it, Sergeant?

THE WITNESS: I can see it.

THE COURT: All right. Lisa, if you want to come around.

Thank you, though.

MR. PATTERSON: May I stand up here, your Honor?

THE COURT: You may.

Q (By Mr. Patterson) Sergeant Holbrook, where did -- when you received this tip, where did y'all drive in from?

MR. PATTERSON: Is it all right if he steps down?

THE COURT: Yeah.

Sir, if you want to step down, you can point to what he is showing you.

(The witness steps down from the witness stand.)

THE WITNESS: When we received the tip, we were, again, in the Moncks Corner area. We were on the

Highway 52 side of Nelson Ferry Road. When he -- actually came down Nelson Ferry, right at the corner of Nelson Ferry and the Shine Bash Lane area, which would be approximately right here on this dirt road where it meets the pavement. At that particular time, somewhere in this vicinity, you could actually look back behind this house at [redacted] Nelson Ferry and see occupants inside this grassy area here behind the house.

THE COURT: Let me ask you -- I just want to make sure I can understand. So you came around and turned down that -- what looks like a dirt road?

THE WITNESS: Correct. Made a right-hand turn on Shine Bash.

THE COURT: And then you could see people in the backyard?

THE WITNESS: That's correct.

THE COURT: Okay. Thanks.

Q (By Mr. Patterson) And, to your knowledge, is Shine Bash Lane a public road?

A Yes, I believe so.

MR. PATTERSON: Your Honor, may I approach again?

THE COURT: You may.

MS. GAY: It's the same picture. As a matter of fact, those are my pictures.

THE COURT: Oh, okay. Do we have that marked as --

MR. PATTERSON: I have not marked it. I wasn't sure if you wanted those marked as State's Exhibits or Court's Exhibits.

THE COURT: It doesn't matter to me. We pre-marked -- we can make it State's 1 if you want or Defendant's 3 is the map.

Are we marking the map?

MR. PATTERSON: It's simply a photo of the road sign, indicating that it's a public road.

THE COURT: All right. That'll either be State's 1 or 2, whatever you want to call it. Or we can call them Court's Exhibits for purposes of today. Doesn't matter.

Q (By Mr. Patterson) And can you tell me what that is --

THE COURT REPORTER: Court's Exhibit 1?

THE COURT: How do you want it marked? Is it --

MR. PATTERSON: I'll mark it State's Exhibit 1.

THE COURT: State's 1. Okay. Thank you.

(State's Exhibit Number 1 is marked for identification.)

Q (By Mr. Patterson) Do you recognize that?

A Yes, I do. That's the -- that's the sign at the corner of Nelson Ferry and Shine Bash Lane.

Q And what is it?

A A green sign at the corner of Shine Bash and Nelson Ferry.

Q And is that a fair and accurate representation of the sign as it was that day?

A Yes, I believe it is.

MR. PATTERSON: Your Honor, we move to admit State's 1 at this time.

MS. GAY: Without objection.

THE COURT: State's 1 is admitted without objection.

(State's Exhibit Number 1 is admitted into evidence.)

MS. GAY: Is he going to continue to talk about the map?

MR. PATTERSON: Yes.

Q (By Mr. Patterson) So when you went down Shine Bash Lane, what did you see?

A As we travelled down the dirt section here of Shine Bash, there were several black males standing right here by this little shed, and there was a pickup truck pulled in on to the grass area.

Q Now, before we get into what happened then, can

you describe the residence as you saw it? Was there a fence around the house?

A To the best of my knowledge, [redacted] has -- is entirely fenced in, the front and the back; and I believe it has a walk-through gate somewhere in this area, if I'm not mistaken; and then there's some type of small utility shed there on the -- on the other side of the fence.

Q So is the shed fenced in?

A No.

Q Is this area here fenced in?

A No, it was not.

THE COURT: I'm sorry, "this area" where?

THE WITNESS: Here.

THE COURT: Where you said what was, or wasn't fenced in.

Q (By Mr. Patterson) Is this general area here fenced in?

A No, it was not.

Q Now, when you -- you see these individuals, what happens next?

A We see the individuals standing here, and I simply pull up to them to make contact -- casual contact with those individuals.

MR. PATTERSON: Your Honor, I don't believe we

would need this again. Would you like me to leave this up?

THE COURT: Well, it just depends on what your follow-up question is going to be. I need to know where they were.

Did he pull up into the yard to make contact with them? How did that work?

THE WITNESS: Yes, ma'am. The fence line is about right here, all of this open grass --

THE COURT: Uh-huh.

THE WITNESS: -- and then there's a little shed here that's not inside the fence. And there was a vehicle parked about right here with several individuals standing around the vehicle.

THE COURT: Okay. Thank you.

THE WITNESS: So as I travelled down the dirt road, I just simply turned in behind where the truck was parked in the grass.

THE COURT: In the middle of all that grassy area?

THE WITNESS: Yes, ma'am. It's a -- somewhat distorted, I guess, but, you know, I did pull on to the grass.

THE COURT: Okay. Thank you.

Q (By Mr. Patterson) What was your reason for

pulling on to the grass?

A My reason for that was because I was -- received a tip that there was some type of active drug activity going on at that time. As I approached the house, I didn't see anybody around it, and that just caught my attention. So I just simply drove back there, and that activity was supposed to be happening in the -- in the rear of the property; so that was my reasoning for -- when I saw those individuals back there, it -- I just didn't feel the need to actually make contact with the actual house. I just went down the Shine Bash Lane.

MR. PATTERSON: Is it okay if he --

Do you have any further questions?

THE COURT: You may sit down. Thank you so much.

(The witness returns to the witness stand.)

Q (By Mr. Patterson) What were you going to ask them?

MS. GAY: Your Honor, that's speculative at this point. I think we understand what he was doing there.

THE COURT: Overruled.

THE WITNESS: Typically, when we have complaints of drug activity and there's folks on the

property, when I actually make contact with them, I explain the nature of my business being there, that they're -- I'm here on the -- on the -- reason that there's suspicious drug activity occurring at the residence, and we go from there as far as, you know -- and just general conversation is what typically takes place.

Q And what happened in this particular instance?

A That particular incident, when I actually pulled on to the grass and exited my vehicle, one individual that was standing in the grass threw down a plastic bag containing a white powder substance that appeared to be cocaine.

Q Now, when you say you "pulled on to the grass," how close were you to the truck?

A I pulled up behind the truck, so I may have been 20 feet or so, at least.

Q And when you say you observed one of the individuals throw something on the ground, how close were you to him?

A At the point that -- that that item was thrown to the ground, I was within eight or nine feet, I'd say, close to ten feet, maybe.

Q And how did you know what it was?

A Just through my time in the drug unit through

experiences.

Q What did it look like?

A A plastic bag containing a white power substance.

Q So what happens after you see this?

A At that time, when I pulled up and got out of the truck, my truck, everything happened relatively quick. I see the truck that's parked in front of me, but I'm more interested at that point of the people outside the vehicle because that's who I see initially. As I get out and start to approach these folks, I see one individual throw down the -- what appeared to be cocaine. Almost instantly an individual opened the door -- the passenger door of the truck that was parked in front of me, and he took off running and -- instantly, he just ran into the woods. And quite a few of our agents, everybody except me, took off after that individual.

Q When you stepped out of your vehicle, how many people were standing around?

A I think it -- I think it may have been three. I -- I -- I think it was three people standing outside the vehicle when I got out.

Q Including the person you saw -- or you say saw threw down?

A Correct.

Q When did you realize there was -- there were people in the truck?

A Within seconds later. I'm keeping an eye on the individual that threw down what appeared to be the cocaine, and within seconds, one -- at the passenger side of the truck, he took off running. And then an individual got out of the driver's side of the truck and asked what was going on.

Q And what -- what did you tell the person who got out of the driver's side?

A I asked him to step to the rear of his vehicle, where I had everybody kind of with me, and I began explaining the nature of my business being there to those individuals. Again, keeping an eye on the cocaine that was thrown to the ground. I'm by myself at this point. So instead of approaching and trying to cuff an individual, I was outnumbered, so I just decided it would be safer for me just to continue on with the investigation until I could get another individual -- an agent there to help me.

Q And what were the other agents doing at this time?

A They were chasing the individual that fled from the passenger side of the vehicle.

Q And what are you -- while you're there by yourself, what are you talking about with these guys?

A Explaining the nature of the -- the confrontation -- or nature of my business being on -- on the property. The nature of the call of why I was there.

Q Did they say anything?

A Not about what I was trying to talk about. Again, I kept my eye on the -- on the cocaine, but didn't bring that up until I had another individual get there with me.

Q When -- what happens between then and when you get somebody else on the scene?

A At that point, I'm just keeping everybody kind of somewhat calm, explaining why I was there, and that, you know, why did an individual flee. The general conversation, until -- I think it was Dale Burst (phonetic). I called for him; that's the closest agent to me. And I called him to come over to assist myself.

Q And what did you do when he got there?

A I actually began to cuff the individual that threw the -- what appeared to be cocaine to the ground. And then we detained the other individuals on that property due to the fact that the complaint was narcotic activity and the fact that there was narcotics thrown to

the ground. And everybody was detained at that point for safety reasons.

Q When did you decide to look in the truck?

A It was after some of the other agents began to kind of filter back towards me. It was -- at that time, it was just a matter of a few minutes. I did peer into the truck through the window -- the door was closed -- due to the fact that we had dope on the ground -- narcotics on the ground and the fact that someone did flee from that vehicle. It all happened right there together, and I just happened to look in the window. I don't know if there's other individuals in that truck hiding. And at that time, you could see in plain view what appeared to be cocaine weighing scales. I think there may have been even some cocaine base right there in the console area also.

Q Was the window tinted?

A That, I don't recall. If it did have tint, it was ever so light tint. I mean, you didn't have to use your hands to peer into the window to shade anything. It was -- you could definitely see through the window.

Q And the door was closed?

A I believe so, at that time.

MR. PATTERSON: Court's indulgence?

THE COURT: Certainly.

(Mr. Patterson speaks with Ms. Dixon off the record.)

Q (By Mr. Patterson) Which individual was the Defendant?

A He exited the driver's side of the -- I think it was a black Chevrolet truck.

Q And is that individual in the courtroom?

A He is.

Q Can you point him out?

A (Witness complies.)

Q Let the record reflect the Officer identified this Defendant.

THE COURT: Okay. It will so reflect.

Q (By Mr. Patterson) Did you -- were you able to identify the license plate on the truck?

A Yes, sir.

Q And who did the truck belong to?

A The Defendant, Curtis Shine (phonetic).

Q Would the -- if you took another look at your report, would that help you refresh your recollection as to who the truck belonged to?

MS. GAY: I'm not opposed to him admitting that -- I think the truck belongs to my client; right?

THE DEFENDANT: (Moves head up and down.)

MS. GAY: I mean, I know that.

THE COURT: Okay. The truck belongs to the Defendant.

Q (By Mr. Patterson) When you approached the property initially, going back, what was the conversation like?

A When I actually approached the individuals?

Q Yeah. When you got out of the car the very first time.

A It was, initially, just going to be a casual encounter, casual contact, explain the reason that --

Q What did you say when you got out of the car?

A I asked who the individuals were. The property owner, I believe, was there. At that point, I mean, I've already had what appeared to be cocaine thrown to the ground --

Q Well, before that, as you're getting out of the car, what are --

A I mean, that was -- when I got out, I mean, I don't know exactly what was said other than, Hey, guys, what's going on, before everything just broke loose.

Q Did anyone ever ask you to leave the property?

A No.

MR. PATTERSON: Court's indulgence?

THE COURT: Certainly.

MR. PATTERSON: Nothing further at this time.

THE COURT: Okay. Cross-examination?

MS. GAY: I'd also like to mark --

(Ms. Gay speaks with Mr. Patterson off the record.)

MS. GAY: I have a few other things that I would like to mark, your Honor.

THE COURT: Okay. Certainly.

MS. GAY: I'm going to use this map. Do you want to look, because I'm going to use your map?

MR. PATTERSON: I'm sorry?

MS. GAY: I'm going to use your map.

Could you mark this for me?

(Defendant's Exhibit Numbers 10 and 11 are marked for identification.)

CROSS-EXAMINATION

BY MS. GAY:

Q Officer, first, I want to identify some of these exhibits that we are going to talk about. And I'm going to hand you -- I think there's nine of them. And if you could take a look at these for me. I don't believe the Solicitor has any objection to these. These are pictures that were taken, and let me start with 7. Is that similar to the house that we're dealing with here in this -- if I tell you that it is, is this the address?

A It appears to be.
Q Okay. And then another one of the front of the house is Number 8?
A Appears to be.
Q And Number 9?
A Appears to be.
Q And then I'm going to -- this is Number 3. And if you can see on Number 3, there's a fenced-in area, which would have been the house, and this is that road that you're referring to.
A I see.
Q Do you see that road right there?
A Yes.
Q Okay. Is it fair to say that this picture of this road -- this is the main road -- is right here, this corner that you referred to?
A If you're --
Q Would you like to look closer?
A If you're coming down Shine Bash towards Nelson Ferry --
Q So it'd be like this?
A Appears to be, yes.
Q Okay. So Number 3 is a picture of the road that y'all drove down that's not in the fenced-in area but on this little road right here?

A Appears to be.

Q Okay. And then I have several pictures. Here's Number 2, which is -- appears to be the back of the house, and I think there's a broken-down car right here and a shed?

A Yes.

Q So this is a red car. So it would be this -- there's the shed; there's the red car right there. Does it appear to be similar?

A It does.

Q Okay. That's Number 2.

And here's a picture of the shed, which is Number 4. This is the shed, Number 4.

And then I think there's that same broken-down car and the shed, which this is Number 5.

So can we agree that this is the same area right in here?

A Appears to be.

Q Okay. And then Number 6 is just sort of the main road. I believe you said that y'all came in from the other end; and then these are the, like, signs of the roads of what we were talking about here, these two roads right here --

A Correct.

Q -- coming from this way?

This is Number 6?

A Correct.

Q Okay. And then this is another picture of the yard, Number 1? General picture of the yard?

A Appears to be.

Q So at this point, I'm going to refer to the map, and then we're just going to maybe refer to smaller pictures of it. But these are smaller pictures of what's on that map.

Okay. This is something that was provided to me in discovery, Defendant's Exhibit 10, and this says: Berkeley County EGS Mapping. Are you familiar with what something like this would be? It'd be like a plat?

A Yes.

Q Okay. Do you -- this particular grayed-off area that was provided to me in discovery from the Solicitor. This particular grayed-off area is, in fact, this plat of this piece of property that we're talking about, which goes, like, all the way up in here. This is Defendant's 10. It's a grayed-in area that was provided to me by the Prosecutor as being the plat of this property.

A Okay.

Q Okay. And I asked the Prosecutor if you were involved in this search warrant that was obtained

to -- before they went in the house, and he told me that you weren't; but you are familiar that there was, in fact, a search warrant done after all this stuff was found and then eventually got in the house on this search warrant?

A There was a search warrant executed on the property.

Q I understand --

MR. PATTERSON: Your Honor, the State would object to relevance --

THE COURT: Wait a minute. Is there an objection?

MR. PATTERSON: Objection to the relevance of the search warrant. The search warrant is for the house, and --

MS. GAY: I understand.

MR. PATTERSON: -- we don't believe that this case revolves around anything located in the house.

MS. GAY: I understand that, but I just wanted to make sure he was familiar with this document, and that they did, in fact, at some point go get one.

THE COURT: Okay. Objection's overruled. I think for my purposes, there may be something relevant based on the language in the warrant. But I'm concerned about the initial entry into the backyard, quite

frankly.

MS. GAY: I understand.

Q (By Ms. Gay) But this is a warrant that was obtained before you went into the house? That is what happened, right, factually?

A There was a search warrant conducted there.

Q Yes. Okay. Now, based on your testimony, you said that one narcotics agent got an anonymous tip.

And that was actually your testimony, because I wrote it down.

And you -- just let's be clear what anonymous tips are. You have no idea who the person is that called it in? As part of your case file, obviously --

A Correct.

Q Correct.

And you have no phone number to call this person back to determine who this person was, even if, like, caller I.D. or anything like that. You have no identifying information to be able to contact this individual?

A I don't.

Q So is it fair -- is it true that -- I mean, obviously, you're a narcotics agent. You have times when you use confidential sources and other things like that. I understand that. That is part of the process.

This particular tip was not from a confidential source?

A Not to my knowledge.

Q And it was not from anybody that you had any prior dealings with?

A Not to my knowledge.

Q And you -- and not from anybody that you had any -- any possible information about their credibility?

A I believe that the tip just came from someone at the sheriff's office, stating that they received the information and passed it on to us that that activity was happening at that time.

Q And to your knowledge here today, you're testifying that you have no way to find out who this person is, you have no way to find out whether or not they had provided any credible information in the past or -- nothing?

A No. I received a tip that there was activity going on at that incident.

Q I'm not talking about the tip itself. I understand what you say the tip says. I understand what your testimony is. I understand why you believe you did what you did. What I'm trying to determine is what you knew about the person who called the tip in. And it's my understanding, because I've been obviously dealing with the Prosecutor on this case for quite some time,

that there's no identifying information about the credibility of that person or that -- the identity of that person?

A I didn't take the tip.

Q Okay. But in this case file, in anything having to do with Walter Bash's case, there's no information that's ever been provided to me, his attorney, or to him, or to the prosecutor about the identity of the tipster and/or the credibility of the tipster; right?

A I don't know if you've ever received anything or not.

THE COURT: Okay. Hold on. Do you know the identity of the tipster?

THE WITNESS: No, I don't.

THE COURT: Okay. Who gave you the tip?

THE WITNESS: I believe someone at the Sheriff's Office.

THE COURT: Okay. And someone else at the Sheriff's Office took the tip?

THE WITNESS: That's correct.

THE COURT: Do you know who took the tip at the Sheriff's Office?

THE WITNESS: No, I don't.

THE COURT: Okay. Thank you.

MS. GAY: Just, other than that, your Honor, I think that what his testimony --

Q (By Ms. Gay) I just want to confirm. You testified that you drove up on this -- and it is a public road, on to a piece -- and then you turned in to what is a private road -- private property, if you want to call it, or house, yard, that's actually, if you look at this map and this map, this back area, you kept trying to distinguish it because it doesn't have part of a fence -- chain link fence around it, but pursuant to this plat, it's still part of this lady -- or this person's property?

A I would think so.

Q So your testimony is you came up on the public road and you turned your car -- which I believe was like a brown Expedition or something like that, not a marked police officer's car?

A It's not a marked car.

Q -- into this property behind the -- right up into this property, parked -- I think you stopped behind the black truck where a bunch of black individuals were involved with conversation going on? Like, you admit you drove up into their yard in an unmarked police vehicle behind the black truck. That was your testimony; correct?

A I pulled into the yard, yes.

Q And you said that -- okay. When you first got there, I believe the Solicitor kept asking you what were you going to ask them? what was your intent? Okay. How many people were in your car?

A Myself and one other individual, I believe.

Q Okay. And you said a bunch of other officers chased after the guy who ran. What, did they come up in cars behind you?

A Yes, they did.

Q Okay. Were they all -- so -- all right. So you, obviously, are a white individual, and you hadn't been invited to the party. So you come up in your car and you're opening the door to get out when the people are scrambling, basically, and you see the bag? Or did you speak before the bag got thrown?

A People weren't running. It was just one individual, and then one individual threw the coke to the ground.

Q Okay. But had you gotten out of your vehicle and said anything before that occurred?

A Sure. I got out and I, basically, What's going on fellows? And then everything took place at that time.

Q Okay. And I believe your testimony was that

you didn't see any -- any activity or people in the front yard, so you didn't stop to knock and identify yourself in the front part of the house because there was nobody there?

A Well, that, and I believe the tip said it was behind the residence.

Q I know, but -- I know that. But you didn't stop here and try to get into any kind of communication at the front of the house, which is the part that's on the public road?

A No, I didn't. Everybody seemed to be in the backyard.

Q Right. And so your testimony was that at the time that you got out, said something, and somebody threw the drugs down -- and I wrote this down -- that you then -- everybody that ran after the guy that ran out of the passenger car -- door, and that you felt like you were outnumbered, so you just chose to gather everybody up and wait for some other people to come. At that point, were those people free to leave?

A At least --

Q If they had run, would you have chased them or called somebody to chase them?

A The one that threw the coke to the ground, he wasn't going to be free to leave as soon as I had enough

people to take control of the situation.

Q So -- so is it your testimony that Mr. Bash wasn't detained at that point even though you were holding him there until the other officers came back to figure out what was going on?

A No, he wasn't detained.

Q Okay. So, as part of this process, I believe you said that you -- that you didn't even talk about the cocaine or bring up the cocaine that you saw on the ground until somebody came back to help you, and then you said that you detained everybody for safety reasons?

A Yes.

Q Right?

A That's correct.

Q At this time, you've not found any drugs at all in Mr. Bash's car at that point, have you?

A No, I haven't.

Q So you detained him for safety reasons, and then you said, I believe the officer was very clear, that the windows were closed, whether or not there was tint or not. At some point, after my client was detained for safety reasons, you went and looked in the window of his car?

A Correct. Someone fled from it.

Q I understand. And at the time that you went to

look through the windows of the car, it's your position that you saw something that was in plain view, I believe you referred to it, that was -- that was drug related; and at that point, I guess, you placed him under arrest?

A He was detained at that time and then eventually placed under arrest.

Q And I believe that your testimony was that you -- you had not -- you specifically said -- because I was kind of confused -- that you didn't even see -- you didn't even figure out what -- that there were drugs in the car until after several officers had come back and were assisting in the arresting process of the other gentleman who threw the drugs down and the other people -- and you're, I guess, interrogating, or whatever, the people that were out there. What was that; like, ten minutes?

A The whole process between when we got there and the agents then approached and then returned back to where I was?

Q (Moves head up and down.)

A It may have been close to ten minutes.

Q Okay. So for at least ten minutes or more there was no drugs that had been discovered in the pickup truck that Mr. Bash owned?

A Not at that point.

MS. GAY: Okay. I have no further questions, I don't think. I just want to ask Mr. Bash something.

THE COURT: Okay.

(Ms. Gay speaks with her client off the record.)

MS. GAY: One moment, your Honor.

THE COURT: Sure.

(Ms. Gay speaks with Mr. Schwacke, Mr. Shelton, Ms. White, and Ms. Littlejohn off the record.)

Q (By Ms. Gay) There is one line of question I want to ask you. Now, your testimony was that when the individual ran from the passenger side -- or passenger seat of my client's car, deputies chased him?

A Correct.

Q Okay. And so your testimony was that my client, Mr. Bash, would have been free to leave. That was your testimony?

A Well --

Q That was your testimony? That he would have been free to leave?

A But he wasn't detained at that time.

Q Well, if he'd run into the bushes, would you have chased him?

A Most likely.

MS. GAY: All right. I have no further

questions, your Honor.

THE COURT: Okay. Any Redirect?

MR. PATTERSON: Briefly.

THE COURT: Okay.

(Documents are shown to Ms. Gay.)

REDIRECT EXAMINATION

BY MR. PATTERSON:

Q Sergeant Holbrook, I'm going to show you two photos.

MR. PATTERSON: Your Honor, may I approach?

THE COURT: You may.

(Documents are handed to the witness.)

Q (By Mr. Patterson) Do you recognize these?

A Yes, I do.

Q What are they photographs of?

A Appears to be cocaine and a scale.

Q Is there anything else?

A Open beer, some Baggies, possibly some cocaine base.

Q Is that a fair and accurate representation of what you would have seen looking through the driver's side window?

A It appears to be.

MR. PATTERSON: Your Honor, we would move to introduce these as State's 2 and State's 3 at this time.

MS. GAY: I have no objection.

THE COURT: All right. Admitted without objection.

(State's Exhibit Numbers 2 and 3 are admitted into evidence.)

Q (By Mr. Patterson) Sergeant Holbrook, after seeing those, can you describe where those were located, where you saw those?

A The scale and the one bag, of what appears to be cocaine, was located actually on the console in between the two seats, if I'm not mistaken. And then there was another bag that was underneath, like, the radio section where you would maybe put pens or your wallet in a little cubbyhole and kind of between the console and the radio section, maybe?

MR. PATTERSON: Court's indulgence?

THE COURT: Certainly.

(Mr. Patterson speaks with Ms. Dixon off the record.)

MR. PATTERSON: Nothing further at this time.

THE COURT: All right. Sir, you may step down. Thank you.

Call your next witness.

MR. PATTERSON: Sergeant Milks.

THE COURT: Is she your case agent?

MR. PATTERSON: She is my case agent.

THE DEPUTY CLERK OF COURT: Please raise your right hand; place your left hand on the Bible.

(The oath is administered by the Deputy Clerk of Court, and the witness answers as follows:)

THE WITNESS: I do.

THE DEPUTY CLERK OF COURT: Please be seated and state your full name; spell your last name for the record.

THE WITNESS: My name is Kimberly Milks. My last name is spelled M-i-l-k-s.

KIMBERLY MILKS,

having been first duly sworn by the Clerk of the Court to tell the truth, the whole truth, and nothing but the truth, was examined and testified upon her oath as follows:

DIRECT EXAMINATION

BY MR. PATTERSON:

Q Sergeant Milks, where do you currently work?

A I work for the Berkeley County Sheriff's Office.

Q How long have you worked there?

A I've worked for the Sheriff's Office approximately seven years.

Q And what's your current position?

A I am currently in the crime and -- I'm sorry, crime and personal division, investigations -- persons and crimes.

Q And what unit were you working for when this incident occurred?

A 2011, I was working in the narcotics division.

Q And what were your duties as a member of the drug enforcement unit?

A I was an active drug agent.

Q And how did you become involved with this case?

A Myself and Sergeant Holbrook were working together on the 10th of November, and we were in the Moncks Corner area. We were in his vehicle, so I was the passenger of his vehicle. And he received a phone call about a tip of drug activity, and he says, Hey, let's just go over to -- somewhere over off of Mitton, and we need to check out this drug tip that we got.

So as we drove to Nelson Ferry, we let the other agents know, on the radio, what address that we were going to. We put on our vests, our hat -- we have a hat that we wear that says "sheriff" on it; a vest that says "sheriff" on it. And as we approached the house, we noticed that -- the house faces the roadway. And the house is dark; there's no lights on. And the tip had said that it was going to be black males in the

yard -- I believe the tip was rear yard, is what Sergeant Holbrook had explained. So because the house was dark -- there is a yard -- a yard area. As the house faces Nelson Ferry, there's a yard area. There's no one in the front yard, so we go down Shine Bash Lane. And as we go down Shine Bash Lane, there's a tree that you can see through the yard; there's a black truck; there's three individuals in the yard.

So as we're -- we approach Shine Bash; we get out of the vehicle. I get out of the passenger side vehicle and approach the men in the yard.

Q Did you say anything when you got out of the car?

A Generally, I say: Hello, I'm Detective Milks.

Q And what happened when you got out of the car? What'd you see?

A I saw the two black males over by the grill. I immediately noticed -- I recognized one of the individuals. I saw the third male at the back of the truck, I would say, leaning on the tailgate of the truck. I --

I'm in the passenger seat. So Sergeant Holbrook and I have worked together a long time; so we have kind of a routine. And that routine is, is he -- he drives, and I -- I am watching the scene. And

when we pull up, I immediately notice that, you know, there are two people at the grill, one person in the drive -- I'm sorry, one at the tailgate, and that the brake lights are on on the vehicle. And so I know at that time there's someone in the vehicle. Or that's my impression.

Q Did you witness the individual jump out of the car?

A Yes. My position was, I approached the truck from the passenger side. And as I approached the truck from the passenger side, I got somewhere between, I would say, the gas tank area. Where you would think -- the wheel, I guess I would say. At that time, I began -- I recognized the smell of marijuana coming from the truck, and then the passenger door opened and a black male jumped from the truck and ran towards the wood line.

Q Did you chase him?

A I did.

Q And how long was it --

Did you catch him?

A No, I did not.

Q How long was it before you came back to the truck?

A Probably ten minutes.

Q And were you in charge of collecting the evidence?

A I was.

MR. PATTERSON: Your Honor, may I approach the witness?

THE COURT: You may.

(Document is shown to Ms. Gay.)

THE COURT: Is that the evidence list?

MS. GAY: Which -- wait. Let me see that a minute. What is that? Is that something that was thrown, or is that something that --

(Ms. Gay speaks with Mr. Patterson off the record.)

MR. PATTERSON: May I approach?

THE COURT: You may.

Did y'all find any marijuana, or just cocaine?

THE WITNESS: I'd have to look at the evidence sheets.

THE COURT: Okay.

THE WITNESS: But the smell of marijuana was evident. That would be my reason to chase him.

Lee -- I'm sorry, Sergeant Holbrook was alone, and so I probably would not have given chase if I didn't -- I didn't think that there was any crime going on. I would have stayed with him.

Q (By Mr. Patterson) I'm going to show you what is going to be State's 4 and 5. Do you recognize those?

(Documents are handed to witness.)

A I do.

Q What are those pictures of?

A This -- this particular photo is a photograph of a plastic bag containing white material, which is packaged -- that reminds me, from my experience, of cocaine. It was in the floorboard. And I believe this photo's the one on the passenger side.

This photo is a clear -- is a white bag with white material that is -- would -- my experience, would say cocaine, when I looked at it, and I spied that in the floorboard of the driver's side.

Q And was this all collected from the truck?

A This is all collected from the truck, yes.

Q Are those fair and accurate representations of what you collected from the truck?

A Yes.

MR. PATTERSON: Your Honor, move to admit these as 4 and 5.

THE COURT: Okay.

MS. GAY: No objection.

THE COURT: State's 4 and 5 are admitted without objection.

(State's Exhibit Numbers 4 and 5 are admitted into evidence.)

MR. PATTERSON: Court's indulgence?

THE COURT: Certainly.

MR. PATTERSON: Nothing further at this time.

THE COURT: All right.

MS. GAY: I need to check something, so if you'll just bear with me, your Honor. Court's indulgence?

THE COURT: Certainly.

CROSS-EXAMINATION

BY MS. GAY:

Q I have reviewed this stuff, extensive amount of rule -- of, you know, chain evidence and -- and such. If you need to confer with the Solicitor, you can. There is no mention of marijuana -- having found marijuana at all in this case file?

A From the vehicle?

Q From anywhere. From the vehicle, from the ground, from anywhere. I mean, I'm looking. Like I said, maybe you need to confer with the Solicitor. But there's nothing that's been provided to me that even mentions anything about marijuana.

A No. I -- I don't recall there being any marijuana. I just remember the smell of marijuana

giving me the reason to go to the door before the gentleman fled from the passenger's side.

Q And with regard to the police report, I believe you are one of the people, Kim Milks, that prepared this police report that -- in this case file?

A Yes.

Q There's also nothing in this police report whatsoever about any smell of marijuana coming in -- exuding or coming out from the truck in your police report that you made.

A Okay.

Q Would you like to review it to refresh?

A No.

Q Okay. The -- so your testimony today is that you were in the car with Holbrook, and that the call came to him, not to you?

A Yes. And that came through his cellular phone, not through the radio.

Q So whatever was being said actually on the phone or who was talking, you would have no testimony that you can add today about the identity of that tipster?

A Right. I can only repeat what he advised me of.

MS. GAY: Which we're not going to do today.

But thank you.

I don't believe I have any other questions for this witness, your Honor.

THE COURT: Okay. Any Redirect?

MR. PATTERSON: Briefly.

REDIRECT EXAMINATION

BY MR. PATTERSON:

Q Sergeant Milks, were you involved in the search warrant?

A Yes, I was.

Q Was any marijuana located in the house?

A Yes.

MR. PATTERSON: Nothing further.

THE COURT: Okay. Thank you.

RECROSS-EXAMINATION

BY MS. GAY:

Q That brings up this last place.

I would like to show you Defendant's Exhibit 11 and ask you to identify Defendant's Exhibit 11.

(Document is handed to the witness.)

A This would be the certain case file search warrant.

MS. GAY: I would like to move this into evidence, your Honor. I do believe it's relevant based on what it says as to the probable cause for why they

got into the house.

THE COURT: Okay.

(Defendant's Exhibit Number 11 is admitted into evidence.)

Q (By Ms. Gay) Now, did you prepare this or somebody else?

A I believe I prepared it.

Q So you're the one who specifically chose the words to use in this search warrant?

A Yes.

Q So when the search warrant, whatever it says -- it -- just to make this clear, it says: Members of the Berkeley County Drug Enforcement Unit were investigating a suspicious complaint.

A Yes.

Q Okay. And there's nothing else in here at all about who that suspicious complaint -- complainer's identity was or their credibility or anything?

A Yeah. It's never known.

Q Yeah. And certainly, pursuant to this search warrant, you were then able to say that somebody had thrown down drugs, and that, you know, some other drugs had been in plain view, that's also in this search warrant that you put the words in there for?

A Yes. I mean --

Q And so -- and, you know, we would agree that a magistrate has to sign the search warrant in order for there to be -- to enter into the house, and I believe the Solicitor specifically said that, Are you -- you know, are you involved in the search warrant. You know that marijuana was found inside the house.

But so -- so that the magistrate did sign the search warrant based on what you said about all the drugs that were dropped and the fact that they found drugs in my client's car?

A Can you repeat the question? I'm not sure what the question is.

Q Well, I think what I'm testifying to is the magistrate signed it after you --

A Yes.

Q -- made the list of probable cause?

A Yes.

Q It had to do with this -- the dropping of the drugs and the finding of the drugs in my client's car. That's in this search warrant for probable cause?

A I believe it is, yes.

Q And as we agreed, it says "suspicious complaint," with no identifying information in this search warrant?

A Yes.

THE COURT: Okay. Anything further?
MS. GAY: I don't think so.
THE COURT: All right.
MR. PATTERSON: Nothing further.
THE COURT: Ma'am, you may step down.
MS. GAY: I have to confer with my little crew over here at the corner.
THE COURT REPORTER: Judge, 11 will be in -- admitted?
THE COURT: Yes. It's admitted. And I need to look at it. Then we're going to take a quick break.
MS. GAY: I have no further questions for the witness, your Honor.
THE COURT: All right. You may step down.
Will you hand up 11 --
MS. GAY: Yes.
THE COURT: -- so I can read it?
And then let's take ten minutes because we have been going since we started the --
MR. PATTERSON: Your Honor, the State has no more witnesses.
THE COURT: Oh, that's it?
MR. PATTERSON: Yes, your Honor.
THE COURT: Okay.
MS. GAY: May I use the restroom, your Honor?

THE COURT: Yeah. We'll be at ease for ten minutes.

(A break is taken from 4:13 p.m. until 4:19 p.m.; at which time, the proceedings continue as follows:)

THE COURT: Okay. There are no more witnesses from the State?

MR. PATTERSON: That's correct, your Honor.

THE COURT: All right.

MS. GAY: Would you like me to talk some more, your Honor, about my thoughts on this or. . .

THE COURT: Well, I'm happy to hear from you, and I'm happy to -- I've read everything that the State gave me, and I've read most of the cases that you've given me, including Jardines, and I've been running my own searches in Fed for all -- and all the South Carolina cases and the federal cases in the Fourth Circuit that deal with the anonymous -- an anonymous tip in the context of the curtilage. And, respectfully, to me, this one's not even close. An anonymous tip is not enough to allow you to roll up in somebody's backyard when your sole purpose for going there is to search it. If you're going there to respond to a noise complaint of teenagers in the backyard and you're worried about drunk driving or you're going -- which is, I still think,

iffy, but that's what Alvarez was about -- or if you're going up to investigate a dogfighting ring based on an anonymous tip and you see people and dogs running from the property, that allows you to go on the property, as in State v. Wright, which our Supreme Court rightfully said.

If you take a look at State v. Taylor, 401 S.C. 104 -- granted that's in the context of approaching people more in the street: bicyclists, somebody riding their bike -- that case was extremely hard fought. The Court of Appeals got reversed by a sharply divided South Carolina Supreme Court in which Judge Beatty's dissent, quite frankly, has the best language.

And what he says in State v. Taylor: I dissent. I would affirm the well-reasoned opinion of Judge Short -- the Court of Appeals opinion. In my view, the majorities' opinion eviscerates the constitutional protection of the Fourth Amendment to the United States Constitution and Article 1, section 10 of the South Carolina Constitution. The record is totally devoid of any facts that would legally justify the stop, let alone the search.

Well, in that particular case, the police received an anonymous tip that a black male on a bicycle was possibly selling dope on an unpaved portion of a

public street known to be a high crime area and to having high incidents of drug traffic. Eleven o'clock at night, they're huddled up, a lot of times looking down, like happens with drug deals in the street, when they rolled up on the behavior. The record doesn't reflect that the police were unable to observe the respondent's hands and nothing contradicted their suspicion that illegal activity was taking place. Then, as the officers approached them, the respondent pedaled toward them in an undisputed attempt to avoid them. Evasive conduct may inform an officer's appraisal of a street corner encounter.

So here we've got an anonymous tip relating to a street corner encounter that has still sharply divided the Circuit Court, the Court of Appeals, and the Supreme Court. This is much more intrusive than a street corner encounter, and they don't even have the additional indicia to support reasonable suspicion that they had in State v. Taylor.

So all that being said, argue something to me, but especially under Jardines, which had not even come down when State v. Taylor came down --

I think it came down in March, but I could be wrong.

-- which further solidified the sanctity of

the curtilage in our Fourth Amendment jurisprudence. I just don't see how you don't suppress the drugs here. But convince me otherwise, if you would like to try.

MR. PATTERSON: Your Honor, respectfully, the State, I think, would argue that, one, this isn't going to be considered part of the curtilage; it would be considered open fields. However, even if under a curtilage theory, we think this is analogous to a knock and talk, which is clearly allowable under multiple Supreme Court cases as well as State Supreme Court cases.

THE COURT: Okay. All right. Well, was it a knock and talk? Were they going to talk to somebody, or were they going to hunt for the drugs that the anonymous tipster allegedly told them about?

MR. PATTERSON: I think the testimony was clear that what they were there for was to find out what was going on. And so it's exactly the analogous, because that's what a knock and talk is. It's walking up to a door or walking up to people to find out, Hey, what's going on? We don't know what's going on, but we're here to ask.

THE COURT: So a knock and talk isn't a pretext to get on the porch and be able to have the drug dog sniff marijuana or to hope somebody opens the door

enough that you can plain view see something laying around in the living room, like scales and some cocaine?

MR. PATTERSON: I don't believe --

THE COURT: Do you have a case that talks about a knock and talk in the context of going there not for investigative information, but just to hunt for drugs?

MR. PATTERSON: Well, I think they were there for investigative purposes. They were there to find out what was going on because the tip was for drugs. I don't think the nature of the tip matters so much as why they were there. They were there to simply ask about the tip, which is what any knock and talk is.

And I handed up case law regarding Alvarez v. Montgomery County. And in this case, they had received reports of underage drinking, and nobody was at the front door; so they went around to the backyard. And the Fourth Circuit said that it's fine for them to go around to the backyard. And in the Tenth Circuit Court of Appeals case, which I handed up, Shuck --

THE COURT: I read it.

MR. PATTERSON: -- officers, again, approached the backyard. And in this case, he actually sniffed a PVC pipe. And how that's distinguished from Jardines is, what they're saying is, is that anybody can smell stuff, but the drug dog is what made the difference.

THE COURT: Oh, sure, I understand that.

What Alvarez actually says is the officers' entry into the backyard satisfied the Fourth Amendment reasonableness requirement. They're responding to a 911 call about an underage drinking party and based on the alcohol containers and awkwardly parked cars, believed they had found the party. They enter the Alvarez' party -- property simply to notify the homeowner or the host about the complaint and to ask that no one drive while intoxicated.

That's like the agents in Bradshaw. The officers in this case had a legitimate reason for entering the Alvarez' property unconnected with a search of the premises. Okay?

So are you telling me that these officers from the narcotics unit of the Berkeley County Sheriff's Office wanted to go through the backyard to see who was back there and to hunt for the owner of the house so they could ask whether people were selling dope out of the backyard?

MR. PATTERSON: I --

THE COURT: Or were they going there to see what was going on and search?

MR. PATTERSON: Their testimony was to find out what was going on.

THE COURT: Okay.

MR. PATTERSON: Were -- were simply there to investigate the tip.

THE COURT: Anything else other than the anonymous tip?

MR. PATTERSON: As --

THE COURT: I didn't hear any.

MR. PATTERSON: As to why they would have gone to that particular location?

THE COURT: To that particular address ever.

MR. PATTERSON: No, they were there --

I think the case law is clear is that anywhere a private citizen might go to create a consensual encounter is lawful on curtilage and any -- and the public road, which is what -- they didn't drive into the backyard until they observed what was clearly observable from anybody who drove down the public road, which is analogous to State v. Wright, the dogfighting case.

In that case, they drove past the house from a public road, and all they observed were a lot of cars and some spotlights. And it wasn't until they were on the private property that they observed the dogfighting stuff: the people running, the dogs. So they had already intruded on the private property at that

point.

THE COURT: Well, let's look at that real quick. I think the section of the case is called "initial intrusion was lawful."

From the road deputies observed a large number of vehicles at the mobile home and saw spotlights shining next to the mobile home. These observations were not subject to any Fourth Amendment protection because they were knowingly exposed to the public. Moreover, these observations would give a reasonable police officer in the deputies' position cause to go forward. Meaning, go forward, say, into the yard. However, even absent these observations, the police had the investigative authority to approach the front door of the mobile home in order to investigate the anonymous tip.

Respondent Coulette's defense counsel admitted that the police may lawfully knock on the door after receiving a complaint. If the deputies could properly drive up the dirt driveway to the front door, then their observations of the dogfighting pit and fleeing people and dogs did not exceed their investigative authority. What they observed as they drove down the dirt road corroborated the anonymous tip and gave them ample reason to believe dogfighting was in progress. Exigent

circumstances developed when the suspects starting fleeing.

We didn't have any exigency here. And you can't drive into the backyard and approach what doesn't look suspicious from the street. And there wasn't anything suspicious from the street. They didn't see anything.

Curtilage includes outbuildings, the yard around a dwelling, a garden of the dwelling, or the parking lot of a business. That's from State v. Dickey, 716 S.E.2d 97, 2011 case from South Carolina.

I think you've made an excellent argument, but the tip was not enough to roll up in the backyard solely to search for drugs. And there's no reasonable interpretation of the officers' testimony other than that's why they were there. They were not there to politely ask the homeowner, Hey, are you selling drugs out of your house? They were there to see if they could find any. And they should have gotten a warrant, although you can't get a warrant based on an anonymous tip, generally. You've got to have more.

Yeah?

MS. GAY: Your Honor, I just want to -- as we're fleshing out this record, I want to say that, with regard to what you said that there weren't exigent

circumstances, all of the testimony from both of these officers was they saw three black males standing in the yard, and that they suited up, as she said. They got their hat on, they got their SWAT team vests on, so every intention that they had were to be narcotics officers driving into that yard. Not -- I mean, though they weren't in a marked vehicle, they were there -- as she said, We were riding around, and we decided to go check this out; and they get all their suits on, and they go up in there, and they don't -- he specifically said that they didn't -- they both said that they did not see anything drop from that guy's hand that led to any type of, you know, suspicious behavior --

THE COURT: Until they were in the yard.

MS. GAY: -- until after they got out of the car, started talking to them, and said something. And they didn't go anywhere near the truck until they saw somebody run from it, who they chased, who was -- you know, they detained my client, he was unlawfully searched, and I believe that we would ask you to please suppress.

Now, he wasn't charged with anything in the house. Just the stuff in the car that he was charged with.

THE COURT: What else? Anything further, just

so y'all can protect your record?

MR. PATTERSON: Well, again, I believe that -- even if we're to consider this curtilage, that there's nothing that precludes a member of law enforcement from intruding on private property where a private citizen could have intruded. So them wanting to go talk to an individual is not precluded based on my reading of the case law.

However, I think that analogous to Wright, they're on a public road, they have a tip of people in the backyard selling drugs, they see people in the backyard selling drugs --

THE COURT: No, they didn't. Not from the road.

MR. PATTERSON: Excuse me. I misspoke. I apologize.

THE COURT: That's okay. No problem.

MR. PATTERSON: They see people in the backyard, which would corroborate that there are -- I mean, that these might be people that we can go talk to.

However, I think -- I don't think that this can be considered curtilage. There is a fence around the house, and this particular property is beyond the fence. It's outside the fence. It's open to two public roads,

and it's open to houses that anybody from the public could have seen. And in U.S. v. Dunn, which I can provide, your Honor --

THE COURT: I have it.

MR. PATTERSON: -- it sets out extent of curtilage factors that would place -- factors that place specific points of property within the umbrella of the curtilage: The proximity of the area to the home, whether the area is within an enclosure surrounding the home, the nature and uses to which the area is put, and the steps taken by the resident to protect the area from observation by passersby. There's no indication that there's any attempt to protect the area from observation from people using the road or people living in the houses.

THE COURT: Well, was there in Jardines?

MR. PATTERSON: I'm sorry?

THE COURT: Was there any such attempt to protect the front porch in Jardines?

MR. PATTERSON: Well, Jardines doesn't rely on an open field's question.

THE COURT: This isn't an open field's question. But it talks about what the curtilage is, and whether the curtilage is protected or not.

MR. PATTERSON: Well, in that particular

situation, the porch was considered the curtilage. This is an area of yard that's beyond a fenced-in area.

MS. GAY: Your Honor, this is an area of yard, as we can see in this map, that has a car that they put there, that has a shed that they put there, that is -- I mean, I've got pictures that I showed you. But all of this -- okay. There's even an outback building right here. This alleged public road curves in to her private property right here. This is this lady's yard. All of it is this lady's yard. They're having their barbecue right here.

THE COURT: Yeah. I mean, I'm looking at the map that the State put up to ask the officers about. You know, I'm with Beatty, Kittredge, and Short in State v. Taylor. I realize there's a split; however, I'm feeling pretty comfortable about this one. The motion to suppress is granted.

What else do we need to go over? Anything else?

MR. PATTERSON: Just one more thing. We'd like to raise one issue of standing where this -- in Minnesota v. Carter, this particular defendant was not the homeowner; he's not the property owner. He's merely present on the scene. And in this particular case, it says, One who is merely present with the consent of the

house owner may not have standing in terms of Fourth Amendment issues.

THE COURT: Okay. Well, I didn't hear --

MS. GAY: Your Honor, my client was in his -- had a truck that he owned that was on that property, and these drugs were actually found in his truck. So pursuant to all the law that I've seen about how to -- how the search happened of his vehicle on that, I don't -- he may not have standing to what they found in the house. That's something totally different. But at this point, he has total standing to what they found in his car. And, you know, which they're alleging is -- you know, he had dominion and control of.

Now, with regard to what's going on, your Honor, Mr. Bash has another charge that's an older charge, that's a -- not nearly as significant as this charge. And at one point in time, he -- he had a bond hearing or some kind of bond revocation hearing in front of your Honor, and his bonds were revoked. And so I don't know -- I wasn't his attorney at the time. I'd like to show you this. I've already talked to Mr. Patterson about it. And it says -- you have the box checked, committed. I don't know why I wasn't a part of the case at that point. But what I would ask you to do --

This case is a couple of years old. Even older than this 2011 case. And I don't know if we need to -- I assume he's going to appeal it. I don't know if that means my client goes out on bond or what or, you know, we ask for a bond.

THE COURT: Well, what about these other charges? Because those don't have anything to do with this; right?

MS. GAY: No.

MR. PATTERSON: Right.

THE COURT: I mean, we need to, I guess, get that set for trial, or however y'all want to handle it.

MS. GAY: Well, it might not be something he does this week. I don't know. But I'm really just trying to figure out if there's a way that he could be out on bond for those other charges that -- that we can figure it out, because you specifically signed this Order and specifically checked the committed box. And I wasn't a part of the case then.

THE COURT: Right. Because he violated one of the terms and conditions of that bond.

MS. GAY: Okay. So -- he's just -- it's your position -- and he wants me to ask you, and his family wants me to ask you. So it's your position he needs to

sit in jail until we work out this other --

THE COURT: Until you figure this out --

MS. GAY: Okay. I understand.

THE COURT: -- or he can post bond on the other case or we have a hearing on, you know, why it should be reinstated.

MS. GAY: Well --

THE COURT: But without information, I'm not going to do that.

MS. GAY: I understand.

So the other question is --

I'm coming back on Thursday afternoon. Maybe we could have this discussion about asking for it to be reinstated.

THE COURT: Y'all talk about it and see if you want to move. We'll get something up. I -- you know, if y'all want to talk to me about standing, I'm happy to look at any law y'all send me tonight. I think the argument is that they shouldn't have been on the property in the first place. And then, if for some reason he doesn't have standing to assert that -- and that would depend, quite frankly, on what his status as a guest on the property was. Nobody put any evidence about that in the record just now. And so it's really not even before me. You know, if that was going to be

the argument, somebody should have put in some evidence in that regard.

MS. GAY: You mean against standing?

THE COURT: Well, yeah. I mean, you know, I don't know if he's related to the people, if he lives there part of the time, if the car stays there all of the time. I mean, this is just a screw-up. That's all. I mean, nobody acted in bad faith, or, you know, I don't think, did it on purpose. But, you know, they suited up and went into the curtilage of this lady's house based on an anonymous tip alone.

MS. GAY: Is this one -- are you talking about going tomorrow?

THE COURT: Yeah. I mean, if I need to look at it tonight, send me whatever you want.

MR. PATTERSON: Will we be able to recall witnesses to discuss standing?

THE COURT: Nope.

MS. GAY: I don't think so.

THE COURT: We're done. I mean, y'all said y'all were resting.

(Ms. Gay is speaking to Mr. Patterson off the record.)

THE COURT: Well, but what I think he's trying to argue is, is he doesn't have standing to assert the

argument that I just granted as the basis for my ruling. However, there's no evidence put in that he doesn't have standing.

MS. GAY: That would be my position.

THE COURT: So the question then becomes: Do you need to put in standing that he does? And that's what I'm willing to look at tonight, if that's even a valid --

MS. GAY: Your Honor, if you -- if it makes a difference, my client would be willing to testify that he was invited to the party, if that's something that you wanted to have in the record.

THE COURT: From what I recall, it depends on what his status as a guest was. You know, quite frankly, I'd be more concerned about wanting to fight about something that is so obviously violative of the Fourth Amendment.

But you go talk to Brian and the folks in your office, and if we want to argue about standing, I'm happy for you to send me some case law. But this one, to me, is not close.

MR. PATTERSON: Thank you, your Honor.

THE COURT: Okay? Thank you.

MS. GAY: Thank you.

THE COURT: So E-mail me whatever y'all want.

Y'all talk, and, you know, I'll read anything you send me.

WHICH WAS ALL THE EVIDENCE ADDUCED AT THIS CAUSE.

(The hearing of this cause concluded at 4:40 p.m., on June 11, 2013.)

REPORTER'S CERTIFICATE

STATE OF SOUTH CAROLINA)
) **ss.**
COUNTY OF BERKELEY)

I, **ROLAYNE M. VOLPE**, Certified Court Reporter, CCR, and Registered Professional Reporter, RPR, do hereby certify that the transcript of the foregoing proceedings accurately reflects the events that occurred before me to the best of my ability at the time and place set out on the caption hereto, the witnesses having been duly cautioned and sworn, or affirmed, to tell the truth, the whole truth, and nothing but the truth.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken or to any attorney or counsel employed by the parties hereto, nor financially interested, directly or indirectly, in the outcome of this action.

CERTIFIED AND SIGNED on this 29th day of August, 2013.

ROLAYNE M VOLPE NOTARY PUBLIC SOUTH CAROLINA

ROLAYNE M. VOLPE, CCR, RPR
Certified Court Reporter and
Registered Professional Reporter
Commission Expires: 8/30/2021

ORIGINAL

WITNESSES

eley County Sheriff's Office

D. Bore

AGENCY CASE NUMBER

11048232

ARREST WARRANT NUMBER

5936

DATE OF ARREST

mber 11, 2011

ON OF GRAND JURY

True Bill

rson of Grand Jury

10/17/12

ICT

son of Petit Jury Date:

DOCKET NO. 2012GS0801823

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

October Term

THE STATE

vs.

WALTER MAURICE BASH
DOB: [redacted]
B/M

Indictment for

Trafficking Cocaine

§44-53-370(e)(2)(e)
CDR: 0281

FILED
12 OCT 17 PM 3:10
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

LFH

R. 85

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on October 17, 2012 the Grand Jurors of Berkeley County present upon their oath:

Trafficking Cocaine

That WALTER MAURICE BASH did in Berkeley County, South Carolina, on or about November 10, 2011, unlawfully and knowingly sell, deliver, or purchase, or bring into this State; or aid, abet, attempt, or conspire to sell, deliver, or purchase, or bring into this State; or was in actual or constructive possession, or attempted to become in actual or constructive possession of a controlled substance or a controlled substance analogue, to wit: Cocaine, in an amount of more than four hundred (400) grams, such possession not having been authorized by law, in violation of §44-53-370(e)(2)(e) 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.

JENNIFER KINZELER WILLIAMS
ASSISTANT SOLICITOR

WITNESSES

keley County Sheriff's Office

D. Ford

AGENCY CASE NUMBER

11048232

ARREST WARRANT NUMBER

5928

DATE OF ARREST

ember 11, 2011

ON OF GRAND JURY

True Bill

rson of Grand Jury

10/17/12

ICT

rson of Petit Jury Date:

DOCKET NO. 2012GS0801824

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

October Term

THE STATE

vs.

WALTER MAURICE BASH
DOB: [redacted]
B/M

Indictment for

Trafficking Cocaine Base

§44-53-0375(C)(1)
CDR: 0450

FILED
12 OCT 17 PM 3:10
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

R. 87

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

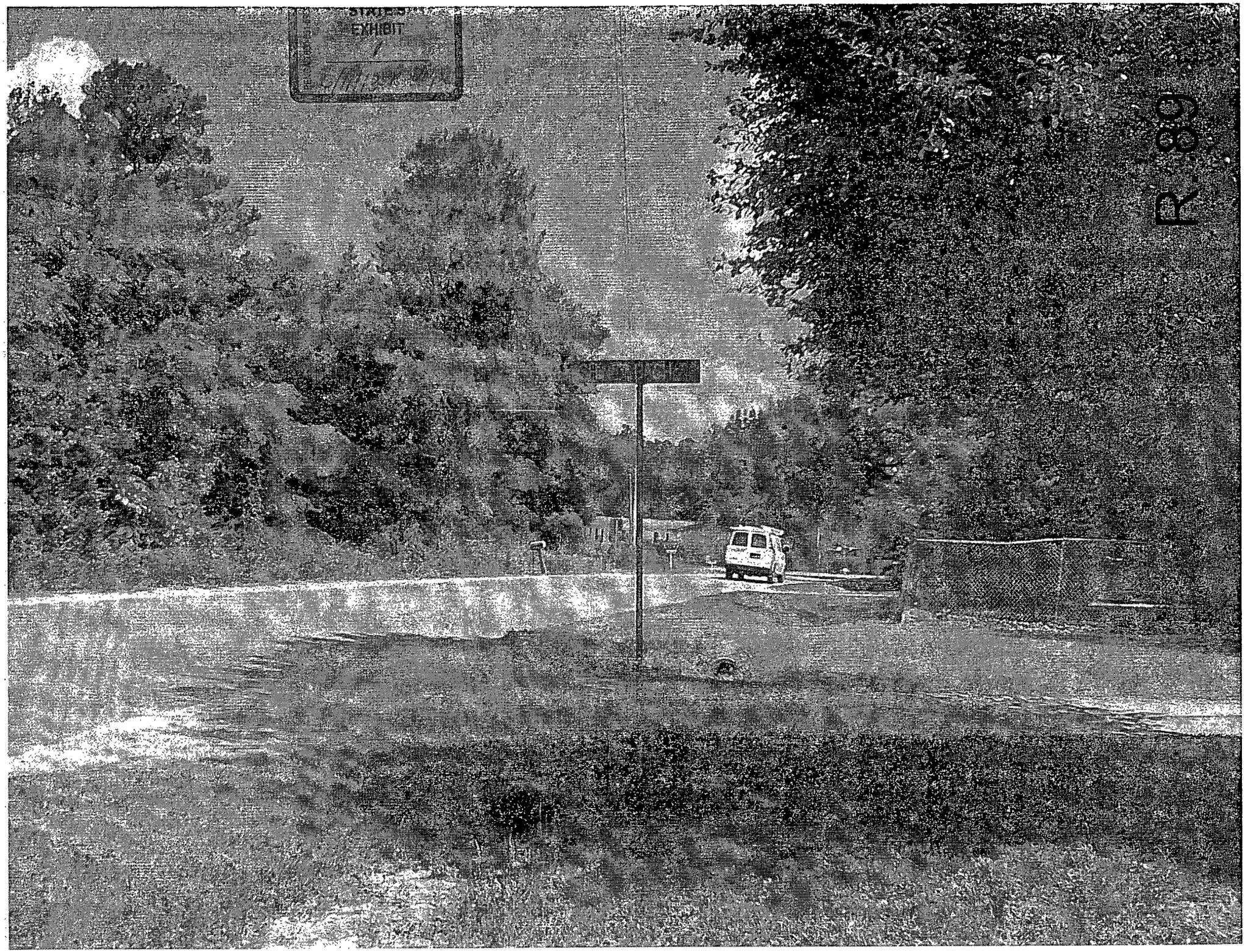
At a Court of General Sessions, convened on October 17, 2012 the Grand Jurors of Berkeley County present upon their oath:

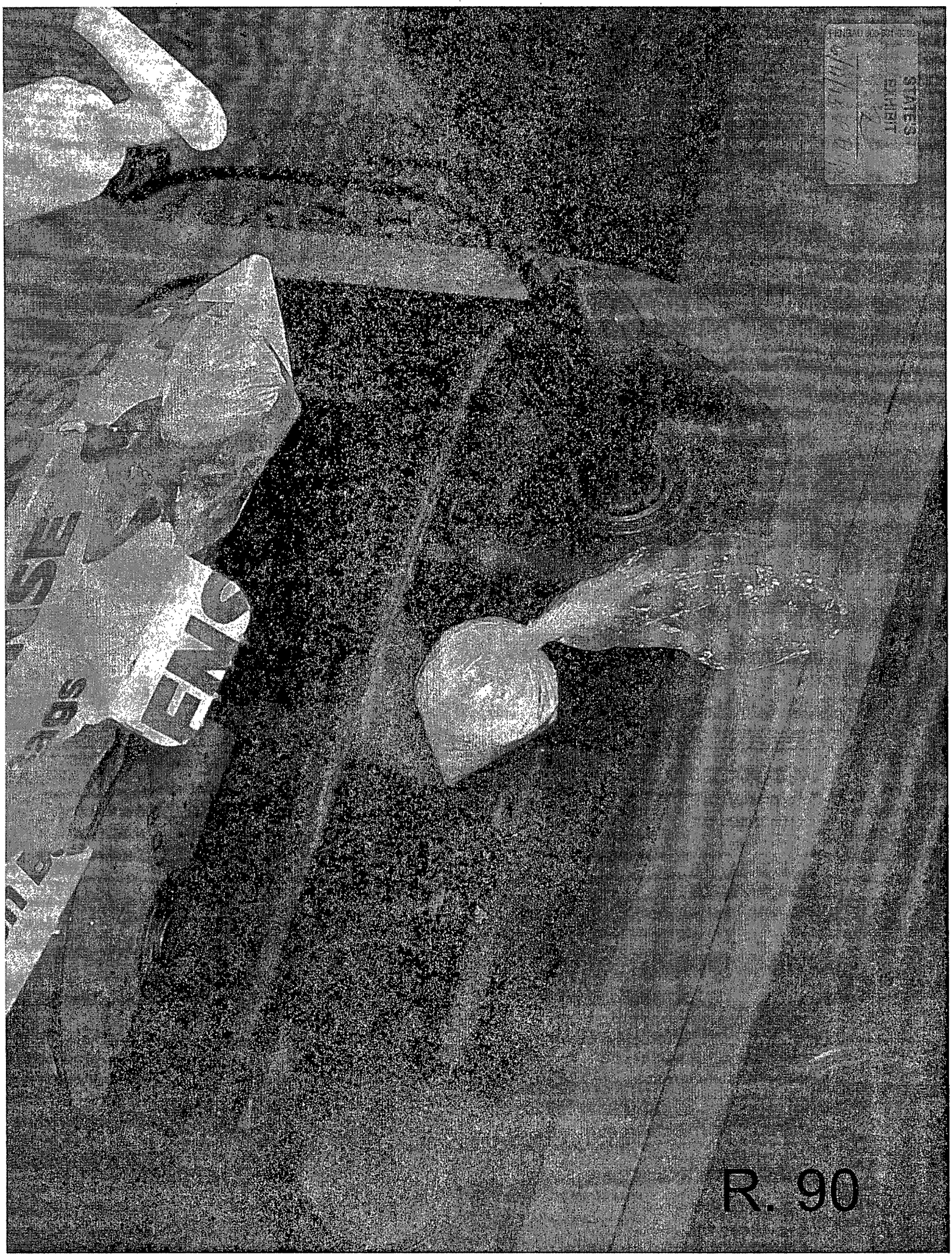
Trafficking Cocaine Base

That WALTER MAURICE BASH did in Berkeley County on or about November 10, 2011, knowingly, sell deliver, purchase, or bring into this state, or did aid, abet, attempt or conspire to sell, deliver, purchase or bring into this state, or was in actual or constructive possession or attempted to become in actual or constructive possession of a controlled substance, or a controlled substance analogue to wit: Cocaine Base, such possession not having been authorized by law, in violation of §44-53-0375(C)(1) of the South Carolina Code of Laws, 1976, as amended.

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

JENNIFER KINZELER WILLIAMS
ASSISTANT SOLICITOR


STATE'S
EXHIBIT
1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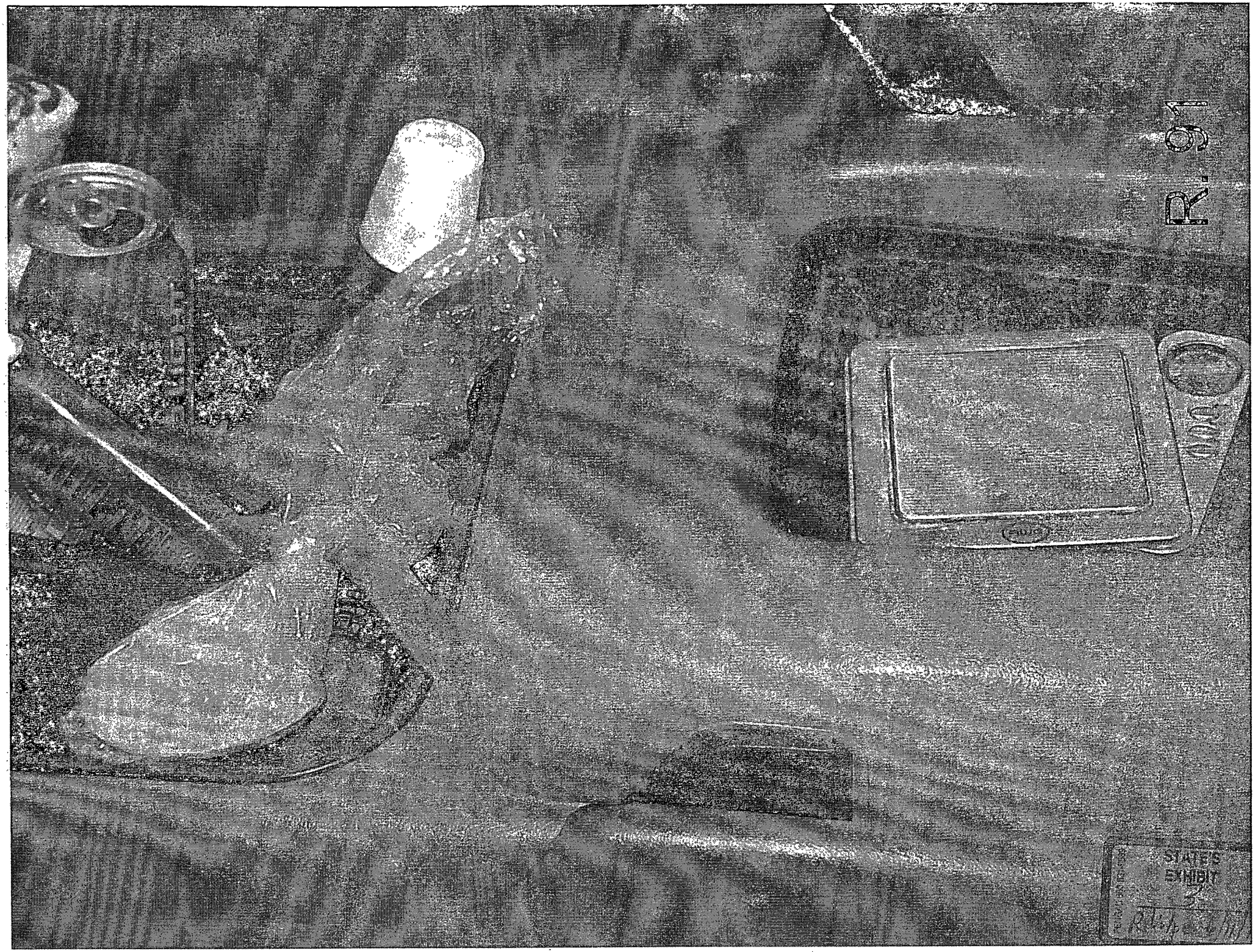
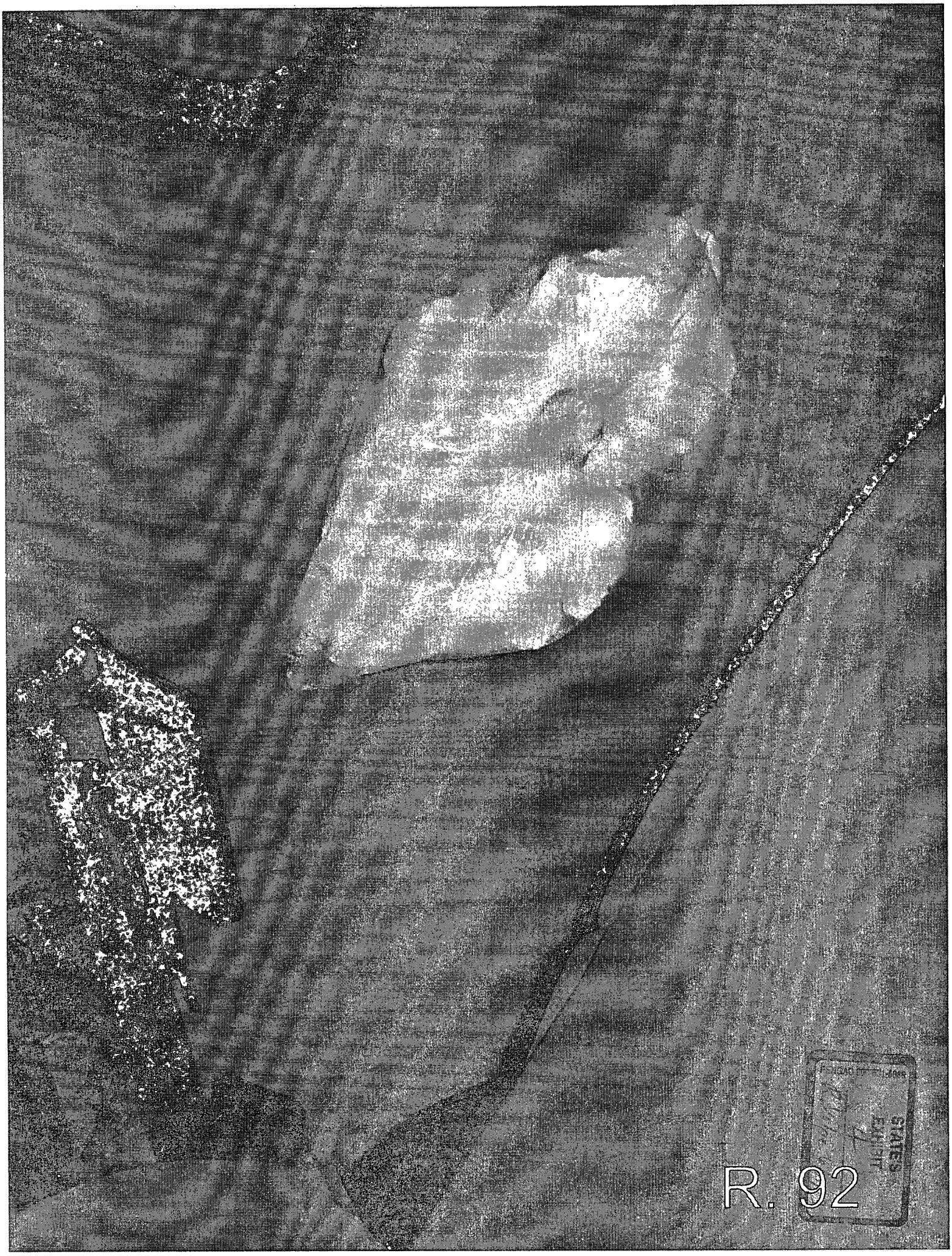
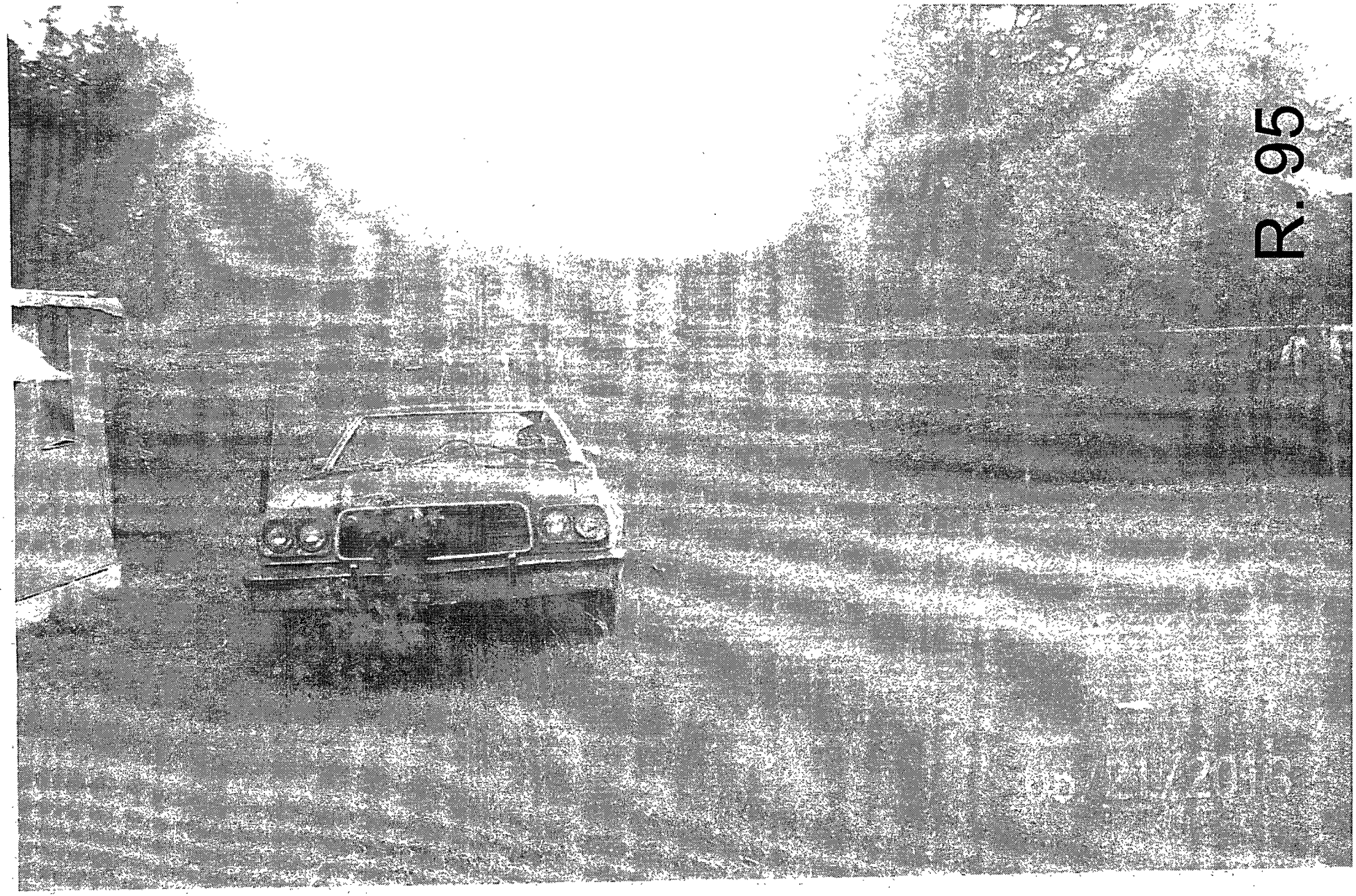

STATE'S
EXHIBIT


R. 92

STATE'S EXHIBIT

DEFENDANT'S EXHIBIT
1
R.V.P. 6/6/13



R. 95

DEFENDANT'S EXHIBIT 2

DEFENDANT'S
EXHIBIT
3
PENGAD 800-631-6989

R. 97

R. 69

DEFENDANT'S EXHIBIT
5
R.V. 12-6-13
FENCAD 800-237-1998

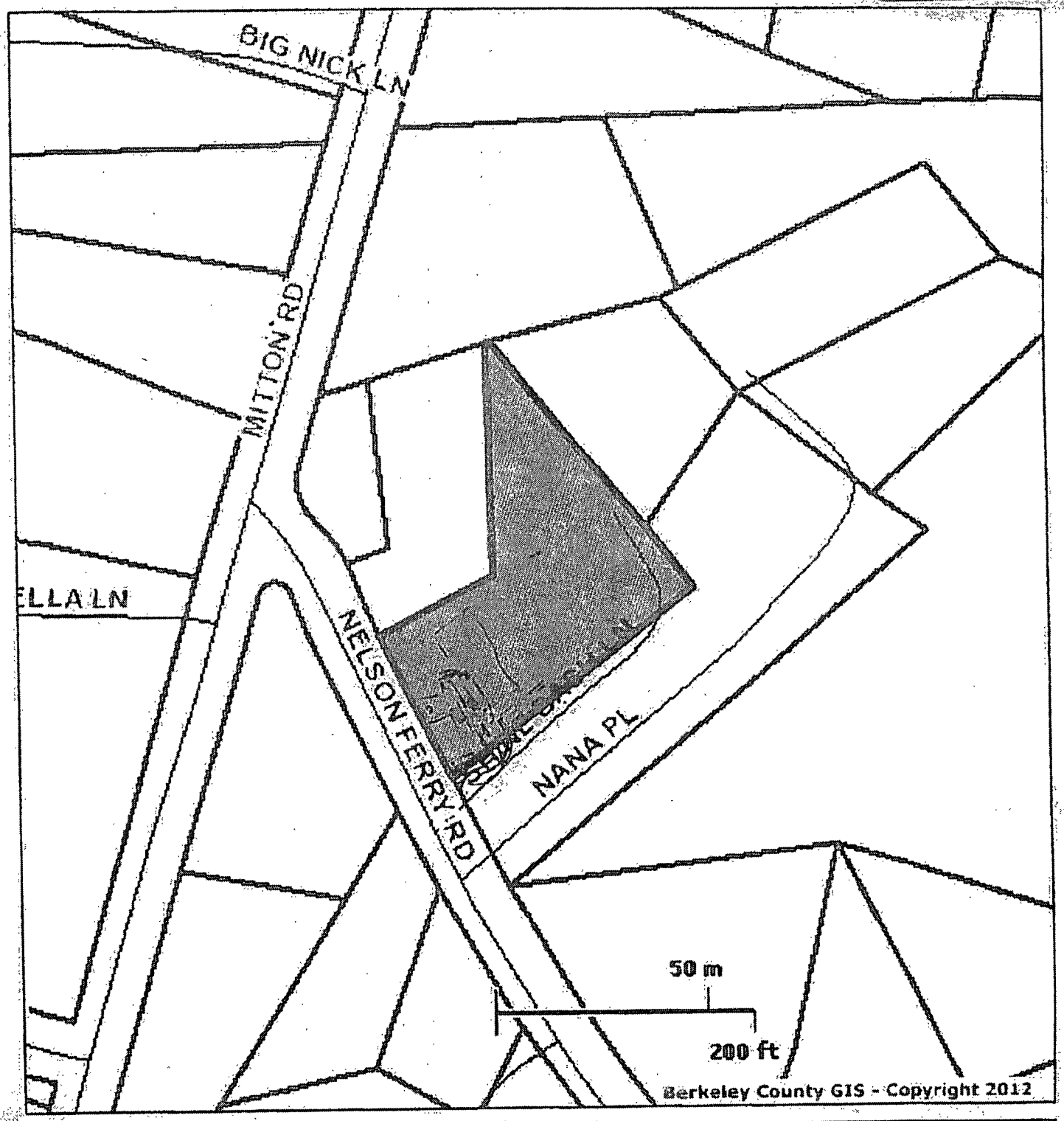
DEFENDANT'S EXHIBIT
6
6/11/13 K. Wolfe

DEFENDANT'S
EXHIBIT
05/26/2013

DEFENDANT'S EXHIBIT
8
6/11/13 R. Volpe
FEN/CAD 800-631-6989

DEFENDANT'S EXHIBIT
9
R. Volpe 6/11/13
PEN-AD 800-631-6989

EXHIBIT
10
6/11/13 K.V.P.C.



BERKELEY COUNTY
GEOGRAPHIC INFORMATION SYSTEM

Berkeley County EGS Mapping

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Thursday, September 20, 2012

N

R. 103

VCD0068

OCA: 2011-11048232

Form Approved by: S.C. Attorney General Section 17-13-160
March 15, 1978

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

SEARCH WARRANT

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY OF BERKELEY:

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

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

(SEE SECTION "A")

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

DESCRIPTION OF PROPERTY

(SEE EXHIBIT "A")

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

A written inventory of all property seized pursuant to this Search Warrant shall be made to

Issuing MAGISTRATE

Within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

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

Moncks Corner, S.C.

10 May, 2011

Signature of Judge

DEFENDANT'S EXHIBIT R-104

VCD0035

OCA: 2011-11048232

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

AFFIDAVIT

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

DESCRIPTION OF PROPERTY SOUGHT
(SECTION "B")

ANY AND ALL ILLEGAL DRUGS, NAMELY SCHEDULE I, (NAMELY COCAINE BASE) II, III, IV AND V CONTROLLED SUBSTANCES AS WELL AS PARAPHERNALIA INCLUDING BUT NOT LIMITED TO ITEMS OF VARIOUS TYPES COMMONLY ASSOCIATED WITH STORAGE, DISTRIBUTION, PURCHASING, MANUFACTURING AND TRAFFICKING OF ILLEGAL DRUGS. ANY COMPUTERS, ELECTRONIC STORAGE MEDIA, DOCUMENTS, PHONE TOLLS, PERSONAL RECORDERS OR ANY OTHER ITEMS ASSOCIATED WITH THE RECORDINGS OF USE OR TRADE OF ANY ILLEGAL DRUGS OR ITEMS OF PERSONAL PROPERTY TENDING TO ESTABLISH THE IDENTITY OF PERSONS IN CONTROL OF THE AREA TO BE SEARCHED.

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

WHILE TRAVELING ON HIGHWAY 17 THROUGH MONCKS CORNER, TRAVEL 0.5 MILES AND TURN LEFT ONTO MITTON ROAD. TRAVEL APPROXIMATLEY 0.6 MILES WEST BOUND UNTIL REACHING NELSON FERRY ROAD. TURN RIGHT ONTO NELSON FERRY ROAD. THE RESIDENCE IS DESCRIBED ON THE LEFT SIDE OF THE ROADWAY. THE RESIDENCE IS DESCRIBED AS A TAN IN COLOR BRICK RESIDENCE WITH BLACK TRIM TO INCLUDE RAISED WHITE PANELS ON THE FRONT OF THE BUILDING. THE FRONT DOOR IS BLACK IN COLOR WITH THE NUMBERS [redacted] THAT IS POSTED ABOVE THE FRONT DOOR IN BLACK COLOR. TO INCLUDE A CHAIN LINK FENCE THAT SURROUNDS THE FRONT OF THE RESIDENCE; THE ADDRESS IS INDICATED AS [redacted] **NELSON FERRY ROAD.** THIS SEARCH WARRANT IS TO INCLUDE ALL OUTBUILDINGS, APPERTUENCES, VEHICLES AND PERSONS PRESENT AT THE TIME THE SEARCH WARRANT IS EXECUTED.

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

MEMBERS OF THE BERKELEY COUNTY DRUG ENFORCEMENT UNIT WERE INVESTIGATING A SUSPICIOUS COMPLAINT AT [redacted] NELSON FERRY ROAD THAT IS LOCATED IN THE MONCKS CORNER AREA OF BERKELEY COUNTY. AGENTS APPROACHED TWO BLACK MALES: LATER IDENTIFIED AS ESAU BRANCH AND CURTIS SHINE WHO IS THE PROPERTY OWNER. BOTH SUSPECTS WERE STANDING IN THE REAR OF THE RESIDENCE, ADJACENT TO A BLACK IN

COLOR TRUCK THAT WAS PARKED, AND DID BEAR THE SC TAG: [redacted]. AS AGENTS BEGAN TO EXPLAIN THE REASON FOR OUR PRESENCE, THE BLACK MALE THAT WAS STANDING AT THE REAR OF THE TRUCK, ESAU BRANCH, WAS OBSERVED THROWING DOWN A CLEAR IN COLOR WHITE POWDERY SUBSTANCE THAT DID WEIGH APPROXIMATELY 1.5 GROSS GRAMS THAT DID TEST POSITIVE FOR COCAINE. THIS AGENT APPROACHED THE TRUCK AND ONE BLACK MALE EXITED THE PASSENGER SIDE DOOR OF THE TRUCK AND ABSCOUNDED FOR AGENTS. IT WAS AT THAT TIME, A BLACK MALE, IDENTIFIED AS WALTER BASH DID STEP OUT OF THE DRIVERS SIDE OF THE VEHICLE, IN PLAIN VIEW ON TOP OF THE CONSOLE ON THE INTEROIR OF THE TRUCK, WAS ONE GRAY IN COLOR DIGITAL SCALE AND A CLEAR BAGGIE CONTAINING A WHITE IN COLOR SUBSTANCE. A SEARCH OF THE VEHICLE WAS CONDUCTED AND YIELDED FOUR CLEAR BAGGIES OF APPROXIMATELY 671.0 GROSS GRAMS OF A WHITE IN COLOR POWDER SUBSTANCE THAT DID TEST POSTIVE FOR COCAINE. THEREFORE, THIS AFFIANT STATES THERE IS PROBABLE CAUSE TO BELIEVE THAT A CRIME HAS BEEN COMMITTED, TRAFFICKING IN COCAINE BASE, THAT ADDITIONAL EVIDENCE AND/OR CONTRABAND WILL BE FOUND UPON THE PREMISES TO BE SEARCHED UPON EXECUTION OF THIS SEARCH WARRANT.

Sworn to and Subscribed before me
This 10th day of NOVEMEBER, 2011

_____ (L.S.)
Signature of Judge

1835

_____
Affiant

R. 106

VCD0037

OCA: 2011-11048232

RETURN

I received the attached Search Warrant 11-10-11, 2011, and have executed it as follows:

On 11-10-11, 2011 at 1850 o'clock P M, I searched (the person) described in the warrant and (the premises).

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

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

Item 1) metal grinder located in shed behind residence by Det. Mcdowell

Item 2) Quantity of BURNT marijuana cigarette located under couch cushion, N Dev by Milks

Item 3) green digital scale located in kitchen ON COUNTER by Det. Milks

Item 4) Quantity of White Powder substance located ON Kitchen counter by Det. Milks/Ashe.

Item 5) Quantity of US currency located ON top of Refridgerator by Ashe

Item 6) Quantity of US currency located on washer in Utility room by Det Boerst

Item 7) Misc paperwork Located inside residence by Milks

Item 8) Quantity of green plant material located inside Kitchen by Ashe

ALL Items Retrieved by Det. Milks

Nothing Follows

This inventory was made in the presence of: Sgt. Holbrook, Sgt Ashe, Sgt Vaughn, SSt Horn Cpl Milks, Cpl Mcdowell, Det. Boerst

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

SWORN to before me this 19th Day of November, 2011

(L.S.)

0550

(Signature of Officer Executing Warrant)

R. 107

VCD0038

Site Map

CERTIFICATE OF COUNSEL

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

SCARLETT A. WILSON
Solicitor, Ninth Judicial Circuit

BY: _____
Mark R. Farthing

Office of the Attorney General
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(803) 734-3727

ATTORNEYS FOR APPELLANT

August 12, 2014